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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

Commissioner T. Scott Beck, SC Workers' Compensation Commission
Charleston County

W.C.C. File Number: 1002642

Megan Haley, Employee, Respondent,

v.

Tire Kingdom, Employer,
and Hartford Insurance Co. Of Midwest,
Insurance Carrier..... Appellants.

FINAL BRIEF OF APPELLANTS

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STATEMENT OF ISSUES ON APPEAL

- I. The Commission erred as a matter of law in finding that the Single Commissioner's Order was interlocutory and therefore not immediately appealable by Defendants.
- II. The Commission erred as a matter of law in failing to find that the Claimant entered into a binding agreement to dispose of her case via Settlement Agreement and Release and further erred as a matter of law in failing to enforce that binding agreement.
- III. The Commission erred as a matter of law in failing to issue a decision and order containing findings of fact and conclusions of law sufficient to allow a reviewing court to determine the basis on which its decision was made.

STATEMENT OF THE CASE

This workers' compensation claim went before the Workers' Compensation Commission pursuant to Form 30 - Request for Commission Review filed by the Defendants, Tire Kingdom and The Hartford Insurance Co. The claim originally went before a Single Commissioner pursuant to Motion to Enforce Settlement Agreement¹ filed by the Defendants, on August 26, 2011. Previously, a hearing had been scheduled for July 26, 2011,² on Defendants Form 21 request to Stop Payment of Temporary Total Disability Benefits and Request to Pay Compensation.

During the pendency of the July 26, 2011 hearing, Defendants entered into settlement negotiations with claimant who, at that time, was represented by counsel, one Daniel A. Beck, Esquire out of Charleston, South Carolina. After consultation with counsel, claimant agreed to accept settlement offer tendered by Defendants. This offer contemplated a full Settlement Agreement and Release in exchange for monetary consideration. Thereafter, claimant, by and through her counsel, notified the Commission via electronic mail that the case was settled and that the hearing could be removed from the Single Commissioner's docket. Pursuant to that communication, the Commission canceled the hearing.

Subsequently, the claimant arbitrarily chose to repudiate her settlement agreement. In response, the Defendants filed Motion to Enforce Settlement Agreement, seeking to close out Ms. Haley's claim as a result of her agreement to a binding contract to settle her claim via

¹ See R. p. 18.

² See R. p. 15.

“clincher” agreement. The Hearing Commissioner issued her Decision and Order on July 20, 2011, denying the Employer/Appellants’ Motion to Enforce Settlement Agreement. R. p. 21. The Single Commissioner’s Decision and Order was a transmittal order, containing no findings of fact or conclusions of law. The Defendants were not granted a hearing prior to the Single Commissioner’s Order, nor were they afforded the opportunity to submit evidence supporting their arguments.

Pursuant to timely Form 30 - Request for Commission Review, the Defendants appealed the Single Commissioner’s Order. The Full Commission issued a second form order, dismissing the Defendants’ appeal as interlocutory, finding that the Single Commissioner’s order was not immediately appealable. R. p. 26. The Full Commission made no findings of fact or conclusions of law in its Order. From the Full Commission’s Order, Defendants have taken this appeal.

STANDARD OF REVIEW

The Administrative Procedures Act establishes the standard of review for decisions by the South Carolina Workers’ Compensation Commission. *Lark v. Bi-Lo, Inc.*, 276 S.C. 130, 276 S.E.2d 304 (1981). The APA provides for judicial review upon exhaustion of all administrative remedies, but states that the Court shall not substitute its judgment for that of the agency as to the weight of the evidence on questions of fact. S.C. CODE ANN. §1-23-380(G) (1976, as amended). For purposes of this review, the Court may reverse or modify the decision if substantial rights of the Appellant have been prejudiced because the administrative findings and decisions are “clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record” or they are “arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion.” S.C. CODE ANN. §1-23-380(G)(5)-(6) (1976, as

amended).

This Court may not substitute its judgment for that of the Commission as to the weight of the evidence on questions of fact, but *may* reverse it if the decision is affected by an error of law. *Youmans v. Coastal Petroleum Co.*, 333 S.C. 195, 508 S.E.2d 43 (S.C. App. 1998). Thus, the Circuit Court's review is limited to deciding whether the Commission's decision is unsupported by substantial evidence or is controlled by some error of law. *Rogers v. Kunja Knitting Mills, Inc.*, 312 S.C. 377, 440 S.E.2d 401 (S.C. App. 1994).

ARGUMENTS

I. DID THE COMMISSION ERR AS A MATTER OF LAW IN FINDING THAT THE DEFENDANTS' APPEAL OF THE SINGLE COMMISSIONER'S DENIAL OF DEFENDANTS' MOTION TO COMPEL ENFORCEMENT WAS NOT IMMEDIATELY APPEALABLE?

The Commission erred in holding that the Single Commissioner's order was interlocutory and, therefore, not immediately appealable. Under South Carolina law, the higher courts shall have appellate jurisdiction for correction of errors of law in law cases, and shall review upon appeal: (1) Any intermediate judgment, order or decree in a law case involving the merits in actions commenced in the court of common pleas and general sessions, brought there by original process or removed there from any inferior court or jurisdiction, and final judgments in such actions; provided, that if no appeal be taken until final judgment is entered the court may upon appeal from such final judgment review any intermediate order or decree necessarily affecting the judgment not before appealed from; (2) An order affecting a substantial right made in an action when such order (a) in effect determines the action and prevents a judgment from which an appeal might be taken or discontinues the action, (b) grants or refuses a new trial or (c) strikes out an answer or any part thereof or any pleading in any action. S.C. CODE ANN. §14-3-330

(Supp. 2010).

Our Supreme Court has clarified the meaning of the statutory law governing whether or not an order is immediately appealable. An order involving the merits is one that "finally determines some substantial matter forming the whole or a part of some cause of action or defense." Mid-State Distributors, Inc. v. Century Importers, Inc., 310 S.C. 330, 426 13 S.E.2d 777 (1993). An order affecting "a substantial right", on the other hand, is an order which would discontinue an action, prevent an appeal, grant or refuse a new trial, or strike out an action or defense. *Id.*

In the case *sub judice*, the Commission's holding that the Single Commissioner's order was not immediately appealable is plainly incorrect as the order involved the merits of the case. Ms. Haley, as demonstrated by electronic mails submitted in the record, voluntarily agreed, and therefore entered into a binding contract with Defendants, to settle her case on a Settlement Agreement and Release. Defendants are aware of the Supreme Court's decision in Peterkin v. Brigman, 319 S.C. 367, 461 S.E.2d 809 (1995) (court's refusal to approve a settlement agreement is not immediately appealable). However, the case at bar is easily distinguishable from Peterkin. The settlement agreement made with Ms. Haley, which Appellants sought to enforce, involved more than merely agreeing upon a dollar amount to close out a civil cause of action.

Instead, Ms. Haley agreed to a full Settlement Agreement and Release, or "clincher" agreement, as contemplated under the Act. In this "clincher" agreement, Ms. Haley's medical benefits would have been definitively closed out and she further agreed to close out her right to

file for a change in condition within one year as allowed pursuant to S.C. CODE ANN. §42-17-90 (Supp. 2011).¹ The clincher agreement, to which Defendants contend the Respondent agreed, is the only mechanism by which the right to file a change in condition can be closed. Thus, having denied enforcement of that mechanism by the Defendants, the Single Commissioner's order plainly involved the merits of the case. Therefore, the Full Commission erred as a matter of law in holding that the Single Commissioner's order was interlocutory and not immediately appealable.

Furthermore, the Commission erred in finding the order in this case interlocutory to the extent that said order affected a substantial right of Defendants. Immediate appeals under Section 14-3-330(2) have been allowed in situations in which the substantial right could not be vindicated on appeal after the case. Breland v. Love Chevrolet Olds, Inc., 339 S.C. 89, 529 S.E.2d 11 (2000). Here, the Defendants contend that a contract was made with the claimant/Respondent to close her case through Settlement Agreement and Release, or "clincher" agreement.

That agreement would have ended the Defendants' liability for any and all disability benefits, including a potential change in condition claim, as well as future medical expenses. The

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S.C. CODE ANN. §14-17-90 (Supp. 2011) provides an injured worker with the right to petition the Commissioner, within one year of the payment of an award of workers' compensation, for review of his or her claim based upon an allegation that his or her condition has changed for the worse as a natural progression from the original injury. The right to file for such a claim is terminated under a clincher agreement.

Commission, by summarily denying Defendants' ability to enforce that contract, terminated Defendants rights in that regard. Once her case goes to the Commission, that right cannot be enforced because after an award is made, claimant is entitled by statute to pursue the additional benefits described *supra*. Indeed, Defendants are continuously accruing more liability due to the Commission's failure to close out her case in a timely manner. Defendants have no avenue of appeal. Thus, the Single Commissioner's form order clearly affected a substantial right of the Defendants and the Full Commission should have allowed an appeal of said Order.

Moreover, the Commission's indifferent handling of this matter constituted a clear violation of Defendants' right to procedural due process under the United States Constitution and similar provisions of the South Carolina Constitution. The requirements of procedural due process, usually deemed to apply in a contested case or hearing which affects an individual's property or liberty interest, generally include adequate notice, the opportunity to be heard at a meaningful time and in a meaningful way, the right to introduce evidence, the right to confront and cross-examine witnesses whose testimony is used to establish facts, and the right to meaningful judicial review. *In Re Vora*, 354 S.C. 590, 595, 582 S.E.2d 413, 416 (2003); *S.C. dept. of Soc. Servs. v. Wilson*, 352 S.C. 445, 452-53, 574 S.E.2d 730, 733-34 (2002); *Cameron Barkley Co. v. S.C. Procurement Review Panel*, 317 S.C. 437, 440, 454 S.E.2d 892, 894 (1995). Procedural due process requirements are not technical; no particular form of procedure is necessary. *In re Vora*, 354 S.C. at 595, 582 S.E.2d at 416. "[D]ue process is flexible and calls for such procedural protections as the particular situation demands." *Wilson*, 352 S.C. at 452, 574 S.E.2d at 733 (quoting *Morrissey v. Brewer*, 408 U.S. 471, 481, 92 S.Ct. 2593, 2600, 33 L.Ed.2d 484, 494 (1972)).

In the case at bar, the Defendants filed Motion to Compel Enforcement of Settlement Agreement. This was the correct procedural mechanism to request a hearing before the Commission on this issue, which plainly goes to the merits of the case, as described *supra*. There is no pleading available to the Defendants to request a hearing on such an issue. In fact, the only pleading available to an aggrieved employer in a workers' compensation claim is the Form 21.² However, this Court has previously held that an Employer does have the right to bring a Motion to have the merits of the case decided on issues other than those contemplated on the Form 21. *See, e.g., McMillan v. Midlands Human Resources*, 305 S.C. 532, 409 S.E.2d 443 (S.C. App. 1991). There, this Court held that Defendants have the right to move the Commission for an Order dismissing a claim for failure to prosecute. This established the precedent that Employer/Defendants in a workers' compensation claim can use a Motion as the mechanism for bringing an issue involving the merits before the Commission for a hearing.

Similarly, in this case, Defendants filed a Motion to Compel. The Defendants' Motion was the **only** mechanism by which they were able to request a hearing on the enforcability of Ms. Haley's settlement agreement. Procedural due process should have afforded the Defendants with the right to adequate notice, the opportunity to be heard at a meaningful time and in a meaningful way, the right to introduce evidence, the right to confront and cross-examine witnesses whose testimony is used to establish facts, and the right to meaningful judicial review.

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The only pleading provided to the Defendants by the Commission in a workers' compensation claim is the Form 21, which contemplates only the issues of stopping payment of temporary total disability benefits, requesting the right for an adjudication of permanent benefits and requesting the right to terminate benefits for failure to comply with medical treatment.

However, **none** of these rights were granted the defendants in the case at bar. Defendants were not granted the opportunity to submit evidence or cross examine witnesses. Defendants received no notice of the Commission's decision nor were given the opportunity to be heard in a meaningful way and at a meaningful time. Instead, Defendants motion was dealt with summarily via a form order with no evidence considered. (See Single Commissioner's Order and Full Commission Order). When Defendants appealed, they were blithely informed that their appeal was interlocutory and, therefore, no relief would be forthcoming. Thus, plainly, Defendants right to due process was trampled upon by the Commission in this case.

In light of the foregoing arguments, the Defendants would respectfully submit that the Commission erred as a matter of law in finding that the Defendants' appeal in this case was interlocutory. Hence, the Commission's Decision and Order should be reversed and the Appellants respectfully petition this Court to consider the merits of the Defendants' case *de novo* or, in the alternative, to remand the case back to the Commission for a full evidentiary hearing on this matter.

II. DID THE COMMISSION ERR AS A MATTER OF LAW IN FAILING TO FIND THAT THE CLAIMANT ENTERED INTO A BINDING AGREEMENT TO DISPOSE OF HER CASE VIA SETTLEMENT AGREEMENT AND RELEASE AND FURTHER ERR IN FAILING TO ENFORCE THAT AGREEMENT?

The Workers' Compensation Commission plainly erred as a matter of law in failing to find that the Claimant entered into a binding, enforceable contract to compromise her workers' compensation claim via Settlement Agreement and Release. Further, the Commission erred as a matter of law in failing to enforce the claimant's settlement agreement. As described *supra.*, Ms. Haley agreed to a full Settlement Agreement and Release, or "clincher" agreement, as

contemplated under the Act. In this “clincher” agreement, Ms. Haley’s medical benefits would have been definitively closed out and she further agreed to close out her right to file for a change in condition within one year. The Defendants have the right to enforcement of this agreement which is binding upon the claimant.

The settled law in South Carolina is that oral settlement agreements are enforceable against the parties where each party is represented by counsel. In *Shelton v. Bressant*, 312 S.C. 183, 439 S.E.2d 183, 439 S.E.2d 833 (1993), the appellant and his attorney appeared in open court and advised the presiding judge they had been able to settle their case with the opposing party. The following day, an oral agreement between the two sides was tape-recorded and subsequently transcribed. Shortly thereafter, the appellant attempted to repudiate the settlement agreement, contending it failed to meet his terms. Our supreme court found the agreement binding and held:

[Appellants'] contention that the suit was not settled according to his instructions does not entitle him to rescind the agreement.

When a litigant voluntarily accepts an offer of settlement, either directly or indirectly through the duly authorized actions of his attorney, the integrity of the settlement cannot be attacked on the basis of inadequate representation by the litigant's attorney. In such cases, any remaining dispute is purely between the party and his attorney.

In *Mackey v. Kerr-McGee Chemical Co.*, 280 S.C. 265, 312 S.E.2d 565 (S.C. App., 1984), this Court held that a claimant could still repudiate an “offer of settlement” that had been accepted by his counsel prior to approval by the Commission. However, Appellants respectfully submit that the statute under which the *Mackey* case was decided has been amended by the legislature as of July 1, 2007.

Voluntary settlements are governed under S.C. CODE ANN. §42-9-390 (1976, as

amended). Prior to July 1, 2007, Section 42-9-390 stated,

A copy of the settlement agreement must be filed by the employer and **approved by only one member of the Commission if the employee is represented by an attorney**. If the employee is not represented by an attorney, a copy of the settlement agreement must be filed by the employer with and **approved by four members of the Commission**. (Emphasis added)

Now, however, Section 42-9-390 simply provides, “the employer must file a copy of the settlement agreement with the Commission if each party is represented by an attorney.” Thus, the Act does **not** require the Commission’s approval where both sides are represented by an attorney. Instead, a copy of the settlement agreement is simply **filed with** the Commission. In turn, the Commission no longer requires the “clincher” agreement to be signed and approved by a Commissioner. The executed settlement agreement is simply stamped “received” by the Commission and a copy is returned to all parties. Hence, the Appellants respectfully submit that Mackey has been legislatively reversed.

As a result, no further action is required by the Act to “legitimize” a Settlement Agreement and Release. Specifically, a Commissioner’s signature is not necessary to enforce the “clincher” agreement and, therefore, the claimant entered into a binding contract. Here, there is no doubt that the claimant agreed to the “clincher” agreement proposed by the Defendants. Electronic mail confirming said agreement can be found in the record. R. p. 22. This electronic mail constitutes concrete evidence of the agreement between the parties. Hence, the Commission’s Decision and Order should be reversed and the Appellants respectfully petition this Court to consider the merits of the Defendants’ case *de novo* or, in the alternative, to remand the case back to the Commission for a full evidentiary hearing on this matter.

III. DID THE COMMISSION ERR AS A MATTER OF LAW IN FAILING TO ISSUE AN APPROPRIATE ORDER WITH FINDINGS OF FACT AND CONCLUSIONS OF LAW CALCULATED TO ASSIST A REVIEWING COURT IN DETERMINING THE COMMISSION'S REASONING FOR DENIAL OF DEFENDANTS' CLAIM?

The Workers' Compensation Commission erred as a matter of law insofar as neither the Single Commissioner nor the Full Commission issued an Order complete with findings of fact and conclusions of law sufficient to allow a reviewing court to determine the basis of its decision. The South Carolina Supreme Court has consistently held that the findings of fact of an administrative agency must be sufficiently detailed to enable a reviewing court to determine whether the findings are supported by substantial evidence and whether the law has been appropriately applied to those findings. *Hill v. Jones*, 255 S.C. 219, 178 S.E.2d 142 (1970). Where material facts are in dispute, an administrative agency must make specific, express findings of fact to support its decision. *Aristizabal v. Woodside-Division of Dan River*, 268 S.C. 366, 234 S.E.2d 21 (1977).

In *Gray v. Laurens Mill*, 231 S.C. 488, 99 S.E.2d 36, 38 (1957), the Supreme Court stated, "the Commission should make such specific and definite findings upon the evidence reported as will enable this court to determine whether the general finding or conclusion should stand, particularly when material facts are at issue." Further, in *Drake v. Raybestos-Manhattan*, 241 S.C. 116, 127 S.E.2d 288, 293 (1962), the Supreme Court stated that the Commission's duty to determine factual issues requires that its findings of fact be "sufficiently definite and detailed to enable the appellate court to properly determine whether the findings of fact are supported by the evidence and whether the law has been properly applied to those findings."

Here, the Commission failed to make such definite and detailed findings as required by the case law previously cited. As described herein *supra.*, the main issue in dispute in this case is

whether or not the claimant entered into a binding Settlement Agreement and Release that goes to the merits of the case both in terms of temporary and permanent disability, entitlement to future medical benefits and the right to file a future claim for potential change in condition. Despite the complexity of the issues involved, the Commission chose to dispose of this matter with a form order. R. p. 21. The Full Commission likewise dealt with Defendants' Motion in a summary manner. R. p. 26.

To the extent that the Commission plainly failed in its duty to issue a genuine Order with detailed findings of fact and conclusions of law on issues going to the merits of the case, it has committed reversible error of law herein. Therefore, the Appellants respectfully request that this Court consider the merits of the Defendants' case *de novo* or, in the alternative, remand the case back to the Commission for a full evidentiary hearing on this matter.

CONCLUSION

The Commission erred as a matter of law in finding that the Single Commissioner's Order was interlocutory and therefore not immediately appealable by Defendants. The Order plainly went to the merits of the case and affected substantial rights of the Defendants. Furthermore, the Commission violated Defendants' right to procedural due process in failing to grant them an opportunity to be heard in a timely and meaningful fashion. The Commission further erred as a matter of law in failing to hold that the claimant, by and through her attorney, entered into a binding contract with the Defendants to settle her case and in failing to enforce that contract upon the Motion of Defendants. Finally, the Commission erred as a matter of law in failing to issue a Decision and Order with findings of fact and conclusions of law on issues going

to the merits of the case, sufficient to allow a reviewing Court to determine the Commission's basis for its decision. Hence, the Appellants respectfully request that this Court consider the merits of the Defendants' case *de novo* or, in the alternative, remand the case back to the Commission for a full evidentiary hearing on this matter.

RESPECTFULLY SUBMITTED,



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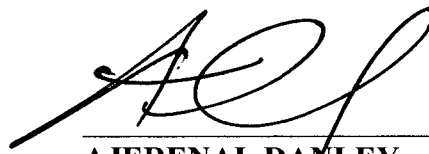
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CERTIFICATE OF COUNSEL

Counsel hereby certifies that this Brief complies with the requirements of Rule 211 of the South Carolina Appellate Court Rules.



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PROOF OF SERVICE BY MAIL

I, Ajerenal Danley, do hereby certify that on September 17, 2012, I served copy of **Final Brief of Appellants** in the above-captioned case upon Respondent by depositing a copy of same in the United States Mail with sufficient postage affixed and addressed to:

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RESPONDENT

Columbia, South Carolina
September 17, 2012



Ajerenal Danley,
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