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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.

PETITION FOR REHEARING

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Appellant, by and through his undersigned attorneys, hereby files this Petition for Rehearing. On September 24, 2025, this Court issued an Order dismissing this case as not immediately appealable. The Order did not address the arguments made by Appellant as to why the issues on appeal are immediately appealable. Instead, the Court summarily concluded that the Appellate Panel's Decision and Order denying compensation to Appellant is not a final decision or judgment as those terms are defined in precedent. The Court relied entirely on 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) and 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).

As grounds for granting his Petition, Appellant would respectfully show the Court may have overlooked or misapprehended the evidence, law and arguments raised on the issues of: (1) the post-Bone cases clarifying the Bone holding and expanding the type of workers's compensation case that can be immediately appealed; (2) the consequences to the parties; and (3) the inability to appeal final orders that do not end the case prevents parties from ever appealing due to the law of the case doctrine.

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.

In dismissing the instant appeal, the Court held "The order on appeal is not a final decision or final judgment as those terms are defined in precedent." The Court further held "Claimant may

appeal this intermediate order after a final decision is entered. If successful, he will be entitled to the relief provided by law."

Respectfully, this holding overlooks the fact that the Appellate Panel denied *with finality* Hinson's right to an award of monetary compensation during his period of temporary disability. The Court erroneously conflates a *final award* denying *intermediate compensation* with a final decision ending the entire case.[1] This was not an interlocutory order governing discovery or venue or denying a motion to dismiss –which is generally what is meant by an interlocutory order. In Davis our supreme 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.*" See Davis v. S.C. Dept. of Corrections, 444 S.C. 138, 906 S.E.2d 569 (2024). Hinson's *claim* was for temporary total disability compensation. The Panel's order resolved the merits of his *claim* against him.[2]

The Appellate Panel held Hinson "is not entitled to temporary total disability payments from the date of his termination, of January 25, 2022, and ongoing pursuant to *S.C. Code Ann.* § 42-9-

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[1]In point of fact, even an order awarding permanent disability compensation does not necessary end the entire case. A claimant often receives medical treatment for life. For example, in Risinger v. Knight Textiles, 353 S.C. 69, 577 S.E.2d 222 (Ct. App. 2002), the claimant requested a hearing requesting additional medical treatment even though the Commission had previously issued a final order finding him permanently and totally disabled and entitled to lifetime treatment. One might ask whether the order after the final order could even have been brought let alone appealed under this Court's strict interpretation of Bone.

[2]Court gives unnecessary weight to boilerplate language in the Appellate Panel's order stating all other issues are held in abeyance. There were no other issues. The sole issue before the Commission was whether or not Hinson was entitled to receive temporary total disability after being terminated allegedly for cause while still under a disability. Issues of medical treatment and permanent compensation were not before the Commission because they were not raised in the pleadings and arguments of the parties.

260." [R.P. 21]. Assuming this holding is in error, what then is Hinson's remedy? Should he gamble that the order is interlocutory and wait until he reaches MMI, go to another hearing on permanent disability and hope to appeal it then?

Respectfully, it would be malpractice for his attorney to recommend such a course of action. It is well established that if no appeal of the award is made within the jurisdictional time limit, the findings become the law of the case. "The adjudications and awards of compensation boards or commissions, as well as the judgments of courts, in proceedings for the recovery of compensation, are generally held to be conclusive upon the parties and their privies, as to the matters involved or justiciable therein, so as to preclude, under the doctrine of res judicata, the relitigation thereof in subsequent proceedings." Wall v. C. Y. Thomason Co., 101 S.E.2d 286, 232 S.C. 153 (1957).

Indeed, it is worth noting that the supreme court held in Davis that she was entitled to appeal precisely because the Appellate Panel's ostensibly intermediate order would ultimately result in her entire case being dismissed. The court stated:

> Davis states it is clear that, if the Appellate Panel's order is not a final agency decision, SCDC intends to pursue the argument on remand that the Appellate Panel's decision effectively ended her claim, even if it did not do so directly, or that the **Appellate Panel's findings (including the point that she "voluntarily" withdrew her Form 50) are now the law of the case, and SCDC will move for a dismissal with prejudice based on those findings.** Davis asserts this would leave her without an adequate remedy on appeal, so the Appellate Panel's order should be immediately reviewable.

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

The court agreed with Davis's position.

So it is here. If Hinson had not appealed, the denial of temporary compensation would be the law of the case. He could not raise it again before a subsequent single commissioner or appellate panel. As in Davis, Respondents would undoubtedly argue that the denial was the law of the case.

There is simply no procedural process whereby Hinson could raise the issue again – particularly if there were no other issue to appeal. If one assumes Hinson was satisfied with a subsequent award for permanent disability or settled his claim for permanent disability compensation, how was he to appeal the previous order? The rules require him to file a 50 for a hearing, try the issue before the single commissioner, appeal that order to the appellate panel, argue it before the appellate panel, and only then can he file a Notice of Appeal to this Court. How can he do that when the Single Commissioner and Appellate Panel have already issued final orders on his claim for temporary compensation?

The Court may presume that somehow he can raise the issue again, and if so, then the only harm is a delay in payment or receipt of money. While it is true that the amount of money at issue is a drop in the bucket to an insurance carrier, to a disabled worker it is a lifeline. Consider this Court's recent decision in Brown involving an appeal 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 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. For the disabled employee who loses his car, housing and credit rating – or goes without necessary medical treatment – the interim loss cannot be adequately compensated for. While an appeal may be a long and imperfect process, it can bring relief when the right to appeal is immediate. Waiting years until the end of the case means relief happens too late or never at all. The employee often simply gives up out of desperation.

Appellant also wishes to state that judicial economy applies not just to the courts, but to the parties as well. Respondents never moved to dismiss this appeal as interlocutory. Both parties assumed the orders below were appealable. Appellant filed his Notice of Appeal on November 19, 2024. The parties fully briefed the case including filing Final Briefs and the Record on Appeal. The appealability issue was raised *sua sponte* by the Court only after the parties had fully prepared the case for a ruling – short only of oral argument. The parties had no alternative. Employees and employers will continue to appeal orders deciding the merits of claims – they dare not do otherwise.

Allowing this appeal to go forward does not stop the progress of the case. If the parties cannot resolve the other issues in the case as they arise, they are still able to try issues of medical treatment and permanent disability before the Commission. See Rule 241(a), SCACR (The lower court or administrative tribunal retains jurisdiction over matters not affected by the appeal including the authority to enforce any matters not stayed by the appeal.").

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 – perhaps – with a hearing awarding permanent disability compensation and lifetime medical treatment. It would be an absurd result if the parties were only allowed to appeal one time in the life of a case – and only when the Commission made a final permanent disability award.

The implications of this ruling are far-reaching – not just to the parties nor even just to workers' compensation, but to other areas of the law as well. For example, family court cases share

the same ongoing nature as workers' compensation. While some orders are final in the sense the Court is using here, others are not. A family court order typically addresses issues of child custody, alimony, contempt proceedings, attorney's fees, etc. If a party had to wait until the final *final* order closing the court's file, there would be no appeals from family court.

Preventing appeals other than awards of compensation would violate public policy. There is an extensive body of case law covering myriad fact patterns and interpreting most of Title 42 going back 90 years. If the only orders that can be appealed are orders either denying compensation altogether or awarding permanent disability compensation, then workers' compensation case law will be forever frozen.

The Court also overlooked the second aspect of appealability, to wit, that denying an immediate appeal of this order will not provide an adequate remedy. The Administrative Procedures Act provides "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). Appellant maintains the Appellate Panel's Order is a final action or ruling denying his claim for compensation on the merits.

The order is certainly not procedural or preliminary – neither is it intermediate. Appellant recognizes that the Court held the order is intermediate because it did not "dispose of the whole subject matter of the action before the Workers' Compensation Commission . . ." under a literal application of Bone.

However, Bone reasoned that the term "final judgment" means "something that finally disposes of the whole subject matter of the action or terminates the action, leaving nothing to be done but to execute the judgment." Bone v. U.S. Food Serv., 404 S.C. 67, 84, 744 S.E.2d 552, 562

(2013). Applying that definition to the instant case means the Appellate Panel's Order was a final judgment because it disposed of the whole subject matter of the action – specifically the claim for temporary total disability which was the only action pled and the only action before the Commission. This is no mere sophistry – it is the only logical way to apply Bone to the way workers' compensation works in the real world.

Moreover, the key to Bone lies in the final sentence. The court held: "we affirm the decision of the Court of Appeals, which found *the current order remanding the matter to the Commission for further proceedings does* not constitute a final judgment as required by section 1–23–390 and, therefore, is not immediately appealable." Id. (emphasis added). The issue as framed by the court stated "This is a workers' compensation case concerning the appealability of a circuit court *order of remand*." Id.

There is no order of remand in this case. There is nothing else for the Commission to do. The order denied Hinson's claim for temporary compensation and, without an appeal, that is the end of it.

Even if the Appellate Panel's order is considered intermediate, the Court must also consider whether Hinson has no other *adequate* remedy. That analysis is detailed in the Memorandum of Law as to Appealability and earlier in this Petition. Suffice it to say,Hinsonhas 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.

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 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 reconsider its Order dismissing the case, 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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Attorney for Appellant

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Columbia, South Carolina

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PROOF OF SERVICE

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

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October 9, 2025

SAMUELS REYNOLDS
LAW FIRM

STEPHEN B. SAMUELS
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MICHAEL R. PARKS
ATTORNEYS AT LAW

October 9, 2025

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:

Enclosed for filing please find a copy of our **Petition for Rehearing** along with our **Proof of Service** regarding the above-referenced matter. Please have your staff file and return to us a clocked copy of the **Petition for Rehearing** and **Proof of Service.** A check in the amount of $50.00, made payable to the SC Court of Appeals for the filing fee of the Petition for Rehearing, will be hand delivered to the Court.

By copy of this letter and attachments, we are serving defense counsel, Mark Davis, Esquire, with a copy of same 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