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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM SOUTH CAROLINA
Workers' Compensation Commission

Appellate Case No. 2024-001975

Troy Hinson, Claimant,. . . . . Appellant,

v.

Merrill Gardens, LLC, Employer, and
Church Mutual Insurance Company, Carrier,. . . . . Respondents.

MEMORANDUM OF LAW AS TO APPEALABILITY

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Appellant Troy Hinson hereby files his Memorandum of Law as to Appealability as reqeusted by the Court.

ARGUMENT

1. The Order on appeal is immediately appealable because it is a Final Order in that the Appellate Panel denied with finality Hinson's right to an award of compensation leaving him with no remedy short of immediate appeal.

The Decision and Order of the Appellate Panel is immediately appealable because it is a "final decision" denying with finality Hinson's right to an award of monetary compensation. The Administrative Procedures Act provides: " 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 (2008) (emphasis added). The statute's use of the term *final decision* rather than *final judgment* cannot be accidental.

In Davis, the South Carolina Supreme Court explained that there is indeed a difference:

> A "final decision" as used in section 1-23-380, concerning review by the court of appeals, has been treated similarly to the term "final judgment" that appears in section 1-23-390 (entitled, "Supreme Court review") and governs review by this Court of a lower court's decision. Cf. S.C. Code Ann. § 1-23-390 (Supp. 2023) ("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."). While we recognize the similarity of sections 1-23-380 and 1-23-390 because they both govern judicial review, *we note they concern two distinct stages in the review process, so they are not interchangeable*. However, the essential requirement of finality remains constant.

Davis v. S.C. Dept. of Corrections, 444 S.C. 138, 906 S.E.2d 569 (2024).

The courts have struggled with applying this language to the unique landscape of workers' compensation. As the court noted in Davis, the appeal "turns on the meaning of statutory provisions governing the review process in workers' compensation matters," specifically the term *award* as it

appears in various places within Title 42. It held "From the context of the statutes . . . , it is apparent that an 'award' is implicitly defined in workers' compensation matters to mean an award of *monetary compensation or other benefits (such as medical treatment)* that are available under South Carolina's workers' compensation laws for the injury or condition that is the subject of a claim." Id.

From this pragmatic standpoint, the Court holds:

> 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). Routinely allowing multiple, intervening appeals prior to a final agency decision on a claim would only lengthen the laborious review process, which in Davis's case has already extended over eight years without a determination of the merits of the claim.

[Id. at 129].

The issue then is not whether the term *award* means any decision by a single commissioner in a case. The issue is what kind of award (or order or decision) is immediately appealable, both to the Full Commission and to the Court of Appeals.

An award of "final compensation" refers to the last stage in a workers' compensation case. It means the award of permanent disability compensation made to an injured worker reaching MMI upon completion of medical treatment. Curiel v. Env. Management Services, 376 S.C. 23. 655 S.E.2d 482 (2007)("Essentially, workers' compensation benefits accrue along a time continuum: temporary total disability benefits are available from the date of injury through the date of maximum medical improvement; post-MMI benefits may then be awarded either as a permanent total or partial disability, or as a percentage of impairment to a scheduled member.").

Workers' compensation cases are unique. Unlike civil litigation (and most other

administrative hearings) where there is one trial and one verdict, workers' compensation cases often involve multiple hearings and multiple decisions as the case evolves. A given case could begin with a hearing on whether the accident was work-related, followed by hearings over medical treatment and temporary compensation, and ending with a hearing awarding permanent disability compensation. It would be an absurd result if the parties were only allowed to appeal one time in the life of a case after the Commission made a final permanent disability award.

The Davis Court recognized this reality noting the "overarching concern has been to avoid repeated, piecemeal appeals in order to foster expeditious review." Davis at 127. "Routinely allowing multiple, intervening appeals prior to a final agency decision would only lengthen the laborious review process, which in Davis's case has already extended over eight years without a determination of the merits of the claim." Id. at 129.

The Court provides the answer to this dilemma by looking to section 1-23-380 and the requirement "that a party must first complete the review process within the agency and have obtained a 'final decision' (or final agency decision') regarding the claim from the Commission before seeking judicial review from the court of appeals." The Court explains "a 'final decision' in this context does not include a final decision on a *procedural or other intermediate point that does not resolve the merits of the claim*." Id. at 128 (emphasis added).

The Davis Court held the Appellate Panel's decision was not a final decision because it did not involve the merits of the claim. Nonetheless, the Court held the Appellate Panel's decision was immediately appealable because under section 1-23-380 because "review of the final agency decision would not provide an adequate remedy." S.C. Code Ann. § 1-23-380 (2023). The Court reasoned this was necessary because "the fundamental flaw in the decision by the Appellate Panel . . . could

continue to impact the Commission's review of the status of Davis's claim on remand." Davis at 130.

The impact of Davis on appellate procedure for workers' compensation is significant and salutary. The Court clarifies the meaning of a final decision to be an award from a hearing that decides an issue on the merits of the claim – specifically one that awards or denies monetary compensation and /or medical treatment. This runs the gamut of the plethora of issues that arise in workers' compensation cases. It would include orders determining whether a claimant was an employee or an independent contractor. It includes orders setting the average weekly wage and compensation rate; awarding or denying temporary total disability compensation; and awarding or denying treatment for a particular injury or body part with a particular doctor. It includes orders deciding whether a given incident gives rise to a compensable injury by accident arising out of and in the course of employment. And, of course, it includes orders awarding permanent disability compensation.

None of the above scenarios are interlocutory. Each fits the definition of a final order. The goal here should not to be to allow only one appeal over the course of a single workers' compensation claim. That would be unworkable. The goal is to bring some common sense to the system and eliminate unnecessary, repetitive and pointless appeals. See, e.g., Russell v. Wal-Mart Stores, Inc., 426 S.C. 281, 286, 826 S.E.2d 863, 865 (2019) (repeated cycle of unnecessary appeals and remands within the Commission deprived the parties of an adequate remedy, thus was immediately appealable);[1] Hilton v. Flakeboard America Limited, 418 S.C. 245, 791 S.E.2d 719

[1]Russell is on appeal again after remand and is set for oral argument before the Court on October 1, 2024.

(2016)("Under these unique circumstances where the Commission has ordered the relitigation of the entire dispute without regard to the matters raised by the appealing party, we find that requiring Hilton to wait until the final agency decision to appeal would not provide him an adequate remedy."). The problem does not seem to lie with the courts. Rather, there has been some degree of confusion within the Commission.

This brings us to the instant case. Here, the Appellate Panel denied Hinson a monetary award – specifically temporary total disability compensation. The essence of the arguments on appeal is fairly straightforward. The Appellate Panel held that an employee fired for cause is barred from receiving temporary compensation *irregardless of whether he has already been deemed disabled by the receipt of temporary compensation due to being out of work due to his work-related injury.*

The Appellate Panel held this case fell under the rubric of Pollack v. Southern Wine & Spirits of America, 405 S.C. 9, 747 S.E.2d 430 (2013). It held "[w]e find that Claimant was terminated for cause and, as such, is not entitled to payment of TTD." [R.P. 38, Finding of Fact 52; p. 40, Conclusion of Law 3]. This ruling is error as this case is controlled by Cranford v. Hutchinson Constr., 399 S.C. 65, 731 S.E.2d 303 (Ct. App. 2012)(temporary total disability compensation should have awarded as a matter of law because employee was not at MMI and had never been released to work without restrictions) and Grayson v. Carter Rhoad Furniture, 312 S.C. 250, 439 S.E.2d 859 (Ct.App.1993), *aff'd as modified by* Grayson v. Carter Rhoad Furniture, 317 S.C. 306, 454 S.E.2d 320 (1995). In Grayson, "[t]he supreme court held that because Grayson was released with work restrictions, there was in reality *no* evidence that Grayson's period of temporary total disability ever ended prior to his firing. Because Grayson's benefits were never properly terminated in accordance with Regulation 67-504, Grayson was entitled to have his benefits reinstated retroactively."

Cranford at 75-76, 731 S.E.2d 308). Accord, Martin v. Rapid Plumbing, 369 S.C. 278, 631 S.E.2d 547 (Ct. App. 2006)(holding procedures to suspend or terminate temporary compensation require strict compliance).

Despite Grayson and Cranford being argued before both the Single Commissioner and Appellate Panel, the Commission completely ignored this binding case law in its analysis. The difference is that Pollack did not *return to work in his same role.* He never left work. He simply continued working at his same wage as a supervisor – a role he was able to continue despite his restrictions because his job had no physical requirements outside of his restrictions. As such, Pollack applies only to individuals who have not previously received temporary compensation, thus not being deemed disabled and not coming under the protections of § 42-9-260 as set out in Grayson and Cranford.

From the standpoint of appealability, none of these cases could have ever reached the appellate courts if the parties could not appeal awards of monetary compensation unless they finally ended the case, i.e. were final *judgments.* Indeed, because an award of permanent disability compensation is subject to review upon a change of condition within one year, even those final decisions are not final judgments within the general definition outside of workers' compensation. See S.C. Code Ann. § 42-17-90 (A) (2007)("on its own motion or ont eh application of a party in interest on the ground of a change in condition, the commission may review and award and on that review may make an award ending, diminishing, or increasing the compensation previously awarded . . .").

The second aspect of appealability under the Administrative Procedures Act is "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." S.C. Code Ann. § 1-23-380 (2008).

Following the initial pronouncement in Bone v. U.S. Food Serv., 404 S.C. 67, 744 S.E.2d 552 (2013), limiting appealability of the Commission's orders, our supreme court has attempted to elucidate clear standards in light of a series of cases highlighting the prejudice engendered by multiple arbitrary procedural rulings from the Commission. See, e.g., Russell; Hilton v. Flakeboard America Limited, 418 S.C. 245, 791 S.E.2d 719 (2016)("Under these unique circumstances where the Commission has ordered the relitigation of the entire dispute without regard to the matters raised by the appealing party, we find that requiring Hilton to wait until the final agency decision to appeal would not provide him an adequate remedy."); Tucker v. S.C. Dep't of Transp., 427 S.C. 299, 831 S.E.2d 426 (2019)(reversing commission's denial of change of condition claim on procedural technicality because "If the parties reasonably need time to prepare, or to negotiate in good faith, the assigned commissioner—or an appellate panel on review—should allow it.").

In the instant case, the prejudice is manifest. Hinson was disabled and receiving weekly workers' compensation checks. He was then called back to work under a 5-pound lifting restriction – well outside the requirements of the job as a maintenance supervisor. After several weeks, he was terminated by orders from upper management – not his onsite supervisor – on sketchy evidence of violations most of which occurred before he even became injured and which were wholly undocumented.

The situation this puts Hinson in is that he has no income, little physical ability to earn an income in building maintenance, and a complete inability to challenge this ruling until he reaches MMI, tries his case, and receives an award of permanent disability compensation. He cannot retry

the instant ruling, so must instead wait on his doctors to place him at MMI and then try his case simply to obtain a final judgment of permanent compensation allowing him to appeal. Indeed, he is virtually compelled to try the case because recovering past due temporary compensation is foreclosed if he settles. In short, he has no adequate remedy other than appeal.

This Court asked the parties to brief the issue of appealability in light of the Court's recent decision in Brown v. Se. Servs., H.H.I., LLC, Op. No. 6111 (S.C. Ct. App. filed May 21, 2025) (Howard Adv. Sh. No. 19 at 68). Brown itself explains why Hinson is entitled to have his appeal heard. The Court reasoned:

> This system of delaying most workers' compensation appeals until the final judgment is not perfect. We understand, and expressly do not discount, the fact that this regime places the interim costs of disability and medical benefits on employers. That concern has less force in this case because the Fund acknowledges it has a statutory right to recover all of its interim expenses from Southeastern. See S.C. Code Ann. § 42-7-200 (C)-(D) (2015). But setting the Fund's unique position aside, two things prevent us from adopting the view that costs such as those associated with temporary benefits warrant immediate appellate review. First, there already is an existing remedy. Our case law recognizes that an employer has a right to seek reimbursement if a workers' compensation award is reversed. See Moore v. North American Van Lines, 319 S.C. 446, 448, 462 S.E.2d 275, 276 (1995) (finding the circuit court may hear an employer's restitution claim when a benefit award is reversed because the commission lacked jurisdiction over the claim). This may not be a perfect remedy, but we cannot say it is inadequate. See also Rose[v. JJS Trucking, 411 S.C. 366, 368, 369 768 S.E.2d 412, 413 (Ct. App. 2015)], (holding parties have an adequate remedy when the only alleged prejudice is delaying the payment of money between insurance providers).[2] Second, adopting this argument would just be another way of turning the final judgment rule completely on its head.

Id.

Brown involved an appeals by an employer over the payment of money. The Court held that an *employer or carrier* suffers no true prejudice by being unable to immediately appeal an award of

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[2]Rose is hardly the archetype for avoiding piecemeal appeals. The case arose out of an accident on August 10, 2011. It is now on its fourth round of appeals at the Court.

medical benefits and temporary compensation. As the Court stated, "We understand, and expressly do not discount, the fact that this regime places the interim costs of disability and medical benefits on *employers*." Id. The Court recognized that employers have an adequate remedy because they can seek reimbursement in a civil case for unjust enrichment.

This also makes sense because claims are paid by insurance companies or large self-insured employers. These large entities have thousands of claims for which they regularly pay benefits. The very nature of insurance is to spread the risk over many claims for which the carrier receives premiums from many employers.

Conversely, an injured worker has one single claim. If he or she cannot work, has no income, needs an operation or has any other need which is being denied under the workers' compensation system, the injured worker suffers real harm.[3] People become crippled, mentally ill, homeless and destitute. A delay in payment is a delay in justice. While to be sure, an appeal is not a speedy remedy, it is the only remedy for an erroneous denial of benefits.

From Hinson's point of view, this case is more like Russell, Hilton or Davis. He is the one suffering because he has been denied benefits. To be sure, his case is not (yet) trapped in a cycle of endless remands as in Russell and Hilton. Nonetheless, if his appeal is not heard now, it is extremely

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[3]Compensation laws constitute a form of social legislation and were enacted primarily for the benefit, protection and welfare of working men and their dependents, to relieve them of the uncertainties of a trial in a suit for damages, to cast upon the industry in which they are employed a share of the burden resulting from industrial accidents, and to prevent the burden of injured employees and their dependents becoming charges on society. Their right to sue and obtain compensation is taken away, and such laws should be construed liberally in favor of the employees and their dependents, in furtherance of the beneficent purposes for which they were enacted, and to avoid any incongruous or harsh results. Cokeley v. Robert Lee, Inc., 197 S.C. 157, 14 S.E.2d 889 (1941)

unlikely it will ever be heard. He has no civil remedy as in Moore. His loss of income affects him much more than having to pay compensation when not due affects a large insurance company. As such, the Court should hold that this case presents an immediately appealable case and should proceed expeditiously with review of the appeal on the merits.

CONCLUSION

For the foregoing reasons, the Court should hold the Decision and Order of the Appellate Panel is immediately appealable, and should proceed expeditiously with appellate review of the case on the merits.

Respectfully Submitted,

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August 31, 2025
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PROOF OF SERVICE

I certify that I, Wanda Powell, Paralegal to Stephen B. Samuels have caused the **Memorandum of Law as to Appealability** to be served on the parties on the date indicated below and addressed as follows:

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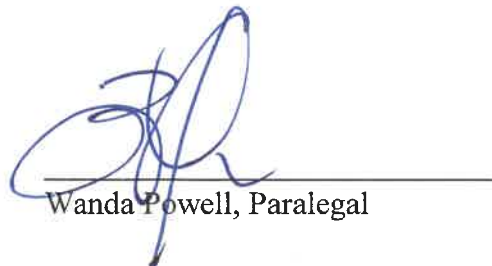

Wanda Powell, Paralegal

September 2, 2025

STEPHEN B. SAMUELS
P. JASON REYNOLDS
C. DAVID BEALE, JR.
MICHAEL R. PARKS
ATTORNEYS AT LAW

September 2, 2025

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Sep 02 2025
SC Court of Appeals

The Honorable Jenny Abbott Kitchings
Clerk of the South Carolina Court of Appeals
1015 Sumter Street
Columbia, South Carolina 29201

RE: Troy Hinson v. Merrill Gardens, LLC
Appellate Case No.: 2024-001975

Dear Ms. Kitchings:

Purusant to the Court's request, attached please find Appellant's **Memorandum of Law as to Appealability** and Proof of Service regarding the above referenced matter. Please have your staff file and return to us a clocked copy of the **Memorandum of Law as to Appealability** and **Proof of Service.**

By copy of this letter and enclosure to Mark Davis, Esquire and Jeffrey Kuykendal, Esquire, we are hereby serving them both with a copy of our **Memorandum of Law as to Appealability** as indicated by our attached **Proof of Service.**

Please contact us with any questions or if further information is needed from our office.

Sincerely,

Wanda Powell
Paralegal for Stephen B. Samuels

/wp
Enclosure(s) as stated

cc: Mark Davis, Esquire.
Jeffrey Kuykendal, Esquire