

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

FEB 19 2019

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.

South Carolina Workers' Compensation Commission,.....Respondent.

RETURN TO PETITION FOR REHEARING

The South Carolina Workers' Compensation Commission (the WCC) files this Return to the Appellants' Petition for Rehearing mailed February 8, 2019. While the Respondent does not believe the Appellants' Petition for Rehearing is proper, this response is nonetheless made in an abundance of caution so as to not be deemed as consenting to the relief sought by Appellants.

The petition should be dismissed as a matter of law pursuant to SCARC Rules 221(c) and 240(i). "Rehearing of Motions. The appellate court will not entertain petitions for rehearing on a motion or petition unless the action of the court on the motion or petition has the effect of dismissing or finally deciding a party's appeal." SCACR 221(c). "Rehearing. The court will not

entertain petitions for rehearing on a motion or petition unless the action of the court on the motion or petition has the effect of dismissing or finally deciding a party's appeal." SCACR 240(i). The Court's Order on January 25, 2019, did not have the effect of dismissing or finally deciding a party's appeal, and is therefore not allowed pursuant to the appellate court rules.

Appellants attempt to distinguish this Petition for Rehearing as being made pursuant to SCACR 240(j) instead of 240(i) is unavailing. SCACR 240(j) states that "[a]ny review of an order issued by an individual judge or justice shall be by petition for rehearing." SCACR 240(j) provides the mechanism for obtaining review: a petition for rehearing. However, SCACR 221(c) and 240(i) still apply. Appellants have still filed a petition for rehearing. SCACR 240(j) does not allow Appellants to circumvent SCACR 221(c) and 240(i) and obtain review of an order that did not have the effect of dismissing or finally deciding Appellant's appeal. For a second time, Appellants' dissatisfaction with a non-dispositional, interlocutory order is not a basis for granting rehearing.

Furthermore, there is no indication that there was any material fact or principle of law that was overlooked or disregarded. Respondent respectfully requests that the court deny Appellants' Petition for Rehearing.

[Signature page to follow.]

Respectfully Submitted,

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ATTORNEYS FOR THE COMMISSION

COLUMBIA, SOUTH CAROLINA
FEBRUARY 19, 2019

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CERTIFICATE OF SERVICE

I hereby certify that I served the foregoing Return to Petition to Reconsider in the above matter by placing a copy of said document in the United States mail, first class postage prepaid, and addressed to:

1. Preston F. McDaniel, Esq.
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2. John M. Milling, Esq.
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February 19, 2019

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