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THE STATE OF SOUTH CAROLINA
In the Court of Appeals

RECEIVED

AUG 29 2024

APPEAL FROM SOUTH CAROLINA
SC Workers' Compensation Commission
Appellate Panel

SC Court of Appeals

Appellate Case No. 2024-000038

Debra Wilson, Claimant, Appellant,

v.

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

PETITION FOR REHEARING

TO: HONORABLE JERRY D. VINSON, JR.; AND CLARKE W. MCCANTS, III,
ESQUIRE; AND CLARKE WARDLAW MCCANTS, IV, ESQUIRE, ATTORNEYS
FOR THE RESPONDENTS:

You will please take notice that pursuant to Rule 240(j),
Rule 221(a)(c), and Rule 240, SCACR, the Appellant hereby
petitions the Court for Rehearing per the Order of the Honorable
Jerry D. Vinson, Jr. filed on behalf of the Court on August 14,

2024, and particularly concerning the following points which were overlooked or misapprehended by the Court.

SYNOPSIS

Judge Vinson, having appeared before you many times I am certain that you or most probably whomever assisted you in researching the law in reference to Remand Orders, and this is important, of a Panel of the Workers' Compensation Commission that are appealable versus those that are not directly appealable overlooked that after and applying Charlotte-Mecklenburg Hosp. Auth. v. SC Dept of Health & Env't Control, 387 S.C. 265, 692 S.E.2d 894 (2010), which was relied upon exclusively in the Order, both Ms. Canteen's claim and this claim would both be found appealable.

The importance of this being a direct appeal from a three-member Panel of the Workers' Compensation Commission is that there is a clear distinction and recognition in the jurisprudence prior to 2007 versus the difference in the appellate process afterwards. Prior to 2007 the Circuit Courts cleaned up and remanded most of the non-directly appealable decisions. This Court and the Supreme Court in its jurisprudence clearly noted the difference between a remand by the Circuit Court and a remand by the Commission Panel to a Commissioner.

POINTS OVERLOOKED AND/OR MISAPPRHENDED

1. Judge Vinson and the Court overlooked the very nature of this appeal from a Remand Order and specifically that the Decision by the Appellate Panel for the Commission **constituted a final decision of the Commission on the Claimant's entitlement under statute to an award for the back.** Quoting from the Appellate Panel's decision:

"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.**" (Emp. add.)

Thus, the Appellate Panel's decision is a final decision as to an award for loss of use of the back which is the award to be made under SC Code §42-9-30(21). Instead the Panel Decision requires/mandates the Hearing Commissioner on remand to make an award based **just** on a part of the back. Judge Vinson and the Court relied on Charlotte-Mecklenburg Hosp. Auth. v. SC Dep't of Health & Env't Control, 387 S.C. 265, 266-67, 692 S.E.2d 894 (2010). For the reasons as set forth in Torrence v. SC Dep't of Corrections, 433 S.C. 224, 857 S.E.2d 549 (2021), Torrence distinguishes Charlotte-Mecklenburg, supra, as to why in Torrence the decision was a final decision on the issue whereas in Charlotte-Mecklenburg it was not; the fundamental difference

is the finality of a decision on the issue. In Charlotte-Mecklenburg the Remand Order was not immediately appealable because a "final" decision on a certificate of need had not been made. Whereas in Torrence, the ALJ Order had determined "the rights of the parties" with finality. For the reasons set out in Torrence, and for the reasons as set forth by the Supreme Court in Russell v. Walmart Stores, Inc., 426 S.C. 281, 826 S.E.2d 863 (2019), the Court should allow this appeal to proceed because this decision, unlike the vast majority of situations involving a remand, constitutes the final judgment determining "the rights of the parties" as a matter of law under the statute to an Award for the back and gives the Commissioner no discretion on remand to consider anything other than one part of the back. Further, as set out in Russell, the beneficial purposes of the Act, since the inception of the Act, is to provide "swift-sure" benefits to the injured worker. A remand to the Hearing Commissioner for a decision on part of the back then an appeal of that decision to the Full Commission, and then an appeal back to the Court of Appeals to address the issue will result in a tremendous amount of further delay in a decision on this deceased claimant's beneficiaries' entitlement to benefits under the Act for loss of use of the back. Quoting again from Russell v. Walmart Stores,

Inc., supra:

"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.**"

(Emp. add.)

Thus, where the Remand Order finally decides an issue and leaves no discretion, in this case on behalf of the Hearing Commissioner to make an award to the whole back which is the award to be made under SC Code §42-9-30(21), this case is identical to the situation in Torrence and other cases set out below where the effect of the Order is to finally decide an issue, again in this case an award to the back.

In Brown v. Greenwood Mills, Inc., 366 S.C. 379, 622 S.E.2d 546 (SC App. 2005), this Court found that the Circuit Court's Remand Order was the final decision because it mandated that the Commission apportion between the occupational disease and his long history of smoking. In Canteen v. McLeod Regional Medical Center, 384 S.C. 617, 682 S.E.2d 504 (SC App. 2009) where the Commission finally decided the claimant's entitlement to benefits for his brain injury and had remanded to the Hearing Commissioner to make an award in reference to other body parts, this Court found that the Order was immediately appealable

because it finally decided the claimant's entitlement to benefits due to the injury to the brain. Of note, the Supreme Court in Charlotte-Mecklenburg, supra, only reversed Canteen in reference to the determination of whether or not an Order is interlocutory under SC Code §14-3-330 whereas an appeal from a Commission Decision is based on SC Code §42-17-60 and the Administrative Procedures Act SC Code §1-23-380.

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.

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.

Finally, as in Russell, this Court and the Supreme Court has struggled to make the Commission make final Decisions so that the system can provide what it is supposed to be providing, which is swift, sure benefits to the injured worker.

The Court misapprehended or overlooked that fact in reference to specifically that the Commission had entered a final judgment on the back and had left the Hearing Commissioner with no discretion in reference to making an award for the back on remand. Judge Vinson and the Court should reverse the decision on the Motion to Dismiss and allow this appeal to proceed to prevent a tremendous amount of further delay by not doing so and specifically because the Commission reached a final decision on this Claimant's entitlement to an award for loss of use of her back under the Statute and instead required her to prove that she was entitled to an award for just loss of use to her low back, which is not, not the award and the issue under the statute.

2. The Court not only misapprehended the failure of the Commission to apply the law in reference to an Award for loss of use of the back, but just as importantly the Court misapprehended the devastating and the unbelievable injury that allowing the Commission to ignore the law will cause to not only

this worker, but to an untold number of workers the longer it is allowed to stand.

Since the inception of the Act our Courts have consistently applied the general principle of law that the Workers' Compensation Act, paraphrasing Judge Dennis (AAJ Dennis) and Chief Justice Bonham in Ham v. Mullins Lumber Co., 193 S.C. 157, 145 S.E.2d 889 (1941), is to be interpreted in light of and so as to promote its purposes or objects so as to provide remedy for the ills and evils which they were designed to remove and to be construed according to or so as to effectuate the Legislature's intent and purpose and that humane principles which should guide interpretation of the Act. On the grounds that the Act is remedial in nature; is commendable legislation; has a beneficent purpose; was enacted for humane purposes; and are grounded in justice, our Courts have always held that the Act should, must and will be accorded a liberal and broad construction and interpretation in order to promote or effectuate its beneficial and humane purposes, and the Act will be given such a construction as to promote justice and the public welfare, and the spirit, reason and intent of the laws, and controlling and technical Rules and requirements will not be permitted to defeat their purposes. The Workers' Compensation Act must be given such an interpretation in favor of the

employee such that the Act must be construed fairly, reasonably, and liberally in favor of and for the benefit of the injured worker and their dependents with all doubts as to the right to compensation being resolved in their favor and all presumptions indulged being in their favor. This again is a summarization from Ham v. Mullins Lumber Co.

Ham, is cited here, instead of such cases as Cokeley v. Robert Lee, Inc., 197 S.C. 157, 14 S.E.2d 889 (1941) because of its specific caution and direction to the Commission to not "literally" construe the Act but to "liberally" construe the Act in favor of benefits to the injured worker. In Ham, the majority of the Full Commission tried to strictly construe the Act against providing benefits for the injured workers dependents and in rebuking those members of the Commission and the conclusion that they reached, the Court wrote:

"In order to reach its conclusion, the Commission had to construe the Act literally rather than liberally, had to read into the Act words, the omission of which by the Legislature was obviously intended on its part, and had to violate the further legislative intent towards coverage under the Act." (Emp. add.)

In so doing, the Court found that the Commission had committed an error of law.

In this case, the Commission Panel added words that are simply not in the Statute and tried to impose on and make the

Hearing Commissioner make an award that is not contemplated by the Act. The Commission Panel not only did not liberally apply the law, they did not literally apply the law and what they did was, they ignored the law. The only logical and reasonable reading of the Panel's Decision is they were trying to decrease the Award to the injured worker's dependents. The actual opinion by the Full Commission Panel in this case is actually beyond cavil and is abhorrent to the fundamental principles of the Workers' Compensation Act. The Commission does not have the authority to go outside of the exact wording and provisions of the Act and the Commission must be made to comply with the law and make the awards in accordance with the law and not for whatever other reason they want to change the law.

Again, allowed to stand for even several months more, not only will benefits be delayed to this worker but numerous other workers will suffer at the hands of a Commission, at least this Panel, who are committed to not construing the Act liberally in favor of benefits, and actually intentionally not applying the law.

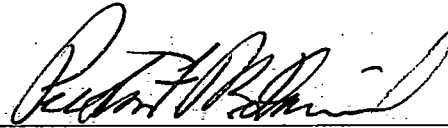
CONCLUSION

Wherefore, the Petitioner respectfully asks for reconsideration and rehearing on the basis that Judge Vinson overlooked the finality of the decision on the issue of an award

for the back and the finality of the decision in general under our case law and that this Commission Panel's Remand Order is unlike the vast majority of the cases where there is a remand.

Judge Vinson and the Court also overlooked or failed to consider the issue that yes this matter can be remanded and then can be addressed after the remand, but by doing so even though it is a final decision on the issue of the award to the back, it would result in a tremendous amount of delay in a final decision being reached on the Petitioner's entitlement to benefits.

Respectfully submitted,



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August 29, 2024

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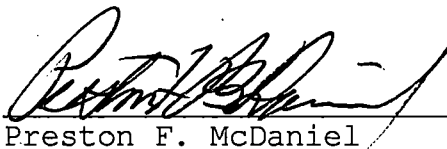
v.

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PROOF OF SERVICE

I certify that I have served the **PETITION FOR REHEARING** by depositing a copy of it in the United States Mail, postage prepaid, addressed as follows:

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Dated: August 29, 2024

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August 29, 2024

VIA HAND DELIVERY

Honorable Jenny A. Kitchings, Clerk
SC Court of Appeals
1220 Senate Street
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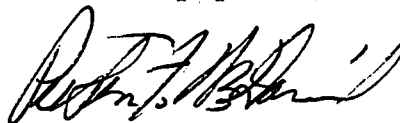
**RE: Debra Wilson v. NHC Homecare Midlands
Appellate Case No. 2024-000038**

Dear Ms. Kitchings:

Please find enclosed the original and one (1) copy of our **PETITION FOR REHEARING** in the above-referenced matter pursuant to Rule 240, along with the required filing fee. I would appreciate you returning the clocked copy to the courier. By copy of this letter, I am notifying and serving Counsel for the Respondents with a copy of the Petition.

As always, I appreciate all of the courtesies and kindnesses shown to me by you, your office and the Court.

Sincerely yours,



Preston F. McDaniel

PFM/kth
Enclosures

cc: Kenneth M. Mathews, Esquire
Clarke W. McCants, III, Esquire
Clarke Wardlaw McCants, IV, Esquire