Sep 15 2025

S.C. SUPREME COURT

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

Case No. 2025-000655

Christina Walthour, Claimant…………………………………………….……………...Respondent,

v.

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

APPENDIX

/s/Michael E. Patterson, Jr.
Michael E. Patterson, Jr. (SC Bar #78437)
Patterson Law Group, LLC
295 Seven Farms Dr., Ste. C-190
Charleston, SC 29492
Telephone: (843) 696-1772
E-mail: michael@pattersonlawsc.com
Attorney for Petitioners

Other counsel of record:

James G. Christmas, Esq.
Robert Clyde Limehouse, III, Esq.
250 Mathis Ferry Rd., Ste. 102
Mount Pleasant, SC 29464
Telephone: (843) 900-1499
E-Mail: gc@christmaslaw.com; trey@christmaslaw.com
Attorneys for Respondent

INDEX

Walthour v Remedy Intelligent Staffing, Inc., S.C.Ct.App. Order dated October 30, 2024 ………………………………………………………………………………………… 1

Walthour v Remedy Intelligent Staffing, Inc., Petitioners' Petition for Rehearing and Reinstatement, dated November 14, 2024.……………………………………………… 3

Walthour v Remedy Intelligent Staffing, Inc., S.C.Ct.App. Order dated March 7, 2025 …………………………………………………………………………………………. 15

Walthour v Remedy Intelligent Staffing, Inc., Petitioners' Petition for a Writ of Certiorari, dated April 7, 2025………………………………………………………………………… 16

Walthour v Remedy Intelligent Staffing, Inc., Respondent's Return to Petitioners' Petition for a Writ of Certiorari, dated May 23, 2025.…………………………………………………… 33

Walthour v Remedy Intelligent Staffing, Inc., Petitioners' Reply to Respondent's Return, dated June 2, 2025…………………………………………………………………………… 41

Walthour v Remedy Intelligent Staffing, Inc., S.C.Sup.Ct. Order dated August 14, 2025 ………………………………………………………………………………………… 51

The South Carolina Court of Appeals

Christina Walthour, Claimant, Respondent,

v.

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

Appellate Case No. 2024-001822

ORDER

This appeal arises out of an order of the Workers' Compensation Commission awarding temporary total disability benefits to Respondent. The order notes Respondent is not at maximum medical improvement and the question of permanent disability has not been decided. Because a final order has not been issued by the Commission and there are matters remaining to be decided below, this appeal is dismissed. *See* S.C. Code Ann. § 1-23-380 (Supp. 2024) (governing appeals from the South Carolina Workers' Compensation Commission and limiting this court's review to final decisions of the Commission or decisions that cannot be adequately remedied if reviewed after the final decision); *Bone v. U.S. Food Serv.*, 404 S.C. 67, 84, 744 S.E.2d 552, 562 (2013) (holding only judgments finally disposing of the whole subject matter of the action before the Workers' Compensation Commission are final decisions). The remittitur will be sent as provided in Rule 221(b) of the South Carolina Appellate Court Rules.

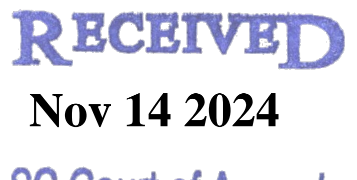
FOR THE COURT

Columbia, South Carolina

cc:

Michael Eugene Patterson, Jr., Esquire
Robert Clyde Limehouse, III, Esquire
James G. Christmas, Esquire

FILED
Oct 30 2024



THE STATE OF SOUTH CAROLINA
In The Court of Appeals

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

SCWCC File No.: 1925084
Appellate Case No. 2024-0001822

Christina Walthour, Claimant, ……………………………………………………….Respondent

v.

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

APPELLANTS' PETITION FOR REHEARING AND REINSTATEMENT

James G. Christmas, Esquire
Robert Clyde Limehouse, III, Esquire
Christmas Injury Lawyers
250 Mathis Ferry Rd., Ste. 102
Mount Pleasant, SC 29464
(843) 874-6564
Attorneys for Respondent

Michael E. Patterson, Jr., Esquire
Mingledorff & Patterson, LLC
245 Seven Farms Dr.
Ste. 310, Box 13
Charleston, SC 29492
(843) 471-1015
Attorney for Appellants

TABLE OF CONTENTS

Table of Authorities…………………………………………………………………..3

Questions Presented……………………………………………………………………4

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 Appellants with an adequate remedy as defined by S.C. Code Ann. § 1-23-380 and South Carolina case law?

Statement of the Case…………………………………………………………………...4

Standard of Review……………………………………………………………………..5

Arguments………………………………………………………………………………6

Conclusion………………………………………………………………………………11

TABLE OF AUTHORITIES

Cases

Arnold v. Carolina Power & Light, 168 S. C. 163, 167 S. E. 234 (1933).

Bone v. U.S. Food Service, 404 S.C. 67, 744 S.E.2d 552 (2013)

Brown v. Bi-Lo, Inc., 354 S.C. 436, 439, 581 S.E.2d 836, 838 (2003)

CFRE, LLC v. Greenville Cnty. Assessor, 395 S.C. 67, 716 S.E.2d 877 (2011).

Davis v. S.C. Dep't of Corr., 444 S.C. 138, 906 S.E.2d 569 (2024), reh'g denied (Oct. 10, 2024)

Lark v. Bi–Lo, Inc., 276 S.C. 130, 276 S.E.2d 304 (1981)

Price v. Peachtree Elec. Servs., Inc., 405 S.C. 455, 748 S.E.2d 229 (2013)

S.C. Baptist Hosp. v. S.C. Dep't of Health & Envt'l Control, 291 S.C. 267, 353 S.E.2d 277 (1987)

Town of Summerville v. City of N. Charleston, 378 S.C. 107, 662 S.E.2d 40 (2008)

Code Sections

S.C. Code Ann. § 1-23-380

Rules

Rule 201, SCACR

Rule 221, SCACR

Rule 240, SCACR

Rule 260, SCACR

Rule 267, SCACR

Rule 268, SCACR

Orders

Walthour v Remedy Intelligent Staffing, Inc., SC Ct. App. Order dated October 30, 2024

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 Appellants with an adequate remedy as defined by S.C. Code Ann. § 1-23-380 and South Carolina case law?

STATEMENT OF THE CASE

Appellants' Petition for Rehearing stems from an Order issued by Justice Hewitt on October 30, 2024. See Walthour v Remedy Intelligent Staffing, Inc., SC Ct. App. Order dated October 30, 2024.[1] The order issued by Justice Hewitt dismissed Appellants' appeal, and ordered remittitur under Rule 221(b), SCACR. Id. Justice Hewitt ruled that Appellants' appeal should be dismissed since "a final order has not been issued by the Commission and there are matters remaining to be decided." Id. Pursuant to Rule 221(a), SCACR, and Rule 260(a), SCACR, Appellants are asking the Court of Appeals to rehear this matter and then reinstate Appellants' appeal.

Procedurally, this case arrived at the Court of Appeals following Appellants denial of Respondent's workers' compensation claim. Based on Appellants' 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.[2] The single commissioner determined that the claim was compensable, and Appellants filed a notice

---

[1] In an effort to be concise and to assist the Court, Appellants shall hereinafter refer to this Order as "Justice Hewitt's Order."

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

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. The Appellate Panel upheld the single commissioner's decision and found that Respondent's claim was compensable.

Subsequently, on October 25, 2024, Appellants timely filed a Notice of Appeal with the Court of Appeals for review of the Appellate Panel's decision and order. As discussed above, Justice Hewitt issued his order five days later on October 30, 2024.

STANDARD OF REVIEW

"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. Appellants 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, Appellants would argue that the appropriate standard of review is one used for statutory construction, which is de novo.

Justice 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.

ARGUMENT

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?

And

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?

Appellants first two questions presented are interconnected and thus Appellants will address both at the same time.

"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's decision 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 Appellants. 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 absolutely a final decision on the merits.

If the Appellate Panel's decision is not appealable then the case is over for Appellants and the claim is compensable. There is no future hearing with the South Carolina Workers' Compensation Act that would allow Appellants to relitigate the compensability of the claim. Therefore, Appellants have exhausted all of their "administrative remedies available within the

agency". S.C. Code Ann. § 1-23-380. Appellants 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.

Justice Hewitt's Order relies on the decision in Bone v. U.S. Food Serv., 404 S.C. 67, 744 S.E.2d 552 (2013). Appellants believe the reliance on Bone is misplaced, as the decision in Bone does not control in this matter. The controlling case is the recent South Carolina Supreme Court decision in Davis v. S.C. Dep't of Corr., 444 S.C. 138, 153, 906 S.E.2d 569, 577 (2024), reh'g denied (Oct. 10, 2024).

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).

The South Carolina Supreme Court's decision in Davis has specifically and unequivocally determined what is to be considered a final decision on the merits in a workers' compensation case. According to the Court in Davis, a final decision on the merits is one in which a decision is issued regarding the ***"grand or denial of a claim."***

There is no question that the single commissioner and the Appellate Panel issued a decision and order ruling on the grant or denial of the claim. At the hearing before the single commissioner and the Appellate Panel, Appellants contention was that Respondent's claim was not a

compensable claim. Both the single commissioner and the Appellate Panel ruled against Appellants and determined that Respondent's claim was compensable. Therefore, pursuant to the decision in Davis, Appellants have exhausted their administrative remedies, a final decision on the merits has been issued, and Appellants are now entitled to judicial review by the Court of Appeals. Id., see also Davis at 153 and 577 (2024).

Regarding the decision in Bone, Appellants would first point out that Bone involved a case in which the Circuit Court had jurisdiction over appeals from the Appellate Panel, which is no longer the law in this state.[3] Therefore, Appellants position is that as the Bone decision relates to the appealability of a case and the jurisdiction of the Court of Appeals, it is not applicable to cases under the new law in which appeals from the Appellate Panel are now immediately directed to the Court of Appeals.

However, it should also be noted that the decision in Bone was extremely divisive, resulting in a 3-2 decision in which two of the justices concurred in the result only and the other two justices wrote a lengthy and compelling dissent. Therefore, Appellants would also argue that the portion of the decision in Bone that addresses the interpretation of a final decision under S.C. Code Ann. § 1-23-380 has now been overruled by the decision in Davis. In fact, Justice Kittridge argued in Davis that Bone should be overruled.

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

[3] "This case arose under prior law that required an appeal from the Commission to be made first to the circuit court. Such appeals are now directed to the Court of Appeals for all injuries occurring on or after July 1, 2007. S.C.Code Ann. § 42–17–60 (Supp.2012)"; Pee Dee Reg'l Transp. v. S.C. Second Injury Fund, 375 S.C. 60, 650 S.E.2d 464 (2007). See the first footnote in Bone.

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 Appellants with an adequate remedy as defined by S.C. Code Ann. § 1-23-380 and South Carolina case law?

Appellants believe that the Appellate Panel's decision is a final decision on the merits under 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."

Even if the Appellate Panel decision could somehow be construed as interlocutory or otherwise not final, then the Appellate Panel decision has left Appellants without an adequate remedy.

If Appellants' appeal is dismissed, then Appellants 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.

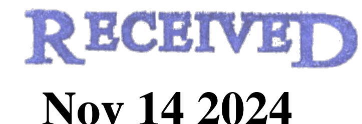
According to the Justice Hewitt Order, only after all of this takes place will Appellants have a right to appeal this matter. If that were allowed to happen, and the Court of Appeals agreed with Appellants that the claim is not compensable, and Appellants were justified and correct in their denial of the claim, then Appellants 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 Appellants hundreds of thousands of dollars.

Additionally, if Justice Hewitt's Order is not reversed, and Appellants appeal reinstated, then Respondent would potentially have a res judicata argument that would preclude Appellants appeal once Respondent has reached MMI. Therefore, for the foregoing reasons, Appellants do not have an adequate remedy left within the South Carolina Workers' Compensation Act.

CONCLUSION

For all of the foregoing reasons, the Justice Hewitt Order should be reversed and Appellants Petition for Rehearing and Reinstatement should be granted.



Nov 14 2024

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM SOUTH CAROLINA
WORKERS' COMPENSATION COMMISSION APPELLATE PANEL

The Honorable Melody L. James, Commissioner
The Honorable Aisha Taylor, Commissioner
The Honorable Cynthia C. Dooley, Commissioner

Appellate Case No. 2024-001822
S.C. W.C.C. File No.: 1925084

PROOF OF SERVICE

I certify that I have served the *Appellants' Petition for Rehearing and Reinstatement* by forwarding via electronic mail and/or U.S. mail on November 14, 2024 addressed to attorneys of record, James G. Christmas and Robert Clyde Limehouse, III, to the South Carolina Court of Appeals, and to the South Carolina Workers' Compensation Commission at the following:

James G. Christmas, Esquire
Robert Clyde Limehouse, III, Esquire
Christmas Injury Lawyers
250 Matthis Ferry Rd., Ste. 102
Mt. Pleasant, SC 29464
Telephone: (843) 874-6564
gc@gchristmaslaw.com
trey@gchristmaslaw.com
Attorneys for Respondent

Amy Bracy
Judicial Department
S.C. Workers' Compensation Commission
P.O. Box 1715
Columbia, SC 29202-1715
judicial@wcc.sc.gov

S.C. Court of Appeals
P.O. Box 11629
Columbia, SC 29211
ctappfilings@sccourts.org

s/Michael E. Patterson, Jr.
S.C. Bar No.: 78437
Mingledorff & Patterson, LLC
245 Seven Farms Dr., Ste. 310, Box 13
Charleston, SC 29492
Telephone: (843) 471-1015
michael@mptrial.com
Attorney for Appellants

November 14, 2024
Charleston, SC

The South Carolina Court of Appeals

Christina Walthour, Claimant, Respondent,

v.

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

Appellate Case No. 2024-001822

ORDER

After careful consideration of the petition for rehearing, the Court is unable to discover that any material fact or principle of law has been either overlooked or disregarded, and hence, there is no basis for granting a rehearing. Accordingly, the petition for rehearing is denied.

Stephanie P. McDonald J.

[signature] J.

Kristi Curtis J.

Columbia, South Carolina

FILED
Mar 07 2025

cc:
Michael Eugene Patterson, Jr., Esquire
Robert Clyde Limehouse, III, Esquire
James G. Christmas, Esquire

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

/s/Michael E. Patterson, Jr.
Michael E. Patterson, Jr. (SC Bar #78437)
Mingledorff & Patterson, LLC
245 Seven Farms Dr., Ste. 310, Box 13
Charleston, SC 29492
Telephone: (843) 471-1015
E-mail: michael@mptrial.com
Attorney for Petitioners

Other counsel of record:

James G. Christmas, Esq.
Robert Clyde Limehouse, III, Esq.
250 Mathis Ferry Rd., Ste. 102
Mount Pleasant, SC 29464
Telephone: (843) 900-1499
E-Mail: gc@christmaslaw.com; trey@christmaslaw.com
Attorneys for Respondent

INDEX

Table of Authorities………………………………………………………………… 1

Certificate of Counsel……………………………………………………………. 2

Questions Presented………………………………………………………………… 2

Statement of the Case……………………………………………………………. 2

Standard of Review………………………………………………………………… 3

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………………………………………….. 5

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………………………….. 11

Conclusion……………………………………………………………………….. 13

TABLE OF AUTHORITIES

Cases
Arnold v. Carolina Power & Light, 168 S. C. 163, 167 S. E. 234 (1933)

Ashford v. Prysmian Power Cables & Sys., USA, 427 S.C. 361, 830 S.E.2d 912 (Ct. App. 2019)

Bone v. U.S. Food Service, 404 S.C. 67, 744 S.E.2d 552 (2013)

Brown v. Bi-Lo, Inc., 354 S.C. 436, 439, 581 S.E.2d 836, 838 (2003)

CFRE, LLC v. Greenville Cnty. Assessor, 395 S.C. 67, 716 S.E.2d 877 (2011)

Davis v. S.C. Dep't of Corr., 444 S.C. 138, 906 S.E.2d 569 (2024), reh'g denied (Oct. 10, 2024)

Hilton v. Flakeboard Am. Ltd., 418 S.C. 245, 791 S.E.2d 719 (2016)

Lark v. Bi–Lo, Inc., 276 S.C. 130, 276 S.E.2d 304 (1981)

Price v. Peachtree Elec. Servs., Inc., 405 S.C. 455, 748 S.E.2d 229 (2013)

Russell v. Wal-Mart Stores, Inc., 426 S.C. 281, 826 S.E.2d 863 (2019)

S.C. Baptist Hosp. v. S.C. Dep't of Health & Envt'l Control, 291 S.C. 267, 353 S.E.2d 277 (1987)

Shatto v. McLeod Reg'l Med. Ctr., 406 S.C. 470, 753 S.E.2d 416 (2013)

Town of Summerville v. City of N. Charleston, 378 S.C. 107, 662 S.E.2d 40 (2008)

Code Sections
S.C. Code Ann. § 1-23-380

S.C. Code Ann. § 1-23-390

Rules
Rule 201, SCACR

Rule 221, SCACR

Rule 240, SCACR

Rule 242, SCACR

Rule 260, SCACR

Rule 267, SCACR

Rule 268, SCACR

Orders
Walthour v Remedy Intelligent Staffing, Inc., SC Ct. App. Order dated October 30, 2024

Walthour v Remedy Intelligent Staffing, Inc., SC Ct. App. Order dated March 7, 2025

Petitions
Walthour v Remedy Intelligent Staffing, Inc., Petitioners' Petition for Rehearing and Reinstatement, dated November 14, 2024.

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,

/s/ Michael E. Patterson, Jr.

Michael E. Patterson, Jr. (SC Bar #78437)
Mingledorff & Patterson, LLC
245 Seven Farms Dr., Ste. 310, Box 13
Charleston, SC 29492
Telephone: (843) 471-1015
E-mail: michael@mptrial.com
Attorney for Petitioners

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.

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.

James G. Christmas
Robert Clyde Limehouse, III.
250 Mathis Ferry Rd., Ste. 102
Mount Pleasant, SC 29464
gc@christmaslaw.com
trey@christmastlaw.com

SC Workers' Compensation Commission
Amy Bracy
Judicial Department
P.O. Box 1715
Columbia, SC 29202-1715
abracy@wcc.sc.gov

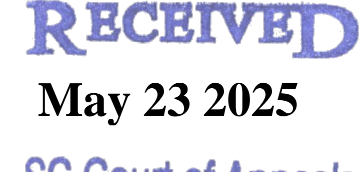
Supreme Court of South Carolina
The Honorable Patricia A. Howard
P.O. Box 11330
Columbia, SC 29211
supctfilings@sccourts.org

Court of Appeals of South Carolina
The Honorable Jenny Abbott Kitchings
P.O. Box 11629
Columbia, SC 29211
ctappfilings@sccourts.org

(Signature contained on the following page.)

April 7, 2025

/s/Michael E. Patterson, Jr.
Michael E. Patterson, Jr. (SC Bar #78437)
Mingledorff & Patterson, LLC
245 Seven Farms Dr., Ste. 310, Box 13
Charleston, SC 29492
Telephone: (843) 471-1015
E-mail: michael@mptrial.com
Attorney for Petitioners


May 23 2025

THE STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

APPEAL FROM THE SOUTH CAROLINA
WORKERS' COMPENSATION COMMISSION

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

APPELLATE CASE NO.: 2025-000655

Christina Walthour, Claimant,.. RESPONDENT,

v.

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

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

CHRISTMAS INJURY LAWYERS, LLC

s/ Robert Limehouse, III
Robert C. "Trey" Limehouse, III, Esquire
Gary Christmas, Esquire
250 Mathis Ferry Road, Suite 102
Mount Pleasant, South Carolina 29464
Telephone: (843) 535-8000
Facsimile: (843) 884-2007
Email: trey@gchristmaslaw.com
gary@gchristmaslaw.com

Attorneys for Respondent

<u>**INDEX**</u>

TABLE OF AUTHORITIES ii

INTRODUCTION 1

STATEMENT OF THE CASE...1

ARGUMENT I..1

ARGUMENT II 1

ARGUMENT III...2

CONCLUSION...3

CERTIFICATE OF SERVICE 4

TABLE OF AUTHORITIES

CASES

Davis v. S.C. Dep't of Corr., 444 S.C. 138, 906 S.E.2d 569 (2024) 1

Russell v. Wal-Mart Stores, Inc., 426 S.C. 281, 826 S.E.2d 863 (2019)...................2

Hilton v. Flakeboard Am. Ltd., 418 S.C. 245, 791 S.E.2d 719 (2016)......................1

Shatto v. McLeod Reg'l Med. Ctr., 406 S.C. 470, 753 S.E.2d 416 (2013) 1

Price v. Peachtree Elec. Servs., Inc., 405 S.C. 455, 748 S.E.2d 229 (2013) 1

Bone v. U.S. Food Serv., 404 S.C. 67, 744 S.E.2d 552 (2013) 1, 2

STATUTES

S.C. Code Ann. Section 1-23-380..1, 2

S.C. Code Ann. Section 42-17-60..1, 2

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,

s/ Robert Limehouse, III

Robert C. "Trey" Limehouse, III, Esquire
Gary Christmas, Esquire
250 Mathis Ferry Road, Suite 102
Mount Pleasant, South Carolina 29464
Telephone: (843) 535-8000
Facsimile: (843) 884-2007
Email: trey@gchristmaslaw.com
gary@gchristmaslaw.com

Attorneys for Respondent

RECEIVED
May 23 2025
SC Court of Appeals

THE STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

APPEAL FROM THE SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION

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

APPELLATE CASE NO.: 2025-000655

Christina Walthour, Claimant,...RESPONDENT,

v.

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

CERTIFICATE OF SERVICE

I, Robert C. "Trey" Limehouse, III, Esquire, Attorney for Respondent, do hereby certify that on the 23rd day of May 2025, I caused to be filed, via electronic mail, a copy of Respondent's Return to Petitioners' Petition for Writ of Certiorari, with the Clerk of the South Carolina Supreme Court. One (1) copy of Respondent's Return was furnished to counsel for Petitioners via electronic mail at the following address:

Michael Patterson, Esquire
Mingledorff & Patterson, LLC
245 Seven Farms Dr., Suite 310
Box 13
Charleston, SC 29492
michael@mptrial.com
Attorney for Petitioners

[Signature Page to Follow]

s/ Robert Limehouse, III
Robert C. "Trey" Limehouse, III, Esquire
Gary Christmas, Esquire
250 Mathis Ferry Road, Suite 102
Mount Pleasant, South Carolina 29464
Telephone: (843) 535-8000
Facsimile: (843) 884-2007
Email: trey@gchristmaslaw.com
gary@gchristmaslaw.com

Attorneys for Respondent

May 23, 2025
Mount Pleasant, South Carolina

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. 2025-000655

Christina Walthour, Claimant…………………………………………….……………...Respondent,

v.

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

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

/s/Michael E. Patterson, Jr.
Michael E. Patterson, Jr. (SC Bar #78437)
Mingledorff & Patterson, LLC
245 Seven Farms Dr., Ste. 310, Box 13
Charleston, SC 29492
Telephone: (843) 471-1015
E-mail: michael@mptrial.com
Attorney for Petitioners

Other counsel of record:

James G. Christmas, Esq.
Robert Clyde Limehouse, III, Esq.
250 Mathis Ferry Rd., Ste. 102
Mount Pleasant, SC 29464
Telephone: (843) 900-1499
E-Mail: gc@gchristmaslaw.com; trey@gchristmaslaw.com
Attorneys for Respondent

INDEX

Table of Authorities……………………………………………………………… 1

Statement of the Case……………………………………………………………. 2

Response to Argument I..………………………………………………………… 2

Response to Argument II...………………………………………………………. 2

Response to Argument III...……………………………………………………… 3

Conclusion……………………………………………………………………….. 13

TABLE OF AUTHORITIES

Cases

Arnold v. Carolina Power & Light, 168 S. C. 163, 167 S. E. 234 (1933)

Ashford v. Prysmian Power Cables & Sys., USA, 427 S.C. 361, 830 S.E.2d 912 (Ct. App. 2019)

Bone v. U.S. Food Service, 404 S.C. 67, 744 S.E.2d 552 (2013)

Brown v. Bi-Lo, Inc., 354 S.C. 436, 439, 581 S.E.2d 836, 838 (2003)

CFRE, LLC v. Greenville Cnty. Assessor, 395 S.C. 67, 716 S.E.2d 877 (2011)

Davis v. S.C. Dep't of Corr., 444 S.C. 138, 906 S.E.2d 569 (2024), reh'g denied (Oct. 10, 2024)

Hilton v. Flakeboard Am. Ltd., 418 S.C. 245, 791 S.E.2d 719 (2016)

Lark v. Bi–Lo, Inc., 276 S.C. 130, 276 S.E.2d 304 (1981)

Price v. Peachtree Elec. Servs., Inc., 405 S.C. 455, 748 S.E.2d 229 (2013)

Price v. Peachtree Elec. Servs., Inc., 396 S.C. 403, 721 S.E.2d 461 (Ct. App. 2011).

Russell v. Wal-Mart Stores, Inc., 426 S.C. 281, 826 S.E.2d 863 (2019)

S.C. Baptist Hosp. v. S.C. Dep't of Health & Envt'l Control, 291 S.C. 267, 353 S.E.2d 277 (1987)

Shatto v. McLeod Reg'l Med. Ctr., 406 S.C. 470, 753 S.E.2d 416 (2013)

Town of Summerville v. City of N. Charleston, 378 S.C. 107, 662 S.E.2d 40 (2008)

Code Sections

S.C. Code Ann. § 1-23-380

S.C. Code Ann. § 1-23-390

Rules

Rule 201, SCACR

Rule 221, SCACR

Rule 240, SCACR

Rule 242, SCACR

Rule 260, SCACR

Rule 267, SCACR

Rule 268, SCACR

Orders

Walthour v Remedy Intelligent Staffing, Inc., SC Ct. App. Order dated October 30, 2024

Walthour v Remedy Intelligent Staffing, Inc., SC Ct. App. Order dated March 7, 2025

Petitions

Walthour v Remedy Intelligent Staffing, Inc., Petitioners' Petition for Rehearing and Reinstatement, dated November 14, 2024.

STATEMENT OF THE CASE

This is an appeal from the South Carolina Workers' Compensation Commission Appellate Panel (the "Appellate Panel"). 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. Justice Hewitt determined that the Appellate Panel Order was not a "final decision" as defined by S.C. Code Ann. § 1-23-380, and dismissed Petitioners' appeal. Petitioners filed for review, and a three judge panel from the Court of Appeals affirmed Justice Hewitt's Order. Subsequently, Petitioners timely filed a Writ of Certiorari, to which Respondent's filed a Return. This is Petitioners' Reply to Respondent's Return.

RESPONSE TO ARGUMENTS I – III

1. **Respondent's first argument is not relevant to the questions presented by Petitioners' Writ of Certiorari.**

The ultimate question presented by Petitioners' Writ of Certiorari is whether or not the Appellate Panel's decision was a "final decision" as defined by S.C. Code Ann. § 1-23-380, and if not, then whether the Appellate Panel's decision provides Petitioners with an adequate remedy as defined by S.C. Code Ann. § 1-23-380 and South Carolina case law? Respondent's first argument does not address any of these issues but rather focuses on a specific provision contained in S.C. Code Ann. § 42-17-60 that has no bearing on whether Petitioners' appeal should be dismissed or reinstated. The inclusion of Respondent's first argument appears to be an effort to color the opinion of the Court by disparaging Petitioners.

2. **Respondent's second argument fails to provide an accurate interpretation of South Carolina case law.**

Respondent first cites Bone v. U.S. Food Service, 404 S.C. 67, 744 S.E.2d 552 (2013) to support Respondent's position that the Appellate Panel's decision was not a final decision as

contemplated by S.C. Code Ann. § 1-23-380. However, there are two important pieces of information that are not included in Respondent's analysis.

The first important piece of information that Respondent failed to include is the fact that 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.

The Court explained the statutory changes, in the second footnote of Bone, 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).

Therefore, the Court has explicitly stated that the decision in Bone only applies to cases involving injuries that occurred prior to July 1, 2007. Thus, the decision in Bone is not applicable to the case at bar.

The second important piece of information that Respondent failed to include is the fact that despite the inapplicability of Bone to the present case, the decision in Bone was a plurality decision and not a majority decision. Therefore, the decision in Bone is not binding precedent.

Respondent next cites Davis v. S.C. Dep't of Corr., 444 S.C. 138, 906 S.E.2d 569 (2024), reh'g denied (Oct. 10, 2024), in support of Respondent's position. However, Respondent failed to address the portion of Davis that is relevant to the case at bar. Specifically, the Court in Davis stated the following,

> "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).

Finally, Respondent cites to Price v Peachtree Elec. Servs., Inc., 405 S.C. 455, 748 S.E.2d 229 (2013) as further support for Respondent's second argument. However, Price is distinguishable both factually and procedurally, although that is not the most glaring reason why Price is inapplicable to the present case. As discussed above, there were significant changes to the South Carolina Administrative Processes Act and the South Carolina Workers' Compensation Act in 2006 and 2007. Therefore, as stated above, the Court determined that the changes would only apply to injuries which occurred on or after July 1, 2007.

In Price, the claimant suffered two injuries, one on December 9, 2002, and the other in November of 2003. Price v. Peachtree Elec. Servs., Inc., 396 S.C. 403, 405–06, 721 S.E.2d 461, 462 (Ct. App. 2011). Therefore, just as in Bone, the injury in question occurred prior to July 1, 2007, which makes Price as inapplicable to the present case as Bone is.

3. **Respondent's third and final argument fails to explain how the dismissal of Petitioners' appeal provides Petitioner with an adequate remedy.**

As an initial matter, Respondent inaccurately refers to the decision in Bone as a "majority opinion." As stated above, the decision rendered in Bone was a plurality opinion and thus is not binding precedent. See Bone v. U.S. Food Service, 404 S.C. 67, 744 S.E.2d 552 (2013).

Petitioners maintain that the Appellate Panel's decision was a final decision, however even if the decision was not a final decision, then Petitioners have been left without an adequate remedy.

It is important to remember that Petitioners denied the compensability of this case. 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.

Respondent's position is that only after all of this takes place will Petitioners have a right to appeal this matter. How does this solution offer Petitioners an adequate remedy? If we follow Respondent's logic, then procedurally, Petitioners cannot appeal until after Respondent has reached MMI.

For Petitioners to maintain their appeal they would not be able to settle the case, and therefore, once Respondent reaches MMI, Petitioners would be forced to a hearing before a Single Commissioner to determine Claimant's permanent partial or permanent total disability. To preserve Petitioners issues for appeal, Petitioners would have to argue that the claim should be denied in its entirety despite the fact that Claimant has received all necessary medical treatment

and temporary wage benefits. At that point, the Single Commissioner would rightfully question how Petitioners' arguments are not at this point moot?

Despite this excellent question, even if the Single Commissioner were to diligently entertain Petitioners arguments that the claim should be denied, and in fact Respondent should be required to reimburse Petitioners for all of the benefits outlined above, then how do the Parties and the Commission adequately and effectively relitigate the issue of compensability?

Assuming arguendo there is an answer to that question, and Petitioners finally get back in front of the Court of Appeals, what happens if the Court of Appeals agrees with Petitioners? What happens if the Court of Appeals agrees with Petitioners that the claim is not compensable?

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.

The only logical conclusion is that Petitioners do not have any adequate remedy and therefore, Petitioners' appeal should be reinstated.

CONCLUSION

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

Respectfully submitted,

/s/ Michael E. Patterson, Jr.
Michael E. Patterson, Jr. (SC Bar #78437)
Mingledorff & Patterson, LLC
245 Seven Farms Dr., Ste. 310, Box 13
Charleston, SC 29492
Telephone: (843) 471-1015
E-mail: michael@mptrial.com
Attorney for Petitioners

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. 2025-000655

Christina Walthour, Claimant…………………………………………….……………...Respondent,

v.

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

PROOF OF SERVICE

I certify that I have served the Petitioners' Reply to Respondent's Return to Petitioners' 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 June 2, 2025, at the addresses listed below; and, I further certify that on June 2, 2025, the Petitioners' Reply was served on all parties listed below via electronic mail.

James G. Christmas
Robert Clyde Limehouse, III.
250 Mathis Ferry Rd., Ste. 102
Mount Pleasant, SC 29464
gc@gchristmaslaw.com
trey@gchristmaslaw.com

SC Workers' Compensation Commission
Amy Bracy
Judicial Department
P.O. Box 1715
Columbia, SC 29202-1715
abracy@wcc.sc.gov

Supreme Court of South Carolina
The Honorable Patricia A. Howard
P.O. Box 11330
Columbia, SC 29211
supctfilings@sccourts.org

Court of Appeals of South Carolina
The Honorable Jenny Abbott Kitchings
P.O. Box 11629
Columbia, SC 29211
ctappfilings@sccourts.org

(Signature contained on the following page.)

June 2, 2025

/s/Michael E. Patterson, Jr.
Michael E. Patterson, Jr. (SC Bar #78437)
Mingledorff & Patterson, LLC
245 Seven Farms Dr., Ste. 310, Box 13
Charleston, SC 29492
Telephone: (843) 471-1015
E-mail: michael@mptrial.com
Attorney for Petitioners

The Supreme Court of South Carolina

Christina Walthour, Claimant, Respondent,

v.

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

Appellate Case No. 2025-000655

ORDER

Based on the vote of the Court, the petition for a writ of certiorari is granted. The parties shall proceed to serve and file ten additional copies of the appendix and ten copies of their briefs in the manner provided by Rule 242(i), SCACR.

FOR THE COURT

BY Patricia A. Howard
CLERK

Columbia, South Carolina
August 14, 2025

cc:
Michael Eugene Patterson, Jr.
Robert Clyde Limehouse, III
James G. Christmas
The Honorable Jenny Abbott Kitchings