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**Jun 11 2024**

**SC Court of Appeals**

**THE STATE OF SOUTH CAROLINA**  
In the Court of Appeals

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**APPEAL FROM SOUTH CAROLINA**  
SC Workers' Compensation Commission  
Appellate Panel

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Appellate Case No. 2024-000038

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Debra Wilson, Claimant, ..... Appellant,

v.

NHC Homecare Midlands, Employer, and  
Premier Group Insurance Company, Carrier, ..... Respondents.

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**RETURN TO MOTION TO DISMISS APPEAL  
AS BEING INTERLOCUTORY**

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By way of Return to the Respondents' Motion to Dismiss the Appeal as being interlocutory, the Appellant would respectfully show unto the Court as follows:

1. That first, the Court should note that the Respondents filed two requests for extensions to file their Brief. At no time did they request an extension to file a Motion to Dismiss. While under the Rules that may or may not be grounds to deny the Motion, the Court should take that into consideration in

reference to the Motion. Further, while the Rules allow the Respondent ten (10) days to reply to the Motion, which is June 14<sup>th</sup>, the Court will note from the letter to the Court requesting an extension to file an initial Reply Brief that Counsel for the Appellant has just had a heart catheterization and on June 13<sup>th</sup> will have an aortic valve replacement. The AVR procedure will require one to two days in the hospital, a week of no driving, no lifting whatsoever, and other restrictions; after which - for lack of a better term - Counsel will be on limited duty for several weeks.

In general, this Court and the Supreme Court have repeatedly advised the Full Commission Panels to stop needless Remands to and reaching final decisions on some issues but not others. Quoting the Supreme Court in Russell v. Walmart Stores, Inc., 426 S.C. 281, 826 S.E.2d 863 (2019):

In all but rare cases, the Appellate Panel of the Workers' Compensation Commission should proceed promptly to make a final decision without the necessity of any remand; when the Commission follows this procedure it will have fulfilled the legislative set goal to provide a system focusing on quick recovery, relatively ascertainable awards, and limited litigation.

In Hilton v. Flakeboard America Ltd., 418 S.C. 245, 791 S.E.2d 719 (2016), where the Panel had vacated and Remanded to the Single Commissioner and ordered the Claimant to undergo an evaluation chosen by the employer and did not address many of

the issues raised in the Remand Order, the Court found that the Claimant was left without an effective remedy and having to undergo basically a new trial.

2. That, specifically in reference to the Motion to Dismiss the Appeal as interlocutory, the defining undisputed point and fact that the decision by the Full Commission Panel is both an error of law and a final decision on the Claimant's entitlement to an Award to her back under §42-9-30(21) is clearly stated and set out in the Remand Order of the Commission Panel.

Quoting:

"IT IS ORDERED that the Panel vacates the determination of the disability to the Claimant's back and remands this matter to the Hearing Commissioner for an analysis and determination of disability to the back as a result of Claimant's admitted lower back injury."

The Commission Panel thus unequivocally denied the Claimant an Award under SC Code §42-9-30(21) for, "loss of use" of her "back" and instead required the Commissioner on Remand to review the evidence as to the loss of use of the back based just on the "admitted lower back injury." That is a ruling on the merits.

3. That this Court and the Supreme Court have both ruled repeatedly that Remand Orders, and any other type of interlocutory Order of the Commission, is directly appealable

where the Commission has finally decided an issue; where it involves the merits of the case; or where it finally determines some substantial matter forming the whole or some part of some cause of action or defense in the case. In Canteen v. McLeod Regional Medical Center, 384 S.C. 617, 682 S.E.2d 504 (SC App. 2009), this Court found that because the Full Commission Remand Order had finally decided Ms. Canteen's entitlement to benefits due to physical brain damage and lifetime compensation but remanded for an Award on other body parts, the Order constituted a final determination on her entitlement to benefits under the Act in reference to the brain under SC Code §42-9-10(C).

Directly on point in Brown v. Greenwood Mills, Inc., 366 SC 379, 623 S.E.2d 546 (SC App. 2005), the Circuit Court had remanded to the Commission to make an apportionment of the benefits to which Mr. Brown was entitled to due to his occupational disease versus his unrelated, non-compensable smoking; the Mandate ordered an apportionment. Why that is directly on point is that the Court found that that was immediately appealable because the Circuit Court mandated apportionment. Here, the Panel's Order mandates apportionment of loss of use of the back to just that; loss of use which stems from the lower back injury, not loss of use of the back which is the Award to be made.

Similarly, in Green v. City of Columbia, 311 S.C. 78, 427 S.E.2d 685 (SC App. 1993), this Court held that where the Hearing Commissioner had ruled on the election issue and required an election of benefits and the Claimant had elected to proceed on wage loss and the Full Commission on appeal (review) affirmed the denial of benefits for partial loss of earning capacity but remanded for decision based on the scheduled member Award, the Commission could not go outside the issues and the election decision was final.

In Cord v. E.H. Hines Construction Company, 220 S.C. 356, 67 S.E.2d 677 (1951), the Supreme Court held where there had been no decision on benefits but the Commission had denied the Defendants the right to a medical evaluation that that Order was immediately appealed because it affected the merits.

In Hilton v. Flakeboard America Ltd., supra, the Supreme Court found that the Commission made several errors of law and that the Order was immediately appealable under SC Code §1-23-380(A) because it affected the merits and the Full Commission had gone outside of the issues before it. The Claimant, more importantly in that case, had a right to a direct appeal of the decision on the issues because the Claimant should not have to face repeated "do-overs" by the Commission.

The Supreme Court stopped the Remand, made a direct decision on the issues, and quoted from SC Code §1-23-380 that any preliminary procedure or intermediate Agency action or ruling is immediately reviewable if the review of the final Agency's decision would not provide an adequate remedy. That is the one guiding principles throughout all of these decisions finding that the remand orders from either the Full Commission or the Circuit Court were immediately reviewable.

4. That in this case, the Commission has ruled that the Claimant is not entitled to an Award under SC Code §42-9-30(21) for loss of use of the back but must prove further her entitlement to benefits for 50% or more loss of use of the back based on the degree of disability (an inappropriate term as the Commission is to determine the loss of use) based on just the low back injury. That is an error of law, and also the decision makes a final decision on the merits in the case, just like Brown v. Greenwood Mills, Inc., supra, in this case, apportionment of the back.

5. That in addition, after a determination by the Commissioner on Remand, then an appeal to the Full Commission, and then to this Court will require much, much more delay. As the Supreme Court wrote in Russell,

"one primary goal of the Workers' Compensation Act is to provide quick and efficient resolution of work-related injury claims so that neither employers nor employees become bogged down in complicated and protracted litigation."

The Court went on to note that the legislature meant to provide swift, sure recovery for work-related injuries regardless of fault. They went on to cite numerous cases where both this Court and the Supreme Court had tried to stop and limit the delay in decisions in workers' compensation cases.

Wherefore, the Motion to Dismiss should be denied and this matter should be allowed to proceed, particularly on the basis that the Commission has made a decision on the merits; has denied the Claimant a substantial right, i.e., a decision on loss of use of the back, and the error of law in the application of the law by the Panel, its misfeasance in office by not making a decision and allowing the Remand will result in a tremendous amount of delay in a decision on benefits to the injured worker's family in this matter.

Respectfully submitted,



Preston F. McDaniel, #3770  
McDANIEL LAW FIRM  
1315 Elmwood Avenue  
Columbia, SC 29201  
(803) 771-7211

and

Kenneth M. Mathews, #3683  
Mathews Law Firm  
Post Office Box 7335  
Columbia, SC 29202-7335  
(803) 252-1242

Attorneys for Appellant

June 11, 2024

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**PROOF OF SERVICE**

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I certify that I have served the **RETURN TO THE MOTION TO DISMISS APPEAL AS BEING INTERLOCUTORY** by depositing a copy of it in the United States Mail, postage prepaid, addressed to:

Clark W. McCants, III, Esquire  
Clark W. McCants, IV, Esquire  
Nance & McCants  
Post Office Box 2881  
Aiken, South Carolina 29802



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Preston F. McDaniel, #3770  
MCDANIEL LAW FIRM  
1315 Elmwood Avenue  
Columbia, South Carolina 29201  
(803) 771-7211

and

Kenneth M. Mathews, #3683  
MATHEWS LAW FIRM  
Post Office Box 7335  
Columbia, South Carolina 29202-7335  
(803) 252-1242

Attorneys and Appellants

June 11, 2024

McDANIEL LAW FIRM  
ATTORNEYS AND COUNSELORS AT LAW  
1315 ELMWOOD AVENUE  
COLUMBIA, SOUTH CAROLINA 29201

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SC Court of Appeals

Proudly representing injured workers  
for over 35 years.

Preston F. McDaniel

Telephone (803) 771-7211

Daniel E. Peagler

Facsimile (803) 252-0709

June 11, 2024

VIA EMAIL: [ctappfilings@sccourts.org](mailto:ctappfilings@sccourts.org)

Honorable Jenny Abbott Kitchings  
Clerk of Court  
SC Court of Appeals  
Post Office Box 11629  
Columbia, South Carolina 29211

**RE: Debra A. Wilson v. NHC Homecare Midlands  
Appellate Case No. 2024-000038**

Dear Ms. Kitchings:

Please find enclosed for filing with the Court our **RETURN TO THE MOTION TO DISMISS APPEAL AS BEING INTERLOCUTORY** in the above-referenced matter. By separate letter, I have asked for an extension for the filing of the Reply Brief of the Appellant in this matter.

By copy of this letter, I am notifying and serving Counsel for the Respondents with a copy of the Return to the Motion.

Sincerely yours,



Preston F. McDaniel

PFM/kecs/KTH  
Enclosures

cc: Kenneth M. Mathews, Esquire  
Clarke W. McCants, III, Esquire (Via email and US Mail)  
Clarke W. McCants, IV, Esquire (Via email and US Mail)