

THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

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JUL 03 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, Carrier .....Respondents.

**RESPONDENTS' RETURN TO  
APPELLANT'S MOTION TO STRIKE**

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

Appellant Kimberly Odom ("Appellant") moved Pursuant to Rule 240 of the South Carolina Appellate Court Rules for an order striking certain portions of Respondents Carolina Hospital System, Employer and Indemnity Insurance Company of NA, Carrier's ("Respondents") Motion to Dismiss Appeal and subsequent Petition for Rehearing. Specifically, Appellant

moved to strike pages 6-7 and Exhibit A of the Motion to Dismiss Appeal and page 7 and Exhibit C of the Petition for Rehearing. Respondents offer this return in response to Appellant's motion to strike.

### **LAW/ANALYSIS**

Section 1-23-380(4) of the South Carolina Code provides:

The review must be conducted by the court and must be confined to the record. In cases of alleged irregularities in procedure before the agency, not shown in the record, and established by proof satisfactory to the court, the case may be remanded to the agency for action as the court considers appropriate.

S.C. Code Ann. § 1-23-380(4).

Notably, Section 1-23-380 of the South Carolina Code regards judicial review upon the exhaustion of administrative remedies. The preamble to Section 1-23-380 states:

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.**

Importantly, a party can only seek judicial review of a final decision by the agency. Id.

On or about April 24, 2017, Respondents moved to dismiss Appellant's appeal on the ground that the South Carolina Workers' Compensation Commission's order was not a final decision and, therefore, was not immediately appealable. Respondents narrowly focused on the language of the Commission's order which found that Appellant had not yet reached Maximum Medical Improvement (MMI) as to her worsening psychological condition and that Appellant's entitlement to Temporary Total Disability (TTD) benefits was premature. The Commission reserved the issue of TTD for further determination.

In addition to the language contained within the Commission's order, Respondents noted for the Court the additional filings and pending hearings before the Workers' Compensation Single Commissioner. Specifically, Respondents noted on pages 6 and 7 of their Motion to Dismiss, and supported by Exhibit A to the same, that additional documents were filed with the Single Commissioner regarding Appellant's treatment for her psychological condition and MMI, and that a hearing before the Single Commissioner remained pending on these filings. The same information and argument was made on page 7, and supported by Exhibit C, of Respondents' Petition for Rehearing.

Respondents' inclusion of the same in their Motion to Dismiss, as well as their request for a panel rehearing, was to provide the Court context of the procedural complexity of this matter and to additionally support that the Commission's order was not a final decision. Respondents maintain that such exhibits and arguments should not be precluded from the Court's consideration on a motion to dismiss based on the ground that the Commission's order is not a final decision. Indeed, Respondents contend that the provision of the South Carolina Code cited by Appellant does not dictate what could be considered by this Court on a motion to dismiss but rather controls the judicial review of an administrative agency's order in which appellant was aggrieved, similar to that of Rules 209 and 210 of the South Carolina Appellate Court Rules regarding the designation of matter and record on appeal.

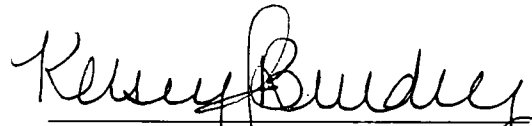
In short, Respondents maintain the Court can properly consider the additional filings submitted to the Single Commission in consideration of Respondents' Motion to Dismiss and Petition for Rehearing.

### **CONCLUSION**

Based on the aforementioned, Respondents respectfully request the Court deny Appellant's motion to strike.

Respectfully Submitted,

COLLINS & LACY, P.C.

  
CHRISTIAN STEGMAIER  
[cstegmaier@collinsandlacy.com](mailto:cstegmaier@collinsandlacy.com)

KELSEY J. BRUDVIG  
[kbrudvig@collinsandlacy.com](mailto:kbrudvig@collinsandlacy.com)

ASHLEY R. KIRKHAM  
[akirkham@collinsandlacy.com](mailto:akirkham@collinsandlacy.com)

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

ATTORNEYS FOR  
RESPONDENTS

**RESPONDENTS' RETURN TO  
APPELLANT'S MOTION TO  
STRIKE**

Columbia, South Carolina  
July 3, 2017

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**CERTIFICATE OF SERVICE**

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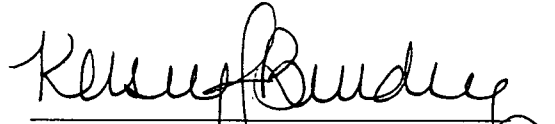
Counsel for Respondents certifies that she has served Respondents' Return to Appellant's Motion to Strike on all parties by depositing a copy of it in the United States Mail, postage prepaid, on July 3, 2017, as follows:

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

[SIGNATURE PAGE FOLLOWS]

Respectfully Submitted,

COLLINS & LACY, P.C.

  
CHRISTIAN STEGMAIER  
[cstegmaier@collinsandlacy.com](mailto:cstegmaier@collinsandlacy.com)

KELSEY J. BRUDVIG  
[kbrudvig@collinsandlacy.com](mailto:kbrudvig@collinsandlacy.com)

ASHLEY R. KIRKHAM  
[akirkham@collinsandlacy.com](mailto:akirkham@collinsandlacy.com)

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