

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM THE
WORKERS' COMPENSATION COMMISSION
SCWCC FILE NO. 1513718

Appellate Case No. 2017-001491

Anthony J. Belo, Appellant,

v.

Aiken County Government, Respondent.

RESPONDENT'S MEMORANDUM
IN SUPPORT OF REMAND

Clarke W. McCants, III
Nance, McCants & Massey
Post Office Box 2881
Aiken, S.C. 29802
(803) 649-6200 Ext. 3
Attorney for the Respondent

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SC Court of Appeals

STATEMENT OF THE CASE AND ARGUMENT

This is a workers compensation case involving a work-related accident which occurred in September 2015 and while the Appellant Anthony Belo was employed by Aiken County Government. A hearing was held on December 19, 2016 before Commissioner R. Michael Campbell, II to determine the issues set forth in the Parties' Forms 50 and 51, and the Claimant's entitlement to certain additional benefits under the South Carolina Workers' Compensation Law (hereinafter referred to as the "Act").

There is no dispute that Mr. Belo injured his lower back as a result of the accident involved in this case. Since the accident he has received certain medical treatment for that injury. He has also received medical treatment for a hernia incurred as a result of treatment for his lower back injury.

Mr. Belo has not reached maximum medical improvement with respect to his lower back injury and the hernia he incurred, and is receiving ongoing treatment. He is also currently not working and is receiving payment of temporary total compensation. Mr. Belo remains employed by Aiken County.

As part of the Form 50 considered by Commissioner Campbell Mr. Belo contends that he sustained a psychological injury as a result of the accident in September 2015. He seeks medical treatment for that alleged injury. The Respondent denies that Mr. Belo has sustained a psychological injury as a result of the accident involved in this case and contends that he is not entitled to compensation and other benefits for the same under the Act.

Commissioner Campbell issued his Decision and Order on April 19, 2017 wherein he determined Mr. Belo did not sustain any psychological injury by accident arising out of and in the

course of his employment with the Employer. Commissioner Campbell further found that Mr. Belo did not suffer an aggravation of his pre-existing mental and emotional condition as a result of an accident arising out of and in the course of his employment.

Counsel for Mr. Belo subsequently filed a Request for Full Commission Review of Commissioner Campbell's Decision and Order. That Request for Review is pending before the Commission.

On May 3, 2017 Counsel for Mr. Belo filed a Motion to Allow Newly Discovered Evidence, which was denied by a Judicial Panel of the Commission. Mr. Belo has asked this Court to review that decision.

The Respondent respectfully contends that the Commission's Order denying Mr. Belo's Motion to Introduce New Evidence is interlocutory and not immediately appealable, and that his appeal to this Court should be dismissed without prejudice.

An appeal of an interlocutory order of the Workers Compensation Commission will not lie unless such order affects the merits or deprives the appellant of a substantial right. Green v. City of Columbia, 427 S.E. 685, 311 S.C. 78 (Ct. App. 1993). While the appeal in Green was presented to the Circuit Court, the ruling outlined in that case is applicable here.¹


The Commission's Order denying Mr. Belo's Motion to Introduce New Evidence does not affect the merits of his case nor does it deny him a substantial right. The Commission has not issued a final decision as to whether he is entitled to benefits for a psychological injury and, thus, has not decided the merits of his claim in that regard. Further, and in the event that the Full

¹ At the time Green was decided appeals of decisions of the Workers' Compensation were presented first to the Circuit Court. Such appeals, of course, are now presented directly to the Court of Appeals.

Commission affirms Commissioner Campbell's Decision and Order, Mr. Belo has the right to ask this Court to review not only that decision, but also the Full Commission's decision with respect to the introduction of any new evidence. If the Commission reverses Commissioner Campbell Decision and Order, then the Commission's decision with respect to the introduction of new evidence is likely moot.

Thus, the Respondents respectfully submit that the Commission should be allowed to issue its final decision as to the merits of Mr. Belo's claim for a psychological injury. Afterwards, all of the present issues in this case will be fully decided and joined for any review by this Court.

Respectfully submitted.



Clarke W. McCants, III
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Attorney for the Appellants

Dated: July 24, 2017

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APPEAL FROM THE
WORKERS' COMPENSATION COMMISSION
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Anthony J. Belo, Appellant

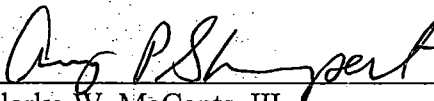
vs.

Aiken County Government, Respondent.

PROOF OF SERVICE

I certify that I have served a copy of the Respondent's Memorandum in Support of Remand on counsel for the Respondent, Robert F. Goings, by depositing a copy of it in the United States Mail, postage prepaid, on July 24, 2017 addressed to Robert F. Goings, Goings Law Firm, LLC, PO Box 436, Columbia, SC 29202 and upon the South Carolina Workers' Compensation Commission, by depositing a copy of it in the United Sate Mail, postage prepaid, on July 24, 2017 addressed to Amy Bracy, Judicial Director, South Carolina Workers' Compensation Commission, P.O. Box 1715, Columbia, South Carolina 29202-1715.

July 24, 2017



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July 24, 2017

The Honorable Jenny Abbott Kitchings
Clerk, SC Court of Appeals
PO Box 11629
Columbia, SC 29211

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IN RE: Anthony J. Belo v. Aiken County Government
Appellate Case No. 2017-001491
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SC Court of Appeals

Dear Ms. Kitchings:

Please file in the above-referenced matter the enclosed Respondent's Memorandum in Support of Remand and Proof of Service upon opposing counsel and the South Carolina Workers' Compensation Commission.

With kindest regards, I am

Sincerely,



Amy P. Shumpert

APS

Enclosures

cc: Amy Bracy (w.encls)
Robert F. Goings, Esq. (w.encls)

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