

THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

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APPEAL FROM THE SOUTH CAROLINA  
WORKERS' COMPENSATION COMMISSION

SC Court of Appeals

Appellate Case No. 2017-000148

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

v.

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

**RESPONDENTS' REPLY TO APPELLANT'S RESPONSE TO  
MOTION TO DISMISS APPEAL**

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

On April 24, 2017, Respondents Carolinas Hospital System, Employer and Indemnity Insurance Company of NA, Carrier (collectively "Respondents") moved this Court for an order dismissing the appeal pursuant to Rule 201 and 240, SCACR. On April 28, 2017, Appellant Kimberley

Odom (“Appellant”) filed her Return to Respondents’ Motion to Dismiss Appeal. Respondents offer this memorandum in reply.

### LAW/ANALYSIS

Appellant initially argues that the Commission erroneously and finally denied Appellant temporary total benefits. However, this is not the ruling of the Commission. Rather, the Commission, in adopting the single commissioner’s order in full, held:

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 [Appellant’s] change of condition is premature at this time and reserved for further determination.”

In Bone, the issue before the Supreme Court was whether an order was a final judgment under the APA when the Circuit Court reversed the Commission’s finding that a claimant did not suffer a compensable injury and remanded for further proceedings. 404 S.C. at 72, 744 S.E.2d at 555. The order in Bone was not a final judgment because the Commission was tasked with further obligations of determining the extent of the claimant’s compensation and providing a final award that constituted an executable judgment. Id. at 79, 744 S.E.2d at 559. Any order addressing compensability

without determining the claimant's current medical status and the specific benefits to be awarded was not a "final judgment disposing of the entirety of the action and leaving nothing further to be done but execution of the judgment." Id.

Recently, the Court of Appeals found an order from the Commission was not immediately appealable because the Commission had not yet ruled on the merits of the claimant's entire claim for benefits. Rose v. JJS Trucking, LLC, 411 S.C. 366, 768 S.E.2d 412 (Ct. App. 2015). There, the Court found there were several issues left for the Commission to determine, including leaving the claim for permanent disability unresolved because the claimant had not yet reached MMI. Id. at 368-69, 768 S.E.2d at 412.

The sole issue before the Commission was Appellant's change of condition. The change of condition was her psychological condition. The commission has not found that Appellant has reached MMI for her change of condition. In short, the Commission's order is not immediately appealable because the Commission has not yet ruled on the merits of Appellant's entire claim for benefits. See Id.

Temporary total disability (TTD) benefits is but one part of the workers' compensation benefits a claimant may receive. Appellant's

entitlement to TTD benefits is not final until she is again placed at MMI—when temporary benefits are stopped and permanent benefits are awarded.

Further, at the same time Appellant's issues are on appeal, the parties have filed subsequent Forms with the single commissioner regarding MMI. An order on these recent filings will have a direct impact on the outcome of this appeal.

The concurrent appeal and filing of Forms with the Single Commissioner has forced Respondents to simultaneously defend this matter in two different courts. Under Bone, the order on appeal is not a "final judgment disposing of the entirety of the action and leaving nothing further to be done but execution of the judgment." See id. at 79, 744 S.E.2d at 559 (noting any order addressing compensability without determining the claimant's current medical status and the specific benefits awarded was not a "final judgment disposing of the entirety of the action and leaving nothing further to be done but execution of the judgment"). It is clear the Commission has further issues to resolve with this matter.

Moreover, Appellant avers that the Commission effectively found Appellant was not entitled to TTD benefits because "no physician had removed the [Appellant] from work with regard to the worsening of her

psychological condition.” However, the Commission went on to state that, therefore, Appellant’s entitlement to TTD benefits due to and caused by the Appellant’s change of condition is premature and reserved for further determination. Accordingly, Appellant’s interpretation of the Commission’s order is misplaced.

The Commission has retained jurisdiction to make a later determination of TTD benefits and has jurisdiction to determine when Appellant reached MMI for the worsened psychological condition. Accordingly, the order on appeal is not immediately appealable.

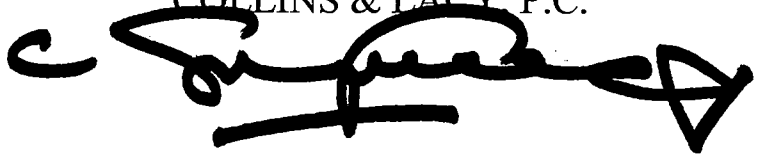
### **CONCLUSION**

Based on the aforementioned, as well as the argument contained with Respondents’ Motion to Dismiss, Respondents respectfully request the Court dismiss Appellant’s appeal.

[SIGNATURE PAGE TO FOLLOW]

Respectfully Submitted,

COLLINS & LACY, P.C.



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ATTORNEYS FOR  
RESPONDENTS

**RESPONDENTS' REPLY TO  
APPELLANT'S RESPONSE TO  
MOTION TO DISMISS  
APPEAL**

Columbia, South Carolina  
May 3, 2017

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**CERTIFICATE OF SERVICE**

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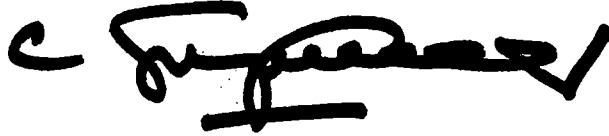
Counsel for Respondents certifies that he has served **RESPONDENTS'**  
**REPLY TO APPELLANT'S RESPONSE TO MOTION TO DISMISS**  
**APPEAL** on all parties by depositing a copy of it in the United States Mail,  
postage prepaid, on May 3, 2017, as follows:

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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Columbia, South Carolina  
May 3, 2017



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May 3, 2017

**VIA HAND DELIVERY**

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

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

Dear Ms. Kitchings:

Please find enclosed the original unbound and seven (7) copies of Respondents' Reply to Appellant's Response to Motion to Dismiss Appeal. 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 counsel of record.

Thank you for your time and attention. Should you have any questions or concerns, please do not hesitate to contact us.

Respectfully,

A handwritten signature in black ink, appearing to read "C. Stegmaier", with a large, stylized flourish at the end.

Christian Stegmaier

CS/MMM  
Enclosures  
cc: Stephen J. Wukela, Esquire

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