

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM THE SOUTH CAROLINA
Workers' Compensation Commission

Appellate Case No. 2016-002266

RECEIVED
MAY 17 2017
SC Court of Appeals

Renee Robles, Employee, Claimant,Appellant,

v.

Party Reflections, Inc., Employer, and
Employers Assurance Company, Carrier,..... Respondents,

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

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

Respondents Party Reflections, Inc. and Employers Assurance Company (“Respondents”) moved this Court for an order dismissing the appeal pursuant to Rule 201 and 240, SCACR. On May 11, 2017, Appellant Renee Robles (“Appellant”) filed her Return to Respondents’ Motion to Dismiss Appeal. Respondents offer this memorandum in reply.

LAW/ANALYSIS

Appellant contends Respondents have misinterpreted Bone, asserting that Bone has never stood for the proposition that a workers' compensation case cannot be appealed until the Commission has ruled on every possible issue. (Appellants' Response, p. 4). However, Respondents do not rely on Bone for that proposition. Rather, Respondents rely on Bone for the proposition that the Appellate Panel's order is not a "final judgment disposing of the entirety of the action and leaving nothing further to be done but execution of the judgment." By way of the subsequent orders issued in February and March, 2017, it is clear the Commission has further issues to resolve with this matter.

As articulated in Respondents' Motion to Dismiss, the Commission has not fully resolved the issue of Appellant's entitlement to TTD benefits. (See Exhibits B-D of Respondents' Motion to Dismiss Appeal). Appellant is only entitled to TTD benefits prior to the date of MMI. See Smith v. S.C. Dep't of Mental Health, 335 S.C. 396, 517 S.E.2d 695 (1999) (providing temporary benefits should cease upon a finding of MMI to permit entry of a permanent order). Thus, the single commissioner's recent 2017 orders addressing the

issue of MMI in turn determines the extent of Appellant's TTD benefits should he prevail.

Further, the single commissioner's 2017 orders allow the Commission to enter a permanency award, which would constitute a final decision that is appealable. See Rose, 411 S.C. at 368-69, 768 S.E.2d at 413 (holding a commission's order leaving the merits of a claim for permanent disability unresolved was not a final decision and not immediately appealable). When Appellant reaches MMI, the Commission may then determine permanent disability benefits. See Smith, 335 S.C. at 399, 517 S.E.2d at 696 ("This is precisely the reason to terminate temporary benefits in favor of permanent benefits upon a finding of MMI."). Because the subsequent 2017 Commission orders determine the extent of TTD benefits and a permanent award of benefits, the order on appeal is not immediately appealable.

Moreover, while Respondents acknowledge that workers' compensation cases are unique and often involve multiple hearings and multiple decisions (See Appellant's Response, p. 5), Appellant fails to recognize the unique procedural posture present in this matter. Specifically, while the Commission's order is on appellate review, Appellant elected to file a Form 50 with the Single Commissioner. The Single Commissioner

subsequently issued two orders regarding MMI and TTD benefits, withdrew those orders, and indicated a new order would be forthcoming. (See Exhibits B-D of Respondents' Motion to Dismiss). These subsequent orders have a direct impact on the extent of Appellant's entitlement to TTD benefits.

Appellant's concurrent appeal and request for a hearing before the Single Commissioner has forced Respondents to simultaneously defend this matter in two different courts.

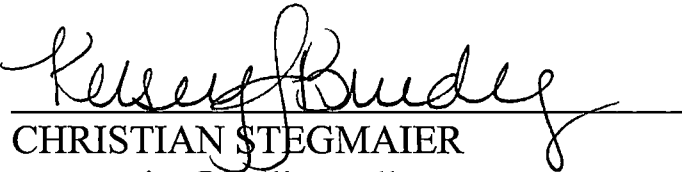
CONCLUSION

For the reasons stated above, as well as those articulated in Respondents' Motion to Dismiss, Respondents respectfully move this Court to dismiss the appeal as not immediately appealable.

[SIGNATURE PAGE TO FOLLOW]

Respectfully submitted,

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PROOF OF SERVICE

I hereby certify that I served **RESPONDENTS' REPLY TO APPELLANT'S RETURN TO MOTION TO DISMISS APPEAL** upon all parties, by placing a copy in the United States mail, postage prepaid, to all counsel of record on May 17, 2017, addressed to the following:

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**PROOF OF SERVICE -
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APPELLANT'S RETURN TO
MOTION TO DISMISS APPEAL**

Columbia, South Carolina
May 17, 2017