

82168

STATE OF SOUTH CAROLINA
In The Court of Appeals

RECEIVED

JAN 12 2017

SC Court of Appeals

APPEAL FROM THE SOUTH CAROLINA
WORKERS' COMPENSATION COMMISSION

Susan S. Barden, Commissioner
T. Scott Beck, Commissioner
Gene McCaskill, Commissioner

WCC File No. 1318928

Appellate Case No. 2016-002423

James A. Ashford,Employee, Claimant, Respondent/Appellant

v.

Prysmian Power Cables and Systems, USA, Employer, and
Sentry Insurance Company,.....Carrier, Appellants/Respondents.

MOTION TO DISMISS

This motion is filed pursuant to Rule 240, SCACR.

This is an appeal in a workers' compensation case. The court should dismiss this appeal because the order of the Workers' Compensation Commission is not a "final order" and review of the final agency decision will provide an adequate remedy for Appellants/Respondents.

The Administrative Procedures Act generally limits a party's right to appeal an administrative case until after there has been a "final" decision. See S.C. Code Ann § 1-23-380.

This term is a term of art; it describes an order that disposes of all the issues in a case and leaves nothing to be done but to enforce by execution what has been determined. See *Bone v. U.S. Food Service*, 404 S.C. 67, 83, 744 S.E. 2d 552, 561 (2013). Under section 1-23-80(A) of the APA, “[a] party who has exhausted all administrative remedies available within the agency and who is aggrieved by a final decision in a contested case is entitled to judicial review...” S.C. Code Ann § 1-23-380(A) (Supp. 2007). “A preliminary, procedural, or intermediate agency action or ruling is immediately reviewable if review of the final agency decision would not provide an adequate remedy.” S.C. Code Ann. § 1-23-380(A).

In this case, there is no question that the full commission order is an intermediate order and not a final decision. This full commission order is based on the single commission hearing, which was held on June 23, 2015. The single commission hearing was based solely on the Form 21 filed by Appellants/Respondents on April 8, 2015, regarding whether Claimant had reached maximum medical improvement (MMI) and whether Appellants/Respondents could stop temporary total disability (TTD) benefits. Respondent/Appellant filed a Form 50 request for hearing on February 16, 2015, alleging permanent and total disability, which requires mandatory mediation prior to a hearing pursuant S.C. Code of Regulation 67-1802. Mandatory mediation has not been held. Thus, mandatory mediation is required to be held, and if the case is not settled at mediation, another single commission hearing will be set based on Respondent/Appellant’s Form 50 alleging permanent and total disability and any and all remaining issues will be ruled upon by the single commissioner. The post mediation single commission hearing will address issues which have not been decided such as Respondent/Appellant’s disability award and whether Respondent/Appellant needs future medical care once he reaches MMI.

The full commission order in this case held in finding of fact #25 that, "Claimant is entitled to all causally related future medical treatment, as recommended by Dr. Gabr, by a physician with a specialty to the hand of Defendants' choosing." See Attachment 1, p. 15. This is the only care that Appellants/Respondents have to provide pursuant to the full commission order, and Appellants/Respondents have to provide this care while any appeal is pending pursuant to S.C. Code Ann. § 42-17-60 (Supp.2012). "In the case of an appeal from the decision of the commission on questions of law, the appeal does not operate as a supersedeas and, after that time, the employer is required to make weekly payments of compensation and to provide medical treatment ordered by the commission involved in the appeal or certification until the questions at issue have been fully determined in accordance with the provisions of this title." See *Bone v. U.S. Food Service*, 404 S.C. 67, 83, 744 S.E. 2d 552, 561 (2013). Rule 241(b)(7), SCACR (stating the general rule that a notice of appeal acts to automatically stay matters decided in the order does not apply to "workers' compensation awards as provided in S.C. Code Ann. § 42-17-60"). *Id.*

Thus, the law requires Appellants/Respondents to provide ongoing medical care as ordered by the full commission while an appeal is pending. Indeed, the conduct of Appellants/Respondents after the full commission award indicate that they understand this principle of law as they have stopped Respondent/Appellant's weekly TTD checks based on the full commission award even though Respondent/Appellant has cross-appealed the full commission order on this issue. Thus, Respondent/Appellant is not receiving any workers' compensation benefits while this appeal is pending. Respondent/Appellant is still waiting on Appellants/Respondents to provide the medical care as ordered by the full commission. If Appellants/Respondents fail to provide this ongoing medical care, it is a violation of the statutory and common law of South Carolina, and


Appellants/Respondents will be subject to contempt of court. As a practical matter assuming Appellants/Respondents follow their duty and obligation under the law, the medical care at issue on appeal will have already been provided by Appellants/Respondents when the appeal is argued making that issue moot. The workers' compensation commission can clearly provide an adequate remedy for any other issues Appellants/Respondents have raised on appeal until a final decision in this case has been rendered by the workers' compensation commission.

In addition to Respondent/Appellant having a right to a workers' compensation hearing after mandatory mediation to address all remaining issues, Appellants/Respondents have the right to file another Form 21 request for hearing regarding MMI and additional medical care once Appellants/Respondents have provided the medical care as ordered by the full commission.

CONCLUSION

This appeal should be dismissed. The dismissal should be without prejudice and with leave to re-file once the commission has entered a final decision.

Respectfully Submitted,


David N. Truitt (Bar # 0065287)
TRUITT LAW FIRM, LLC
925 Calhoun St.
Columbia, SC 29201
(803) 814-1556
(803) 814-1557 (facsimile)
ct@chiptruittlaw.com

Attorney for Respondent/Appellant

January 12, 2017

STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM THE SOUTH CAROLINA
WORKERS' COMPENSATION COMMISSION

RECEIVED

JAN 12 2017

SC Court of Appeals

Susan S. Barden, Commissioner
T. Scott Beck, Commissioner
Gene McCaskill, Commissioner

WCC File No. 1318928

Appellate Case No. 2016-002423

James A. Ashford,Employee, Claimant, Respondent/Appellant,


v.

Prysmian Power Cables and Systems, USA, Employer, and
Sentry Insurance Company,.....Carrier, Appellants/Respondents.

PROOF OF SERVICE

The undersigned hereby certifies that he has hand-delivered on January 12, 2017, a copy of the Motion to Dismiss in the above entitled action to Nicholas L. Haigler, Esq., SOWELL GRAY STEPP & LAFFITTE, L.L.C., 1310 Gadsden Street, Columbia, SC 29211.

TRUITT LAW FIRM, LLC


David N. Truitt #0065287
925 Calhoun St.
Columbia, SC 29201
(803) 814-1556

Attorney for Respondent/Appellant