

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM THE SOUTH CAROLINA
WORKERS' COMPENSATION COMMISSION

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OCT 08 2019

SC Court of Appeals

WCC Case No. 1516717

Gary Clark, Jr. Claimant Appellant,
v.
Horry County, employer,
and SC Association of
Counties, Carrier Respondent.

MEMORANDUM ADDRESSING APPEALABILITY

Respondents Horry County, employer, and SC Association of Counties, Carrier, submit this Memorandum of law addressing the issue of appealability.

ARGUMENT

I. Claimant's Appeal is Interlocutory

The South Carolina Administrative Procedures Act ("APA") provides that "[a] final decision or order shall be in writing or stated in the record....[and a] final decision shall include findings of fact and conclusions of law, separately stated." S.C. Code Ann. § 1-23-350. Because the denial of Appellant's motion to set aside the subrogation claim was made at a motion hearing, and not a hearing on the merits, a final order has not been made by the Commission. Appellant's appeal of the Single Commissioner's denial of his motion to set aside Respondents' subrogation claim was interlocutory because the possibility of a reduction of the Respondents' lien remains

open for a later determination if Appellant recovers a settlement or a judgment in the third-party claim.

The APA further establishes the standard for judicial review of decisions of the Workers' Compensation Commission. *Hall v. Desert Aire, Inc.*, 376 S.C. 338, 346, 656 S.E.2d 753, 757 (Ct. App. 2007). Under the APA:

“A party who has exhausted all administrative remedies available within the agency and who is aggrieved by a final decision in a contested case is entitled to judicial review pursuant to this article and Article 1. This section does not limit utilization of or the scope of judicial review available under other means of review, redress, relief, or trial de novo provided by law. 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. Except as otherwise provided by law, an appeal is to the court of appeals.”

S.C. Code Ann. § 1-23-380 (Supp. 2018).

“An appellate court may reverse or modify the decision of the appellate panel if substantial rights of the appellant have been prejudiced because the administrative findings, inferences, conclusions, or decisions are affected by other error of law.” *Houston v. Deloach & Deloach*, 378 S.C. 543, 552, 663 S.E.2d 85, 89 (Ct. App. 2008). Here, no rights of the Appellant have been prejudiced since he is free to pursue a reduction of Respondents' lien when, and if, he recovers a settlement or judgment in the third-party claim. Until that point, Appellant will continue to experience no prejudice.

II. The Workers' Compensation Commission has not made a final agency decision

As cited above, the APA allows judicial review when a party has exhausted all administrative remedies and the agency issues a final decision. S.C. Code Ann. § 1-23-380. “A final judgment disposes of the whole subject matter of the action or terminates the particular

proceeding or action, leaving nothing to be done but to enforce by execution what has been determined.” *Ashford v. Prysmian Power Cables & Sys., USA*, 830 S.E.2d 912, 915 (Ct. App. 2019) (quoting *Charlotte-Mecklenburg Hosp. Auth. v. S.C. Dep’t of Health & Env’tl. Control*, 387 S.C. 265, 267, 692 S.E.2d 894, 895 (2010)). Moreover, “[a]n order of the commission is not a final decision unless it resolves the entire action.” *Ex parte South Carolina Property & Casualty Insurance Guarantee Association*, 411 S.C. 501, 504, 768 S.E.2d 670, 672 (Ct. App. 2015). “If there is some further act which must be done by the court prior to a determination of the rights of the parties, the order is interlocutory.” *Charlotte-Mecklenburg Hosp. Auth. v. S.C. Dep’t of Health & Env’tl. Control*, 387 S.C. 265, 267, 692 S.E.2d 894, 895 (2010).-

Here, there has never been a final agency decision regarding Respondents’ subrogation claim. Appellant is correct that Respondents’ lien may be equitably reduced by the Commission in situations “where an employee...enters into a settlement with or obtains a judgment...from a third party in an amount less than the amount of the employee’s estimated total damages...” S.C. Code Ann. § 42-1-560(f); *Kirkland v. Allcraft Steel Co.*, 329 S.C. 389, 393, 496 S.E.2d 624, 626 (1998). However, Appellant has neither entered into a settlement agreement nor has he obtained a judgment against the third-party defendant. Thus, there is no settlement or judgment to be equitable reduced, or set aside as the Appellant would like. Therefore, the Single Commissioner did not enter a final agency decision when he denied the Appellant’s motion to set aside the subrogation claim, because the Appellant may still raise that issue when, and if, he obtains a settlement or judgment at a later time. As the Appellant still has an adequate remedy if this becomes true, his appeal of the Single Commissioner’s Order is interlocutory, and the Appellate Panel of the Commission was correct in dismissing Appellant’s appeal. “[N]either of those orders was a final ruling on the [subrogation claim],” since the possibility of a reduction of the

Respondents' lien is open for a later determination. *See Norwest Props., LLC v. Strebler*, 424 S.C. 617, 622, 819 S.E.2d 154, 157 (Ct. App. 2018).


III. Medication is mandatory and did not occur prior to both Orders

The regulations of the South Carolina Workers' Compensation Commission require that third-party lien reduction claims "must be mediated prior to a hearing." S.C. Code Regs. § 67-1802(A)(3). Since Claimant has not settled or received a judgment in the third-party claim, there has been no basis for Claimant to assert that he is entitled to a reduction of the lien because he has not accepted "an amount less than the amount of the employee's estimated total damages." S.C. Code Ann. § 42-1-560(f). Further, Claimant has never filed a Form 50 requesting a hearing on the merits of Respondents' third-party lien and the issue has not been addressed in mandatory mediation. Thus, Appellant's appeal of the Appellate Panel's denial of his motion to set aside the subrogation claim was not ripe because the parties had not conducted mandatory mediation.

CONCLUSION

As the Appellant has yet to secure a settlement or judgment in his third-party claim, and the Commission has not entered a final agency decision regarding whether Appellant is entitled to a reduction of his hypothetical recovery, it was not an error for the Appellate Panel of the Commission to dismiss Appellant's appeal of the Single Commissioner's Order. For the foregoing reasons, Respondents respectfully request an order from this Court that this matter is interlocutory and not immediately appealable.

[SIGNATURE PAGE FOLLOWS]

For 

William H. Lyon
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October 3, 2019
Mount Pleasant, SC 29464

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM THE SOUTH CAROLINA
WORKERS' COMPENSATION COMMISSION

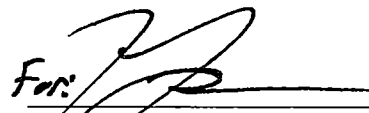
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PROOF OF SERVICE

I certify that I have served the Memorandum Addressing Appealability on the Appellant, by depositing a copy of it in the United States Mail, postage prepaid, on October 3, 2019, addressed to his attorney of record, Stephen J Wukela, Wukela Law Firm, P. O. Box 13057, Florence, SC 29504-3057.

For: 

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October 3, 2019

VIA CERTIFIED MAIL

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

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Re: Gary Richard Clark, Jr. vs. Horry County and SC Association of Counties
Workers' Compensation Case No. 1516717

Dear Ms. Kitchings:

Pursuant to the Court's request, enclosed for filing please find the Respondents' Memorandum Addressing Appealability, along with Proof of Service. By copy of this letter, I am also serving Appellant with a copy of this Memorandum

With kindest regards,

WILLSON JONES CARTER & BAXLEY, P.A.


William H. Lyon

WHL/btf

Enclosures

cc: Stephen J. Wukela, Esquire

kas

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