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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM THE SOUTH CAROLINA WORKER'S COMPENSATION
COMMISSION

Appellate Panel

Appellate Case No. 2012-211870

Richard A. Hartzell, Employee.....Respondent

v.

Palmetto Collision, LLC, Employer,.....Appellant

and

the S.C. Uninsured Employers Fund.....Respondent

PETITION FOR REHEARING

Pursuant to Rules 221 and 240, SCACR, Respondent Richard A. Hartzell petitions this Court to Rehear and Reconsider its opinion in Hartzell v. Palmetto Collision, LLC and S.C. Worker's Compensation Uninsured Employers Fund, Op. No 5457, filed November 23, 2016.

The Court affirmed the South Carolina Worker's Compensation Commission Appellate Panel's finding that Respondent Hartzell suffered a compensable injury under the Worker's Compensation Act. The Court reversed that portion of the Appellate Panel's order awarding a medical evaluation, finding the award in contravention of Section 42-15-60(A).

1. In affirming in part and reversing in part, the Court overlooked or misapprehended that its opinion should have included an order of remand directing the Worker's

Compensation Commission to make additional findings consistent with the opinion of this Court after receiving such additional evidence as may be necessary to make a final award.

The Order/Award of the Worker's Compensation Commission Appellate Panel directed:

“IT IS HEREBY ORDERED that the Claimant be provided an evaluation to determine whether he is at MMI and whether he is in need of any additional medical treatment together with any benefits under the Act necessarily resulting from such evaluation and determination. It is further

ORDERED that the Employer in South Carolina Worker's Compensation Uninsured Fund may choose the provider.” R. p. 18.

It is obvious that the Commission's award was not final because it left open the determination of 1) the need for additional medical treatment and 2) “...any benefits under the Act necessarily resulting from such evaluation and determination...”

The Commission anticipated the need for additional evidence in order to make its final award.

This Court has now reversed the award of the employer paid evaluation.

The only medical benefit thus far ordered by the Commission is an initial evaluation to determine MMI and the need for additional treatment. This is important as medical opinions are frequently part of the evidence in a Worker's Compensation case. The Court of Appeals should make clear that the reversal of the evaluation order does not preclude the Respondent from providing a medical opinion consistent with subsection 42-15-60(A) at his own expense, nor does it preclude a final award based upon that or other additional evidence.

2. The Court of Appeals further overlooked or misapprehended that, since the Order of the single Commissioner as well as that of the Appellate Panel was not final within the meaning of South Carolina Code Section 1-23-380, (Administrative Procedures Act) and by its own terms contemplated further proceedings before the Commission, those orders were not

immediately appealable see Bone v. U.S. Food Service, 404 S.C. 67, 744 S.E. 2nd 552 (2013). Though Bone involved an appeal under the prior procedural scheme wherein the first appeal from the Commission was to the circuit court, the same principal has been applied to the current procedure of direct appeal from the Commission to the Court of Appeals. See Levi v. Northern Anderson County EMS, 409 S.C. 374, 762 S.E. 2nd 44 (Ct. App. 2014). As stated in Bone:

“An Order as to compensability, without addressing the Claimant’s current medical status and specific benefits to be awarded, is not a final judgment disposing of the entirety of the action and leaving nothing further to be done but execution of the judgment.” Bone, Supra, 404 S.C. 67, 79 S.E. 2nd 552, 559.

The Bone issue was raised before the Supreme Court after its writ of certiorari to the Court of Appeals. The Supreme Court decided that Bone was inapplicable since both Section 1-23-390 and Rule 242(a) SCACR authorize the Supreme Court to issue a writ of certiorari to review a final decision of the Court of Appeals. Hartzell v. Palmetto Collision, LLC, Supreme Court Opinion No. 27620, filed April 13, 2016, Footnote 1. The Supreme Court did not, however, address the issue of whether or not the appeal from the Commission to the Court of Appeals was proper under Section 1-23-380.


Whether by way of remand or dismissal of the appeal, this Court should make clear to the Worker’s Compensation Commission that it has the duty and the jurisdiction to receive evidence and make further findings of fact as may be necessary to make a final and complete award.

CONCLUSION

The Court should grant the Petition for Rehearing, withdraw its opinion and either remand the case for further proceedings before the Commission not inconsistent with the opinion of November 23, 2016, or dismiss the appeal, so that the Commission may consider evidence necessary for a final award.

December 6, 2016

Respectfully submitted,



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ATTORNEY FOR RESPONDENT
RICHARD A. HARTZELL

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PROOF OF SERVICE

I certify that I have served Petitioner's Reply Brief upon Respondents, by depositing a copy of same in the United States mail, postage prepaid, on December 6, 2016, addressed to their attorney of record, Kirsten Barr, Esq. and to the attorney for the S.C. Uninsured Employers Fund, Lisa Glover, Esq., as follows:

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December 6, 2016



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December 6, 2016

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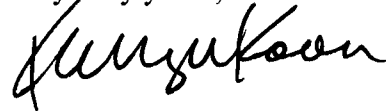
RE: Richard A. Hartzell v. Palmetto Collision, LLC
Appellate case number: 2012-211870

Dear Madam Clerk,

Please find herewith the original and six (6) copies of a Petition for Rehearing in the above referenced matter together with a Proof of Service of the same and my check for the required fee.

With kindest regards, I am

Very truly yours,



Kerry W. Koon

KWK:mm
Enclosures