

STATE OF SOUTH CAROLINA
In the Court of Appeal

APPEAL FROM THE
SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION

Commission Panel:

Commissioner Susan S. Barden, Chair
Commissioner Avery B. Wilkerson
Commissioner R. Michael Campbell

SCWCC File No. 1206236

Appellate Case No. 2018-001160

RECEIVED
AUG 07 2018
SC Court of Appeals

Jennie Cox, Employee.....Appellant

v.

Palmetto State Transportation, Employer and
Cherokee Insurance Company, Carrier.....Respondents

**RETURN TO APPELLANT'S
MOTION TO REINSTATE APPEAL**

This court dismissed Appellant's appeal because she failed to comply with Rule 207. Rule 207, SCACR (transcript of proceeding). The date of the court's order of dismissal is July 23, 2018. That same day, the court received a "motion for leave to order the transcript out of time or, alternatively, to obtain consent to forgo ordering transcript," which Appellant's counsel signed

and mailed on July 16, 2018. On August 1, 2018, the court decided to construe that motion as a motion to reinstate the dismissed appeal. Respondents' file this Return in opposition to her motion.

Either party may appeal the award of the Full Commission to the Court of Appeals. S.C. Code Ann. § 42-17-60. Nevertheless, appeals from the Commission are governed by the Administrative Procedures Act. *Hilton v. Flakeboard Am. Ltd.*, 418 S.C. 245, 249, 791 S.E.2d 719, 721 (2016). "Section 1-23-380(A) of the APA states a 'preliminary, procedural, or intermediate agency action or ruling is immediately reviewable if review of the final agency decision would not provide an adequate remedy.'" *Id.*; see also *Hilton v. Flakeboard Am. Ltd.*, 418 S.C. 245, 249 n. 1, 791 S.E.2d 719, 721 n. 1. ("Section 1-23-390, along with Rule 242, SCACR, govern this Court's review of a final decision by an intermediate judicial tribunal, while [section] 1-23-380 defines the circumstances under which a judicial body may review an agency decision." (citing *Shatto v. McLeod Reg'l Med. Ctr.*, 406 S.C. 470, 753 S.E.2d 416, 418 n. 2 (2013))).

A court must determine whether an interlocutory order is immediately reviewable on a case-by-case basis; that is, a court determines whether a later review of a final judgment will provide an adequate remedy in a case. *Hilton v. Flakeboard Am. Ltd.*, 418 S.C. 245, 249, 791 S.E.2d 719, 721. Although circumstances justifying interlocutory appeals exist, they "are about as rare as the proverbial hens' teeth." *Id.*, 418 S.C. 245, 252, 791 S.E.2d 719, 723 (internal citation and description omitted).

In this case, the full Commission reversed the single Commissioner's order and award of permanent and total disability. The full Commission remanded the case for "a Hearing Commissioner [to] determine Claimant's permanency award for her compensable injuries

sustained because of her May 31, 2012 injury.”¹ Because the full Commission remanded the case for further proceedings, its order is interlocutory. *See Bone v. U.S. Food Serv.*, 404 S.C. 67, 744 S.E.2d 552 (2013) (discussing the meaning of “final judgment” under the APA).

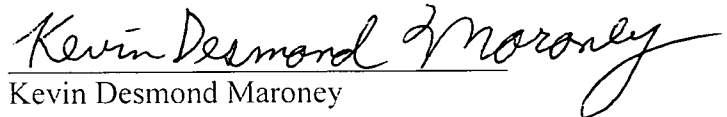
In addition to being interlocutory, there are no special circumstances justifying an immediate appeal. The Commission has scheduled a hearing for a final determination of Appellant’s entitlement to permanent partial disability benefits. The hearing will take place on August 8, 2018. After the single Commissioner makes that determination, Appellant can appeal to the full Commission. Once the full Commission reviews and determines the final award, Appellant can then appeal all issues to this court, including the issue of permanent and total disability. If Appellant does appeal the full Commission’s final order, then this court and the parties will have the benefit of a complete record regarding the extent of her injuries. Under these circumstances, immediate appellate review is unjustified.

Because Appellant is appealing an interlocutory order and no special circumstances justify immediate appellate review, this court should not grant her motion to reinstate her appeal.

¹ Full Commission Decision and Order, p. 28 (dated May 21, 2018). Ms. Cox attached a copy of the Full Commission Order to her Notice of Appeal.

Respectfully submitted,

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July 7, 2018
Columbia, SC

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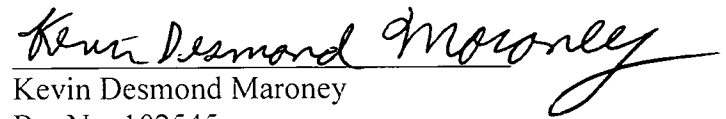
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PROOF OF SERVICE

I certify that I served the Appellant with a copy of the Respondent's Return via U.S. mail. The copies were sent to the following addresses:

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July 7, 2018
Columbia, SC