

Pamela O. Cartee,)
)
 Claimant)
)
 v.)
)
 S.C. Judicial Dept.,)
)
 Employer, and)
)
 State Accident Fund,)
)
 Carrier, Defendants.)
 _____)

ORDER

WCC FILE NO.: 1307922

RECEIVED

OCT 12 2018

SC Court of Appeals

STATEMENT OF THE CASE

On August 16th, 2018, the South Carolina Court of Appeals ordered “Appellants to file a motion with the Workers’ Compensation Commission to inquire whether John M. Milling was a party to the attorneys’ fee petition below.” Appellants filed a Motion on August 29th, 2018. After considering Appellants’ Motion and reviewing the records of the Commission, we answer the Court of Appeals question in the affirmative: John M. Milling is a party to the attorneys’ fee petition.

FINDINGS OF FACT AND RULINGS OF LAW

Based on the record, the Commission makes the following findings of fact and rulings of law:

1. On April 4th, 2014, attorney Preston McDaniel wrote the Commission to give notice that he and attorney John Milling had been retained to represent Pamela Cartee in her workers’ compensation claim against the S.C. Judicial Department and State Accident Fund, for which WCC File No. 1307922 had been assigned. This letter was written on Mr. McDaniel’s firm’s letterhead and did not contain the signature of Mr. Milling.
2. On December 8th, 2017, Mr. McDaniel filed a WCC Form 61 Fee Petition with the Commission. The Form 61 was not signed by Mr. Milling.
3. A Hearing was held on this fee petition before the single Commissioner on February 12th, 2018. Mr. Milling did not appear or offer arguments at this Hearing.

4. On March 2nd, 2018, Mr. McDaniel sent a revised Form 61. This form was not signed by Mr. Milling.
5. On February 21st, 2018, the single Commissioner issued an Interim Order approving disbursement to Counsel the attorneys' fees that were permitted by law.
6. On March 6th, 2018, the single Commissioner issued his Decision and Order Denying the Petition for Additional Attorneys' Fees in excess of those permitted by law.
7. On March 20th, 2018, Mr. McDaniel filed a WCC Form 30 Request for Full Commission Review. Mr. McDaniel hand-edited the Form 30 to list himself as both "Attorney *and* Claimant". This form was not signed by Mr. Milling and did not indicate that Mr. Milling was appealing the denial of the Petition for Additional Attorneys' Fees in excess of those awarded on February 21st, 2018.
8. On April 22nd, 2018, Mr. McDaniel filed a Brief of Appellants with the Commission. The Brief of Appellants was not signed by Mr. Milling, however, unlike the Form 61s and Form 30 Request for Review, it did list Mr. Milling's name and address under Mr. McDaniel's signature block.
9. The matter was set for Hearing before the Commission on May 21st, 2018. Both Mr. McDaniel and Mr. Milling were present at the Hearing. Prior to going on the record, Mr. Milling informed the Commission that he would not be addressing the Commission. Mr. McDaniel presented oral arguments. At no point during his oral arguments did Mr. McDaniel indicate that Mr. Milling was challenging the denial of the Petition for Additional Attorneys' Fees in excess of those awarded on February 21st, 2018.
10. On May 30th, 2018, the Full Commission issued its Decision and Order unanimously finding that Appellants were not entitled to the full amount of attorneys' fees requested on the Form 61 Fee Petition and Form 30 Request for Review. The majority of the Commission held that the attorneys' fees should be limited to 33.3% of the amount payable to Claimant once the award became final. Two Commissioners concurred in part but stated they would have only limited the award of attorneys' fees to 33.3% of the amount payable as of the date of the Decision and Order of the Full Commission.
11. Service of the Full Commission's Decision and Order was perfected on Appellants on May 30th, 2018 by serving Mr. McDaniel directly using electronic means in accordance with S.C. Code Regs. 67-213(A) ("The Commission serves orders electronically . . ."). As Mr.

McDaniel is co-counsel with Mr. Milling, this perfected service on Mr. Milling as well. However, at the request of the Appellants, the Commission served Mr. Milling a second time with the Decision and Order using electronic means on June 1st, 2018. The parties received notice of the award of the Commission, as evidenced by their filing of this appeal of the award with the Court of Appeals.

12. Following a series of telephone calls, letters, and emails initiated by Mr. McDaniel, on June 1st, 2018, the Commission's Judicial Director sent an email to Mr. McDaniel that included the following statement:

Mr. Milling was not served with a copy of the Decision and Order as he was neither a party to the December 8th, 2017 Form 61 Fee Petition nor the March 20th, 2018 Form 30 Request for Full Commission Review. We are happy to send him a copy of the Decision and Order.

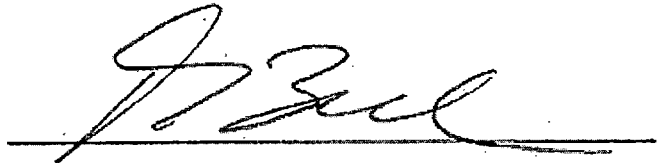
This email from the Commission's staff was sent in the context of determining who needed to be served with copies of the Order. This email was not a Decision and Order of the Commission and did not have any effect on determining who was or was not a party to the Petition for Additional Attorneys' Fees in excess of those awarded on February 21st, 2018.

13. On June 25th, 2018, Mr. McDaniel attempted to file a Motion to Reconsider the Decision and Order of the Full Commission. This motion was not signed by Mr. Milling but did list Mr. Milling's name and address under Mr. McDaniel's signature block. The Motion was returned as being untimely in accordance with S.C. Code Ann. Regs. 67-215(B) (Supp. 2018).
14. To date, the Commission has received no document or other correspondence directly from John Milling that states he is challenging the denial of the Petition for Additional Attorneys' Fees in excess of those awarded on February 21st, 2018.
15. Although Mr. Milling has not signed any of the documents or presented oral argument on the issue of the attorney fee award, we find he is a party of interest in the issue.
16. Therefore, based on a preponderance of the evidence, we find Mr. Milling is a party to the Petition for Additional Attorneys' Fees.

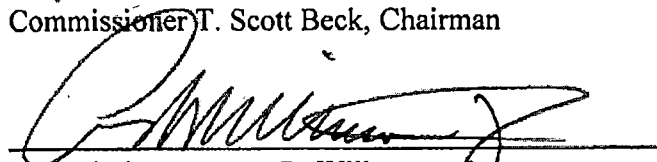
CONCLUSION

Based on the foregoing, we answer the question from the Court of Appeals in the affirmative and hold that John Milling is a party to the Petition for Attorneys' Fees in excess of those awarded on February 21st, 2018.

IT IS SO ORDERED



Commissioner T. Scott Beck, Chairman



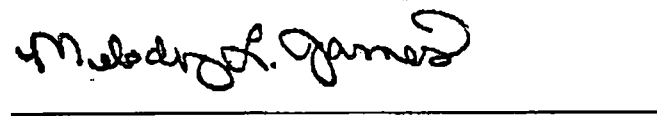
Commissioner Avery B. Wilkerson, Jr.



Commissioner Susan S. Barden



Commissioner R. Michael Campbell, II



Commissioner Melody L. James



Commissioner Aisha G. Taylor



ALAN WILSON
ATTORNEY GENERAL

October 9, 2018

VIA US MAIL

Honorable V. Claire Allen
Deputy Clerk
The South Carolina Court of Appeals
1220 Senate Street
Columbia, SC 29201

RECEIVED

OCT 12 2018

SC Court of Appeals

RE: Appellate Case no. 2018-001234

Dear Ms. Allen:

On August 16, 2018, Chief Judge James E. Lockemy issued an Order holding the above referenced appeal in abeyance for sixty days pending an Order from the Workers' Compensation Commission. The Order from the Commission was in regards to whether Mr. John M. Milling was a party to the attorneys' fee petition in the case below. The purpose of this letter is inform the Court that, pursuant to Judge Lockemy's Order, the Workers' Compensation Commission issued an Order, enclosed with this letter, determining that Mr. Milling was a party to the attorneys' fee petition.

The 60 day period ends on Monday, October 15, 2018. We request that this matter be restored as an active appeal.

Please let me know if I can be of any further assistance.

Sincerely yours,

Harley L. Kirkland
Assistant Attorney General
Counsel for the Workers' Compensation
Commission

Enclosure

CC: Preston F. McDaniel and John M. Milling



POST OFFICE BOX 11549
COLUMBIA, SOUTH CAROLINA 29211-1549

Honorable V. Claire Allen
Deputy Clerk
The South Carolina Court of Appeals
1220 Senate Street
Columbia, SC 29201

RECEIVED

OCT 12 2018

SC Court of Appeals