

THE STATE OF SOUTH CAROLINA
In The Supreme Court

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APPEAL FROM THE SOUTH CAROLINA
COURT OF APPEALS

S.C. SUPREME COURT

Appellate Case No. 2023-001042

Alicia Ruffin, Employee/Claimant, Petitioner,

v.

Builders Firstsource, Inc., Employer,
and Liberty Mutual Insurance
Company, Carrier, Respondents.

**RESPONDENT'S RETURN AND MOTION TO DISMISS
PETITION FOR WRIT OF CERTIORARI**

Pursuant to Rule 240 of the South Carolina Appellate Court Rules, Respondents now move to dismiss Petitioner's Petition for Writ of Certiorari. This Motion is based on the following grounds:

Statement of Facts

This matter arises from the *same workers' compensation claim, WCC File No. 1815744*, that was previously adjudicated by the South Carolina Workers' Compensation Commission (hereinafter "the Commission"), by the South Carolina Court of Appeals (hereinafter "Court of Appeals"), and this Honorable Court. **This Honorable Court denied Petitioner's first Petition for Writ of Certiorari in its Order dated January 13, 2022. (Exhibit A.)** Thus, this matter was adjudicated and final.

The background before January 13, 2022 is as follows. Commissioner Beck of the Commission issued a Decision and Order on December 10, 2020 following a workers' compensation hearing. (Exhibit B.) At some time after the Decision and Order was entered, Petitioner filed some sort of attempt at an appeal. (Respondents were not copied on the correspondence or the Form 30 so they are unsure what exactly was sent to the Commission.)

On January 6, 2021, Petitioner's Form 30 Request for Commission Review was dismissed by the Commission, as Petitioner failed to comply with the requirements of S.C. Code Section 42-17-50, and S.C. Regulation 67-701. (Exhibit C.) Petitioner subsequently filed a "Motion to Reinstate Petitioner's Workers' Compensation Benefits" on January 14, 2021. (Exhibit D.) Respondents filed a Response to Petitioner's Motion to Reinstate on January 22, 2021. (Exhibit E.) Commissioner Barden issued a "Judicial Conference Decision and Order" denying Petitioner's Motion to Reinstate on February 24, 2021. (Exhibit F.)

Petitioner filed a “Notice of Appeal in a Workers’ Compensation Case” with the Court of Appeals. This was served on Respondents on March 31, 2021. (**Exhibit G.**) On July 14, 2021, the Court of Appeals issued an Order dismissing Petitioner’s appeal because Petitioner failed to provide proof of timely service upon the Respondents as required by Rule 203(b)(6) of the South Carolina Appellate Court Rules (SCACR). (**Exhibit H.**) On July 20, 2021, Petitioner filed a Petition for Rehearing with the Court of Appeals. (**Exhibit I.**) On September 13, 2021, the Court of Appeals issued an Order denying Petitioner’s Petition for Rehearing, as the Court was unable to discover any material fact or principle of law that has been either overlooked or disregarded. (**Exhibit J.**)

On November 1, 2021, Petitioner filed her first Petition for Writ of Certiorari with this Honorable Court, requesting a review of whether the Court of Appeals erred in dismissing her appeal. (**Exhibit K.**) As previously mentioned, **this Honorable Court denied Petitioner’s first Petition for Writ of Certiorari by Order dated January 13, 2022 and remitted the claim back to the Commission.**

Notwithstanding the Orders issued by this Honorable Court, the Court of Appeals, and the Commission, on February 24, 2022, Petitioner filed yet another Form 50 with the same file number asserting the same claims that had been previously ruled upon by the Commission in the December 10, 2020 Decision & Order.

On March 8, 2022, Commissioner Campbell granted Defendants’ Motion to Certify the Form 19, closing the Commission’s file on the original claim. Shortly thereafter, Respondents mailed Petitioner her award check and the signed Order from Commissioner Campbell. (**Exhibit L.**) Irrespective of their previous decision to close the claim, the Commission issued a corrected Notice of Hearing for a hearing to take place on May 27, 2022 to determine the issues as set forth

on Forms 50 and 51 filed in February. **(Exhibit M.)** As a result of the hearing, on August 3, 2022, Commissioner McCaskill issued an Order administratively dismissing any subsequent pleadings if they related to the same set of facts and circumstances already decided by the final decision of the Court of Appeals. **(Exhibit N.)** The Order also relieved Respondents of any obligation to respond to further filings by Petitioner related to the claim.

Again, in complete disregard for the Orders issued by this Honorable Court, the Court of Appeals, and the Commission, Petitioner again filed another Form 50 on August 8, 2022, which was administratively dismissed by Order from Commissioner Wilkerson dated September 7, 2022. **(Exhibit O.)** On September 12, 2022, Petitioner filed another Form 30 and Amended Form 30 requesting the Commission to review of the matter again alleging Respondent's counsel altered evidence and therefore res judicata did not apply. **(Exhibit P.)**

On September 30, 2022, Petitioner filed a Notice of Appeal with the Court of Appeals appealing the Orders of the Commissioners. **(Exhibit Q.)** The Court of Appeals responded on October 7, 2022 with a letter to Petitioner noting the deficiencies in her Notice of Appeal. **(Exhibit R.)** Respondents followed suit with their own letter noting that the appeal was improper as the matter was pending before the Appellate Panel of the Commission. **(Exhibit S.)**

On October 20, 2022, the Commission issued a Notice of Appellate Hearing, presumably based on the September 12, 2022 Form 30. **(Exhibit T.)** On November 17, 2022, the Court of Appeals issued another letter to Petitioner noting another deficiency in her attempt to file her Notice of Appeal originally dated September 30, 2022. **(Exhibit U.)**

On December 9, 2022, the Court of Appeals issued an Order dismissing Petitioner's Notice of Appeal because a final order had not been issued by the Commission. **(Exhibit V.)** The same day, Petitioner filed a "Motion to Submit New Evidence" with the Court of Appeals. **(Exhibit W.)**

On February 13, 2023, the Court of Appeals construed Petitioner's Motion from December 9, 2022 as a petition to rehear the dismissal and dismissed the Motion. **(Exhibit X.)** The next day, the Commission issued an Appellate Decision and Order affirming the decision of the commissioners and dismissing the claim. **(Exhibit Y.)**

On February 23, 2023, Petitioner filed another Notice of Appeal with the Court of Appeals in response to the Commission's dismissal in the February 14, 2023 Order. **(Exhibit Z.)** Subsequently on March 28, 2023, following the Order rendered on December 9, 2022, the Court of Appeals remitted the matter back to the Commission. **(Exhibit AA.)** On March 31, 2023, the Court of Appeals sent a letter noting deficiencies in Petitioner's February 23, 2023 Notice of Appeal. **(Exhibit BB.)** On April 12, 2023, Petitioner filed another Notice of Appeal with the Court of Appeals responding to the February 14, 2023 Order. **(Exhibit CC.)** The Court of Appeals issued an Order on April 18, 2023 dismissing the appeal based on untimely service. **(Exhibit DD.)**

In response, on April 28, 2023, Petitioner filed a Motion for Reinstatement of Appeal with Court of Appeals claiming proper service. **(Exhibit EE.)** On May 1, 2023, the Court of Appeals issued a letter noting deficiencies in Petitioner's Motion for Reinstatement of Appeal. **(Exhibit FF.)** On June 15, 2023, the Court of Appeals issued an Order dismissing "Motion for Reinstatement of Appeal" from April 28, 2023. **(Exhibit GG.)**

On June 20, 2023, Petitioner filed a Motion to Reverse & Motion for an Order Compelling or Discovery in response to the June 15, 2023 Order. **(Exhibit HH.)** On June 27, 2023, Petitioner filed a Form 6 Notice of Appeal from Administrative Tribunal, accompanied by a letter to the Court of Appeals, a Bill of Complaint (Notification of New Assignment) {Special Deposit}. **(Exhibit II.)** On June 28, 2023, Petitioner filed this, her second, Petition for Writ of Certiorari.

I. Res Judicata

Respondents request that this Honorable Court dismiss Petitioner's second Petition for Writ of Certiorari, as it is not properly before the Court. The December 10, 2020, Decision and Order from the Commission is final. It was not timely appealed to the Full Commission, and the appeal was dismissed. Petitioner's Motion to Reinstate was also denied by the Commission. Petitioner's subsequent appeal to the South Carolina Court of Appeals was also untimely and therefore dismissed. Petitioner's Petition for Rehearing to the Court of Appeals was also denied. **Most importantly, this Honorable Court denied Petitioner's first Petition for Writ of Certiorari originating from the same claim.** At that point, no further filings should have been entertained and no further proceedings should have been scheduled.

"Res judicata bars a subsequent suit by the same parties on the same issues." *Johnson v. Greenwood Mills, Inc.*, 317 S.C. 248, 250, 452 S.E.2d 832, 832 (1994). "Res judicata is shown if (1) the identities of the parties is the same as a prior litigation; (2) the subject matter is the same as the prior litigation; and (3) there was a prior adjudication of the issue by a court of competent jurisdiction." *Id.* at 250-21, 452 S.E.2d at 832. "This court has repeatedly held that, under the doctrines of res judicata and collateral estoppel, the decision of an administrative tribunal precludes the re-litigation of the issues addressed by that tribunal in a collateral action." *Bennett v. S.C. Dep't of Corrections*, 305 S.C. 310, 312, 408 S.E.2d 230, 231 (1991), *cited by Crosby v. Prysmian Communications Cables*, 397 S.C. 101, 108, 723 S.E.2d 813 (Ct. App. 2012). "A party claiming preclusive effect under collateral estoppel must demonstrate that the particular issue was '(1) actually litigated in the prior action; (2) directly determined in the prior action; and (3) necessary to support the prior judgment.'" *Crosby*, 397 S.C. at 109, 723 S.E.2d at 818. Here, the issues raised by Petitioner meet all three elements, as it is the same claim. Further, Petitioner kept

trying to add in new injuries unrelated to the original claim. **If they were related, any and all claims were required to be brought in the initial action.**

The doctrine of collateral estoppel is also known as “issue preclusion.” Issue preclusion bars the relitigation of only the particular issues that were actually litigated and decided in the prior suit. As a result, the doctrine of collateral estoppel is inapplicable when the arguments turns on an assertion that the other party *should* have litigated a particular issue in the prior action.

The doctrine of res judicata is a distinguishable concept. Res judicata encompasses both issue preclusion and claim preclusion. However, rest judicata is more commonly referred to simply as claim preclusion. Claim preclusion bars plaintiffs from pursuing a later suit where the claim (1) was litigated or (2) could have been litigated.

Our Court has recently reaffirmed the following statement of the doctrine:

Res judicata bars subsequent actions by the same parties when the claims arise out of the same transaction or occurrence that was the subject of a prior action between those parties. Under the doctrine of res judicata, “[a] litigant is barred from raising any issues which were adjudicated in the former suit *and any issues which might have been raised in the former suit.*”

Catawba Indian Nation v. State, 407 S.C. 526, 537, 756 S.E.2d 900, 902 (2014) (citations omitted) (emphasis added). “Res judicata ends litigation, promotes judicial economy and avoids the harassment of relitigation of the same issues.” J. Flanagan, SOUTH CAROLINA CIVIL PROCEDURE 642 (1996), *cited with approval in Plum Creek Dev. Co. v. City of Conway*, 334 S.C. 30, 34, 512 S.E.2d 106, 108 (1999). “[N]o one should be twice sued for the same cause of action.” *First Nat’l Bank of Greenville v. U.S. Fid. & Guar. Co.*, 207 S.C. 15, 24, 35 S.E.2d 47, 56 (1945).

Despite finality from the prior adjudication, Petitioner has repeatedly attempted to refile the exact same claim, in an effort to retry the case, evidently without understanding that the case

is over. This is a very straightforward res judicata scenarios. This Honorable Court should dismiss the Petition on these grounds alone.

II. Failure to conform to Rule 242, SCRAC

Additionally, a “direct and concise” argument in support of the Petition is non-existent. The arguments and information included in the Petition are convoluted and nonsensical to the point that Respondents are unclear as to what exactly Petitioner is asking this Honorable Court to consider. Pursuant to Rule 242(d)(4), this would be a sufficient reason for denying her Petition.¹ Respondents ask the Court to dismiss the Petition for these procedural reasons. Moreover, as referenced herein, the procedural history of this claim is rife with Petitioner's procedural deficiencies and seemingly flagrant disregard for the previous Orders from this Honorable Court, the Court of Appeals, and the Commission.²

Should this Honorable Court deem that this Writ should not be dismissed for procedural reasons, Respondents contend Petitioner states no grounds on which this Honorable Court should grant a Writ of Certiorari pursuant to Rule 242 of the South Carolina Appellate Court Rules. Although the list is not controlling or fully measuring, all five reasons in Rule 242(b) are unquestionably inapplicable in this case.³ Respondents contend there are no special or important reasons to grant Writ of Certiorari and ask this Honorable Court to decline to do so in this case.

For the foregoing reasons, Respondents respectfully request the Supreme Court to dismiss Petitioner’s Petition for Writ of Certiorari with prejudice.

¹ Pursuant to Rule 242(d)(4), failure of a petitioner to present with accuracy, brevity, and clarity the information and arguments that are essential to a ready and adequate understanding of the points requiring consideration will be a sufficient reason for denying the petition.

² It also worth noting Petitioner's disregard for the appellate court rules mirrors her disregard for the procedural rules set forth for litigating a claim before the South Carolina Workers' Compensation Commission.

³ This case does not involve a novel question of law, a dissent in the decision of the Court of Appeals, a Court of Appeals decision in conflict with a prior decision of the Supreme Court, a substantial constitutional issue, or a federal question.

Respectfully submitted,

WILLSON JONES CARTER & BAXLEY, P.A.

A handwritten signature in black ink, appearing to read "J. South Lewis, II", written over a horizontal line.

J. South Lewis, II, Esquire
325 Rocky Slope Road, Suite 201
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Attorney for Respondents

Date: July 14, 2023