

IN THE SUPREME COURT OF THE STATE OF DELAWARE

JOHNSON CONTROLS, INC.,	§	
	§	
Employer/Appellee Below-	§	No. 556, 2003
Appellant,	§	
	§	
v.	§	Court Below---Superior Court
	§	of the State of Delaware,
	§	in and for Kent County
ROBERT D. BARKLEY,	§	C.A. No. 02A-01-003
	§	
Claimant/Appellant Below-	§	
Appellee.	§	

Submitted: July 20, 2004
Decided: September 28, 2004

Before **HOLLAND, BERGER** and **JACOBS**, Justices

ORDER

This 28th day of September 2004, upon consideration of the appellee’s motion to dismiss, the appellant’s answer to the motion to dismiss, the appellee’s reply, the Superior Court’s report following remand, the appellee’s supplemental motion to dismiss, the appellant’s response to the supplemental motion to dismiss, and the Superior Court’s denial of the appellant’s motion to reargue the denial of the appellant’s motion to stay the judgment, it appears to the Court that:

(1) The employer-appellant, Johnson Controls, Inc., filed an appeal from two Superior Court orders. The first, dated January 27, 2003, reversed a decision of the Industrial Accident Board (the “Board”) denying benefits to claimant-

appellee, Robert D. Barkley, and remanded the matter to the Board.¹ The second, dated October 22, 2003, awarded attorney's fees to Barkley for his success on appeal to the Superior Court.² Because this Court lacks jurisdiction to consider the appeal, it must be DISMISSED.

(2) Barkley filed a motion to dismiss the appeal on the ground that the two Superior Court orders are both interlocutory, and not final, orders. Barkley further argued that Johnson Controls lost its opportunity to properly appeal to this Court from a final judgment of the Superior Court by failing to file a timely appeal to the Superior Court from the Board's August 11, 2003 order on remand, which awarded benefits to Barkley.

(3) In response, Johnson Controls argued that the appeal is proper because the Superior Court's October 22, 2003 order awarding attorney's fees was the Superior Court's final order. Johnson Controls further argued that it always intended to appeal the Superior Court's analysis of the proper standard of causation contained in the January 27, 2003 decision, but could not do so prior to the issuance of the Superior Court's October 22, 2003 order awarding attorney's fees,

¹ The Superior Court determined that the Board had applied an incorrect standard of causation in determining that Barkley was not entitled to benefits and directed the Board to apply the rule of "direct and natural consequences" in determining on remand whether Barkley was entitled to benefits. *Groce v. Johnson's Used Cars*, 1997 Del. Super. LEXIS 450 (Del. Super. 1997); 1 Larson's Workers' Compensation Law, § 10.06[2].

² Del. Code Ann., tit. 19, § 2350(f) (1995).

because any such appeal would have been dismissed by this Court as interlocutory. Johnson Controls also noted that it did, in fact, file an appeal from the Board's order on remand on September 12, 2003. However, this Court reviewed the Superior Court docket, which did not reflect any such filing.

(4) Following our review of the Superior Court docket, this Court concluded that the matter should be remanded to the Superior Court for factual findings, including an evidentiary hearing if necessary, concerning the following questions: a) whether the Superior Court believed it had retained jurisdiction of this case (i.e. considered it an "open" case) between the dates of January 27, 2003, when it remanded the case to the Board, and October 22, 2003, when it awarded attorney's fees to the claimant's attorney; b) if so, whether a notice of appeal needed to be filed from the August 11, 2003 Board decision on remand to preserve the employer's right to appeal to the Superior Court; and c) whether a timely notice of appeal to the Superior Court was, in fact, filed by Johnson Controls.

(5) On June 1, 2004, the Superior Court submitted its report following remand. The Superior Court determined that a notice of appeal had to be filed in order to preserve Johnson Controls' right to appeal from the Board's decision on

remand,³ but found that no timely appeal was, in fact, filed.⁴ The Superior Court also determined, having found no legal authority to the contrary, that its October 22, 2003 award of attorney's fees was separately appealable to this Court.

(6) On June 4, 2004, Barkley filed a supplemental motion to dismiss in this Court. In the motion, Barkley renews its argument that Johnson Controls' appeal from the Superior Court's January 27, 2003 order should be dismissed because it did not first file an appeal to the Superior Court from the Board's decision on remand.⁵ Barkley also withdrew its motion to dismiss as it pertains to the Superior Court's October 22, 2003 award of attorney's fees, based upon the Superior Court's finding that the award was separately appealable. In the alternative, Barkley argues that, because the award of attorney's fees is not a matter in controversy, it is not properly before this Court.⁶

(7) In its answer to Barkley's motion, Johnson Controls renews its argument that both orders are properly before the Court because a timely appeal was taken

³ Del. Code Ann., tit. 11, § 2349 (2001) ("An award of the Board, in the absence of fraud, shall be final and conclusive between the parties . . . unless within 30 days of the day the notice of the award was mailed to the parties either party appeals to the Superior Court . . .").

⁴ The Superior Court found that, while Johnson Controls submitted a praecipe stamped by the Prothonotary on September 12, 2003, no original appeal papers were filed. The Superior Court noted that the last day for filing a timely appeal was September 10, 2003 in any case. Finally, the Superior Court found that, contrary to Johnson Controls' assertions, the failure to file a timely appeal was not the fault of Board personnel.

⁵ Supr. Ct. R. 8.

⁶ Id. Johnson Controls' original objection to the application for attorney's fees was later withdrawn.

from the October 22, 2003 order awarding attorney's fees.⁷ We disagree. This Court's appellate jurisdiction may be invoked, as a matter of right, only through a timely appeal from a final judgment of a trial court.⁸ The test for whether an order is final and, therefore, ripe for appeal is whether the trial court has clearly declared its intention that the order be the court's "final act" in the case.⁹ This Court has consistently ruled that Superior Court orders of remand directed to administrative agencies, including the Board (except for remands for purely ministerial functions), are interlocutory, and not final, orders.¹⁰ Thus, a timely appeal to the Superior Court of the Board's decision on remand, which would have resulted in the entry of a final judgment of the Superior Court, was necessary for Johnson Controls to properly invoke the appellate jurisdiction of this Court.

(8) Moreover, an order awarding attorney's fees in connection with an interlocutory order of remand also is interlocutory.¹¹ In this case, attorney's fees were awarded for Barkley's attorney's efforts in convincing the Superior Court that the Board had relied upon an erroneous standard of causation and should be

⁷ Johnson Controls also requests additional briefing on the questions posed to the Superior Court on remand. We have considered this request and have concluded that no further briefing is necessary.

⁸ *Pollard v. The Placers, Inc.*, 692 A.2d 879, 880 (Del. 1997).

⁹ *J.I. Kislak Mtg. Corp. of Del. v. William Matthews, Builder, Inc.*, 303 A.2d 648, 650 (Del. 1973).

¹⁰ *Pollard v. The Placers, Inc.*, 692 A.2d at 881.

¹¹ *Id.*; Del. Code Ann., tit. 19, § 2350(f).

required to apply the proper standard on remand. Because the Board's order on remand never was appealed to the Superior Court for decision and a final judgment never was entered, however, the award of attorney's fees remains interlocutory and, therefore, unappealable to this Court.¹²

(9) Because, under the unique circumstances of this case neither of the orders purportedly appealed from is properly before this Court,¹³ this Court, therefore, is without jurisdiction to consider them, and this appeal must be dismissed.

NOW, THEREFORE, IT IS ORDERED that the appeal is DISMISSED.¹⁴

BY THE COURT:

/s/ Carolyn Berger
Justice

¹² *Pollard v. The Placers, Inc.*, 692 A.2d at 881.

¹³ Supr. Ct. R. 42.

¹⁴ We also find no abuse of discretion on the part of the Superior Court in denying Johnson Controls' motions for stay of judgment and for reargument.