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Mar 29 2021

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

Appeal From The Workers' Compensation Commission

Appellate Case No. 2020-001474

David Casey, Employee, Respondent,

v.

APTIM Federal Services, LLC, Employer, and XL Specialty Insurance Company,
Carrier, Appellants.

**APPELLANTS' RETURN TO RESPONDENT'S MOTION
TO STAY PROCEEDINGS AND REQUEST FOR EXTENSION TO
FILE INITIAL BRIEF AND DESIGNATION OF MATTER**

Pursuant to Rules 240 and 241, SCACR, Appellants APTIM Federal Services, LLC, Employer, and XL Specialty Insurance Company, Carrier, hereby file this Return to Respondent's Motion to Stay Proceedings and Request for Extension to File Initial Brief and Designation of Matter. The grounds for the Return are as follows:

1. Initially, Appellants assert that according to the Court's online filing system, the Court has construed Respondent's Motion as a "Motion - Stay / Supersedeas (including lifting of automatic stay) and Extension." *See generally* Rule 241(c), SCACR, (stating that after the service of the notice of appeal, "any party may move for an order imposing a supersedeas of matters decided in the order, judgment, decree or decision on appeal").

2. As the Court is well aware, there are several procedural requirements for filing a Motion for supersedeas including that, absent "extraordinary circumstances[,]" the party must first make an application for supersedeas to the lower court or administrative tribunal which entered the order

or decision on appeal. Rule 241(d)(1), SCACR. If the application was not made to the administrative tribunal first, the party must file a petition stating the "extraordinary circumstances which made it impracticable to make such an application." Rule 241(d)(4)(C), SCACR. Respondent did not do either in this case.

3. Additionally, a party making an application for supersedeas must also file a "written petition verified by the client" and include several specific statements. Rule 241(d)(3)(4), SCACR. Respondent did not do so in this case.

4. Therefore, Appellants respectfully assert that, to the extent the Court construes this Motion as a petition for supersedeas, Respondent did not follow the procedural requirements for such a petition as required under Rule 241, SCACR.

5. As for the merits of the Motion, Respondent essentially makes two arguments in favor of a stay in this case—(1) it would be in the interest of judicial economy to stay the current proceedings because there is another proceeding involving the parties to this appeal pending before the South Carolina Workers Compensation Commission and (2) there is no prejudice to granting the stay because Appellants are under no current obligation to provide Respondent with anything until their appeal rights have been extinguished.

6. Appellants respectfully assert that Respondent's "judicial economy" argument is without merit. Notably, Respondent has had well over four months since Appellants served our notice of appeal on November 4, 2020 to request a stay in this case. He did not do so until now. Instead, he requested an extension to file and serve his Initial Brief and Designation of Matter with the Court on February 18, 2021, although he apparently had no intentions of actually filing his Initial Brief and Designation of Matter. He has now waited until less than one week before his Initial Brief is due to file the current motion requesting a stay of the proceedings. Respondent's

current claims of "judicial economy" are disingenuous as it appears that his motivations are simply a veiled attempt to further stall the current appeal proceeding.

7. Next, Respondent argues that there is no prejudice to granting such a stay as Appellants are under no obligation to provide Respondent with anything until their appeal rights have been extinguished. However, this argument overlooks the fact that Appellants have a right to have their appeal heard in a timely manner without unnecessary delay caused by the opposing party.

8. Additionally, Appellants vehemently disagree with Respondent's assertion that he "does not see any scenario in which the issues before the South Carolina Workers Compensation Commission are not appealed and ultimately heard by [this Court]." Respectfully, the issues currently set for a hearing on our Form 21 are a determination of the award of Respondent's permanent partial disability. There are several scenarios that could result in that decision not making its way to the Court of Appeals including both parties agreeing with the decision and award of the single commissioner and not appealing to the Appellate Panel of the Workers Compensation Commission (Appellate Panel). Even if the Form 21 proceedings were appealed to the Appellate Panel, both parties could then decide not to appeal the decision of the Appellate Panel. Obviously, the parties could alternatively agree to resolve the issues set for decision on the Form 21 hearing. There is simply no credibility to the assertion that it is a foregone conclusion that the Form 21 proceeding will eventually be appealed to this Court. Furthermore, if such an appeal did occur, it could be several months or even a year before such a decision did make its way to the Court of Appeals. In the interim, the current proceedings would sit stale without any guarantee that the Form 21 proceeding would eventually make its way to this Court.

9. Furthermore, and, again assuming this Court construes this Motion as a petition for supersedeas, Respondent has failed to make any argument as to the proper grounds for such relief.

See Rule 241(c)(2) (stating that when deciding whether an order should issue pursuant to [Rule 241], the lower court, administrative tribunal, appellate court, or judge or justice of the appellate court "should consider whether such an order is necessary to preserve jurisdiction of the appeal or to prevent a contested issue from becoming moot"). Respondent makes no argument related to these issues in his Motion, and, frankly, Appellants see no reason that staying the current appellate proceeding is necessary to prevent a contested issue from becoming moot or to preserve the jurisdiction of the appeal in this case.

10. Next, Appellants take issue with the manner in which this Motion was presented to the Court. Notably, Respondent first sent an email from his paralegal to the Court, *ex-parte*, arguing that the current appeal is "an almost interlocutory issue regarding back-owed benefits, and there are pending lower court proceedings in this same case regarding permanent impairment/award that, regardless of the outcome, will result in an appeal by one side [to this Court]."

11. This correspondence was certainly improper as Respondent did not include Appellants on this correspondence to the Court. Furthermore, as discussed herein, Appellants strongly take issue with the assertion that the Form 21 proceedings will result in an appeal to this Court. Appellants respectfully request that the Court strike this correspondence from its file because it was an improper *ex-parte* communication with the Court.

12. Finally, Appellants request that the Court deny Respondent's alternative request for a 30-day extension to file and serve his initial brief and designation of matter.

Accordingly, Appellants respectfully request that the Court deny Respondent's Motion to Stay Proceedings and Request for Extension to File Initial Brief and Designation of Matter.

(signature page follows)

March 29, 2021



Daniel B. Eller (SC Bar # 73275)
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Carrier, Appellants.

CERTIFICATE OF SERVICE

I certify I have served **Appellants' Return to Respondent's Motion to Stay Proceedings
and Request for Extension to File Initial Brief and Designation of Matter** on Respondent

David Casey via electronic mail on March 29, 2021 addressed to his attorney of record:

Richard C. Alexander (chip@leekelaw.com)
Shelly Leeke Law Firm, LLC
3614 Ashley Phosphate Road
North Charleston, SC 29418



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Subject: David Casey v. APTIM (Case No. 2020-001474)- Return to Motion for Stay
Date: Monday, March 29, 2021 at 11:04:16 AM Eastern Daylight Time
From: Will Childers
To: Chip Alexander, Mandi Whitaker
CC: Dan Eller, Amanda Steward, Will Childers
Priority: High
Attachments: 2021-03-29 Letter to Court of Appeals re David Casey Return to Motion for Stay .pdf, 2021-03-29 David Casey Return to Motion for Stay .pdf

Chip,

Attached for service upon you, please find our Return to your Motion for Stay with proof of service in the above case, which is being filed with the Court of Appeals this morning.

Thanks,
Will

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March 29, 2021

VIA "ONE-DRIVE"

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

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SC Court of Appeals

*Re: David Casey v. APTIM Federal Services, LLC and XL Speciality Insurance Co.
Appellate Case No. 2020-001474*

Dear Ms. Kitchings:

Enclosed please find **Appellants' Return to Respondent's Motion to Stay Proceedings and Request for Extension to File Initial Brief and Designation of Matter**, as well as proof of service upon Respondent's attorney for same. Thank you for your consideration.

With kind regards,

ELLER TONNSEN BACH, LLC

William F. Childers, Jr.

WFC

Enclosures

cc: Richard C. Alexander (via electronic mail)