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SC Court of Appeals

STATE OF SOUTH CAROLINA
In the Court of Appeal

APPEAL FROM THE
SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION

T. Scott Beck, Commissioner

SCWCC File No. 1619767

Appellate Case No. 2018-001111

Veronica Rodriguez, Employee.....Respondent

v.

Peggy Evers, Employer and NorGuard Insurance Company Carrier.....Appellants

APPELLANTS' INITIAL REPLY BRIEF

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ARGUMENT

I. Section 42-17-60 is inapplicable; the law of the case doctrine is inapplicable; and the Court can provide meaningful relief for Ms. Evers; consequently, the Court has appellate jurisdiction to decide this case.

Ms. Rodriguez first argues that the Ms. Evers'¹ Notice of Appeal is defective because it does not comply with section 42-17-60. But this Court disagrees. *Wofford v. City of Spartanburg*, 410 S.C. 102, 103, 763 S.E.2d 53, 54 (Ct. App. 2014) (“[A] party filing an appeal from the Commission to the Court of Appeals need not state in the notice of appeal the grounds of the appeal or the alleged errors of law...This appeal will not be dismissed for noncompliance with section 42-17-60.”). Mr. Rodriguez’s argument is specious.

Next, Ms. Rodriguez contends that the law of the case doctrine prevents this court from hearing the appeal, because the Notice of Appeal does not list the underlying order of Commissioner Campbell, the March 26, 2018 order administratively dismissing the appeal, or the April 16, 2018 order denying reinstatement. A few points demonstrate how this is wrong.

First, the underlying order of Commissioner Campbell was not appealed because the Commission did not rule on it; the Commission administratively dismissed the appeal without reaching the merits. Parties can only appeal a decision of the Commission. S.C. Code Ann. §42-17-60 (“[E]ither party to the dispute...may appeal the decision of the [C]ommission to the [C]ourt of [A]ppeals.”). Because Ms. Evers cannot appeal a decision that does not exist, she appealed the denial of the motion to reinstate.

Second, Ms. Evers did not appeal the March 26, 2018 administrative dismissal because she does not dispute that a deadline was missed and that the Commission had the authority to remove her appeal from the reviewing hearing docket. What she disputes is the refusal to reinstate the

¹ This brief will collectively refer to the Employer and Carrier as Ms. Evers.

appeal, which is why she appealed the final order denying reinstatement. If the Court overturns the order denying reinstatement, the Full Commission will have to reinstate and hear her appeal.

Third, Ms. Rodriguez failed to read regulation 67-215(B), which is why she does not understand that the Commission's May 21, 2014 order is the *final* decision denying the motion to reinstate: "If a motion for reconsideration is properly filed...the [initial April 16, 2018] order...is not considered final until the motion for reconsideration has been disposed of by the...Full Commission." S.C. Code Ann. Regs. 67-215(B). This is why the May 21, 2014 order indicates the matter before the Commission was a Motion to Reinstate, not a motion for reconsideration. (Form Order of the Commission (May 21, 2014)). And, regardless, Ms. Evers sent the Notice of Appeal along with both the April 16, 2018 and May 21, 2018 decisions to the Court of Appeals and Ms. Rodriguez's attorney. Consequently, if the April 16, 2018 order was relevant (which it is not), Ms. Evers' would have substantially complied with Rule 203 and the Court could still exercise appellate jurisdiction. *Cf.* Rule 203(d)(2)(B)(ii), SCACR ("[The notice of appeal filed with the appellate court shall include] [a] copy of the decision(s) to be challenged on appeal") *with* Rule 203(e)(2)(C), SCACR ("[the notice of appeal shall contain] the date of the decision from which the appeal is taken"); *see also Skinner v. Westinghouse Elec. Corp.*, 380 S.C. 84, 668 S.E.2d 795, 796 (2008) (a procedural defect *may* deprive the court of appellate jurisdiction).² The law of the case doctrine is inapplicable. Ms. Rodriguez's argument is specious.

Finally, Ms. Rodriguez argues the appeal is moot because "this Court's reversal would not provide meaningful relief to Appellants, who would nevertheless be subject to the award of Com.

² As noted in Ms. Evers' initial brief, the attorney filing this brief started at Speed, Seta on July 6, 2018, well after the events giving rise to this appeal, including the filing of the Notice of Appeal, took place. (Brief of the Appellant, p. 7 n. 6).

Campbell and the unappealed dismissal and the first order denying reinstatement.” (Respondent’s brief, p. 14). This is wrong for two reasons.

First, Ms. Evers did not have to appeal the April 16, 2018 order denying reinstatement because that was not the final order denying reinstatement. “If a motion for reconsideration is properly filed...the [initial April 16, 2018] order...is not considered final until the motion for reconsideration has been disposed of by the...Full Commission.” S.C. Code Ann. Regs. 67-215(B). Second, if the Court overturns the order denying reinstatement, then the Commission will have to reinstate and hear Ms. Evers’ appeal from Commissioner Campbell’s order. Consequently, Ms. Evers will receive meaningful relief.

Section 42-17-60 has no bearing on appeals from the Commission. Ms. Evers appealed the final order denying reinstatement and complied with Rule 203. Rule 203(e)(2)(C), SCACR (“[The Notice of Appeal shall contain] the date of the decision from which the appeal is taken”). The law of the case doctrine is inapplicable. And this Court can provide Ms. Evers’ with meaningful relief. Consequently, every one of Ms. Rodriguez’s contrary arguments is baseless.

II. Ms. Rodriguez spends most her brief arguing, on behalf of the Commission, that Ms. Evers did not satisfy good cause. She must do this because the Commission did not give any reasons for its denial of the motion to reinstate—which makes its decision arbitrary and therefore subject to reversal under the law.

As Ms. Evers discussed in her initial brief (Brief of Appellant, p. 8), this Court can overturn the Commission’s decision if it is arbitrary. S.C. Code Ann. § 1-23-380(5)(f). A decision is arbitrary if it is not based on a course of reasoning. *Deese v. S.C. State Bd. of Dentistry*, 286 S.C. 182, 184-85, 332 S.E.2d 539, 541 (1985).

Ms. Rodriguez writes pages arguing that the Commission had reasons to determine that Ms. Evers did not present good cause in her motion. But she is rationalizing after-the-fact; the Commission did not provide any reasons for its denial of the motion to reinstate, in either the April

16, 2018 order or the final May 21, 2018 order. Consequently, this Court can reverse the Commission's decision.

III. Administrative agencies, like the Workers' Compensation Commission, only have the authority granted them under a statute. The refusal to reinstate and hear Ms. Evers' appeal exceeds the Commission's authority under section 42-17-50. Consequently, the Commission's decision exceeds its statutory authority and, consequently, is subject to reversal under the law.

"An administrative agency has only such powers as have been conferred by law and must act within the authority granted for that purposes." *Bazzle v. Huff*, 319 S.C. 443, 445, 462 S.E.2d 273, 274 (1995). The statute governing appeals to the Full Commission states, "the Commission shall review the award [of the single Commissioner]..." "S.C. Code Ann. §42-17-50. As Ms. Evers noted in her initial brief (Brief of Appellant, p. 10 n. 15), a regulation may not alter or add to a statute's requirements. *See also Society of Professional Journalists v. Sexton*, 283 S.C. 563, 567, 324 S.E.2d 313, 315 (1984) ("Although a regulation has the force of law, it must fall when it alters or adds to a statute."). Although the Commission can pass a regulation that enables administrative removal of a case from the review hearing docket, thereby providing for quicker review of appeals that are already procedurally compliant, it cannot pass a regulation that enables the Commission to refuse to hear appeals. Because the Commission blotted out the word "shall" from the statute when it refused to reinstate and hear Ms. Evers' appeal, the Commission's decision exceeds its statutory authority and is therefore subject to reversal by this Court. S.C. Code Ann. §1-23-380(5)(b).

IV. The Commission's decision to deny reinstatement of Ms. Evers' appeal is arbitrary, beyond its statutory authority, and an abuse of discretion. In addition, the Court, if it reverses the Commission's order, will be requiring the Commission to hear a meritorious appeal.

Ms. Rodriguez scatters misdirected and baseless arguments across 26 pages in her initial brief. But this case is simple: 1) The Commission did not provide any reasons for denying Ms. Evers' motion to reinstate, which makes the decision arbitrary and therefore reversible under the law;

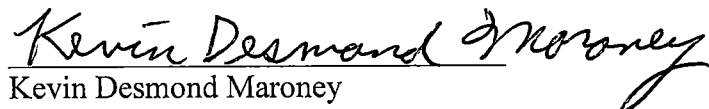
2) The Commission does not have the statutory authority to refuse to hear appeals, which makes its decision similarly reversible; and 3) Ms. Evers, as demonstrated in her initial brief,³ provided reasons that should constitute “good cause” for reinstatement, making the decision denying reinstatement an abuse of discretion and, therefore, subject to reversal. Finally, Ms. Evers’ underlying appeal is meritorious; as demonstrated in her initial brief,⁴ the single Commissioner did not have jurisdiction to award compensation to Ms. Rodriguez. This is not a situation wherein a favorable ruling would result in a frivolous appeal to the Full Commission. This last point should, in addition to all the previous arguments, tip the scales in favor of Ms. Evers.

CONCLUSION

Ms. Evers respectfully asks this Court to reverse the Commission’s May 21, 2018 decision, and order it to hear her appeal.

Respectfully submitted,

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³ (Brief of the Appellant, pp. 10-12).

⁴ (Brief of the Appellant, pp. 12-13).

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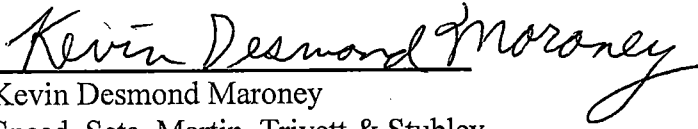
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PROOF OF SERVICE

I certify that I have served the Appellants' Reply Brief on Veronica Rodriguez by depositing a copy of it in the United States Mail, postage prepaid, on August 17, 2018 addressed to her attorney, Don C.Gibson, Post Office Box 60669 North Charleston, SC 29419.

August 17, 2018


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