

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM THE WORKERS COMPENSATION COMMISSION

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

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JAN 19 2017

SC Court of Appeals

WCC File No. 1413546
Appellate Case No. 2016-002294

Timothy McDuffie, Employee, Claimant, Respondent,
v.

Johnson Food Services, LLC, Employer, and Great American Alliance Insurance Co./Strategic
Comp., Carrier, Appellants.

APPELLANT'S RESPONSE TO RESPONDENT'S MOTION TO DISMISS

Johnson Food Services and Great American Alliance Insurance Company hereby responds to Respondent's Motion to Dismiss, which was received on January 12, 2017 via US Mail. The grounds for this Response are set forth below.

Facts/Procedural Background

Timothy McDuffie (Respondent) contends that he was injured on September 19, 2014 while employed at Johnson Food Services. The Single Commissioner determined that Mr. McDuffie's injury was compensable for his back and knee complaints on May 16, 2016. The Appellate Panel of the South Carolina Workers Compensation Commission affirmed this decision in an order dated October 12, 2016. Appellants appealed to the South Carolina Court of Appeals. The Respondent filed a Motion to Dismiss on the basis that the order is not immediately appealable. However, the Motion to Dismiss must be denied for the reasons set forth below.

Argument

I. This order is immediately appealable pursuant to S.C. Code 42-17-60

Pursuant to South Carolina Code Ann. Section 42-17-60, an appeal may be taken from the Commission under the same terms and conditions as governs appeals in ordinary civil actions. South Carolina Code Ann. Section 42-17-60 (Supp. 2010). The Supreme Court of South Carolina states that 42-17-60 allows an immediate appeal from an interlocutory order of the Commission only whether the order “affects the merits.” Id. See also; Chastain v. Spartan Mills, 228 S.C. 61, 88 S.E.2d. 836 (1955). There is no doubt that the order of the Appellate Panel, which finally determines the issue of compensability, thereby allowing the awarding of Workers Compensation benefits, affects the merits of this matter because there would be no award due to Mr. Mc Duffie had this Order not been issued.

Respondent relies on the Charlotte Mecklenburg case which states that “a final judgment 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.” Charlotte Mecklenburg Hospital Aut. v. South Carolina Department of Health and Evtl. Control, 3897 S.C. 25, 267, 692 S.E.2d 894, 895 (2010). However, there is nothing left to be done as to the compensability of Mr. McDuffie’s claim. Therefore, this matter is appealable.

Respondent asserts that 1-23-380 applies and interlocutory appeals are not allowed in administrative cases. Under S.C. Code Ann. Section 1-23-380:

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 pursuant to this article and Article 1... (emphasis added)

While it is true as Respondent states that the Single Commissioner may address benefits as far as additional medical treatment etc., the Single Commissioner is PROHIBITED from

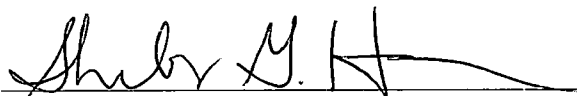
addressing the issue of compensability. See Prince v. Beaufort Mem. Hosp., 392 S.C. 599 (S.C. Ct. App. 2011) (holding that a trial court has no authority to exceed the mandate of the appellate court on remand). Therefore, the Appellant has in fact exhausted its administrative remedy as to the issue of compensability. Moreover, if the Appellant did not appeal the issue of compensability, it would be forever waived. See McLendon v. S.C. Dep't of Highways and Pub. Transp., 313 S.E. 525 (1994) (holding that a circuit court ruling on the merits has finality with respect to the issue decided and will become the law of the case if it is not immediately appealed). Just because there are issues surrounding medical treatment, does not mean that the order is not final "an order involves the merits if it finally determines some substantial matter forming the whole or part of some cause of action or defense in the case." See Foggie v. GE, 376 S.C. 384, 389 (S.C. Ct. App. 2008) (holding that [W]here the circuit court's order constitutes a decision on the merits and the remand order has no effect on the finality of the decision, the order is immediately appealable). The award is final as to the determination of compensability. Therefore it is immediately appealable.

CONCLUSION

For the foregoing reasons, the Appellants respectfully request that the Respondent's Motion to Dismiss be denied.

Respectfully Submitted,

January 19, 2017



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Trial Court Case No. 1413546
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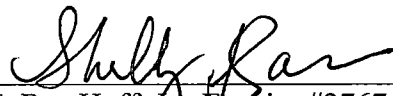
PROOF OF SERVICE

I certify that I have served Appellant's Response to Respondent's Motion to Dismiss by depositing a copy of the same in the United States Mail, postage prepaid, on January 19, 2017 to the following parties, and or their representatives:

Andrew N. Safran
Post Office Box 12089
Columbia, SC 29211

Amy Bracy, Judicial Director
S.C. Workers' Compensation Commission
Post Office Box 1715
Columbia, SC 29202

January 19, 2017



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SC Court of Appeals

Jenny Kitchings
Clerk of Court
SC Court of Appeals
Post Office Box 11629
Columbia, S.C. 29211

Re: Timothy McDuffie, Employee, Claimant, Respondent v. Johnson Food Services, LLC,
Employer, and Great American Alliance Insurance Co./Strategic Comp., Carrier, Appellants.
Appellate Case No. 2016-002294

Dear Honorable Kitchings:

Please find enclosed herewith the Appellant's Response to Respondent's Motion to Dismiss in the above referenced matter.

By copy of this letter, I am hereby serving the Respondents attorney with a copy of Appellant's Response to Respondent's Motion to Dismiss. If you have any additional questions, please do not hesitate to contact me.

Sincerely,

E. Ros Huff, Jr.
Shelby G. Hapeshis
Huff & Hapeshis, LLC

ERHjr/ea

Enclosure

cc: Andrew N. Safran, Esquire
Amy Bracy, SCWCC

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