

# The South Carolina Court of Appeals

Clarence Winfrey, Employee, Claimant, Respondent,

v.

Archway Services, Inc., Employer, and American Fire & Casualty Insurance Company c/o Liberty Mutual Group, Carrier, Appellants.

Appellate Case No. 2014-001788

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## ORDER

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On November 15, 2016, Respondent petitioned the South Carolina Supreme Court pursuant to Rule 240, SCACR, and Rule 245, SCACR, for extraordinary writs of prohibition and mandamus and for an ex parte emergency order to stay an order issued by the South Carolina Workers' Compensation Commission on November 8, 2016. Because the underlying case is currently before the South Carolina Court of Appeals, our supreme court transferred Respondent's petition to this court pursuant to Rule 245(a), SCACR. This court received Respondent's return on November 18, 2016.

On October 18, 2016, Appellants moved for protective order with the South Carolina Workers' Compensation Commission seeking an order granting the right to indefinitely suspend all adjusting and handling of Respondents' claim, including payment of medical and compensation benefits. Appellants sought this order in response to a complaint filed by Respondent on September 8, 2016, in the court of common pleas. In their motion before the Commission, Appellants stated:

This complaint is without merit and is clearly frivolous. However, for purposes of the case—and this motion—before the Commission, we must accept the allegations as true. If the allegations are determined to be true, the mere continued handling of this claim exposes

[Appellants] to ongoing and unlimited civil liability. It would be inequitable to require [Appellants] to continue to provide benefits and compensation and to require [Appellants] to continue handling and adjusting this claim while simultaneously exposing [Appellants] to ever increasing civil liability. The Commission cannot require [Appellants] to violate the law—which [Respondent] has alleged [Appellants] are doing in their handling of this claim. Therefore, this Commission should issue and Order permitting [Appellants] to cease all activity on this claim pending the resolution of the complaint filed by [Respondent] in the Fifth Circuit.

Without a hearing, the Commission granted Appellants' motion for protective order on November 8, 2016. The Commission provided no reasoning for the granting of the order.

On July 25, 2014, the Appellate Panel of the Workers' Compensation Commission issued a decision and order finding Respondent had suffered a compensable injury under the act. Specifically, the Appellate Panel found Respondent suffered an electrical shock during the course of his employment which led to an acute myocardial infarction which caused an acute ventricular septal defect (VSD). Respondent underwent emergency surgery to repair the VSD. The Appellate Panel found the injury to be compensable and ruled Respondent was entitled to receive temporary total disability benefits from September 15, 2013, through the present and continuing until further order of the Commission or by agreement of the parties. Additionally, the Appellate Panel ruled Respondent was entitled to ongoing treatment until he reaches maximum medical improvement. No finding of permanency was entered. Further, the Appellate Panel ruled Respondent may be entitled to additional medical conditions for other causally related conditions and Appellants had the reserved the right to contest compensability of any injury or condition opined to be related to the original injury.

The Appellate Panel's July 25, 2014, final decision and order is the subject of the present appeal. The appeal has not stayed Respondent's right to receive compensation and medical benefits under the Workers' Compensation Act. *See* Rule 241(b)(7), SCACR; *see also* S.C. Code Ann. § 42-17-60 (2015). Further, this court has jurisdiction over all matters directly affected by this appeal. *See* Rule 205, SCACR. We find the Commission lacked jurisdiction to issue an order staying the payment of compensation and medical benefits which are the subject of

this appeal. Accordingly, the order of the Workers' Compensation Commission, to the extent the order stayed benefits which are the subject of the present appeal, is void. As we have noted in our prior orders, questions of compensability of any maladies potentially related to the original injury yet not specifically addressed in the Appellate Panel's July 25, 2014 final decision and order remain within the jurisdiction of the Workers' Compensation Commission.

Oral arguments for this appeal will be held on December 6, 2016.

*H. Bruce Williams*

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*Paul W. Thomas*

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*John D. Beatty*

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Columbia, South Carolina

**FILED**

*November 18, 2016*

cc:

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