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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court Of Appeals

APPEAL FROM SOUTH CAROLINA
WORKERS' COMPENSATION COMMISSION

Full Commission Appellate Panel Order

WCC File No.:1417071

Appellate Case No.: 2019-001643

Joseph Jefferson, Employee,.....Respondent,

v.

South Carolina Department of Transportation, Employer, and
State Accident Fund, Carrier,.....Appellants.

APPELLANTS' REPLY BRIEF

J. Gabriel Coggiola, Esquire
Willson, Jones, Carter & Baxley
3600 Forest Drive, Suite 204
Columbia, SC 29204
(803) 227-2884
jgcoggiola@wjcblaw.com
Attorney for Appellants

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ARGUMENTS

I. RESPONDENT IMPROPERLY DESCRIBES THE FUNCTION OF S.C. CODE ANN. § 42-9-240.

It is well-established that “statutes must be read as a whole and sections which are part of the same general statutory scheme must be construed together and given effect, if it can be done by any reasonable construction.” *Buchanan v. S.C. Prop. & Cas. Ins. Guar. Ass’n*, 417 S.C. 562, 567–68, 790 S.E.2d 783, 786 (S.C. Ct. App. 2016) (internal citations omitted).

Respondent portrays the Legislature as providing carriers with a 14-day “grace period beyond the statutory due date” of an award. (Resp. Brief, p.13). However, reading S.C. Code Ann. § 42-9-240 on its own would not comply with the statutory intent of the Legislature, and accompanying case law, which clearly state that sections of the Workers’ Compensation Act must be read together when possible. To that end, Respondent conveniently fails to reference S.C. Code Ann. § 42-17-50, which states in pertinent part:

“If an application for review is made to the commission within fourteen days from the date when notice of the award shall have been given, the commission shall review the award and, if good grounds be shown therefor, reconsider the evidence, receive further evidence, rehear the parties or their representatives and, if proper, amend the award.”

S.C. Code Ann. § 42-17-50 (2015).

While carriers have the option to pay an award due within 14 days of an order, a critical consideration during this 14-day time period is whether or not the carrier—or a claimant—wants to appeal an order of the Commission. Typically, even if a party is considering appealing an order, it does not make sense to pay an award that would only be tied up in the appeal process and potentially turned back over to the paying party (the carrier).

Although a carrier may choose to pay an award to avoid judgment interest and still pursue

appealing an order,¹ Respondent inaccurately and selectively represents § 42-9-240 as a “grace period,” when in reality, it is merely one section to be considered in conjunction with § 42-17-50 while parties are determining if they want to pursue an appeal with the South Carolina Workers’ Compensation Commission.

II. THIS CASE IS PROPERLY BEFORE THIS COURT BECAUSE AS NOTED BY THE COMMISSION AND IN RESPONDENT’S BRIEF, THERE IS NO SOUTH CAROLINA PRECEDENT ON THIS LEGAL ISSUE AND THE IMPLICATIONS OF THIS DECISION ARE OF SIGNIFICANT PUBLIC IMPORTANCE.

Despite using the greater part of seven of thirteen pages of Respondent’s brief for a string of legal quotations and citations, Respondent does not cite to a single South Carolina case for precedent on the issue of how to construe when an award is considered “paid” in the context of the Workers’ Compensation Act. Respondent’s brief is devoid of any such citation because one does not exist. Here, the dissent in the Commission’s order astutely points out, “...that, in the absence of South Carolina precedent, this Commission should adopt the logic of the North Carolina Court of Appeals in construing the term ‘paid’....” (Resp. Brief, p.8).

Even though the Commission may look to our sister state—upon which our own workers’ compensation system was heavily based—for guidance, Appellants respectfully request that this Court grant the petition for a writ of certiorari to address a novel issue. Significantly, even the Full Commission Appellate Panel did not come to a unanimous decision regarding when an award is “paid” in South Carolina.

Finally, this case is one of significant public interest and involves legal principles of major

¹ Appellants note that they have paid Respondent the award at issue in this case during the pendency of this appeal to avoid interest accruing on the Commission’s award. However, Appellants respectfully request—and Respondent’s counsel conceded it would be proper—that the award be given back to Appellants should this honorable Court determine Appellants prevail on the merits.

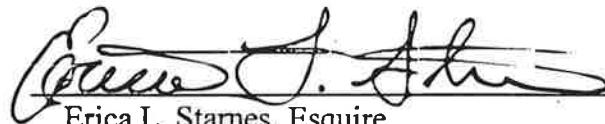
importance due to its potential implications. There are thousands of workers' compensation claims processed every year in South Carolina. Accordingly, when and how an award is considered *timely* paid from a carrier to a claimant is an integral aspect of our workers' compensation system. There are significant policy interests of every insurance carrier, and every claimant, in when penalties can be assessed based on an award payment. Hence, Appellants request that this Court provide guidance to the bar on South Carolina's interpretation on this important legal issue.

CONCLUSION

In sum, Appellants respectfully request that this Court provide guidance to the bar on this novel legal issue, reverse the majority Full Commission's findings, and order Respondent to return the penalty paid.

Respectfully submitted,

WILLSON JONES CARTER & BAXLEY, P.A.



Erica L. Starnes, Esquire
3600 Forest Drive, Suite 204
Columbia, SC 29204
Attorney for Appellants

March 19, 2021
Columbia, South Carolina

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CERTIFICATE OF COUNSEL

Appellants, by and through their undersigned counsel, certify that Appellants' Reply Brief complies with Rules 208(a)(3), 211(b), and 267(d), SCACR.



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Willson, Jones, Carter & Baxley
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Columbia, SC 29204
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PROOF OF SERVICE

I certify that pursuant to the South Carolina Court of Appeals' letter dated March 16, 2021, I have properly served the final copy of **Appellants' Reply Brief** and **Appellants' Motion to File Appellants' Final Reply Brief Outside of Filing Deadlines for Court Consideration**, by mailing a copy of the same by United States Mail with first class postage prepaid to the following addresses on March 19, 2021:

Mr. Stephen J. Wukela, Esquire
403 Second Loop Road
P.O. Box 13057
Florence, South Carolina
29504-3057

(HAND DELIVERY)
The Honorable Jenny Abbott Kitchings
The South Carolina Court of Appeals
1220 Senate Street
Columbia, SC 29201

[Signature page to follow]



Erica L. Starnes, Esquire

Willson, Jones, Carter & Baxley

3600 Forest Drive, Suite 204

Columbia, SC 29204

(803) 227-2894

elstarnes@wjlaw.net

Attorney for Appellants

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Columbia, South Carolina

