

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

Appeal from the South Carolina
Worker's Compensation Commission

WCC File No. 1609593
Appellate Case No. 2019-000560

RECEIVED
APR 15 2019
SC Court of Appeals

Gena Cain Davis, Claimant,.....Appellant,

v.

S.C. Department of Corrections, Employer, and
State Accident Fund, Carrier,.....Respondents.

**RETURN TO
MOTION TO STAY**

The above-named Respondents hereby respectfully request that the Appellant's Motion to Stay be denied based upon the following:

1. On April 4, 2019, the Appellant filed a Notice of Appeal regarding the Workers' Compensation Commission's Appellate Panel's Final Decision and Order dated March 5, 2019; however, the Notice fails to "state the ground of the appeal or the alleged errors of law," in contravention of the mandatory requirements of S.C. Code Ann. § 42-17-60.
2. By its Final Decision and Order dated March 5, 2019, the Appellate Panel concluded, *inter alia*, that the Appellant "voluntarily withdrew her second Form 50 dated April 18, 2017 on October 24, 2017, pursuant to S.C. Code Reg. 67-609(C)." According to S.C. Code Reg. 67-609(C), "[w]ithdrawing a Form 50 or

Form 52 the second time without good cause may operate as a voluntary dismissal of the claim when the form is withdrawn by a claimant who has once withdrawn a Form 50 or Form 52 based on the same set of facts.”

3. The Appellate Panel’s March 5, 2019 Decision and Order further concluded that the Respondents “suspended temporary disability compensation on April 5, 2017 in accordance with S.C. Code Reg. 67-505(F) and S.C. Code Ann. § 42-15-80(A).” Under S.C. Code Ann. § 42-15-80(A), “[i]f the employee refuses to submit himself to or in any way obstructs the examination requested by and provided for by the employer, his right to compensation and his right to take or prosecute a proceeding under this title must be suspended.” Regulation 67-505(F) further states that, even more than 150 days following an accident, temporary compensation may be unilaterally suspended in accordance with S.C. Code Ann. § 42-15-80, so long as a Form 21 is filed.
4. Prior to the Appellant’s filing of the Notice of Appeal of these legal issues, the Workers’ Compensation Commission noticed a hearing for May 2, 2019 “[t]o determine if claimant’s temporary compensation was legally terminated.” (*See attached Ex.1*).
5. Because the Commission’s Appellate Panel has already finally determined that Respondents “suspended temporary disability compensation on April 5, 2017 in accordance with S.C. Code Reg. 67-505(F) and S.C. Code Ann. § 42-15-80(A),” the doctrines of *res judicata* and collateral estoppel prohibit the Commission from addressing the legal basis for the suspension of temporary disability compensation for a second time at a new hearing on May 2, 2019. The Respondents object to the May 2, 2019 hearing on this basis and further argue

that the Appellant's withdrawal of her second Form 50 operated as a voluntary dismissal of her claim and S.C. Code Ann. § 42-15-80 otherwise prohibits her from taking or prosecuting any proceeding under Title 42.

6. Pursuant to Rule 205, S.C.A.C.R., upon service of the Notice of Appeal on April 4, 2019, exclusive jurisdiction vested in the Court Appeals over matters related to the appeal, including the issue of whether temporary compensation was legally suspended. Furthermore, pursuant to both Rule 205 and Rule 241, S.C.A.C.R., the Commission is prohibited from proceeding with matters concerning the suspension of temporary disability compensation while the appeal is pending.
7. The Appellant admits that the purpose of the May 2, 2019 Commission hearing relates to matters on appeal and now moves to stay *the appeal*, ostensibly in hopes that the Commission will issue a new order, inconsistent with the last, on the issue of her entitlement to temporary disability compensation. According to the Appellant's own Motion, a new hearing "may either moot the appeal in this action or may create another related issue." Respectfully, this argument does not support the application for a stay of the appeal, but rather speaks to the impropriety of the May 2, 2019 hearing and highlights the very real possibility of inconsistent legal conclusions.
8. In addition to a stay of the appeal, the Appellant has specifically requested that the Court of Appeals issue an order "stating that matters pending before the Commission remain within the Commission's jurisdiction, such that the hearing scheduled for May 2, 2019 and any subsequent hearings should go forward as scheduled." The only matter purportedly "pending" before the Commission is to determine the legal basis for the suspension of temporary disability

compensation, a matter that has already been finally decided by the Commission's Appellate Panel and an issue over which the Court of Appeals now has exclusive jurisdiction.

9. The Respondents respectfully contend that the issue of whether the doctrines of *res judicata* and/or collateral estoppel bar a second hearing to determine whether "temporary compensation was legally terminated" is not properly before the Court of Appeals. The Respondents further contend that the issue of whether the Appellant's withdrawal of her second Form 50 operated as a voluntary dismissal of her claim, or whether S.C. Code Ann. § 42-15-80 otherwise prohibits her from taking or prosecuting any proceeding under Title 42, is similarly not before the Court of Appeals. Therefore, if the Court of Appeals were to grant the requested stay of appeal, the Respondents object to any further order specifically authorizing any hearing over matters related to the appeal in light of these issues.
10. In the alternative, if the Court of Appeals were to determine that the Commission's March 5, 2019 Decision and Order is not immediately appealable¹, then it would likewise be inappropriate for the Court of Appeals to issue an order "stating that matters pending before the Commission remain within the Commission's jurisdiction, such that the hearing scheduled for May 2, 2019 and any subsequent hearings should go forward as scheduled." As stated above, the doctrines of *res judicata* and collateral estoppel prohibit the Commission from

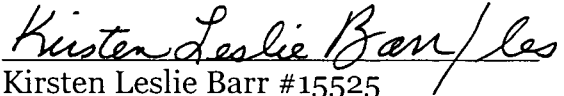
¹ The Respondents would note that S.C. Code Ann. § 1-23-380 specifically states that "[a] preliminary, procedural, or intermediate agency action or ruling is immediately reviewable if review of the final agency decision would not provide an adequate remedy."

addressing the legal basis for the suspension of temporary disability compensation for a second time at a new hearing on May 2, 2019. In addition, the Respondents object to the May 2, 2019 hearing on the basis that the Appellant's withdrawal of her second Form 50 in fact operated as a voluntary dismissal of her claim and S.C. Code Ann. § 42-15-80 otherwise prohibits her from taking or prosecuting any proceeding under Title 42.

THEREFORE, the Respondents respectfully contend that the Appellant's Motion to Stay proposes a solution in search of a problem. According to the Appellant, staying the appeal whilst the same issue is relitigated before the Commission would somehow promote judicial economy because a second bite at the proverbial apple may "moot" the appeal and the appellate stay would otherwise permit "consolidation" of subsequent appeals. Would not the more elegant and economic solution be to simply apply existing rules and procedures? The Court of Appeals could apply Rule 205, S.C.A.C.R., and stay further proceedings before the Commission, while the Appellate Courts determine the legal issues with finality and without the risk of inconsistency. In the alternative, the Court of Appeals could dismiss the present appeal as interlocutory and permit the Commission to determine whether the Appellant has a right to prosecute additional claims unrelated to the issues previously determined by the Appellate Panel's March 5, 2019 Order. As such, the Respondents respectfully request that the relief requested in the Appellant's Motion to Stay be denied.

Respectfully submitted,

April 12, 2019


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WCC File #: 1609593
Carrier File #: 2016002181
March 15, 2019

NOTICE OF HEARING

Gena T Cain v. SOUTH CAROLINA DEPT OF CORRECTIONS

Subject: To determine if claimant's temporary compensation was legally terminated.

Date: May 2, 2019 at 01:00 PM

Location: Legal Studies Center, 111 South Main Street, Courtroom D105
Sumter, SC 29150

South Carolina Regulations 67-601 through 67-615 govern hearings before the South Carolina Workers' Compensation Commission. The claimant must attend when not represented by an attorney or when disfigurement is involved. Corporations must be represented by an attorney, and uninsured employers must attend.

Attorneys must file a Form 58 with proof of service pursuant to Regulation 67-611. Postponements are only granted pursuant to Regulation 67-613. Please visit www.wcc.sc.gov/Commissioners to view Commissioners' Preferences. If you have questions regarding this matter, please contact the office of the undersigned Jurisdictional Commissioner.

Commissioner T. Scott Beck
803-737-5698, sdebruhl@wcc.sc.gov

CERTIFICATE OF SERVICE – This is to certify the undersigned has served this notice in the above entitled action upon all parties to this cause by sending a copy hereof by electronic mail or United States mail.

By: Shawnee M DeBruhl, SC Workers' Compensation, March 15, 2019

Party

Employee: Gena T Cain

Employer: SOUTH CAROLINA DEPT OF
CORRECTIONS
Carrier: State Accident Fund

Employer: SOUTH CAROLINA DEPT OF
CORRECTIONS
Carrier: State Accident Fund

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EXHIBIT 1

THE STATE OF SOUTH CAROLINA

In the Court of Appeals

RECEIVED

Appeal from the South Carolina
Worker's Compensation Commission APR 15 2019

SC Court of Appeals

WCC File No. 1609593
Appellate Case No. 2019-000560

Gena Cain Davis, Claimant,.....Appellant,

v.

S.C. Department of Corrections, Employer, and
State Accident Fund, Carrier,.....Respondents.

PROOF OF SERVICE

The undersigned hereby certifies that the above-named Appellant, Gena Cain Davis, was served with a copy of the attached Return to Motion to Stay Appeal this 12th day of April, 2019 by depositing a copy of the same in the United States Mail, first class postage prepaid, addressed to counsel of record, as follows:

Stephen B. Samuels, Esq.
1320 Richland Street
Columbia, SC 29201

April 12, 2019

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WORKERS' COMPENSATION DEFENSE

Reply to
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April 12, 2019

The Honorable Jenny Abbott Kitchings
Clerk, South Carolina Court of Appeals
P. O. Box 11629
Columbia, SC 29211

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APR 15 2019

SC Court of Appeals

Re: Gena Cain Davis v. SC Department of Corrections
W.C.C. File No.: 1609593
Appellate Case No.: 2019-000560
Carrier File No.: 2016-2181
Date of Accident: July 14, 2016

Dear Ms. Kitchings:

Enclosed herewith for filing, please find the original and six (6) copies of our Return to Motion to Stay Appeal and original Proof of Service of the same in the above-referenced matter. By a copy of this correspondence, I am serving the other counsel of record with a copy of our Return to Motion.

Yours very truly,

Kirsten L. Barr/les
Kirsten L. Barr

KLB/icm/les
Enc.

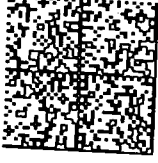
cc: Kori Tabor, South Carolina State Accident Fund (w/enc.) (email only)
Russell Rush, SC Dept. of Corrections (w/enc.) (email only)
Stephen B. Samuels, Esq. (w/enc.)
Commissioner T. Scott Beck (w/enc.)



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APR 15 2019

SC Court of Appeals



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