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THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

RECEIVED

APPEAL FROM THE SOUTH CAROLINA
WORKERS' COMPENSATION COMMISSION

JAN 13 2017

SC Court of Appeals

Melody L. James, Commissioner
Mike Campbell, Commissioner
Avery B. Wilkerson, Jr., Commissioner

W.C.C. FILE NO.: 1215107

APPELLATE CASE NO.: 2016-002416

Randy Faulkenberry, Employee, ClaimantRESPONDENT.

v.

Conbraco Industries, Inc., Employer, and Great American Alliance Insurance Company,
Carrier, AppellantsAPPELLANTS.

MOTION TO DISMISS APPEAL

Pursuant to Rule 240 SCACR, Respondent, Randy Faulkenberry, hereby moves the Court to dismiss Appellants', Conbraco Industries, Inc.'s and Great American Alliance Insurance Company's, appeal of the South Carolina Workers' Compensation Commission's (commission's) November 1, 2016 Order. This Motion is based upon the fact the commission's ruling, which finds Mr. Faulkenberry has not achieved maximum medical improvement as to the consequences of a June 19, 2012 accident, requires further medical treatment and is entitled to accrued/continuing temporary total disability compensation, clearly does not constitute "a final decision", as required by S.C. Code Ann. § 1-23-380(A)(Supp. 2015), and is consequently not immediately appealable. See, Rose v. JJS

Trucking, LLC, 411 S.C. 366, 768 S.E. 2d 412 (Ct. App. 2015); Ex parte South Carolina Property and Casualty Insurance Guaranty Association, 411 S.C. 501, 768 S.E. 2d 670 (Ct. App. 2015).

FACTS

By Order dated May 24, 2016, the single commissioner determined: (a) Mr. Faulkenberry had sustained a compensable back injury on June 19, 2012 while performing his job duties for Conbraco Industries, Inc.; (b) he had not reached maximum medical improvement and required further treatment for the consequences of this injury in accordance with the recommendations of Drs. Donald R. Johnson, II, Ezra B. Riber and Brett C. Gunter; (c) the current circumstances, including the establishment of "good cause" per S.C. Code Ann. § 42-15-60 (2007), warranted the commission's designation of Dr. J. Kelby Hutcheson as Mr. Faulkenberry's authorized treator for the purposes of his claims; (b) Appellants were obliged to satisfy the causally related medical expenses incurred during the period they had denied liability for Mr. Faulkenberry's injuries; and (c) he was entitled to receive continuing/ongoing temporary total disability compensation effective May 6, 2015.

Following consideration of the issues raised by Appellants' June 6, 2016 W.C.C. Form 30, the commission, through Order dated November 1, 2016, fully affirmed each of the single commissioner's determinations, requiring Appellants to:

(a) accept financial responsibility for all medical treatment, evaluations, medications, physical therapy, evaluative procedures, injections, etc. which Mr. Faulkenberry has heretofore received/undergone for his compensable back injury, including, but not limited to, the modalities provided/prescribed by the medical specialists, facilities, etc. referenced herein; (b) likewise accept financial responsibility for the additional causally related medical modalities provided/prescribed by Dr. Hutcheson, who is hereby designated as his authorized treating physician for the purposes of this claim; and (c) pay Mr. Faulkenberry temporary total disability compensation effective May 6, 2015 until this

obligation is relieved by further agreement of the parties or Order of this Commission.

ARGUMENT

“Section 1-23-380 of the . . . [Administrative Procedures] Act limits appeals . . . [in this context] to those from a ‘final decision’ of the commission.” Rose, 768 S.E. 2d at 413; South Carolina Property and Casualty Insurance Guaranty Association, 768 S.E. 2d at 672. “An agency decision that does not decide the merits of a contested case is not a final agency decision subject to judicial review.” Price v. Peachtree Electrical Services, Inc., 405 S.C. 455, 748 S.E. 2d 229, 230 (2013).

As recognized by the Supreme Court in Charlotte-Mecklenburg Hospital Authority v. South Carolina Department of Health and Environmental Control, 387 S.C. 265, 692 S.E. 2d 894-895 (2010), “a final decision” within the purview of the Administrative Procedures Act “disposes of the whole subject matter of the action or terminates the particular proceeding or action, leaving nothing to be done but to enforce by execution what has been determined.” See also, Bone v. U.S. Food Service, 404 S.C. 67, 744 S.E. 2d 552, 561 (2013). Consequently, “[a]n order of the commission is not a final decision unless it resolves the entire action.” Rose, *supra*; South Carolina Property and Casualty Insurance Guaranty Association, *supra*.

In this regard, while S.C. Code Ann. § 42-17-60 (Supp. 2014) requires Appellants “to make weekly payments of compensation and to provide medical treatment ordered by the commission involved in the appeal” pending final determination, this obligation: (a) does not deprive Appellants of “an adequate remedy in that they may raise the . . . [disputed issues] on appeal of a final award”; and (b) the balance struck by this statute, which denies Mr. Faulkenberry a year’s worth of accrued temporary total disability compensation, is reasonable. See, Bone, 744 S.E. 2d at 561; see also, Rose, 768 S.E. 2d at 413-414.

Inspection of the Commission's November 1, 2016 Order unquestionably verifies Mr. Faulkenberry's compensable injury requires treatment to facilitate his attainment of maximum medical improvement. Until he reaches this medical plateau: (a) Mr. Faulkenberry remains eligible for temporary disability compensation; and (b) his degree of residual permanent disability is not ripe for assessment. Given these facts, the appealed Order is not "a final decision", as several aspects of Mr. Faulkenberry's claim remain unresolved.

Accordingly, Mr. Faulkenberry respectfully prays that the Court conclude the current appeal is interlocutory and dismiss it, without prejudice, pending the commission's ultimate entry of a final decision that is properly appealable per Section 1-23-380(A).

Respectfully submitted,

By: 

ANDREW N. SAFRAN
P.O. Box 12089
Columbia, S.C. 29211
Phone: (803) 256-6689

ATTORNEY FOR RESPONDENT

Columbia, South Carolina
January 13, 2017

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APPEAL FROM THE SOUTH CAROLINA
WORKERS' COMPENSATION COMMISSION

Melody L. James, Commissioner
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Avery B. Wilkerson, Jr., Commissioner

W.C.C. FILE NO.: 1215107

APPELLATE CASE NO.: 2016-002416

Randy Faulkenberry, Employee, Claimant RESPONDENT.

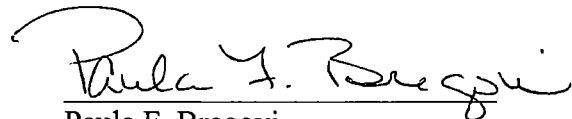
v.

Conbraco Industries, Inc., Employer, and Great American Alliance Insurance Company,
Carrier, Appellants APPELLANTS.

CERTIFICATE OF SERVICE

I, Paula F. Bregovi, Legal Assistant for Andrew N. Safran, Esquire, Attorney for Respondent, do hereby certify that on the 11th day of January, 2017, I caused to be filed, via hand delivery, the original and six (6) copies of Respondent's Motion to Dismiss Appeal, with the Clerk of the South Carolina Court of Appeals. One (1) copy of the Respondent's Motion to Dismiss Appeal was furnished to counsel for Appellants via first class mail at the following address:

E. Ros Huff, Jr., Esquire
Post Office Box 1935
Irmo, South Carolina 29063



Paula F. Bregovi
Post Office Box 12089
Columbia, South Carolina 29211
(803) 256-6689

January 13, 2017

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January 13, 2017

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SC Court of Appeals

HAND DELIVERED

The Honorable Jenny Abbott Kitchings
Clerk
South Carolina Court of Appeals
1015 Sumter Street
Columbia, South Carolina 29201

RE: Randy Faulkenberry v. Conbraco Industries, Inc. and
Great American Alliance Insurance Company
Appellate Case No.: 2016-002416

Dear Ms. Kitchings:

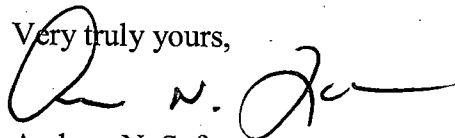
Enclosed please find an original and seven copies of Respondent's Motion to Dismiss Appeal, which I am filing on behalf of Mr. Randy Faulkenberry relative to the above-captioned matter. I have also enclosed my firm's check in the amount of Twenty-five and no/100 (\$25.00) Dollars. At this time, I would greatly appreciate your filing these documents and returning one clocked copy to my courier.

By copy of this letter, I am serving a copy of this Motion on Ros Huff, attorney for Appellants. As always, in the event he has any questions or comments concerning this matter, I invite him to contact me.

Thank you for your cooperation.

With kindest regards, I am

Very truly yours,



Andrew N. Safran

ANS/as

cc: E. Ros Huff, Jr., Esquire
South Carolina Workers' Compensation Judicial Department