

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM THE SOUTH CAROLINA WORKERS' COMPENSATION
COMMISSION

Appellate Panel of the Workers' Compensation Commission

Appellate Case No. 2017-001746
W.C.C. File No. 1315112

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SC Court of Appeals

BOEING COMMERCIAL AIRPLANES, Employer, and INDEMNITY INSURANCE
COMPANY OF N.A., Carrier, Defendants

Appellants,

v.

DANIEL GATON, Employee/Claimant,

Respondent.

RESPONDENT'S MEMORANDUM OF LAW IN OPPOSITION TO THE APPEAL

Michael J. Jordan, Esquire
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P.O. Box 1028
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TABLE OF CONTENTS

Statement of Issue on Appeal..... 1

Statement of the Case and Facts2

Standard of Review3

Argument

 The South Carolina Workers' Compensation Commission Correctly Determined
 Granting an Order for an Injured Worker to Obtain a Second Medical Opinion
 for his Ongoing Symptoms is Interlocutory Cannot Not Be Appealed4

Conclusion6

STATEMENT OF ISSUE ON APPEAL

- I. WHETHER THE SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION CORRECTLY DETERMINED AN INTERLOCUTORY ORDER CANNOT NOT BE APPEALED.

STATEMENT OF THE CASE AND FACTS

The Respondent (hereinafter "Mr. Gatton") was involved in an admittedly compensable injury by accident on July 24, 2013. As a result of his injury by accident, the Respondent sustained an injury to his right shoulder.

A hearing, clincher conference, was held in this matter while the Respondent was handling the matter *pro se*. This hearing occurred on October 28, 2014 where the parties entered into an agreement that included (1) an indemnity payment from the Appellant to Mr. Gatton for a 20% loss of use to the right shoulder under S.C. Code 42-9-30 and (2) for ongoing medical treatment to be provided by the Appellant to Mr. Gatton. The agreement was finalized on a WCC Form No. 16-A, which was filed with the Commission on October 28, 2014.

On May 23, 2017 Mr. Gatton, through his undersigned attorney, filed a Motion with the South Carolina Workers' Compensation Commission seeking a second medical opinion for his ongoing shoulder symptoms. The Honorable Commissioner Michael Campbell granted the Motion and filed an Order with the Commission on June 9, 2017.

The Appellants filed a W.C.C. Form 30, Request for Commission Review, on June 23, 2017. The South Carolina Workers' Compensation Commission issued a Decision and Order dated July 17, 2017 denying the Appellants request and determined the appeal to be interlocutory. The form Order from the Commission denied the appeal and determined it to be "Dismissed as Interlocutory."

The Appellants filed Notice of Appeal to this Court on July 17, 2017 and this Memorandum to the appeal follows.

STANDARD OF REVIEW

Section 42-17-60, S.C. Code Anno., 1976, governs appeals from a final decision of the South Carolina Workers' Compensation Commission and provides in its applicable part, "[t]he award of the commission ... is conclusive and binding as to all questions of fact." (emphasis added). An appeal from the Workers' Compensation Commission will not lie from an interlocutory order of the Commission unless the Order affects the merits or deprives the appellant of a substantial right. Green v. City of Columbia, 311 S.C. 78, 79-80, 427 S.E.2d 685, 687 (Ct.App.1993).

While the Appellate Courts may not substitute their judgment for that of the Commission on questions of fact, they may reverse when the Commission's decision is affected by an error of law. *See: Sturkie v. Ballenger*, 268 S.C. 536, 235 S.E.2d 120 (S.C. 1977); Etheredge v. Monsanto Co., 349 S.C. 451, 562 S.E.2d 679 (S.C. App. 2002); Muir v. C. R. Bard, Inc., 336 S.C. 266, 519 S.E.2d 583 (S.C. App. 1999); Hamilton v. Bob Bennett Ford, 336 S.C. 72, 518 SE2d 599 (S.C. App. 1999). Either party to the dispute ... may appeal from the decision of the commission ... for errors of law under the same terms and conditions as govern appeals in ordinary civil actions." Section 1-23-380(g), S.C. Code Anno., 1976, the Administrative Procedures Act, also governs appeals from administrative agencies and provides in its applicable part, "[t]he court may reverse or modify the decision if substantial rights of the appellant have been prejudiced because the administrative findings, inferences, conclusions, or decisions are ... affected by other error of law or clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record..." Lark v. Bi-Lo, Inc., 276 S.C.

130, 276 S.E.2d 304 (S.C. 1981).

ARGUMENT

THE SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION CORRECTLY DETERMINED GRANTING AN ORDER FOR AN INJURED WORKER TO OBTAIN A SECOND MEDICAL OPINION FOR HIS ONGOING SYMPTOMS IS AN INTERLOCUTORY ORDER AND CANNOT NOT BE APPEALED.

South Carolina adheres to the final judgment rule. See Bone v. U.S. Foods, Inc., 399 S.C. 566, 733 S.E.2d 200 (2012) (holding S.C.Code Ann. § 1-23-610(A)(1) (Supp.2009) of the APA allows judicial review only from "final decisions" of administrative agencies). Accordingly, with certain exceptions, an appeal lies only from a final judgment. Hagood v. Sommerville, 362 S.C. 191, 194-195, 607 S.E.2d 707, 708 (2005); S.C.Code Ann. § 14-3-330(1) (1976 and Supp.2004); Rule 72, SCRCF; Rule 201(a), SCACR. By statute, an appeal from an interlocutory order is permitted in certain circumstances, including when the order is one "involving the merits ... [or] affecting a substantial right." S.C.Code Ann. § 14-3-330(1)&(2).

In Bone, the Courts considered the meaning of a "final decision" and confirmed that "[i]f there is some further act which must be done by the court prior to a determination of the rights of the parties, the order is interlocutory." Bone 399 S.C. at 573, 733 S.E.2d at 203 (2012) (quoting Charlotte-Mecklenburg Hospital Authority v. South Carolina Department of Health and Environmental Control, 387 S.C. 265 at 267, 692 S.E.2d 894 at 894 (2010)). "A judgment which determines the applicable law, but leaves open questions of fact, is not a final judgment." *Id.* Rather, "[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." *Id.* at 267, 692 S.E.2d at 895 (citing *Good v. Hartford Accident & Indem. Co.*, 201 S.C. 32, 21 S.E.2d 209 (1942)).

The underlying Motion addresses a request for additional medical treatment. The medical treatment requested in the Motion does not draw an end to the case, rather, it helps determine the injured workers' need for potential medical treatment. This is not a final judgment. The Motion and subsequent orders do not dispose of the subject matter of the case. Rather, as the Commission stated, it is obviously "interlocutory." Mr. Gatton's medical treatment will remain ongoing regardless of the outcome of second medical opinion.

An appeal from the Workers' Compensation Commission will not lie from an interlocutory order of the Commission unless the order affects the merits or deprives the appellant of a substantial right. *Green v. City of Columbia*, 311 S.C. 78, 79-80, 427 S.E.2d 685, 687 (Ct.App.1993). The substantial rights of the Appellant Employer have not been affected by an error of law. The Commission properly granted the injured worker an opportunity to seek a second medical opinion for his ongoing shoulder symptoms. There was no error of law and the Appellant Employer's substantial rights have not been affected. An Order requiring the Appellant Employer to supply the injured worker with another medical opinion does not deprive them from any substantial right.

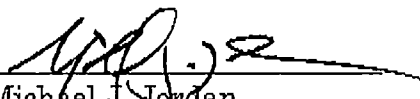
The Commission correctly determined and concluded as a matter of law the

Appellant's appeal was interlocutory and not a final decision.

CONCLUSION

For the reasons set forth above the Respondent requests the Court of Appeals affirm the Decision and Order of the South Carolina Workers' Compensation Commission.

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By: 
Michael J. Jordan
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Goose Creek, South Carolina
September 15, 2017

CERTIFICATE OF SERVICE

I hereby certify that on September 15, 2017, I served the Defendant in the foregoing matter with a copy of the attached Respondent's Memorandum of Law in Opposition to the Appeal by mailing a copy of same via first class mail, postage pre-paid and addressed as follows:

The Honorable Jenny Abbott Kitchings
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September 15, 2017

Via US Mail & Facsimile

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Re: Appellate Case No.: 2017-001746
Daniel Gatton v. Boeing

SEP 15 2017
SC Court of Appeals

Dear Ms. Kitchings:

Enclosed please find the original and one copy of the Respondent's Memorandum of Law in Opposition to the Appeal.

By copy of this letter to Mikell H. Wyman, Esquire, I am providing them with a copy of the same.

With kindest regards, I am

Sincerely,

Michael J. Jordan
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MJJ/ld
Enclosures
cc: Daniel Gatton
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MESSAGE:

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SC Court of Appeals

Appellate Case # 2017-001746
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