

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

RETURN TO RESPONDENT'S MOTION¹

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SEP 05 2018
SC Court of Appeals

¹ There are no factual matters contained in this Return that require submission of an affidavit. The Appellants make only a legal argument. If the Court disagrees, they would appreciate the opportunity to submit one.

MEMORANDUM IN SUPPORT OF RETURN TO RESPONDENT'S MOTION

Under the authority of Rule 240(e), Peggy Evers and NorGuard Insurance Company (Ms. Evers) file this Return to Respondent's (Ms. Rodriguez's) motion.

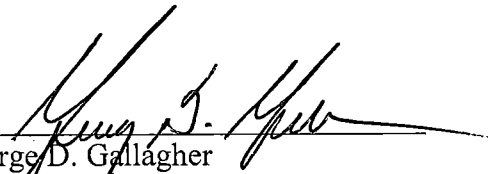
The Court of Appeals does not have authority to entertain Ms. Rodriguez's motion because of Rule 241. "The lower court or administrative tribunal retains jurisdiction over matters not affected by the appeal *including the authority to enforce any matters not stayed by the appeal.*" Rule 241(a), SCACR (emphasis added). An appeal does not stay payment of benefits. Rule 241(b)(7), SCACR ("Worker's Compensation awards as provided in S.C. Code Ann. §42-17-60 [are not stayed by an appeal]"); *Bone v. U.S. Food Serv.*, 404 S.C. 67, 744 S.E.2d 552, 561 (2013) (citing Rule 241, SCACR). Consequently, the Workers' Compensation Commission has jurisdiction to order payment of benefits and any other penalties associated with a lack of payment, but this Court does not.

Although Ms. Rodriguez did not explain why she thinks this motion is appropriate in this Court, her rationale likely rests upon the authority of (at least) *McLeod v. Piggly Wiggly Carolina Co.*, 280 S.C. 466, 472, 313 S.E.2d 38, 41 (Ct. App. 1983). That case, however, concerns the authority of the circuit court to order payment of benefits under the pre-2007 system governing appeals from the Workers' Compensation Commission. The authority of the Court of Appeals under the post-2007 system has not been addressed and, because of the Appellate Court Rules, need not be. (Appellate Court Rule 241 was last amended in April of 2009).²

The Court does not have authority to hear Ms. Rodriguez's motion because of Appellate Court Rule 241. Her motion should be denied.

²(<https://www.sccourts.org/courtReg/displayRule.cfm?ruleID=241.0&subRuleID=&ruleType=A> PP Last Visited 09/04/2018).

Respectfully submitted,


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September 5, 2018
Columbia, SC

Attorneys for Appellants

PROOF OF SERVICE OF APPELLANTS' RETURN

THE STATE OF SOUTH CAROLINA
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PROOF OF SERVICE

I certify that I have served the Appellants' Return on Veronica Rodriguez by depositing a copy of it in the United States Mail, postage prepaid, on **September 5, 2018** addressed to her attorney, Don C.Gibson, Post Office Box 60669 North Charleston, SC 29419.

September 5, 2018

Kevin Desmond Maroney

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