THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM THE SOUTH CAROLINA
WORKERS' COMPENSATION COMMISSION

The Honorable Melody L. James, The Honorable Aisha Taylor,
and The Honorable Cynthia C. Dooley
Commissioners for the Appellate Panel

Appellate Case No. 2024-001822 (SC Ct. App. filed Oct. 24, 2024)

Christina Walthour, Claimant.....Respondent,

v.

Remedy Intelligent Staffing, Inc., Employer, and
XL Insurance America, Inc., Carrier.....Petitioners.

PETITION FOR A WRIT OF CERTIORARI

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INDEX

TABLE OF AUTHORITIES

Cases

Code Sections

Rules

Orders

Petitions

CERTIFICATE OF COUNSEL

Counsel for Petitioners certifies that the Petition for Rehearing was made and finally ruled on by the Court of Appeals on March 7, 2025.

QUESTIONS PRESENTED

1. Is the South Carolina Workers' Compensation Commission Appellate Panel (the "Appellate Panel") Decision and Order, dated October 3, 2024, immediately appealable to the Court of Appeals?

2. Is the Appellate Panel's determination of the compensability of a claim a final decision on the merits as defined by S.C. Code Ann. § 1-23-380 and South Carolina case law?

3. If the Appellate Panel's determination of the compensability of a claim is not a final decision on the merits, then does the Appellate Panel's decision provide Petitioners with an adequate remedy as defined by S.C. Code Ann. § 1-23-380 and South Carolina case law?

STATEMENT OF THE CASE

Petitioners' Petition for a Writ of Certiorari stems from an Order issued by Justice Hewitt on October 30, 2024, in which Justice Hewitt dismissed Petitioners' Appeal. See Walthour v Remedy Intelligent Staffing, Inc., SC Ct. App. Order dated October 30, 2024. On November 14, 2024, Petitioners filed a Petition for Rehearing and Reinstatement. See Walthour v Remedy Intelligent Staffing, Inc., Petitioners' Petition for Rehearing and Reinstatement, dated November 14, 2024. On March 7, 2025, a three Justice panel for the Court of Appeals affirmed the Order issued by Justice Hewitt. See Walthour v Remedy Intelligent Staffing, Inc., SC Ct. App. Order dated March 7, 2025 (hereinafter both Orders from the Court of Appeals shall be collectively referred to as "Hewitt's Order"). Hewitt's Order dismissed Petitioners' appeal, and ordered remittitur under Rule 221(b), SCACR. Id. Hewitt's Order ruled that pursuant to S.C. Code Ann. § 1-23-380, Petitioners' appeal should be dismissed due to the fact that "a final order has not been issued by the Commission and there are matters remaining to be decided." Id. Pursuant to S.C. Code Ann. § 1-23-390, Rule 242, SCACR, Rule 221, SCACR, and Rule 260 SCACR, Petitioners

are requesting the Supreme Court grant this Petition for a Writ of Certiorari to review Hewitt's Order and reinstate Petitioners' appeal.

Procedurally, this case arrived at the Court of Appeals following Petitioners denial of Respondent's workers' compensation claim. Based on Petitioners' denial of Respondent's claim, Respondent requested a hearing to determine the compensability of the claim.

On November 29, 2023, a hearing was conducted by Commissioner Avery B. Wilkerson.[1] The single commissioner determined that the claim was compensable, and Petitioners filed a notice of appeal to the Appellate Panel. Oral arguments were heard by the Appellate Panel on July 15, 2024. The Appellate Panel issued its decision and order on October 3, 2024 (hereinafter the "Appellate Panel Order"). The Appellate Panel upheld the single commissioner's decision and found that Respondent's claim was compensable.

Subsequently, on October 25, 2024, Petitioners timely filed a Notice of Appeal with the Court of Appeals for review of the Appellate Panel's decision and order. However, as discussed above, Hewitt's Order determined that the Appellate Panel Order was not a "final decision" as defined by S.C. Code Ann. § 1-23-380. Therefore, Petitioners respectfully request that this Petition for a Writ of Certiorari be granted, and Petitioners' Appeal be reinstated.

STANDARD OF REVIEW

Pursuant to Rule 242(b), SCACR,

"A writ of certiorari is not a matter of right, but of sound judicial discretion, and will be granted only where there are special and important reasons. The following, while neither controlling nor fully measuring the Supreme Court's discretion or power to grant review in general, indicate the character of reasons which will be considered:

(1) Where there are novel questions of law.

[1] Commissioner Wilkerson is no longer a Commissioner with the South Carolina Workers' Compensation Commission.

(2) Where there is a dissent in the decision of the Court of Appeals.

(3) Where the decision of the Court of Appeals is in conflict with a prior decision of the Supreme Court.

(4) Where substantial constitutional issues are directly involved.

(5) Where a federal question is included and the decision of the Court of Appeals conflicts with a decision of the United States Supreme Court."

Further, pursuant to S.C. Code Ann. § 1-23-390, "An aggrieved party may obtain a review of a final judgment of the circuit court or the court of appeals pursuant to this article by taking an appeal in the manner provided by the South Carolina Appellate Court Rules as in other civil cases."

"A petition for rehearing shall be in accordance with Rule 240, and shall state with particularity the points supposed to have been overlooked or misapprehended by the court." Rule 221(a), SCACR. Generally, a petition for rehearing must state "the points supposed to have been overlooked or misapprehended by the Court." Arnold v. Carolina Power & Light, 168 S. C. 163, 167 S. E. 234 (1933).

"A case shall not be reinstated except by leave of the court, upon good cause shown, after notice to all parties." Rule 260(a), SCACR.

Rule 221(a), SCACR and Rule 260(a), SCACR, set forth standards of review for both a petition for rehearing and a petition for reinstatement. Petitioners agree that the Court of Appeals can issue a ruling based on the standards of review set forth in Rules 221 and 260, SCACR; however, Petitioners would argue that the appropriate standard of review is one used for statutory construction, which is de novo.

Hewitt's Order turns on the interpretation of S.C. Code Ann. § 1-23-380, and as such the Court should adhere to the standard of review for statutory construction. "Determining the proper

interpretation of a statute is a question of law, and this Court reviews questions of law de novo." Town of Summerville v. City of N. Charleston, 378 S.C. 107, 110, 662 S.E.2d 40, 41 (2008).

"The cardinal rule of statutory construction is to ascertain and give effect to the intent of the legislature." Brown v. Bi-Lo, Inc., 354 S.C. 436, 439, 581 S.E.2d 836, 838 (2003). We must give the words in a statute their plain and ordinary meaning, without resort to subtle or forced construction to limit or expand the statute's operation, and when the words are unambiguous, we must apply their literal meaning. CFRE, LLC v. Greenville Cnty. Assessor, 395 S.C. 67, 74, 716 S.E.2d 877, 881 (2011). Statutes should be read in harmony with their purpose and with other provisions that are part of the same general statutory law in order to determine their effect. Id.

ARGUMENTS

1. **The Appellate Panel Order is immediately appealable to the Court of Appeals, and the Appellate Panel Order is a final decision on the merits as defined by S.C. Code Ann. § 1-23-380 and South Carolina case law.**

The APA establishes the standard for judicial review of decisions of the Commission." Bone v. U.S. Food Serv., 404 S.C. 67, 73, 744 S.E.2d 552, 556 (2013) (holding the APA, not the general appealability statute of section 14-3-330, establishes the applicable standard for review); see also Lark v. Bi–Lo, Inc., 276 S.C. 130, 132, 276 S.E.2d 304, 305 (1981) (stating the APA "purports to provide uniform procedures before State Boards and Commissions for judicial review after the exhaustion of administrative remedies").

Therefore, the plain language of S.C. Code Ann. § 1-23-380 governs judicial review of the Appellate Panel Order by the court of appeals. Specifically, S.C. Code Ann. § 1-23-380 states,

> "A party who has ***exhausted all administrative remedies available within the agency*** and who is aggrieved by a ***final decision*** in a contested case is entitled to judicial review .... Except as otherwise provided by law, ***an appeal is to the court of appeals***."

"Our appellate courts have previously explained that an agency decision, including one by the Commission, is generally not a "final decision" unless it resolves the merits of the action." See, e.g., Bone, 404 S.C. at 73–74, 744 S.E.2d at 556 (stating "[a]n agency decision which does not decide the merits of a contested case ... is not a final agency decision subject to judicial review" (second alteration in original) (quoting S.C. Baptist Hosp. v. S.C. Dep't of Health & Envt'l Control, 291 S.C. 267, 270, 353 S.E.2d 277, 279 (1987)); Price v. Peachtree Elec. Servs., Inc., 405 S.C. 455, 457, 748 S.E.2d 229, 230 (2013).

South Carolina case law has determined that a final decision is a decision which resolves the merits of the action. This is a workers' compensation claim which was denied by the Petitioners. The merits of the claim are to determine whether this workers' compensation claim is compensable or not. Both the single commissioner and the Appellate Panel found that Respondent's workers' compensation claim was compensable, which is a final decision on the merits.

If the Appellate Panel Order is not appealable then the case is over for Petitioners and the claim is compensable. There is no future hearing with the South Carolina Workers' Compensation Act that would allow Petitioners to relitigate the compensability of the claim. Therefore, Petitioners have exhausted all of their "administrative remedies available within the agency". S.C. Code Ann. § 1-23-380. Petitioners are "aggrieved by a final decision in a contested case" and they are "entitled to judicial review," which is an "appeal to the court of appeals." Id.

Hewitt's Order relies on the decision in Bone v. U.S. Food Serv., 404 S.C. 67, 744 S.E.2d 552 (2013). Petitioners believe the reliance on Bone is misplaced, as the decision in Bone was decided under a substantially different version of the South Carolina Workers' Compensation Act, Title 42, et seq., SC Code Ann., as well as a substantially different version of the South Carolina Administrative Processes Act, Title 1-23, et seq., SC Code Ann.

In the second footnote in Bone, the Court explained the statutory changes stating,

"Section 1–23–380 originally provided for review by the circuit court, but it was amended in 2006 to direct appeals to the Court of Appeals. The workers' compensation statutory amendment making this change (§ 42–17–60) was not enacted until 2007 and applies to injuries on or after July 1, 2007, which is after the date of Bone's accident." Bone, 404 S.C. at 74, 744 S.E.2d at 556 (2013).

In Bone, the employee's injury occurred on June 26, 2007, which as noted above, is prior to the date the statutory change became effective (July 1, 2007). Bone, 404 S.C. at 70, 744 S.E.2d at 554 (2013). Bone was decided by this Court on June 26, 2013.

Approximately 6 months later, on December 18, 2013, this Court reached a much different decision in Shatto v. McLeod Reg'l Med. Ctr., 406 S.C. 470, 753 S.E.2d 416 (2013). Notably, in Shatto the employee's injury occurred on December 21, 2007, which is after the statutory change discussed above became effective. Shatto, 406 S.C. at 474, 753 S.E.2d at 418 (2013).

Additionally, Petitioners would emphasize that the procedural facts of Shatto mirror the facts of the case at bar. In Shatto, the employer denied the claim on the basis that the claimant was an independent contractor and not an employee. The single commissioner determined the case was compensable. The employer appealed and the appellate panel affirmed the single commissioner's decision in its entirety. The employer then appealed the case to the Court of Appeals, and the Court of Appeals reversed the Commission's decision.

This is the exact same situation that Petitioners find themselves in. Petitioners denied Respondent's claim. The single commissioner found the claim was compensable, and the appellate panel affirmed the single commissioner's decision in its entirety. Petitioners then filed a notice of appeal with the Court of Appeals. However, unlike the employer in Shatto, Petitioners had their appeal dismissed.

Petitioners would also point to the second footnote contained in the Shatto decision which specifically addresses the significant statutory changes referenced above. Shatto, 406 S.C. at 474, 753 S.E.2d at 418 (2013). Specifically, the Court stated,

"At oral argument the matter of appellate jurisdiction was raised in light of our decision in Bone v. U.S. Food Serv., 404 S.C. 67, 744 S.E.2d 552 (2013). The parties contend that this Court has jurisdiction to hear this appeal and that Bone has no application. We agree. Bone addressed appealability under the predecessor to section 1–23–390 of the South Carolina Code, which provided that in appeals from an administrative agency, such as the Commission, to the circuit court " '[a]n aggrieved party may obtain a review of any final judgment of the circuit court ... by appeal to the Supreme Court.' " Bone, 404 S.C. at 77, 744 S.E.2d at 557 (quoting S.C.Code § 1–23–390 (1986)). In 2006, as part of Act 387, which, among other things, mandated that appeals from the Commission go directly to the court of appeals, section 1–23–390 (2006), entitled "Supreme Court review," was amended to include review of decisions from the court of appeals. Section 1–23–390 concludes by providing that appeals from the court of appeals shall be pursued "by taking an appeal in the manner provided by the South Carolina Appellate Court Rules as in other civil cases." Rule 242(a), SCACR, authorizes this Court to issue a writ of certiorari "to review a final decision of the Court of Appeals." (emphasis added). The parties concede that the court of appeals' decision is final. Indeed, the rule speaks in terms of reviewing a "final decision" of the court of appeals, not a "final judgment." Id.

Petitioners would further note that Justice Hewitt represented the employee in both Bone and Shatto. However, despite Justice Hewitt's intimate knowledge of both cases and his contemporaneous acknowledgment that the ruling in Bone did not apply to Shatto, Justice Hewitt only relied on Bone to dismiss Petitioners' Appeal. Yet, procedurally, the facts in Shatto are the exact same as the procedural facts of the case at bar.

It is also important to point out that the decision in Bone was extremely divisive, resulting in a plurality decision in which two of the justices (Justice Hearn and Justice Kittredge) dissented. Justice Hearn wrote a lengthy and compelling dissent in which Justice Kittredge concurred. Specifically, Justice Hearn stated the following,

"The circuit court order in this case...resolved the issue of compensability with finality and was clearly appealable, just as the full commission's order, which was also a final decision on compensability, was appealable by Bone in the first instance. Both parties conceded at re-argument that upon remand, the full commission will have no alternative but to make an award to Bone, the circuit court having reached the ultimate issue in the case—whether Bone suffered a compensable injury. Nevertheless, Bone has stunningly succeeded in arguing to the majority that while she was entitled to appeal the full commission's decision to the circuit court, once the circuit court reversed the commission's finding of no compensability, the order was transformed into an unappealable order and the employer is precluded from appealing further until after the remand results in an award to Bone. I cannot accept the premise that by reversing the commission on a factually-driven issue and remanding, an appellate court—in this instance the circuit court—can cut off further review up the appellate chain. If Bone could appeal the full commission's decision against her on the issue of compensability, then surely the employer is entitled to appeal the circuit court's order reversing that finding. In other words, appealability, once established, should not be extinguished by one level of appellate review; appealability should not be a moving target." Bone, 404 S.C. at 85–86, 744 S.E.2d at 562–63 (2013).

Just as Justice Hearn points out in her dissent (Justice Kittredge concurring), in the case at bar the Appellate Panel Order was a final decision on the compensability of the claim under S.C. Code Ann. § 1-23-380 and is therefore immediately appealable to the Court of Appeals.

In Hilton v. Flakeboard Am. Ltd., 418 S.C. 245, 791 S.E.2d 719 (2016), this Court granted the petitioner's writ of certiorari following the Court of Appeal's dismissal of the petitioner's appeal. In Hilton, the Court determined that the petitioner's appeal fell within the exception contained in S.C. Code Ann. § 1-23-380. S.C. Code Ann. § 1-23-380 states, "A preliminary, procedural, or intermediate agency action or ruling is immediately reviewable if review of the final agency decision would not provide an adequate remedy." Therefore, if an adequate remedy does not exist, then this serves as an exception to the general rule that a final decision on the merits is required.

Petitioner cites Hilton because of the separate opinion written by Justice Kittredge. Hilton, 418 S.C. at 252, 791 S.E.2d at 723 (2016). Justice Kittredge concurred with the result but wrote separately to express his opinion that Bone should be overruled. Id. Specifically, Justice Kittredge stated, "I concur in result but write separately to note my view that the result the Court reaches today is directly contrary to this Court's decision in [Bone]. I joined the dissent in Bone, and I remain firmly convinced that Bone was wrongly decided and should be overruled."

Petitioners agree with Justice Kittredge's position in Hilton. This Court's decisions in Shatto and Hilton are both contrary to Bone as it relates to the interpretation of S.C. Code Ann. § 1-23-380.

More recently, this Court decided Davis v. S.C. Dep't of Corr., 444 S.C. 138, 906 S.E.2d 569 (2024), reh'g denied (Oct. 10, 2024), which is another case that is contrary to Bone. The Court in Davis stated the following,

"This reading harmonizes the statutory language in section 1-23-380 with its plain meaning and with the purpose of the workers' compensation statutory scheme, which is to facilitate a streamlined review of the merits of a claim. ***In our view, the intent of the South Carolina General Assembly is to allow the Appellate Panel to administratively review a final "award" (grant or***

denial of a claim) by the single commissioner (under section 42-17-50), and then to permit, in turn, ***judicial review*** of the "final agency decision" of the Appellate Panel ***in a direct appeal to the court of appeals*** (under section 1-23-380)." Id. (Emphasis added).

According to the Court in Davis, a final decision on the merits is one in which a decision is issued regarding the ***"grant or denial of a claim."*** Id.

There is no question that the Appellate Panel Order is a ruling on the "grant or denial of the claim." At the hearing before the single commissioner and the Appellate Panel, Petitioners contention was that Respondent's claim was not a compensable claim. Both the single commissioner and the Appellate Panel ruled against Petitioners and determined that Respondent's claim was compensable. Therefore, Petitioners have exhausted their administrative remedies, a final decision on the merits has been issued, and Petitioners are now entitled to judicial review by the Court of Appeals. Id., see also Davis, 444 S.C. at 153, 906 S.E.2d at 577 (2024).

Based on the foregoing, Petitioners believe that it is clear that this case is immediately appealable to the court of appeals and should be reinstated.

2. **If the Appellate Panel's Order is not a final decision on the merits, then the Appellate Panel's Order does not provide Petitioners with an adequate remedy as defined by S.C. Code Ann. § 1-23-380 and South Carolina case law.**

Petitioners believe that the Appellate Panel's Order is a final decision on the merits pursuant to S.C. Code Ann. § 1-23-380, however there is an exception to the general rule. S.C. Code Ann. § 1-23-380 states, "A preliminary, procedural, or intermediate agency action or ruling is immediately reviewable if review of the final agency decision would not provide an adequate remedy."

Therefore, while Petitioners firmly believe that the Appellate Panel Order is a final decision on the merits, if the Court disagrees, then Petitioners would argue that the Appellate Panel Order has left Petitioners without an adequate remedy as defined by S.C. Code Ann. § 1-23-380.

In the case of Russell v. Wal-Mart Stores, Inc., 426 S.C. 281, 287, 826 S.E.2d 863, 865 (2019), this Court cited the decision in Hilton to highlight the necessity for immediate appeals when appropriate. In Russell, this Court went to great lengths to explain why all litigants wind up prejudiced if they are subjected to "repeated unexplained 'do overs' before a final decision of the Commission". Russell, 426 S.C. at 287, 826 S.E.2d at 866 (2019). In Russell, this Court noted that in Hilton an immediate appeal was granted "despite the fact the commission's order was not a final decision." Id. see also 418 S.C. at 253, 791 S.E.2d at 723 (Kittredge, J., concurring) (contending "the petitioners in Bone made the identical argument ..., that review of a final agency decision would not provide an adequate remedy").

If Petitioners' appeal is dismissed, then Petitioners will be forced to make the following payments:

1. Payment of back owed temporary total disability compensation to Respondent.

2. Begin the payment of ongoing weekly temporary total disability compensation to Respondent.

3. Payment of all causally related medical treatment in the past.

4. Payment for all causally related medical treatment until Respondent reaches MMI.

5. Payment of temporary total disability once Respondent reaches MMI, and all causally related medical treatment Respondent will need in the future.

According to Hewitt's Order, only after all of this takes place will Petitioners have a right to appeal this matter. If that were allowed to happen, and the Court of Appeals agreed with Petitioners that the claim is not compensable, and Petitioners were justified and correct in their

denial of the claim, then Petitioners only remedy would be to look to Respondent for payment of everything listed above. This would be an absurd result, but more practically speaking it would put Respondent in an awful position in which Respondent could now owe Petitioners hundreds of thousands of dollars.

Additionally, if Hewitt's Order is not reversed, and Petitioners appeal is not reinstated, then Petitioners' claims may become moot, which would strip Petitioners of their appellate rights. Moreover, if Petitioners' Appeal is not reinstated, then Respondent may arguably have a res judicata argument that would preclude Petitioners appeal once Respondent has reached MMI. Therefore, for the foregoing reasons, Petitioners do not have an adequate remedy left within the South Carolina Workers' Compensation Act or the South Carolina Administrative Processes Act.

CONCLUSION

For the reasons stated, Petitioners respectfully request the Court grant the Petition for a Writ of Certiorari.

Respectfully submitted,

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PROOF OF SERVICE

I certify that I have served the Petition for a Writ of Certiorari on Respondent, through her attorneys of record and the South Carolina Workers' Compensation Commission by depositing a copy of it in the United States Mail, postage prepaid, on April 7, 2025, at the addresses listed below; and, I further certify that on April 7, 2025, the Petition for a Writ of Certiorari was served on all parties listed below via electronic mail.

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April 7, 2025

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