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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM
THE SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION

Opinion No. 6111
(S.C. Ct. App. Filed May 21, 2025)

Zachary Brown, Claimant……Respondent.

v.

Southeastern Services, H.H.I., LLC, Employer……Respondent,

and

Uninsured Employers' Fund, Defendant……Petitioner.

RETURN TO PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

1. Does the Opinion of the Court of Appeals directly conflict with the precedent of this Court or otherwise present "special and important" reasons for this Court's consideration, under SCACR Rule 242.

2. Did the Court of Appeals properly dismiss the UEF's appeal as interlocutory, pursuant to the Administrative Procedures Act (APA) and consistent with precedent on the issue?

ARGUMENT

I. The South Carolina Uninsured Employers' Fund (UEF) failed to demonstrate in its brief how the Opinion of the Court of Appeals presents special and important issues for this Court's review.

The Opinion of the Court of Appeals in this matter was limited to whether the Order of the Appellate Panel of the Workers' Compensation Commission was immediately appealable. Contrary to the UEF's assertion, nothing in the narrow scope of the Court of Appeals' Opinion presents this court with a "special and important" reason for this Court's consideration. SCACR Rule 242(b). While not a measure or limit of this Court's power to grant review, SCACR Rule 242(b) describes the kinds of issues and the character of reasons which this Court considers in determining whether to grant certiorari. Among those are novel questions of law, a dissent in the decision of the Court of Appeals, "a decision of the Court of Appeals [that] is in conflict with a prior decision of the Supreme Court," substantial constitutional issues, and "where a federal question is included and the decision of the Court of Appeals conflicts with a decision of the United States Supreme Court."

The Opinion of the Court of Appeals does not conflict with a prior decision of this Court. The UEF argues that the Opinion conflicts with "precedent" regarding the immediate review of decisions determining jurisdictional questions. Specifically, the UEF claims that the Court of Appeals overlooked its own decisions holding that interlocutory orders are appealable if it "affects the merits or deprives the appellant of a substantial right." Petition for Cert. p. 4 (citing *Green v.*

City of Columbia, 311 S.C. 78, 427 S.E.2d 685 (Ct. App. 1993). The UEF also cites *Canteen v. McLeod Regional Medical* Center, 384 S.C. 617, 682 S.E.2d 504 (Ct. App. 2009), defining an order that reflects the merits. While this may have been a persuasive argument a couple decades ago, the precedent cited by the UEF was overruled and later entirely abrogated by this Court in the present context. See *Charlotte-Mecklenburg Hosp. Auth. v. S.C. Dep't of Health & Envt'l Control*, 387 S.C. 265, 267, 692 S.E.2d 894, 895 (2010)); *Bone v. U.S. Food Serv.*, 404 S.C. 75, 744 S.E.2d 552 (2013) (holding that the standard of "involving the merits" does not apply to APA cases and that *"Canteen* was overruled by this Court in [the Court's] *Charlotte-Mecklenburg* decision." *Id at 80*). Assuming *arguendo* this case was before this Court prior to *Charlotte-Mecklenburg* and *Bone*, the decisions cited would only conflict with prior decisions of the Court of Appeals, rather than directly conflicting with decisions of this Court, and thus, would not necessarily warrant review by this Court.

Rather than demonstrating some direct conflict with the precedent of this Court or a novel issue of law, the UEF relies on the policy implications of the Court of Appeals' Opinion and points to the substantive issues of the case which were not addressed by the Court of Appeals, as being matters of "substantial public importance" that would warrant this Court's review. The Respondent would respectfully submit that the narrow procedural issues addressed by the Court of Appeals do not rise to the level of requiring this Court's review, and that entertaining these arguments would only serve to further and unnecessarily lengthen the course of litigation in this matter, and to the detriment of the Respondent.

II. The Court of Appeals properly dismissed the UEF's appeal as interlocutory in accordance with the Administrative Procedures Act.

The Administrative Procedures Act (hereinafter, "APA") governs review of cases under the South Carolina Workers' Compensation Act (hereinafter "the Act"). Under the APA, review of a decision under the Act is limited to 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." S.C. Code Ann. § 1-23-380. While an agency decision must typically be final prior to judicial review, "[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." *Id*.

As discussed in the Opinion by the Court of Appeals, the decision of the Workers Compensation Commission was not a final decision. A final decision or "final judgment" is one that "disposes of the whole subject matter of the action or terminates the particular proceeding or action, leaving nothing to be done but to enforce by execution what has been determined." *Bone v. U.S. Food Serv.*, 404 S.C. 75, 744 S.E.2d 552, 557 (2013) (quoting *Charlotte-Mecklenburg Hosp. Auth. V. S.C. Dep't of Health & Envt'l Control*, 387 S.C. 265, 267, 692 S.E.2d 894, 895 (2010)). The Court of Appeals had previously addressed appealability in a similar context in *Rose v. JJS Trucking, LLC*, 768 S.E.2d 412, 411 S.C. 366 (Ct. App. 2015). In *Rose*, the uninsured employer appealed an order of the Commission denying the employer's petition to transfer responsibility for continuing compensation and benefits to the South Carolina Uninsured Employers' Fund pursuant to S.C. Code Ann. § 42-1-415(A). The Commission determined that the claimant's injury was compensable, granted temporary benefits, but found that the claimant had not yet reached maximum medical improvement, and therefore, did not rule on his claim for permanent disability. The Court held that because the Commission's "order leaves the merits of Rose's claim for permanent disability unresolved . . . the order is not a final decision and not immediately

appealable." *Id* at 413. This Court specifically noted that "[b]ecause the commission has not yet ruled on the merits of Samuel Rose's entire claim," that the case was not ripe for this Court's review. *Id*. The Decision and Order of the Commission in the present case only addressed jurisdiction, compensability and entitlement to medical and temporary disability benefits and, thus, did not dispose of the whole action, as it did not address the Respondent's permanent disability benefits or entitlement to any other benefits under the Act, to which the Respondent may have been entitled.

The Decision and Order is also not subject to immediate review as an exception to the final judgment rule. Under the APA, an interlocutory order may only be immediately appealable if a final decision would not provide an adequate remedy. As noted by the Court of Appeals in its Opinion, the exception to the final judgment rule is narrow and rarely applied. See *Hilton v. Flakeboard Am. Ltd.,* 418 S.C. 245, 252, 791 S.E.2d 719, 723 (2016) ("[C]ircumstances . . . that will permit the immediate appeal of an interlocutory administrative decision under section 1-23-380(A) 'are about as rare as the proverbial hens' teeth." (quoting *State v. Lytchfield*, 230 S.C. 405, 409, 95 S.E.2d 857, 859 (1957)). The UEF argues that the Decision and Order of the Commission should be immediately appealable because delay in review until a final decision would potentially frustrate their ability to recover funds paid in the event that Respondent's claim is later found not to be compensable. However, the Court of Appeals addressed this issue in *Rose*, holding that the uninsured employer in that case could make no specific argument that a delay in transfer of payment of benefits to the UEF would result in an inadequate remedy. In the present case, the UEF can point to no inadequate remedy; rather, like the uninsured employer in *Rose*, the UEF can only point to delay in recovery of payments if the claim is later found to not be compensable.

While the UEF claims that their remedy would be inadequate due to the employer's difficulty in recovering payments from the employee, this does not keep the UEF from recovering its expenses from the employer, pursuant to S.C. Code Ann. § 42-7-200 (C)-(D) (2015). Moreover, pursuant to *Moore v. North American Van Lines*, 319 S.C. 446, 448, 462 S.E.2d 275, 276 (1995), the employer has a right to seek reimbursement if a workers compensation award is reversed. The UEF argues that the Opinion of the Court of Appeals risks "irreparable" harm to public funds because the UEF's ability to recover from an insolvent employer is not guaranteed. However, the possibility there may be no guarantee of recovery due to the potential for insolvency of an employer or an employee does not make either the UEF or the employer's remedy inadequate. Essentially, the UEF's position is that the potential insolvency of a party creates inadequacy. However, perceived inequity or unfairness and the mere possibility of being unable to collect on a judgment do not render a remedy inadequate.[1] Rather, this Court in *Hilton* described the kind of interlocutory order that would be immediately appealable. In that case, the claimant appealed an interlocutory order of the Appellate Panel of the Full Commission that remanded the claim to the single commissioner for a new trial without any explanation and after the claimant had prevailed on the merits at the hearing before the single commissioner. This Court noted that the

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[1] This Court discussed this issue in *Bone*, finding the same allegation of unfairness by the employer/carrier to be "unfounded and unpersuasive"*:*

> Petitioners and the South Carolina Defense Trial Attorneys' Association lastly argue it is "unfair" and inequitable" to allow a claimant to receive benefits while the matter is pending on appeal, since there is no stay of an award applicable here. . . Petitioners, however, do not address the opposite result, i.e., what happens when a claimant is denied benefits and is made to wait during the pendency of appeals by their employer and the insurance carrier, when the ultimate determination is made that the claimant suffered a compensable injury for which medical care and benefits were wrongfully withheld? The Claimant may receive interest after the fact . . . but there is no provision for medical support during this time.

Bone v. U.S. Food Service, 404 S.C. at 82, 83, 744 S.E. 2d at 561.

Respondent would respectfully submit that the Claimant stands to lose and suffer much more severely and personally than an insurance company or state fund.

Commission's order presented such extraordinary circumstances that requiring the claimant to wait until a final adjudication of his claim would not provide the claimant with an adequate remedy as it may subject the claimant to "repeated unexplained 'do-overs,'" indefinitely delaying his remedy. *Hilton v. Flakeboard Am. Ltd.,* 418 S.C. at 252, 791 S.E.2d at 723 (2016). The present case does not present such rare and extraordinary circumstances that it would lead to irreparable harm as previously described by this Court in *Hilton*.

In further support of the UEF's position that the Court of Appeals erred in dismissing their appeal, the UEF argues that a restrictive interpretation of the exception to the final judgment rule undermines the Workers' Compensation Act's purpose of efficient resolution. Again, much like the Petitioners in *Bone*, the UEF only addresses how barring interlocutory appeals would delay their eventual recovery if a claim were later found to be invalid or not compensable. The UEF intentionally or obtusely overlooks the fact that the claimant would forego medical treatment and subsistence level payment, for what could be several layers of appeals over several years if our Courts took a more liberal approach in allowing interlocutory appeals in cases in workers' compensation claims.[2] Moreover, the UEF's claims that restrictive interpretation of the APA's exception to the final judgment rule may preclude an employer, carrier, or fund from challenging jurisdictional findings or stifle judicial economy. This argument stretches the rubber-band of reasoning to the point of rupture. There would be nothing preventing the employer from preserving a jurisdictional issue at any hearing prior to, and including, the final hearing disposing of the entirety of the claim, as is the case with any other interlocutory order at common law. Furthermore,

[2] In fn. 1 of its brief, the UEF makes reference temporary total disability (TTD) benefits, claiming that the Court questioned Respondent's counsel regarding the payment of TTD, and that counsel for Respondent mistakenly responded that the UEF had not paid the TTD award. However, this was not the case. Counsel for Respondent was asked about whether the UEF had provided medical treatment, to which counsel for Respondent responded that the UEF had not, which remains the case.

allowing the Court of Appeals' dismissal of the UEF's appeal to stand, would only promote judicial economy, in providing clearer rules with respect to the appealability of interlocutory orders from the Workers' Compensation Commission.

CONCLUSION

For the foregoing reasons, the Respondent respectfully requests that this Court deny the Petition for a writ of certiorari.

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August 26, 2025

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and

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PROOF OF SERVICE

I certify that I have served Return to Petition for a Writ of Certiorari, on the attorney of record for the Uninsured Employers' Fund, and attorney of record for the Employer, by US Mail and/or electronic mail, on the 26th day of August, 2025, addressed as follows:

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August 26, 2025

Via email to supctfilings@sccourts.org
The Honorable Patrica A. Howard
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RE: Zachary Brown v. Southeastern Services, HHI, LLC, et al
Appellate Case No: 2022-001153
Our File No: 02-2549-01-700-19

Dear Ms. Howard:

Please find attached our Return to Petition for a Writ of Certiorari with Proof of Service in the above matter.

If you should require anything further, please contact this office.

With warmest regards,

LAW OFFICE OF
DARRELL THOMAS JOHNSON, JR., LLC

___s/Joshua R. Fester__
Warren Paul Johnson
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JRF/lmc
:encs