

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM SOUTH CAROLINA
Workers' Compensation Commission
Appellate Panel

Appellate Case No. 2018-001234

RECEIVED

NOV 29 2018

SC Court of Appeals

Pamela Cartee, Claimant,

v.

SC Judicial Department, Employer,
and State Accident Fund, Carrier, Defendants,

IN RE:

Preston F. McDaniel, Esquire,
and John M. Milling, Esquire, Appellants,

v.

SC Workers' Compensation Commission.....Respondent.

REPLY TO RETURN TO
MOTION TO DISMISS APPEAL
BASED ON A LACK OF JURISDICTION
OF THE COURT

By way of Reply to the Return filed to the Motion to
Dismiss filed by the Appellants, the Appellants would
respectfully reply:

1. That while the Motion sets forth specific statutory and case law holding that the judicial authority of the Commission lies only with the Commission and only the Commission is empowered to perform all judicial dispositions, one of which is the issuance of an Order of dismissal as being untimely; the Return conspicuously sets forth no statutory or case law to the contrary as there is none. The letter, and the Appellants would reiterate the letter, not an Order was issued not only not by the Commission or a Commissioner, but by a, "judicial docketing director".

In the absence of express statutory authority, neither the SC Workers' Compensation Commission nor its Commissioners can delegate the duty to make, "judicial dispositions" to an employee of the Commission. 1985 Op. Atty. Gen., No. 85-77, p. 207, 1985 WL 1660 47; SC Code §42-3-20, "the Commissioners shall handle . . . and such other matters as may come before the Department for judicial disposition." This Court has specifically held that:

"where the Legislature gives quasi-judicial powers to an administrative agency or officer, only the agency or person granted the authority may exercise it and . . . (a) decision by a person not authorized, notwithstanding approval by an administrative agency or officer, is without legal force and effect." Vulcan Materials Co. v. Greenville County Board of Zoning Appeals, 342 S.C. 480, 536 S.E.2d 892 at 898 (SC App. 2000).

The decision to dismiss a Petition as being untimely is a judicial action/determination requiring a, "judicial disposition".

2. That the Attorneys from the Attorney General's office on behalf of the Commission erroneously on p. 2 refer to the letter of Ms. Hollmon as, "Ms. Hollmon's Order".

3. That the Return is factually and legally inaccurate in that the Notice of Appeal filed in this case specifically noted the jurisdictional flaws in both service and in the failure to enter a final Order, and the refusal of the Commission to comply with the dictates of the Act, all of which are jurisdictional, substantive and procedural to the authority of the Commission and the jurisdiction of this Court.

4. That while Rule 260(c), SCACR, is accurately cited as to its content in the Return, it is inapplicable to alter the remedy requested in the Motion. The Respondent cannot alter or amend the prayer for relief or the issue before the Court. The issue before the Court is a Motion to Dismiss for a lack of jurisdiction. The issue is a simple one; either the Court finds it lacks jurisdiction because a final Order has not been issued by the Commission under its authority to make, "judicial dispositions" and the matter should be dismissed or the Court finds that the letter of Ms. Hollmon is a "judicial disposition"

and Order of the SC Workers' Compensation Commission and the Motion to Dismiss for lack of jurisdiction should be denied.

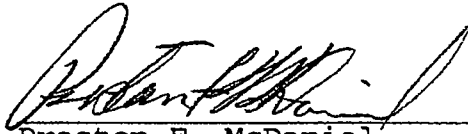
There is no question that pursuant to the Appellate Court Rules that the Notice of Appeal was properly perfected according to the Rules if, and the Appellant would reiterate if, this letter issued by an employee of the Commission constitutes a final "judicial disposition" by the Commission. Either the appeal is premature due to a lack of jurisdiction and lack of finality at the administrative agency or it is not.¹

WHEREFORE, for the above-referenced reasons, the Motion to Dismiss for a lack of finality should be granted.²

¹ In reference to the footnote in the Return it is factually inaccurate. Counsel for the Commission well knows that the Circuit Court issued a Stay to the Hearing Commissioner's Decision and then lifted that Stay as to any further action by the Commission at their request to allow for a decision by the Full Commission. After that Full Commission decision and the Appellants filed the Motion for Rehearing, the Appellants filed the Motion to Stay further action in any regard to allow time for the Appellants to file an amended and supplemental Complaint to include and incorporate the actions and irregularities before the Full Commission.

² Query: since there is a pending declaratory judgment action in the Circuit Court which has the authority to render a decision on all substantive and procedural issues involved after developing and narrowing the Record, which can save the time and expense of briefing and arguing an appeal, and whose decision will apply only to this fact-specific situation, why is the Commission so Hell-bent on the rush to judgment as to its handling of this matter and forcing an appeal?

Respectfully submitted,



Preston F. McDaniel
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and

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MILLING LAW FIRM
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Darlington, South Carolina 29532
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APPELLANTS

November 29, 2018

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PROOF OF SERVICE

I certify that I have served the **REPLY TO RETURN TO MOTION TO DISMISS APPEAL BASED ON A LACK OF JURISDICTION OF THE COURT** thereof by depositing a copy of same in the United States Mail, postage prepaid, on November 29, 2018 addressed to:

T. Parkin C. Hunter, Esquire
Harley L. Kirkland, Attorney at Law
Post Office Box 11549
Columbia, South Carolina 29211-1549



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APPELLANTS

November 29, 2018

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Proudly representing injured workers
for over 30 years.

Preston F. McDaniel

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Matthew Robertson

Facsimile (803) 252-0709

November 29, 2018

VIA FACSIMILE - 734-1839
AND US MAIL
Honorable Jenny Abbott Kitchings
Clerk of Court
SC Court of Appeals
Post Office Box 11629
Columbia, South Carolina 29211

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NOV 29 2018

SC Court of Appeals

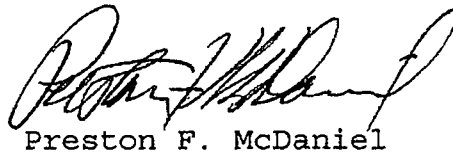
RE: **McDaniel and Milling v SCWCC**
Appellate Case No. 2018-001234

Dear Ms. Kitchings:

Enclosed please find the original and seven (7) copies of my **REPLY TO RETURN TO MOTION TO DISMISS APPEAL BASED ON A LACK OF JURISDICTION** of the Court. I would appreciate your returning the clocked-in copy to me in the enclosed self-addressed stamped envelope.

By copy of this letter, I am notifying and serving Counsel for the Respondent with a copy of same. As always, I appreciate all the courtesies and kindnesses shown to me by the Court in this and all matters.

Sincerely yours,



Preston F. McDaniel

PFM/kth
Enclosures

cc: John M. Milling, Esquire
T. Parkin Hunter, Esquire
Harley L. Kirkland, Attorney at Law

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For over 30 years.

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FAX TRANSMISSION COVER SHEET

RECEIVED

Date:

11/29/18

From:

Preston F. McDaniel

To:

Clk of Court

Fax Number Called:

734-1839

Regarding:

McDaniel v. Sewcc

Case# 2018-001234

Comments:

Please see attached Reply
to Return to Motion to Dismiss
Appeal Based On A Lack of Jurisdiction.

Thank you in advance.

We are transmitting 9 pages, including face sheet.

If you have any problems with this transmission, please call me at 803-771-7211.

Transmitted from Fax Number 803-252-0709

Transmitted by: Hum

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