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S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM THE SOUTH CAROLINA
WORKERS' COMPENSATION COMMISSION

Avery B. Wilkerson, Jr., Chair
T. Scott Beck, Commissioner
R. Michael Campbell, II, Commissioner

Appellate Case No. 2022-001488

Barry Adickes, Claimant.....Respondent,

v.

Philips Healthcare, Employer,
and Fidelity & Guarantee
Insurance Company, Carrier. .....Petitioners.

RETURN

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Table of Contents

Table of Authorities

South Carolina Cases

Statutes

Other Authorities

Counter Statement of Questions Presented

I. Whether the Court of Appeals correctly affirmed the Workers' Compensation Commission's award of benefits?

II. Whether the Court of Appeals correctly affirmed the Workers' Compensation Commission's imposition of penalties upon Petitioners?

Introduction

The South Carolina Workers' Compensation Act is designed to provide employees "swift and sure compensation." *Mendenall v. Anderson Hardwood Floors, LLC*, 401 S.C. 558, 562, 738 S.E.2d 251, 253 (2013). Barry Adickes, Respondent, asks the Court deny this petition for certiorari so he may finally obtain the benefits to which he is entitled. Respondent was injured in the course and scope of his employment on March 22, 2011. To date, he has not received final compensation, and his ongoing medical care has been repeatedly denied without cause.

This matter has a lengthy and convoluted procedural history, but its posture at this phase is simple. On remand from the court of appeals, the Workers' Compensation Commission (the commission) reduced Respondent's partial wage loss benefits. Petitioners, however, seek to further reduce Respondent's award and seek reprieve from penalties assessed by the commission.

The case at bar involves no novel questions of law, no constitutional issues, and no federal questions. It involves a per curiam, unpublished opinion from the court of appeals that does not conflict with supreme court precedent. Petitioners disagree with the imposition of sanctions and penalties and they disagree with the date upon which the commission found Respondent's wage loss benefits should begin. The legal issue alleged by Petitioners is one of statutory interpretation.

Petitioners have denied Respondent swift and sure compensation and medical treatment. They have done so in contravention of valid orders and in contravention of South Carolina law. Just as Petitioners denied Respondent access to undisputedly necessary and ordered medications for weeks, their petition only serves to further deny and obscure Respondent's entitlement to benefits.

Statement of the Case

On March 22, 2011, Barry Adickes, (Respondent) lost control of his company car and slid 100 feet off the side of a North Carolina mountain. (R. pp. 312-314). He was not rescued until the next day. (R. pp. 312-314). Respondent treated extensively over the following years for his concussion and injuries to his neck and shoulder. (R. pp. 446-604). In the weeks immediately following the collision, Respondent was unable to work, but he returned to his job shortly thereafter. (R. p. 326). He continued in that position for over two years. In January of 2014, however, Philips Healthcare (Employer) terminated him. Due to his injuries, Respondent was unable to obtain employment earning the wages which he earned prior to his termination.[1]

In September of 2014, Respondent requested a hearing with the commission claiming reduced earning capacity after an injury. (R. p. 73). Employer and Fidelity & Guaranty Insurance Company (Carrier) (collectively, Petitioners), disputed this and argued the hearing was premature. (R. p. 74). A single commissioner heard the claim in January of 2015. (R. p. 255). He issued an award in August of 2015, finding the claim was timely and awarding benefits for partial wage loss. (R. pp. 1-18). Employer/ Carrier, appealed to the commission's appellate panel, which heard oral arguments in December of 2015. (R. p. 561). The panel affirmed the single commissioner's decision the following February. (R. pp. 19-34).

Petitioners further appealed to the court of appeals in 2016, alleging the commission erred in finding Respondent had reached maximum medical improvement (MMI), alleging error in finding Respondent sustained wage loss per section 42-9-20, and alleging error in the commission's awarding of 340 weeks of benefits. (R. pp. 35-39). The court of appeals (*Adickes I*) affirmed the commission on the former two points, but found the commission erred in making a

[1] That Respondent suffered partial wage loss is no longer in dispute.

340-week award. (R. pp. 38-39). The case was therefore remanded to the commission for a calculation of benefits consistent with *Adickes I*. (R. p. 39).

The parties were heard on October 9, 2018, and Commissioner Barden issued an order on January 17, 2019, finding Respondent was entitled to benefits beginning the date he was terminated by Employer, limiting the award to 340 weeks from date of injury, and finding Employer/Carrier were not entitled to a set-off for the weeks Adickes was totally disabled. (R. pp. 41-51). Petitioners then appealed to the Appellate Panel of the full Commission, which heard oral arguments on April 30, 2019. (R. p. 623). An order affirming the single commissioner's decision was issued on June 20, 2019. (R. pp. 59-64). Petitioners appealed that decision to the court of appeals.

While the case was pending on remand, the Carrier refused to authorize payment of medications ordered by the authorized treating physician.[2] (R. p. 268). Respondent Adickes initiated supplemental proceedings, filing a Form 50 on September 5, 2018, requesting a hearing regarding Petitioner Carrier's noncompliance with a prior order.

After filing that Form 50 but prior to Commission hearing the matter, Petitioners stopped paying weekly benefits. (R. p. 53, 56). During the pendency of the initial appeal, Petitioners made weekly payments of benefits. Following that appeal, Petitioners sought permission from the court of appeals and from the commission to cease paying weekly benefits. (R. p. 54). That request was refused. (R. p. 54). Nevertheless, Petitioners ceased payment of weekly benefits on February 5, 2019. (R. p. 53, 56). Petitioners have not paid weekly benefits since that date and have not paid the full award.

[2] Respondent's entitlement to ongoing medical treatment as prescribed by the authorized treating physicians is not in dispute.

Therefore, in addition to raising the Petitioners' failure to provide ordered medical treatment, Respondent raised Petitioners' failure to pay weekly benefits. Those matters were heard and adjudicated on April 19, 2019, and Commissioner James issued an order imposing a ten percent penalty for unpaid weekly benefits and a $200.00 per day penalty for 27 days of willful disobedience of the order requiring Petitioners provide of medications. (R. p. 57). Petitioners appealed that order to the appellate panel of the commission, which affirmed the order of Commissioner James and increased the fine for failure to pay medical benefits to $500.00 per day. (R. p. 71). Petitioners then appealed that order to the court of appeals.

Petitioners moved the court of appeals consolidate the two appeals, and the two separate appeals were consolidated on January 24, 2020. The court of appeals thereafter decided the consolidated matters without oral argument, issuing an unpublished opinion affirming the commission orders in full on July 27, 2022 (*Adickes II)*. Petitioners then moved for reconsideration. The court of appeals denied that motion on August 11, 2022. Petitioners filed a Petition for Writ of Certiorari on October 21, 2022.

Argument

Respondent's position is not complex. He is entitled to two-thirds of the difference between his preinjury wages and his post-injury wages for a total of 347 and 5/7 weeks. For the first 147 weeks post-accident, excluding short periods of total disability, Respondent remained in the employ of Employer and received the same or similar salary as before the accident. Thus, per *Adickes I*, Petitioners do not have to compensate Respondent for those 147 weeks, which leaves 193 weeks. For those 193 weeks, Respondent earned, as a result of his on the job injury, substantially less than he earned pre-injury and is therefore entitled to wage loss benefits over those weeks.[3]

The number of weeks is then increased by 7 and 5/7 weeks, for Respondent received temporary total disability benefits (TTD) for that number of weeks over the course of two periods. Section 42-9-20 states that when a period of total disability benefits is paid, the number of weeks such benefits were paid "shall not be deducted from the maximum period allowed in [section 42-9-20] for partial disability." Therefore, Respondent is entitled to compensation for an additional seven and five sevenths weeks of partial disability benefits.

Lastly, the fines and penalties imposed by the commission for Petitioners' violations of prior orders were appropriate. Petitioners asked permission to stop payment; the request was denied. They stopped payment nevertheless. Petitioners failed to approve necessary medication on five occasions for extended periods of time. The denials were unequivocally intentional. The failure was in direct violation of an order, and compliance was refused despite informal demands from Respondent. The failures were willful, and fines were appropriate. The court of appeals properly affirmed the order of the commission. Review by this Court is unnecessary.

[3] The amount of Respondent's reduced earning capacity is not in dispute.

I. The Court of Appeals Correctly Affirmed the Commission's Award of Benefits.

a. Wage loss start date.

The commission correctly awarded benefits for all weeks in the 340-week period following Respondent's accident during which he experienced wage loss. *Adickes I* held the commission erred in making a 340-week award. The commission corrected that error and reduced Respondent's award by the number of weeks he did not sustain wage loss. Petitioners now seek to further restrict his benefits by pushing forward the date those benefits could start.

Per *Adickes I*, Respondent could only receive wage loss benefits over the 340 weeks that followed his accident. Respondent suffered no actual wage loss from his resulting disabilities while he remained employed with Employer. He is not entitled to benefits for those weeks. Since his termination by Employer, however, he has experienced disability through partial wage loss, and he is entitled to compensation from that date forward. A finding of MMI and any distinction between permanent wage loss and temporary wage loss are both irrelevant.

"Although a finding of MMI often coincides with an award of permanent disability benefits . . . an individual can also be permanently disabled and still have yet to achieve MMI." *McMahan v. S.C. Dept. of Ed.-Trans.*, 417 S.C. 481, 489, 790 S.E.2d 393, 397 (Ct. App. 2016) *cert. denied* (2017). In *McMahan*, the court of appeals held a finding of MMI is not required for a claimant to be permanently disabled. *Id.* Correspondingly, in *Bass v. Kenco*, the court held "[a] declaration of maximum medical improvement is irrelevant to the award of permanent partial disability . . . [m]aximum medical improvement is a distinctly different concept from disability." 366 S.C. 450, 466-67, 622 S.E.2d 577, 585-86 (Ct. App. 2005). The court further explained that while generally, "when a claimant receiving temporary benefits reaches maximum medical improvement and is still disabled, temporary benefits are terminated and the claimant is awarded

permanent benefits. It does not follow, however, that a claimant who has not reached maximum medical improvement is precluded from an award of permanent benefits." *Id.*

The facts of this case are aligned, for purposes of this legal question, with those in *Bass*. Both cases involve section 42-9-20, and in both cases, benefits were correctly awarded for a loss that accrued prior to and/or irrespective of maximum medical improvement. Once Employer terminated Respondent, he began to suffer wage loss. Section 42-9-20 provides compensation for a decrease in ability to earn wages. Whether the loss in capacity manifested itself before or after MMI is irrelevant. The wage loss Respondent began to suffer in January of 2014 was permanent as of that date, for he never again earned his preinjury wages.

Furthermore, in contrast to other benefits awarded under the Act, section 42-9-20 makes no distinction between temporary and permanent benefits. The statute awards benefits based only on disability, which is "the incapacity because of injury to earn the wages which the employee was receiving at the time of the injury in the same or any other employment." S.C. Code Ann. § 42-1-120. Because there is no distinction between temporary and permanent, the only issue is whether the definition of disability has been met. *See Outlaw v. Johnson Service Co.*, 254 S.C. 486, 176 S.E.2d 152 (1970) (Loss of earning capacity alone is the criterion for compensation under the Act for wage loss benefits).

The workers' compensation act contemplates two models for recovery: The medical model and the economic model. *Wigfall v. Tideland, Inc.*, 354 S.C. 100, 104, 580 S.E.2d 100, 102 (2003). Section 42-9-30 codifies the medical model where recovery for workplace injuries is based upon the permanent impairment of a specific body part. Sections 42-9-10 and 42-9-20 represent the economic or wage loss model where recovery is based on economic disability, or the incapacity to earn wages. This case involves the economic model, which therefore turns on Respondent's

disability, or his inability to earn his pre-accident wages. *Keeter v. Clifton Mfg. Co.*, 225 S.C. 389, 392, 82 S.E.2d 520, 522 (1954) ("compensation under the Act is not awarded for the physical injury as such, but for disability produced by such injury. The disability is to be measured by the employee's capacity or incapacity to earn wages which he was receiving at the time of injury. Loss of earning capacity is the criterion.").

To limit an award under the economic model to 340 weeks from the date of injury on the back end and at the same time limit the award at the front end, by waiting until MMI to award benefits, is nonsensical. Under that approach, the compensation due a claimant who suffered partial wage loss could depend on how long it took her to reach MMI. This is not the intended result of the Act. The ability to proceed under sections 42-9-10 and 42-9-20 are vested rights of claimants who sustain injuries to multiple body parts. *Brown v. Owen Steel Co., Inc.*, 316 S.C. 278, 280, 450 S.E.2d 57, 58 (Ct. App. 1994) ("The policy behind allowing a claimant to proceed under the general disability sections 42-9-10 and 42-9-20 allows for a claimant . . . to establish a disability greater than the presumptive disability provided for under the scheduled member section."). The argument posited by Petitioners, if accepted, would effectively deprive a claimant the right to establish the combined effects of her disability were greater than the sum of the presumptive losses provided for in section 42-9-30.

The commission correctly awarded benefits from the date Respondent's wage loss began. He, therefore, respectfully asks this Court deny the petition for certiorari.

b. Total disability credit.

The court of appeals correctly affirmed the commission's refusal to deduct the weeks Respondent was totally disabled from his partial disability award. The conclusion of the

commission is consistent with prior case law interpreting section 42-9-20, consistent with a plain reading of section 42-9-20, and consistent with the intent of *Adickes I*.

In *Bass v. Kenco*, the defendants similarly argued the commission erred in not giving them a credit for TTD benefits paid. 366 S.C. at 465, 622 S.E.2d at 585. There, the claimant was totally, but temporarily, disabled for a period of time prior to an award of partial wage loss. *Bass v. Kenco*, 2003 WL 22977624 (S.C. Workers' Compensation Commission) (March 20, 2003) (R. pp. 820-26). The commission awarded 340 of weeks of compensation following the period of total disability. *Id.* ("It is hereby ordered that the defendants shall pay John Bass, Jr. 340 weeks of compensation . . . without credit for temporary total disability benefits paid."). The court affirmed that order. *Id.*

In *Bass*, like the case at bar, the claimant suffered a mental or cognitive injury and physical injuries. *Id.* at 466, 622 S.E.2d 585. The claimant's mental injuries were the proximate cause of his loss in earning capacity, while his physical injuries were the direct cause of his temporary total disability. *Id.* ("[t]he period of total disability of the [physical injury] [was] separate and distinct from the subsequent period of permanent partial general disability stemming from the physiological issues."). Consequently, the court of appeals affirmed the commission's award of 340 weeks without reduction for TTD paid.

Respondent likewise argues the period during which he received TTD for his physical injuries should not be deducted from the maximum period allowed. The facts are parallel to those in *Bass.* Respondent Adickes' brain injury with loss of executive function is the primary cause of his wage loss, while his neck and shoulder injuries and treatment of those injuries were the cause of his temporary total disability. The periods are separate and distinct, and the commission correctly declined to give Petitioners credit for TTD paid.

Furthermore, a plain reading of section 42-9-20 supports the position taken by the commission and affirmed by the court of appeals.[4] The final sentence of that section states, "In case the partial disability begins after a period of total disability, the [period of total disability] shall not be deducted from the maximum period allowed in this section for partial disability." S.C. Code. Ann. § 42-9-20. The "maximum period" described is 340 weeks post-accident.[5] That sentence is not redundant or superfluous. *Matter of Decker*, 322 S.C. 215, 219, 471 S.E.2d 462, 463 (1995) ("A statute should be so construed that no word, clause, sentence, provision, or part shall be rendered surplusage, or superfluous."); 82 C.J.S. Statutes § 433 (2012) ("Courts are loath to read statutes in a manner that would render parts of them entirely superfluous, meaningless, or inoperative."). Instead, it provides an exception to the maximum period allowable stated in the previous sentence.

Respondent is entitled to further wage loss benefits for the number of weeks he was totally disabled. The commission correctly awarded such benefits, and the court of appeals correctly affirmed that order. The petition for certiorari should be denied.

c. Law of the case.

The commission's order and the court of appeals' opinion do not contradict the law of the case established by the court of appeals in 2018. Following this case's initial adjudication, the

[4] Under Petitioners' position, if the final sentence of 42-9-20 was excluded, a claimant who receives 170 weeks of TTD would not be entitled to any weeks of partial wage loss benefits, for the employer would get a credit for the remaining 170 weeks. Despite Petitioners' prostrations the final sentence of 42-9-20 was included to prevent such a ridiculous outcome, such outcome has no support elsewhere in the Act.

[5] Petitioners' exemplar on page 10 of their petition is likewise nonsensical. Should a claimant receive 200 weeks of TTD benefits prior to an award of benefits per section 42-9-20, the claimant's benefits would cease after receiving 500 weeks of combined benefits. *Roberts v. McNair*, 366 S.C. 50, 619 S.E.2d 453 (Ct. App. 2005) (enforcing a 500-week maximum of combined total and partial disability benefits).

Petitioners filed an appeal raising three issues: (1) Whether Respondent reached MMI, (2) whether Respondent met his burden of proving his entitlement to benefits pursuant to section 42-9-20, and (3) whether respondent was entitled to a 340-week award. (R. p. 147). The court of appeals affirmed the commission on the former two issues but reversed the 340-week award commencing January 17, 2014, and remanded for a new calculation of benefits consistent with the plain language of section 42-9-20. (R. pp. 35-39).

Respondent agrees the 2018 court of appeals opinion is the law of the case and agrees the law of the case is generally binding on subsequent appeals courts. However, Petitioners' assertions as to violations of the law of the case doctrine are specious, misleading, and non-substantive.

Despite multiple assertions of the lower judicial bodies' failings, lengthy explanations of the law of case doctrine, recitations of *Adickes I's* holding, only two sentences within Petitioners' first argument tend to suggest their actual allegations of failures to follow remand instructions. (Petition p. 5). There, with no explanation, Petitioners assert (1) the commission erred in holding *Adickes I* did not reverse the date wage loss began, (2) the commission erred in reaffirming that the wage loss award commenced as of the date of termination and not the date of the injury, and (3) the commission erred by extending the award beyond 340 weeks. (Petition p. 5).

There is no dispute as to when the wage loss began. It began on the first day Respondent earned less than he did pre-accident, which was undisputedly the day of his termination. Petitioners' statement, "[the commission found] the permanent wage loss award commenced as the date of termination, not the date of injury," intentionally or unintentionally, intimates the commission awarded 340 weeks of benefits. That is not so. The commission, on the record page cited by Petitioners, plainly states "[Respondent] is limited to 340 weeks from the date of injury March 22, 2011" and "the award beginning on [the date of termination] is for 193 weeks as

[Respondent] worked 147 weeks [after the accident]." (R. p. 13). The wage loss award could not, per the 2018 opinion of the court of appeals, have begun on the date of the accident. The 340-week window began that day, but the award did not begin until the disability revealed itself. There is nothing incredulous about those findings.

Likewise, the commission extending the award beyond 340 weeks is not violative of the law of the case. Substantively, the award extension is addressed *supra*. However, the awarding of an additional 7 and 7/5 weeks is procedurally consistent as well. *Adickes I* addressed the larger question of whether claimants who suffer wage loss are entitled to a 340-week award or an award over the course of 340 weeks from the date of injury. (R. pp. 35-39). The court did not address the final sentence of section 42-9-20, which provides an exception to the court's holding that claimants receive benefits over the course of 340 weeks from the date of injury. (R. pp. 35-39). That section was not cited or referenced by the court, and it was wholly excluded from the portions of section 42-9-20 the court defined "applicable" to the case in its posture at the time. (R. p. 38). The court expressed that Respondent could not receive "wage loss compensation for the period he worked full-time and earned a full-time salary." (R. p. 39). The Carrier not receiving credit for the weeks Respondent was totally disabled is fully consistent with that statement and the opinion as a whole. Extending the award beyond 340 weeks for weeks paid in TTD is consistent with *Adickes I*. For these reasons, the court of appeals' opinion does not need to be revisited and the Court should deny the petition.

II. The Court of Appeals Correctly Affirmed the Commission's Imposition of Sanctions upon the Petitioners.

The commission correctly imposed fines and penalties on the Petitioners for their termination of weekly benefits and their failure to provide medications as prescribed by the authorized treating physician and ordered by the commission. Section 42-9-90 provides that when

compensation from an award of the commission is not paid within fourteen days, the unpaid amount shall be increased by ten percent. Likewise, section 42-3-175 gives the commission the authority to impose sanctions up to $500.00 per day for willful disobedience of an order, including a refusal to authorize medical treatment. The commission chose to impose both penalties in this case, and its decision to do so does not necessitate review by this Court.

a. Termination of weekly benefits.

Petitioners asked the court of appeals and the commission for permission to stop paying benefits. The court of appeals deferred to the commission and the commission declined their request. (R. p. 56). Petitioners initially made payments as required during the appeal but later stopped despite a Commission order. Section 42-17-60 requires an employer make weekly payments of compensation until the questions at issue are fully determined. The questions at issue are not fully resolved, and therefore, the Petitioners could not lawfully terminate weekly payments. Section 42-9-90 mandates imposition of a ten percent penalty. It is not a discretionary matter. *See Hudson ex rel. Hudson v. Lancaster Convalescent Center*, 407 S.C. 112, 754 S.E.2d 486 (2014).

Making the stop payment especially egregious is that the Appellants did not stop making weekly payments as soon as the court of appeals ruled in 2018 in reliance on their understanding of what the order meant. They waited until Commissioner Barden heard this case on remand and determined the amount owed. (R. pp.41-51).

Moreover, Petitioners requested permission to stop payment twice, once of the court of appeals and once of the commission. The court of appeals issued an order on May 11, 2018, declining to address the petition and finding the motion was more appropriate for the commission since the matter had been remanded. Petitioners then petitioned the commission for permission to stop payment. That motion was summarily denied by Commissioner Barden. *Bagwell v. Ernest*

Burwell, Inc., 227 S.C. 165, 4 S.E.2d 7 (1955) (the legislature intended that the weekly payments awarded are to be made until the questions are fully determined). Despite having asked permission to stop payment and being denied, the Petitioners still stopped payment.

Petitioners reliance upon *Case v. Hermitage Mills* is misguided. 236 S.C. 515, 115 S.E.2d 57 (1960). *Case* held "the express provision in [42-17-60] that after the expiration of 30 days following his appeal from the commission's award the employer shall be required to make payment until the questions at issue shall have been fully determined seems clearly to mean that there shall be no supersedeas of the commission's award, or of a circuit court judgment affirming it. *Id.* at 532, 115 S.E.2d at 67. Petitioners' reliance on *McLeod v. Piggly Wiggly Carolina Co.* is likewise flawed. 280 S.C. 466, 313 S.E.2d 38 (1984). The *McLeod* court held, "an appeal does not suspend payment of weekly benefits awarded pursuant to Section 42-9-20" because those payments are "in the nature of support." *Id.* at 472, 313 S.E.2d at 41. The commission imposed penalties as required by section 42-9-90; review by the Court is unnecessary.

b. Denial of medications.

In addition to Petitioners' refusal to pay weekly benefits, they began denying medications that were ordered by the authorized treating physician they selected. Petitioners were under order to provide those medications. (R. p. 3). Nevertheless, in July of 2018, Petitioners denied Respondent's prescribed medication for a total of forty-four days over a four-month period. As a consequence, the single commissioner imposed fines under section 42-3-175. The appellate panel increased those fines from $200.00 per day for 27 days to $500.00 per day for 27 days. Petitioners argue they did not willfully disobey the order. Their conduct showed otherwise.

"Contempt results from the willful disobedience of an order of the court." *Bigham v. Bigham*, 264 S.C. 101, 104, 212 S.E.2d 594, 596 (1975). A willful act is one which is "done

voluntarily and intentionally with the specific intent to do something the law forbids, or with the specific intent to fail to do something the law requires to be done; that is to say, with bad purpose either to disobey or disregard the law." *Spartanburg County Dep't of Soc. Servs. v. Padgett,* 296 S.C. 79, 82–83, 370 S.E.2d 872, 874 (1988)). The determination of contempt ordinarily resides in the sound discretion of the trial judge. *State v. Bevilacqua,* 316 S.C. 122, 129, 447 S.E.2d 213, 217 (Ct. App. 1994). "Once the moving party has made out a prima facie case, the burden then shifts to the respondent to establish his or her defense and inability to comply with the order." *Widman v. Widman*, 348 S.C. 97, 119, 557 S.E.2d 693, 705 (Ct. App. 2001).

Petitioners have shown no reason or excuse for their failure to provide the ordered medications. Instead, counsel for the Petitioners reported on some occasions that the adjuster and the adjuster's supervisor were simply not responding. (R. pp. 716, 720) ("It seems this office isn't answering anyone, not even their own client."). The adjuster denied Respondent's prescription for nadolol—a prescription the authorized treating physician had prescribed and the Carrier had approved for years—because of her belief nadolol "is a cardiovascular medication and she wasn't clear on why they are paying for that." (R. p. 727). After twenty-seven days, the prescription was finally filled.

Petitioners urge fines are not appropriate because "Petitioners remained in constant communications with Adickes' counsel about the status of the approval." While it is true Petitioners' *counsel* and her paralegal remained in contact with Respondent's counsel, the adjuster and Carrier were not in contact and refused to respond to even their own client and their counsel. (R. pp. 716, 720). The adjuster made a conscious choice to deny the medications for twenty-seven days, not by mistake, but in an effort to save costs. To the extent counsel worked to comply with

the order, her efforts did not prevent Carrier from acting contemptuously. The imposition of sanctions is supported by substantial evidence.

Petitioners asked permission to stop making weekly payments and were ultimately denied. They stopped making those payments nonetheless. Petitioners were required to provide causally related medical treatment as ordered by the authorized treating physician. The adjuster and carrier became unresponsive and intentionally and willfully denied Respondent's medications. Consequently, the fines and penalties were proper. For those reasons, Respondent respectfully requests the Court deny the petition for certiorari.

Conclusion

This Court should deny the petition for certiorari. The court of appeals correctly affirmed the order of the commission and there is no justification for supreme court review of this matter.

Respectfully submitted,

s/ James D. George, Jr.

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