

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, CarrierRespondents.

**RESPONDENTS' REPLY TO
APPELLANT'S RETURN TO PETITION
FOR REHEARING (PANEL)**

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

Pursuant to Rules 221 and 240 of the South Carolina Appellate Court
Rules, Respondents Carolinas Hospital System, Employer and Indemnity
Insurance Company of NA, Carrier ("Respondents") respectfully moved this
Court for a rehearing (panel) of Respondents' Motion to Dismiss Appeal. On

or about June 27, 2017, Appellant filed her return to the petition for rehearing. Respondents' offer this reply to Appellant's return.

LAW/ANALYSIS

I. The Court Should Consider Respondents' Request for a Panel Rehearing.

Appellant avers that pursuant to Rule 221(c) of the South Carolina Appellate Court Rules, the Court should not consider Respondents' request for rehearing by the panel from the individual judge's order denying Respondents' Motion to Dismiss Appeal.

However, Respondents maintain that a rehearing by the panel is necessary to secure and maintain uniformity of its prior decisions regarding similar disputes. Specifically, Respondents aver that the individual judge's order denying Respondents' Motion to Dismiss does not align with the Court's prior orders on similar motions. See Cook v. Spartanburg Steels Products, Inc., App. Case No. 2014-001372, Order (March 19, 2015).

Accordingly, Respondents respectfully request a rehearing by the panel on the denial of its Motion to Dismiss.

II. The Commission's Order is Not A Final Decision

Appellants aver that the Commission's Order finally decided Appellant's current entitlement to temporary total disability (TTD) benefits, refusing to consider Appellant's physical restrictions.

While Appellant's Form 50 filed with the Single Commissioner indicated a change of condition to body parts as well as Appellant's psychological condition, the Single Commissioner squarely held that Appellant suffered a change of condition as to the psyche issue, and held that ongoing issues regarding the change of condition for the psychological condition was premature. The Commission ostensibly retained jurisdiction to make a later determination of TTD and further retained jurisdiction to determine when Appellant reached maximum medical improvement for the worsened psychological condition. The Workers' Compensation Commission affirmed the Single Commissioner's order in its entirety.

Appellate appears to now argue that while the issue of MMI and the entitlement to TTD benefits as it relates to Appellant's worsened psychological condition may be held in abeyance, the Commission erred in denying Appellant's entitlement to TTD benefits in refusing to consider Appellant's physical restrictions for un-changed body parts. However, the

issue of TTD for the worsened psychological condition is ongoing until Appellant reaches MMI, and there is no Order from the Commission confirming MMI for the psychological condition to date. Should Appellant receive work restrictions as a result of her worsened psychological condition before the Commission finds her at MMI for her change of condition for the worse, Appellant is entitled to TTD benefits pursuant to the Act, and additional issues regarding Appellant's entitlement to TTD may be litigated through the Commission.

Moreover, 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 and still must determine when Appellant is back at MMI for her change of condition for the worse.**

Appellant contends this Court's order in Cook v. Spartanburg Steel Products, Inc. is distinguishable due to the parties in that case agreeing to hold the issues of TTD and permanency in abeyance. Regardless of the scenario in which the Commission held the issue of TTD in abeyance

pending a determination of MMI, it remains that the Commission has retained jurisdiction to determine the issue of TTD at a later date.

Moreover, the Commission expressly noted that any finding regarding TTD for 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, if Appellant receives work restrictions as a result of psychological condition, 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 aforementioned, as well as the arguments contained in Respondents' Petition for Rehearing (Panel), Respondents respectfully request the Court grant Respondents' Motion to Dismiss Appeal.

[SIGNATURE PAGE TO FOLLOW]

Respectfully Submitted,

COLLINS & LACY, P.C.


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ATTORNEYS FOR
RESPONDENTS

**Respondents' Reply to
Appellant's Return to Petition
for Rehearing (Panel)**

Columbia, South Carolina
July 3, 2017

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WORKERS' COMPENSATION COMMISSION

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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' Reply to Appellant's Return to Petition for Rehearing (Panel) 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.



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ATTORNEYS FOR
RESPONDENTS

CERTIFICATE OF SERVICE

Columbia, South Carolina
July 3, 2017



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July 3, 2017

VIA HAND DELIVERY

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

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JUL 03 2017

Re: *Kimberly Odom, Appellant v. Carolinas Hospital System, Employers and Indemnity Insurance Company of NA, Carrier, Respondents*
Claim No. 002020-048774-WC-01
Appellate Case No. 2017-00148
C&L File No. 000511-08827

Dear Ms. Kitchings:

Please find enclosed the unbound originals and seven (7) copies each of the following documents in connection with the above referenced matter:

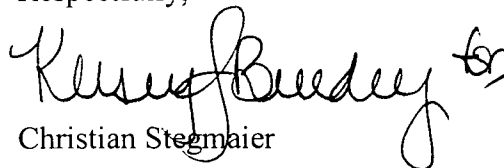
1. Respondents' Reply to Appellant's Return to Respondents' Petition for Rehearing;
2. Respondents' Motion to File Out of Time their Reply to Appellant's Return to Respondents' Petition for Rehearing;
3. Respondents' Return to Appellant's Motion to Strike Portions of Respondents' Petition for Rehearing and Portions of Respondents' Motion to Dismiss.

Also enclosed is our firm's check in the amount of \$25.00 representing the filing fee for Respondents' Motion to file their Reply out of time. Please file the originals and return one copy each to our office via our courier.

By copy of this letter, we are serving copies of same 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,


Christian Stegmaier

CS/mmm

Enclosures

cc: Stephen J. Wukela, Esquire