

THE STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT

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May 23 2025

S.C. SUPREME COURT

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APPEAL FROM THE SOUTH CAROLINA  
WORKERS' COMPENSATION COMMISSION

Melody James, Commissioner  
Aisha Taylor, Commissioner  
Cynthia Dooley, Commissioner

APPELLATE CASE NO.: 2025-000655

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Christina Walthour, Claimant,..... RESPONDENT,

v.

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

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RESPONDENT'S RETURN TO  
PETITIONERS' PETITION  
FOR WRIT OF CERTIORARI

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## INTRODUCTION

Respondent hereby submits this response to Petitioners' Writ of Certiorari, which seeks a review of the dismissal of their appeal by the South Carolina Court of Appeals from the Order issued by the Workers' Compensation Commission Appellate Panel (the "Order"), dated October 3, 2024. The Court of Appeals appropriately dismissed the appeal, as the Order does not constitute a final decision. Consequently, Petitioners' request for expedited judicial review is unjustified, and the Writ should be denied.

## STATEMENT OF THE CASE

Respondent relies on Petitioners' recitation of the procedural history of the case. However, despite the fact that Respondent's case has been adjudicated as compensable by the initial Hearing Commissioner and affirmed by all three Commissioners on the Appellate Panel, Petitioners have declined to comply with the Order. As a result, Respondent has not received temporary total disability benefits or authorized medical treatment for a duration exceeding five years and ten months, amounting to over three hundred six weeks, in direct violation of S.C. Code Ann. 42-17-60 (2024), as further discussed below. Respondent underwent a three-level cervical fusion independently due to the ongoing denial of her claim, and she continues to necessitate an adjacent level fusion, which again has been denied.

## ARGUMENTS

### **I. Petitioners seek to circumvent the legislative intent of S.C. Code Ann. § 42-17-60 (2024).**

S.C. Code Ann. § 42-17-60 (2024) requires that insurance carriers maintain benefit payments throughout the appeals process, unless directed otherwise by the Workers' Compensation Commission. It is evident that the legislature aimed to safeguard workers against financial difficulties during these appeals. Petitioners' refusal to fulfill payment obligations during the appeal (and since Respondent's injury in July 2019) is a blatant violation of the statute. This undermines the intended protective measure and results in unnecessary delays in Respondent's just claim for compensation, which has extended for over five years and ten months since July 2019.

### **II. The Order issued by the Appellate Panel does not constitute a final decision.**

Pursuant to S.C. Code Ann. § 1-23-380 (2024), judicial review transpires exclusively following the issuance of a "final decision" in a contested case. A decision is deemed final when it addresses all principal issues. In this instance, although the Order considered compensability, it failed to encompass all facets of the claim, particularly the assessment of benefits, including the amount and duration, which remain unresolved. Consequently, the Order does not completely settle the contested case.

In Bone v. U.S. Food Serv., 404 S.C. 67, 744 S.E.2d 552 (2013), the Court determined that a decision regarding compensability, which does not address allocated benefits, lacks finality. The Court underscored that a definitive ruling must encompass both liability and the awarded benefits.

This perspective is consistent with Davis v. S.C. Dep't of Corr., 444 S.C. 138, 906 S.E.2d 569 (2024), in which the Court reiterated that an agency's decision cannot be deemed final unless it resolves the entire contested matter, inclusive of benefits.

The Order in question, analogous to the one in Davis, pertains solely to a portion of the case concerning compensability, while leaving additional matters regarding the magnitude and breadth of benefits unresolved. Consequently, it fails to satisfy the statutory criteria for a conclusive decision as stipulated in S.C. Code Ann. § 1-23-380.

Furthermore, in Price v. Peachtree Elec. Servs., Inc., 405 S.C. 455, 748 S.E.2d 229 (2013), the Court articulated that judicial review is only appropriate after a final decision that comprehensively addresses all contested matters. Inasmuch as the Order does not resolve the issue of benefits, it cannot be considered a final order for the purposes of appeal.

### **III. Petitioners possess a sufficient remedy on appeal subsequent to the issuance of a final decision.**

Petitioners seek an immediate review to avert irreparable harm. Nonetheless, as highlighted in Hilton v. Flakeboard Am. Ltd., 418 S.C. 245, 791 S.E.2d 719 (2016), interlocutory review is permissible solely in exceptional circumstances where a postponement of a final ruling would deprive a party of an adequate remedy. Petitioners have not demonstrated any extraordinary circumstances in this instance.

In Shatto v. McLeod Regional Medical Center, 406 S.C. 470, 753 S.E.2d 416 (2013), the Court determined that immediate review is justified solely when a procedural injustice is incapable of being rectified through the appeal process. Petitioners retain the right to articulate their concerns regarding compensability subsequent to the Commission's conclusive benefits determination. The standard appellate process is expected to furnish a satisfactory remedy for Petitioners.

Furthermore, Russell v. Wal-Mart Stores, Inc., 426 S.C. 281, 826 S.E.2d 863 (2019) underscores the significance of minimizing delays in workers' compensation claims. The Court emphasized that protracted appeals exacerbate the challenges faced by claimants, asserting that litigation should not be interminable, as it postpones the relief for injured workers. In this instance, Petitioners' appeal of an interlocutory order regarding compensability unnecessarily prolongs the resolution process, mirroring the delays that the Court aimed to avert in Russell. The statutes and prior rulings referred to herein are crafted to guarantee timely assistance for injured workers. The actions of Petitioners stand in contradiction to this objective, which the Court has consistently expressed frustration towards, namely, the delaying and prolonging of a claimant's request for relief.

The reliance of Petitioners on the dissenting opinion in Bone is misplaced. The majority opinion in Bone indicated that an order regarding compensability, without a resolution on benefits, is not considered final and is not immediately subject to appeal. The dissent, which suggested that compensability constitutes a final judgment, was not upheld by the Court, and Petitioners' reliance on this dissent does not alter the existing legal framework.

## CONCLUSION

Accordingly, the Order should not be considered a final ruling under S.C. Code Ann. § 1-23-380, which would justify dismissing Petitioners' appeal. This Court's previous rulings, particularly in Bone and Davis, show that only final decisions involving all key aspects of a case can be appealed. Moreover, Petitioners' attempt to circumvent the legislative requirement to continue paying benefits during the appeal process contradicts the clear legislative intent of S.C. Code Ann. § 42-17-60. Petitioners will have an appropriate remedy once a final ruling is given. Therefore, Respondent respectfully requests that the Court deny the Writ of Certiorari and uphold the Court of Appeals' decision.

Respectfully submitted,

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