

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM THE APPELLATE PANEL OF THE
SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION

W.C.C. File No.: 1318928
Appellate Case No. 2016-002423

RECEIVED

JUL 14 2017

SC Court of Appeals

James A. Ashford, Employee, Claimant.....Respondent,

v.

Prysmian Power Cables & Systems, USA, Employer, and
Sentry Insurance Company, Carrier..... Appellants.

INITIAL REPLY BRIEF OF APPELLANTS

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Attorney for Appellants

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I. The Court should not consider Ashford’s Initial Respondent’s Brief because the brief failed to comply with the Appellate Court Rules.

In violation of the Appellate Court Rules, Ashford served his brief *over a week after* it was due to the Court and Prysman Power. Pursuant to Rule 208(a)(2), SCACR, “Within thirty (30) days after service of appellant's brief, respondent shall serve one copy of his brief on all parties to the appeal and file with the clerk of the appellate court one copy of the brief with proof of service.” Rule 262(b), SCACR, states, “Service by mail is complete upon mailing.” Further, Rule 263(a), SCACR, provides, “No additional time shall be allowed after service by mail or upon a statutory agent. Rule 6(e), SCRCR, is not applicable to these rules, and no additional time shall be allowed by reason of service by mail or upon a statutory agent.”

Prysman Power filed and served its Initial Brief of Appellants/Respondents on May 30, 2017, making Ashford’s respondent’s brief due on June 29, 2017. Ashford did not file and serve his initial brief until July 7, 2017. The record does not include any indication that Ashford requested an extension of time to serve his brief. In fact, Ashford did not file his brief until after Prysman Power contacted counsel for Ashford on July 6, 2017, inquiring whether he had filed a respondent’s brief that may have been overlooked by Prysman Power. (Email Correspondence to Counsel for Prysman Power).

Furthermore, Ashford’s brief—which was untimely filed and only submitted after correspondence from counsel for Prysman Power—failed to include any references to the record. *See* Rule 208(b)(4), SCACR (“The brief shall contain references to the transcript, pleadings, orders, exhibits, or other materials which may be properly included in the Record on Appeal [see Rule 210(c)] to support the salient facts alleged. References shall also be made to where relevant objections and rulings occurred in the transcript. In the initial briefs, these references should be to the page and line number of the transcript prepared by the court reporter or by the page of the

material to be referenced . . .”). Accordingly, Prysmian Power requests the Court to reject Ashford’s Respondent’s Brief.

II. The Hearing Commissioner had authority to rule on the psychological issue and violated Prysmian Power’s due process rights by failing to do so.

Ashford’s brief consists of a single sentence repeated in different iterations for over twenty pages in length. Simply put, Ashford repeatedly maintains the Hearing Commissioner did not have authority to rule on the psychological issue at the June 23, 2015 hearing because Ashford filed a Form 50 and therefore had a right to mandatory mediation prior to a hearing to determine permanent and total disability which included the psychological issue. This argument is flawed for multiple reasons. Importantly, the Hearing Commissioner must rule on the issues presented to it and Ashford—not Prysmian Power—raised the psyche issue when he filed his Form 58 Pre-Hearing Brief for the June 23, 2015 hearing. The first issue raised by Ashford on the Form 58 was *whether Ashford was entitled to additional medical or psychological care*. (Ashford’s APA, p. 1). Further, in his Administrative Procedures Act submissions for the June 23, 2015 hearing, Ashford submitted a Medical Questionnaire and numerous reports from Todd Hanson, a licensed marriage and family therapist, to support his psychological claim. (Ashford’s APA, pp. 117-123). Additionally, when Prysmian Power objected to the admission of the psychological evidence, Ashford argued there was no prejudice to Prysmian Power in including the evidence at the hearing. (H.T. 4-5).

During the hearing, the Hearing Commissioner allowed Ashford to provide specific testimony regarding his alleged psychological injury. (H.T. 24-25, 48-53). Moreover, counsel for Ashford asked Ashford, “So do you want Commissioner Campbell to order that you get some psychological treatment as well, based on this accident?” and Ashford responded, “Yes.” (H.T., p. 25). The Hearing Commissioner could not make a finding at that hearing on whether Ashford

needed psychological treatment without first determining whether Ashford had a psychological injury. *See* S.C. Code Ann. §1-23-350 (2017) (“If, in accordance with agency rules, a party submitted proposed findings of fact, the decision shall include a ruling upon each proposed finding.”). Furthermore, although Ashford repeatedly argues mandatory mediation was required before the Hearing Commissioner could rule on the issue, Ashford has never requested to schedule mediation with counsel for Prysmian Power, nor contacted the Commission inquiring about setting mediation.

Consequently, Ashford cannot in good faith raise the psychological issue in his brief to the Commission for the June 23, 2015 hearing, testify about the issue during the hearing, ask for psychological treatment during the hearing, and then subsequently argue the Hearing Commissioner did not have authority to rule on the issue. The Hearing Commissioner had authority to rule on the issue as the issue was presented to it by Ashford in the pleadings and during the hearing. The Hearing Commissioner’s failure to rule on the issue violated Prysmian Power’s due process rights. *See Aristizabal v. I. J. Woodside-Div. of Dan River, Inc.*, 268 S.C. 366, 370-71, 234 S.E.2d 21, 23 (1977) (“If a material fact is contested, the Hearing Commissioner must make a specific, express finding on it.”); *Leventis v. S.C. Dep’t of Health & Envtl. Control*, 340 S.C. 118, 131, 530 S.E.2d 643, 650 (Ct. App. 2000) (“Due process is flexible and calls for such procedural protections as the particular situation demands.”).

Assuming *arguendo* that what Ashford is arguing is correct, and the Hearing Commissioner could not rule on the issue until after a separate Form 50 hearing and mandatory mediation, then Ashford should not have raised the issue until he submitted his Pre-Hearing Brief for a separate Form 50 hearing. In other words, even under Ashford’s logic, the Hearing Commissioner would have erred in admitting the psychological evidence and allowing the testimony.

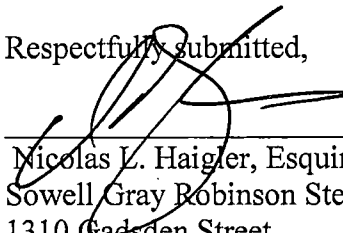
III. The appeal is not Interlocutory.

This is an appeal from the Final Decision and Order of the Appellate Panel of the Workers' Compensation Commission (the Appellate Panel). The Hearing Commissioner issued an order over a year after the hearing requests, finding the psychological issue was not properly before it. The Appellate Panel affirmed the order without specifically addressing the facts supporting the conclusion that the issue was not properly before the Hearing Commissioner. This was a final ruling on the psychological issue, terminating this particular proceeding. *See* S.C. Code Ann. § 1-23-390 ("An aggrieved party may obtain a review of a final judgment of the circuit court or the court of appeals pursuant to this article by taking an appeal in the manner provided by the South Carolina Appellate Court Rules as in other civil cases."); *Charlotte-Mecklenburg Hosp. Auth. v. S.C. Dep't of Health & Envtl. Control*, 387 S.C. 265, 267, 692 S.E.2d 894, 895 (2010) ("A final judgment disposes of the whole subject matter of the action or terminates the particular proceeding or action, leaving nothing to be done but to enforce by execution what has been determined."). Moreover, even if this Court determines the appeal is interlocutory, the issue is still immediately appealable. *See Hilton v. Flakeboard Am. Ltd.*, 418 S.C. 245, 249, 791 S.E.2d 719 (2016) (confirming that under South Carolina law, preliminary, procedural, or intermediate agency actions or rulings are immediately reviewable if review of the final agency decision would not provide an adequate remedy). Any subsequent filings with the Commission are not a part of this record on appeal. If any separate actions proceeded, they proceeded only because the Hearing Commissioner erred by violating Prysmian Power's due rights. Accordingly, this appeal cannot be considered interlocutory.

CONCLUSION

Prysmian Power respectfully requests this Court to reverse the decision of the Appellate Panel and remand the claim to the Appellate Panel to address whether Ashford sustained a psychological injury.

Respectfully submitted,



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APPELLANTS

July 14, 2017

THE STATE OF SOUTH CAROLINA
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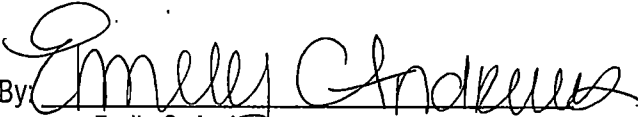
James A. Ashford, Employee, Claimant..... Respondent,

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Prysmian Power Cables & Systems, USA, Employer, and
Sentry Insurance Company, Carrier..... Appellants.

PROOF OF SERVICE

I certify that I have served the Appellants' Initial Reply Brief on James Ashford by depositing a copy of it in the United States Mail, postage prepaid, on July 14, 2017, addressed to his attorney of record, David N. Truitt, Esquire, 925 Calhoun Street, Columbia, SC 29201 and Honorable Jenny Abbott Kitchings, Judicial Director, South Carolina Court of Appeals, 1015 Sumter Street, Columbia, SC 29201 (via Hand-Delivery on July 14, 2017).

By 

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July 14, 2017

VIA HAND DELIVERY

The Honorable Jenny Abbott Kitchings
Clerk, South Carolina Court of Appeals
1015 Sumter Street
Columbia, SC 29201

RE: James A. Ashford v. Prysmian Power Cables
WCC File No.: 1318928
Date of Accident: 10/30/13
Claim No.: 55C098612
Our File No.: 5431/8392

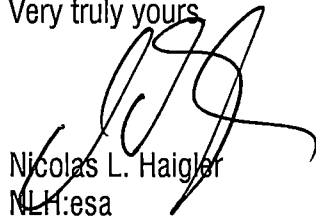
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Dear Ms. Kitchings:

Please find enclosed herewith the original and one (1) copy of the Appellants' Initial Reply Brief in the above-referenced matter. We would appreciate your filing the original Brief returning a clocked-in copy of the same to us via our courier.

By copy of this letter and aforementioned documents to the Respondent's attorney, we are serving him with a copy of the Appellants' Initial Reply Brief.

Very truly yours



Nicolas L. Haigler
NLH:esa

Enclosures

cc: David N. Truitt, Esquire (via U.S. Mail)
Ms. Dietra Garland (via e-mail only)
Ms. Christina Trainor (via e-mail only)
Mr. Terry Cummings (via e-mail only)
Ms. Shafia Sarwar (via e-mail only)
Ms. Dianne Wells (via e-mail only)
Ms. Melissa Manwaring (via e-mail only)