

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

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APR 24 2017

SC Court of Appeals

APPEAL FROM THE SOUTH CAROLINA
WORKERS' COMPENSATION COMMISSION

Appellate Case No. 2017-000148

Kimberly Odom, Employee/Claimant,.....Appellant,

v.

Carolinas Hospital System, Employer and Indemnity Insurance
Company of NA, CarrierRespondents.

RESPONDENTS' MOTION TO DISMISS APPEAL

TO THE HONORABLE JUDGES OF THE SOUTH CAROLINA
COURT OF APPEALS:

Respondents Carolinas Hospital System, Employer and Indemnity Insurance Company of NA, Carrier respectfully move this Court for an Order dismissing the appeal pursuant to Rule 201 and 240, SCACR. Appellant Kimberly Odom, Employee/Claimant argues the South Carolina Workers' Compensation Commission erred in failing to find Appellant was entitled to total temporary disability benefits as it relates to her psychological condition.

The order from the Commission, however, is not a final decision and is not immediately appealable because the Commission found the issue of TTD benefits was premature.

FACTUAL/PROCEDURAL BACKGROUND

Appellant suffered a work-related injury to her back and left leg on June 20, 2012. On March 18, 2014, Appellant and Respondents entered into a Consent order settlement agreement based on impairment ratings to the back and left leg. The consent order resolved Appellant's back and left leg disability and left Appellant's right to allege a change of condition and future medical treatment open.

Appellant was placed on work restrictions due to the injury of her leg and back. However, despite the restrictions, Appellant attempted to return to work in a job with no lifting obligations. She worked for one week unless worsening pain in her back and lower extremity caused her to leave her job. She has been unable to work since.

Appellant continued to treat with the authorized treating physician, Dr. Richard Kline, for her back and leg pain. During one specific visit in December 2014, Kline noted Appellant was "tearful and frustrated because this pain has completely changed her life." During his deposition, Dr. Kline

opined that Appellant should see a psychologist regarding her depression. Respondents approved Appellant to see the authorized treating psychologist, Dr. Dora Windsorova.

Appellant subsequently filed a Form 50 claiming a change of condition for the worse pursuant to S.C. Code Ann. § 42-17-90. The basis for the change of condition was “worsening depression.”

At her deposition, Dr. Windsorova opined that Appellant’s depression had worsened and diagnosed her with recurrent major depressive disorder and moderate depression. Dr. Windsorova further opined that Appellant had not reached maximum medical improvement (MMI) from a psychological standpoint. Following the deposition, Appellant continued to treat with Dr. Windsorova for her psychological symptoms. However, Appellant has never been removed from work for her psychological condition or as a result of the worsening of her psychological condition.

The Single Commissioner found: (1) a causal relationship existed between the psychological condition and the original physical injury; (2) Appellant was entitled to ongoing psychological treatment which tends to lessen her period of disability; (3) Appellant suffered a change of condition for the worse because of her worsening psychological condition; (4)

Respondents must provide reimbursement for any out of pocket expenses related to Appellant's psychological condition that were incurred for medications or treatment with her primary care physician, Dr. Reynolds and any other causally related expenses; (5) given that no physician has removed Appellant from work with regard to the worsening of her psychological condition, the issue as to Appellant's entitlement to temporary total disability benefits due to and caused by the Appellant's change of condition was premature and reserved for further determination; and (6) Appellant has not reached maximum medical improvement for her psychological condition.

On December 30, 2016, the Appellate Panel affirmed the Decision and Order of the Single Commissioner.

Appellant filed her Notice of Appeal with this court on or about January 26, 2016.

LAW/ANALYSIS

Appellant's appeal from the commission's order is not immediately appealable because the Commission found Appellant had not yet reached MMI and Appellant's entitlement to TTD benefits was premature. Because the Commission reserved the issue of TTD for further determination, the

Commission's order is not a final decision and, therefore, is not immediately appealable.

The Administrative Procedures Act governs judicial review of decisions of the commission. S.C. Code Ann. § 1-23-380 (Supp. 2014); Bone v. U.S. Food Serv., 404 S.C. 67, 73, 744 S.E.2d 552, 556 (2013). Section 1-23-380 of the Act limits appeals to those from a final decision of the commission. See S.C. Code Ann. § 1-23-380. A commission's order is not a final decision unless it resolves the entire action. See Price v. Peachtree Elect. Servs., Inc., 405 S.C. 455, 457, 748 S.E.2d 229, 230 (2013) ("An agency decision that does not decide the merits of a contested case is not a final agency decision subject to judicial review."); Bone, 404 S.C. at 73, 744 S.E.2d at 556 (same); see also id. at 75, 744 S.E.2d at 557 ("A final judgment disposes of the whole subject matter of the action and terminates the particular proceeding or action, leaving nothing to be done but to enforce by execution what has been determined." (quoting Charlotte-Mecklenburg Hosp. Auth. v. S.C. Dep't of Health and Env't'l Control, 387 S.C. 265, 267, 692 S.E.2d 894, 895 (2010))).

Here, the Commission's order only confirms the change of condition for the worse for Appellant's psychological condition and does not address

Appellant's increased permanent disability, if any, from the change of condition for the worse. The Commission specifically reserved the right to determine TTD at a later date—once Appellant reached MMI. Because the Commission had yet to determine the issues of MMI for the worsened psychological condition or entitlement to additional permanent indemnity benefits, additional proceedings will be necessary. Thus, the Commission's order is not a final decision and is not immediately appealable. See e.g., Rose v. JJS Trucking, LLC, Op No. 5291 (S.C. Ct. App. filed Jan. 28, 2015 (Shearouse Adv. Sh. No. 4 at 91) (finding a commissioner's order was not a final decision and therefore, not immediately appealable, because the order left the merits of the employee's claim for permanent disability unresolved); Ex parte S.C. Prop. & Cas. Ins. Guar. Ass'n, Op. No. 5290 (S.C. Ct. App. filed Jan. 28, 2015) (Shearouse Adv. Sh. No. 4 at 85) (finding commission's order was not a final decision and was not immediately appealable because the commission had not made a determination on claimant's substantive rights).

Indeed, a determination of what benefits Appellant is entitled to has not been decided. Even more evident, Dr. Winsorova recently provided responses to a questionnaire regarding Appellant's treatment for her

psychological condition, indicating, inter alia, that Plaintiff has now reached MMI. (See Exhibit A). Other matters—specifically, whether Appellant is entitled to permanent indemnity benefits as a result of her worsened psychological condition, and whether Appellant is entitled to ongoing psychological treatment—would be affected and addressed by a determination of MMI. A hearing remains pending on this specific issue. (See Exhibit A).

In short, the Commission's order from which Appellant appeals does not dispose of the whole subject matter of the action and terminates the particular proceeding or action, leaving nothing to be done but to enforce by execution what has been determined. See Bone, 404 S.C. at 75, 744 S.E.2d at 557.

In Appellant's Notice of Appeal, Appellant indicates the issue on appeal is whether the Commission erred in failing to award TTD benefits. However, the Commission expressly noted that any finding regarding TTD regarding Appellant's psychological condition would be premature at that time, since she was not on any restrictions for her psychological condition at the time of the hearing. It is clear from the Commission's order that this is not a final decision because the Commission retained jurisdiction to make a

later determination of TTD and has jurisdiction to determine when Appellant reaches MMI for the worsened psychological condition. Accordingly, the Commission's decision was not immediately appealable.

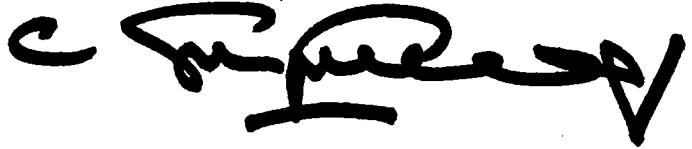
CONCLUSION

Based on the foregoing argument, Respondents respectfully request the Court dismiss the appeal as not immediately appealable.

[SIGNATURE PAGE TO FOLLOW]

Respectfully Submitted,

COLLINS & LACY, P.C.



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ATTORNEYS FOR
RESPONDENTS

MOTION TO DISMISS

Columbia, South Carolina
April 24, 2017



Victoria A. Randall | D: 803.255.0430 | E: vrandall@collinsandlacy.com
Senior Paralegal

April 24, 2017

Amy Bracy, Director
Judicial Department
SC Workers' Compensation Commission
Post Office Box 1715
Columbia, South Carolina 29202-1715

Re: Kimberly Odom v. Carolinas Hospital System & Indemnity Insurance Company
of NA
WCC File No.: 1208234
Claim No.: 002020-048774-WC-01
Date of Injury: 6/20/2012
C&L File No.: 000511-08827

Dear Amy:

Enclosed for filing at this time, please find the Employer / Carrier's Form 21, Request for Hearing in this matter. Also enclosed is an updated Form 18, the treating physician's final medical narrative, and Collins & Lacy's \$25.00 check for filing expenses. Please schedule a hearing at your earliest convenience.

By copy of this letter to Stephen J. Wukela, Esquire, attorney for the claimant, we are hereby serving him with a copy of the same.

Sincerely,

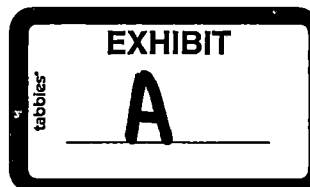
A handwritten signature in black ink that reads "Victoria A. Randall". The signature is fluid and cursive.

Victoria A. Randall
Senior Paralegal

:var

Enclosure

Cc: Stephen J. Wukela, Esquire
Tammy Clark
Dale Jeffords



South Carolina Workers' Compensation Commission

1333 Main Street, Suite 500
Post Office Box 1715
Columbia, South Carolina 29202-1715
(803) 737.5675 www.wcc.sc.gov



WCC File #: 1208234

Carrier File #: 002020-048774-WC-01

Carrier Code #:

Employer FEIN #: 62-1762526

Claimant's Name: Kimberly Odom SSN: 248-65-1931 Employer's Name: Carolinas Hospital System
Address: 1746 Big Swamp Road Address: 1594 Freedom Blvd., Suite 101
City: Pamplico State: SC Zip: 29583 City: Florence State: SC Zip: 29505
Home Phone: (843) 598-0846 Work Phone: () - Insurance Carrier: Indemnity Insurance Company of NA
Preparer's Name: Ellen M. Adams, Esquire Law Firm: Collins & Lacy, P.C. Preparer's Phone #: 803.256.2660

The date of injury reported on Form 12A is: 6/20/2012 (m/d/yyyy)

Check appropriate section(s). The Employer's Representative requests a hearing to:

I. Stop payment of compensation. Claimant has reached maximum medical improvement and Claimant continues to receive temporary compensation payments. The employer's representative requests a hearing pursuant to § 42-9-260(D) to stop payment of temporary compensation. A hearing requested pursuant to this section must be held within sixty days of the date of the request.

Claimant reached maximum medical improvement on (m/d/yyyy) (copy of medical report must be attached).
Compensation payments are current as of (m/d/yyyy) and shall continue until otherwise ordered or until Form 17 is signed by the claimant.
A Form 17 was offered and refused on (m/d/yyyy).

II. Address suspension, termination, or reduction of temporary disability payments for any cause.

- a. At any time pursuant to § 42-9-260(E).
b. After the one-hundred-fifty day period has expired pursuant to § 42-9-260(F), R.67-505 and R.67-506.

The basis for the termination/ suspension is

III. Determine if compensation is due pursuant to § 42-9-10, § 42-9-20 or § 42-9-30 and, if so, in what amount, based on the following grounds:

Claimant is at MMI for her change of condition for the worse (psyche only per Comm. McCaskill).

Claimant reached maximum medical improvement on 02/21/17 (m/d/yyyy) (copy of medical report must be attached).

IV. Request Credit for Overpayment of temporary compensation pursuant to § 42-9-210.

V. Determine amount of compensation for claims involving a fatality.

- a. Payment of unpaid balance of compensation when employee dies pursuant to § 42-9-280.
b. Amount of compensation for death of employee due to accident pursuant to § 42-9-290.

VI. Mediation

- a. Mediation is requested to be ordered pursuant to Reg. 67-1801 B.
b. Mediation is required pursuant to Reg. 67-1802.
c. Mediation is requested by consent of the Parties pursuant to Reg. 67-1803.
d. Mediation has been conducted by a duly qualified mediator and resulted in an impasse.

Failure to respond pursuant to Reg. 67-208.B in writing or by submission of a Form 22 may result in ordered mediation pursuant to Reg. 67-1801 B.
Questions regarding mediation may be submitted to mediation@wcc.sc.gov.

I certify I have served this document pursuant to Reg. 67-211 by delivering a copy to Stephen J. Wukela, Esquire, Post Office Box 13057
Florence, SC 29504-3057 on April 24, 2017, by: [x] first class postage [] certified mail [] personal service [] electronic service. A
\$25.00 filing fee and updated Form 18 is required.

Handwritten signature of Akirkham

Attorney at Law
Title

akirkham@collinsandlacy.com
Email

April 24, 2017
Date

Questions about the use of this form should be directed to the Judicial Department at 803-737-5675, or judicial@wcc.sc.gov or mediation@wcc.sc.gov
Refer to Regulations 67-211, 67-504, 67-505, 67-506; and 67-510.

CERTIFICATE OF SERVICE

The undersigned employee of Collins & Lacy, P.C., does hereby certify that she has served the following named individual(s) with a copy of the pleading indicated below by mailing a copy of same in the United States mail, with sufficient postage affixed thereto and return address clearly marked on the date indicated below:

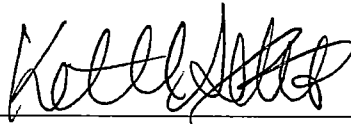
INDIVIDUAL(S) SERVED:

Amy Bracy, Director
Judicial Department
SC Worker's Compensation Commission
Post Office Box 1715
Columbia, South Carolina 29202-1715

Stephen J. Wukela, Esquire
Wukela Law Firm
Post Office Box 13057
Florence, SC 29504-3057

PLEADING(S):

SC WCC Form 21



April 24, 2017

Columbia, South Carolina



Claimant's Name: Kimberly Odom SSN: 248-65-1931 Employer's Name: Carolinas Hospital System
Address: 1746 Big Swamp Road Address: 1594 Freedom Blvd., Suite 101
City: Pamplico State: SC Zip: 29583 City: Florence State: SC Zip: 29505
Home Phone: (843) 598-0846 Work Phone: () - Insurance Carrier: Indemnity Insurance Company of NA
Preparer's Name: Ellen M. Adams, Esquire Law Firm: Collins & Lacy, P.C. Preparer's Phone #: 803.256.2660

1. Date of injury: 6/20/2012 2. Total Weeks Compensation Paid: 84 3/7
(m/d/yyyy)

3. Type of Compensation Paid (TP or TT)/Periods of Payment:

Type: <u>TT</u>	From: <u>7/3/2012</u>	To: <u>2/3/2014</u>
	(m/d/yyyy)	(m/d/yyyy)
Type: <u>PP</u>	From: <u>3/18/14</u>	To: <u>3/18/14</u>
Type: _____	From: _____	To: _____

4. Date of First Payment: 7/3/12
(m/d/yyyy)

5. Total Amount Paid (a) Compensation: \$170,214.01
(b) Medical (Include Nursing, Hospital, Drugs, Etc.): \$78,374.88

6. Informal Conference is Requested: Yes No (check one)

Use these lines to send a memo to the Commission: _____

Osney McChane
Employer's Representative

() -
Phone

4/24/2017
Date

Type or print all information. File this form six months after the alleged injury date and each six months until the Commission's File is closed. Form 18 must be filed whether or not compensation is ongoing. Check "yes" after Number 6 to request an informal conference. Refer to R.67-413, R.67-507, and R.67-804 for further information.

February 10, 2017

Dora Windsorova, M.D.
2137 Hoffmeyer Road
Suite D
Florence, SC 29501

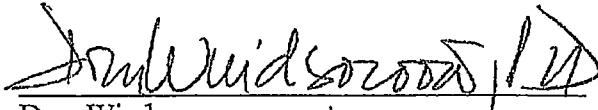
Re: Kimberly Odom v. Carolinas Hospital System & Indemnity Insurance Company
of NA
WCC File No.: 1208234
Claim No.: 002020-048774-WC-01
Date of Injury: 6/20/2012
Our File No.: 000511-08827

Dear Dr. Windsorova:

I represent the employer/carrier with regard to the above-referenced workers' compensation claim. It is my understanding you released Ms. Odom from ongoing treatment on June 15, 2016. Accordingly, I request that you please answer the following questions, stating your opinions to a reasonable degree of medical certainty:

1. Has Ms. Odom reached maximum medical improvement with regard to her psychological condition? YES
2. If not, what additional treatment do you recommend for Ms. Odom for her psychological condition? /
3. Do you recommend any ongoing medical treatment or medications for Ms. Odom's psychological condition as a result of this work injury? WILL DEFER TO HER MEDICAL DOCTOR
4. If so, do you anticipate this medical treatment for Ms. Odom's lifetime? AS ABOVE
5. Does Ms. Odom have any permanent work restrictions as a result of her work Accident from a psychological standpoint? NO
6. Are all of your opinions stated to a reasonable degree of medical certainty? YES

7. ADDITIONAL COMMENTS: _____


Dora Windsorova
Dated: 2/21/17

Thank you again for treating Ms. Odom. If you have any questions regarding this questionnaire, please do not hesitate to contact me.

Sincerely,



Ashley R. Kirkham

ARK/hmb

Cc: Tammy Clark
Steve Wukela, Esquire

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM THE SOUTH CAROLINA
WORKERS' COMPENSATION COMMISSION

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Appellate Case No. 2017-000148

Kimberly Odom, Employee/Claimant,.....Appellant,

v.

Carolinas Hospital System, Employer and Indemnity Insurance
Company of NA, Carrier Respondents.

CERTIFICATE OF SERVICE

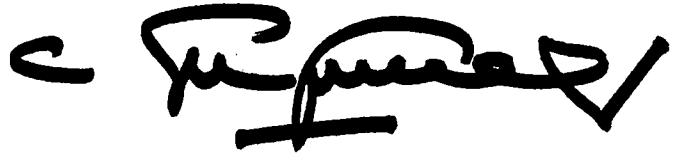
Counsel for Respondents certifies that she has served Respondents' Notice of Appearance on all parties by depositing a copy of it in the United States Mail, postage prepaid, on April 24, 2017, as follows:

Stephen J. Wukela, Esquire
Wukela Law Firm
Post Office Box 13057
Florence, SC 29504-3057

[SIGNATURE PAGE FOLLOWS]

Respectfully Submitted,

COLLINS & LACY, P.C.



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Post Office Box 12487
Columbia, South Carolina 29211
(803) 256-2660 (voice)
(803) 771-4484 (facsimile)

ATTORNEYS FOR
RESPONDENTS

CERTIFICATE OF SERVICE

Columbia, South Carolina
April 24, 2017



Christian Stegmaier | D: 803.255.0454 | E: cstegmaier@collinsandlacy.com

April 24, 2017

VIA HAND DELIVERY

The Honorable Jenny A. Kitchings
South Carolina Court of Appeals
1220 Senate Street
Columbia, South Carolina 29201

RECEIVED
APR 24 2017
SC Court of Appeals

Re: *Kimberly Odom, Appellant v. Carolinas Hospital System, Employer and Indemnity Insurance Company of NA, Carrier, Respondents*
Claim no. 002020-048774-WC-01
Appellate Case No. 2017-000148
C&L File No. 000511-08827

Dear Ms. Kitchings:

Please find enclosed the original unbound and seven (7) copies of Respondent's Motion to Dismiss Appeal together with the \$25.00 filing fee in connection with the above referenced matter. Please file the original and return one copy to our office via our courier.

By copy of this letter, I am serving a copy to all counsel of record.

Thank you for your time and attention.

Respectfully,

Christian Stegmaier

CS/net
Enclosures

cc: Stephen J. Wukela, Esquire

RECEIVED

APR 24 2017

SC Court of Appeals



1330 Lady Street, Sixth Floor (29201) Post Office Box 12487 | Columbia, SC 29211

VIA HAND DELIVERY

The Honorable Jenny A. Kitchings
South Carolina Court of Appeals
1220 Senate Street
Columbia, South Carolina 29201

511-8827