

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM RICHLAND COUNTY
South Carolina Workers' Compensation Commission

Derrick L. Williams, Commissioner; Susan S. Barden, Commissioner; Andrea C. Roche,
Commissioner

W.C.C. File No.: 1105986
Appellate Case No.: 2012-212689

Pamela Proud, Claimant, Appellant,

v.

Palmetto Health Richland, Employer, and Key Risk Management Services,
Inc., Carrier, Respondents.

REPLY BRIEF OF APPELLANT
PAMELA PROUD

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STATEMENT OF ISSUE ON APPEAL

- I. DID THE SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION ERR AS A MATTER OF LAW IN FINDING CLAIMANT'S PRE-INJURY WAGE INCREASE DID NOT CONSTITUTE AN EXCEPTIONAL REASON TO DEVIATE FROM THE STANDARD METHOD OF CALCULATION?

- II. WHETHER CLAIMANT'S APPEAL SHOULD BE DISMISSED AS AN INTERLOCUTORY ORDER NOT SUBJECT TO IMMEDIATE APPELLATE REVIEW?

STATEMENT OF THE CASE

This is an appeal from an Order of the Appellate Panel of the South Carolina Workers' Compensation Commission. This case originally came before the Single Commissioner on a Form 50 filed by the Claimant. This was a denied case. Before the Single Commissioner, Claimant contended that she suffered a compensable injury by accident to her left leg (ankle) on May 5, 2011, when she missed a step and fell in an employer provided parking garage. Claimant also alleged that her average weekly wage should be \$753.60 with a corresponding compensation rate of \$502.42, because of a pre-injury transfer within the hospital that resulted in a wage increase.

The Single Commissioner determined that Claimant suffered a compensable injury by accident, and awarded Claimant temporary total disability compensation as well as payment of causally related medical treatment, mileage, and prescription medication. However, the Single Commissioner determined that Claimant's proper average weekly wage was \$585.04 with a corresponding compensation rate of \$395.05.

Cross-appeals followed the Single Commissioner's ruling. Claimant appealed that part of the Order setting the average weekly wage at \$585.04 and compensation rate at \$390.05. Defendants appealed those parts of the Single Commissioner's Order finding that Claimant suffered a compensable injury, and several rulings concerning evidence proffered by Claimant. The Appellate Panel affirmed in full the Order of the Single Commissioner.

This appeal follows the Order of the Appellate Panel affirming the Order of the Single Commissioner regarding Claimant's average weekly wage and compensation rate.

FACTS

The facts surrounding Claimant's accident are not in dispute. On May 5, 2011, the date of the accident, Claimant attended glucometer training at Palmetto Health Richland. (Hr'g Tr. 10, Aug. 17, 2011.) When she arrived for the training session she parked in the employee parking garage, just as hospital security had instructed her to. (Hr'g Tr. 10.) After finishing her training session, Claimant met with Judy Hardebeck to discuss her schedule and materials for her "floor specific nursing orientation". (Hr'g Tr. 10.) Claimant testified that she left the emergency room at approximately 9:40 a.m., and proceeded to walk to the parking garage. (Hr'g Tr. 10-11.) She testified that as she exited the area where the elevators are located, she missed a step and "fell forward onto both of [her] knees and [her] palms or heels of [her] hands and the ankle twisted very badly." (Hr'g Tr. 12.)

Claimant has been a registered nurse for more than twenty (20) years. (Hr'g Tr. 9.) Claimant was briefly employed by Defendant employer in 2006, but left after three weeks. (Hr'g Tr. 9.) Claimant returned to work for Defendant employer in 2010. (Hr'g Tr. 9.) In 2011, she transferred from Palmetto Health Baptist to Palmetto Health Richland. (Hr'g Tr. 9.) As a result of this transfer, Claimant's pay increased from \$26.00 per hour to \$31.40 per hour. (Cl.'s Ex. B.) Her "Employee Change of Status Report" indicates that the effective date of transfer was April 17, 2011. (Cl.'s Ex. B.) Claimant started working, and began training for the transfer on May 2, 2011. (Hr'g Tr. 10.) On the date of her accident she was in the training phase for her new position. (Hr'g Tr. 10.)

ARGUMENT

I. CLAIMANT'S APPEAL SHOULD NOT BE DISMISSED AS IT IS A VALID, FINAL JUDGMENT, SUBJECT TO IMMEDIATE APPELLATE REVIEW.

Respondents argue that this appeal is interlocutory, and should therefore be dismissed. It is true that a party may only appeal from final judgments of the Workers' Compensation Commission. The South Carolina Supreme Court recently stated that, "we note our long-standing rule that the APA governs the review of administrative agency matters, and is controlling over any provisions that conflict with its terms." *Bone v. U.S. Foodservice*, 399 S.C. 566, 570, 733 S.E.2d 200, 202 (2012) (*reh'g granted* Sept. 14, 2012) (*citing Lark v. Bi-Lo, Inc.*, 276 S.C. 130, 132, 276 S.E.2d 304, 305 (1981)). The Court further stated that "S.C. Code Ann. § 1-23-610(A)(1) (Supp.2009) of the APA allows judicial review only from "final decisions" of the ALC." *Id.* (*citing Charlotte-Mecklenburg Hospital Authority v. South Carolina Department of Health and Environmental Control*, 387 S.C. 265, 692 S.E.2d 894 (2010)). In *Charlotte-Mecklenburg* the Court stated that 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." *Charlotte-Mecklenburg Hospital Authority v. South Carolina Department of Health and Environmental Control*, 387 S.C. 265, 267, 692 S.E.2d 894, 895 (2010) (*citing Good v. Hartford Accident & Indem. Co.*, 201 S.C. 32, 21 S.E.2d 209 (1942)) (emphasis added).

The judgment of the Appellate Panel in this case is a final judgment because their Order terminates this "**particular proceeding or action.**" The Respondents assert that the Appellate Panel's Order is not final because Appellant may be entitled to further benefits not provided for in either the Single Commissioner's Order or the Appellate Panel's Order. However, this reasoning is flawed. The Orders of the Single Commissioner and Appellate Panel are final

judgments with regard to Claimant's average weekly wage, and compensation rate and compensability of the claim. There is "nothing to be done but enforce by execution what has been determined" with regard to Claimant's Form 50 dated May 26, 2011. Appellant's entitlement to further benefits under the Act, a determination as to maximum medical improvement, permanency, etc., would necessarily require another proceeding. To obtain a ruling on these issues, Appellant would be required to file another Form 50 requesting a new and different hearing before a Commissioner. The Appellate Panel's Order finally decided all issues that were before the Single Commissioner in this **particular proceeding**. Any further issues that may come before the Commission would be decided in a different proceeding.

Since the Appellate Panel's Order finally decided all issues before the Single Commissioner on this Form 50, the Order is a final judgment from which an appeal may lie. Thus, this appeal should not be dismissed as interlocutory.

CONCLUSION

For the reasons stated herein, Appellant's appeal is from a final judgment and should not be dismissed as interlocutory.

Respectfully Submitted,



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April 16, 2012