THE STATE OF SOUTH CAROLINA
In the Supreme Court

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S.C. SUPREME COURT

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Appeal from the South Carolina
Worker's Compensation Commission

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Opinion No. 28224
(Filed July 31, 2014)
Appellate Case No. 2022-000519

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Gena Cain Davis, Claimant,........................................................................Respondent,

v.

S.C. Department of Corrections, Employer, and
State Accident Fund, Carrier,.......................................................................Petitioners.

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**REPLY TO RETURN TO PETITION FOR REHEARING**

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## **Arguments**

I. If the Supreme Court's Order permits immediate review of single commissioner decisions that do not award compensation or benefits, then the majority opinion should be withdrawn and clarified.

In her Return, the Respondent claims that "*Petitioners seem to be laboring under the misconception that the Court's holding prevents the Appellate Panel from considering … issues decided in final orders which determine the rights of the parties*." (p.14).[1] According to the Respondent, the Appellate Panel can still immediately review an intermediate decision of a single commissioner even when that decision does not address any award of compensation or benefits.[2] Respectfully, the Supreme Court's Order cannot be read so liberally and based on the plain language employed by the majority of the Court, the Supreme Court's Order does not permit immediate review of a single commissioner's decision unless it contains an "award monetary compensation or other benefits (such as medical treatment)."

The majority Opinion states that

> "an 'award' is implicitly defined in workers' compensation matters to mean **an award of monetary compensation or other benefits** (such as

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[1] Mr. Justice Few may also be laboring under a similar "misconception," as his concurring opinion states "the majority reads the term 'award' too narrowly" by limiting the Appellate Panel's authority to hear interlocutory appeals. Davis v. S.C. Dep't of Corr., No. 2022-000519, 2024 WL 3588952, at *12 (S.C. July 31, 2024).

[2] If this were the Supreme Court's interpretation of S.C. Code Ann. § 42-17-50, then the Appellate Panel was, in fact, entitled to immediately review Commissioner Campbell's November 14, 2017, Order because it determined the rights of the parties.

> medical treatment) that are available under South Carolina's workers' compensation laws for the injury or condition that is the subject of a claim...
>
> ***
>
> ...**an appeal must be from an award**, **not simply any decision** ... Thus, the argument that a 'decision' from a single commissioner meets the statutory threshold for the Appellate Panel to commence its review under section 42-17-50 is contrary to not only the terms of the statute, but also existing precedent." Davis v. S.C. Dep't of Corr., No. 2022-000519, 2024 WL 3588952, at *8-10 (S.C. July 31, 2024) (emphasis added).

Clearly, with the adoption of this language, the Appellate Panel is not permitted to immediately review a single commissioner's decision unless it is "an award of monetary compensation or other benefits (such as medical treatment)." The majority opinion necessarily prohibits immediate Appellate Panel review of orders that decide anything from jurisdiction to questions of independent contractor status because such decisions do not involve an award of "benefits ... for the injury." *Id*, at *8.

If the Supreme Court intended to hold that the Appellate Panel may immediately review "any decision" that "determine[s] the rights of the parties" (Respondent's Return p.14), then Supreme Court should reconsider its above-quoted language and explicitly hold that the term "award" in S.C. Code Ann. § 42-17-50 means "any decision that determines the rights of the parties," as urged by both the Petitioner and the Respondent herself. Without such clarification, others may also labor under the

misconception that the Supreme Court has limited the term "award" in S.C. Code Ann. § 42-17-50 to "mean an award of monetary compensation or other benefits" in the future.

II. If the Supreme Court's Order permits immediate review of single commissioner decisions "where 'the aggrieved party 'would be left with an inadequate remedy on appeal,'" then the majority opinion should be withdrawn and clarified.

In her Return, the Respondent argues that the majority's Opinion permits the Appellate Panel to immediately review

> "intermediate orders where the aggrieved party 'would be left with an inadequate remedy on appeal.' This is in the intended consequence of the Court's opinion." (p.14).

If this is indeed the "intended consequence of the Court's opinion," then the majority should reconsider and strike footnote 8, which reads

> "we dismiss as dicta [the] suggestion that there might be exceptions to section 42-17-50 for some unspecified interlocutory issues on the basis it is contrary to the General Assembly's requirements in section 42-17-50. *See, e.g.*, *Davis*, 2022 WL 551972, at *2 (opining '[t]he appellate panel commonly reviews intermediate orders that decide important issues in a contested workers' compensation case ...')." Davis v. S.C. Dep't of Corr., No. 2022-000519, 2024 WL 3588952, at *10 (S.C. July 31, 2024).

Not only does the majority opinion hold that the Appellate Panel may only review final awards of monetary compensation or medical benefits, but footnote 8 appears to directly contradict the Respondent's claim that there are exceptions permitting intermediate Appellate Panel review of interlocutory decisions.

Therefore, if the Petitioners are truly "laboring under the misconception that the Court's holding prevents the Appellate Panel from considering" interlocutory appeals, the Petitioners respectfully request that the Supreme Court strike footnote 8 from its Opinion and elucidate the circumstances permitting immediate review of intermediate orders. Without such clarification, others may also interpret footnote 8 literally and thus labor under a similar "misconception" in the future.

## **Conclusion**

If the Respondent is correct and the Supreme Court intended to permit immediate review of decisions affecting the rights of the parties and immediate review whenever a party would otherwise be left without an adequate remedy, then the majority's opinion should be withdrawn and clarified. If the Petitioners are correct and the majority opinion actually prohibits such immediate review under S.C. Code Ann. § 42-17-50 by holding that the Appellate Panel may only review final awards "of monetary compensation or other benefits" and by expressly stating that there are no exceptions that would permit interlocutory appeals, then the Supreme Court should reconsider its decision. As stated in the concurring opinion, "the majority reads the term 'award' too narrowly" and

"If the commission believes it is necessary to hear interlocutory appeals on certain issues to effectuate the purpose of the Act, it is not this Court's role to prevent it from doing so unless there is a specific statutory restriction of that authority. *See James*, 390 S.C. at 201, 701 S.E.2d at 737 (stating the "workers' compensation commission ... is, in the first instance, responsible for effectuating the purposes of the workers' compensation act by administering, enforcing, and construing its provisions in order to secure its humane objectives." (quoting 100 C.J.S. *Workers' Compensation* § 706 (2000))). Thus, I would hold the single commissioner's order was immediately appealable to the appellate panel." Davis v. S.C. Dep't of Corr., No. 2022-000519, 2024 WL 3588952, at *12 (S.C. July 31, 2024).

The Petitioners respectfully requests that this opinion be adopted by the majority.

Respectfully submitted,

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