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THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM SOUTH CAROLINA
Workers' Compensation Commission

Appellate Case No. 2024-001975
Order filed September 24, 2025

Troy Hinson, Claimant,. . . . . Petitioner,

v.

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

PETITION FOR WRIT OF CERTIORARI

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CERTIFICATE OF COUNSEL

Counsel for Petitioner certifies that the Petition for Rehearing was made and finally ruled on by the Court of Appeals on November 5, 2025. [App. p. 180].

QUESTION PRESENTED

1. Whether the Court of Appeals erred in dismissing as interlocutory Petitioner's appeal of the Order of the Workers' Compensation Commission denying with finality the sole issue at trial, to wit: Petitioner's claim for temporary total disability compensation.

STATEMENT OF THE CASE

Petitioner Troy Hinson files this Petition for Writ of Certiorari asking the Court to issue the writ and remand to the Court of Appeals with instructions to hear his appeal on the merits. The underlying appeal arises out of a Form 15 (Section III)[1] hearing before the Workers' Compensation Commission wherein the Single Commissioner and Appellate Panel issued orders denying Hinson's claim for compensation. After the parties filed final briefs with the Court of Appeals, the court "dismiss[ed] this case as not immediately appealable."

Petitioner Troy Hinson was employed as the maintenance director for Merrill Gardens, an assisted living facility in Columbia, South Carolina. On July 29, 2021, Hinson injured his back (with radiculopathy), both hips and abdomen/groin (hernia) pushing a full industrial trash compactor up a ramp. His claim was accepted and treatment was provided.

Following the accident Hinson was completely out of work due to his injury for various periods, during which time he was paid temporary total disability compensation [TTD] from July

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[1]The Form 15 (Section III) is used by an injured worker who "believe[s] that the temporary compensation should not have been stopped . . . A hearing will be held within 60 days of receipt of your request to determine if temporary compensation has been properly terminated."

29-August 2, 2021; August 13-23, 2021; and October 29-December 22, 2021.

On December 13, 2021, Hinson's orthopaedic surgeon, Dr. James O'Leary, put Hinson on a 5-pound pushing, pulling, lifting and carrying limit along with prohibiting twisting and stretching. [R.P. 171]. Upon receiving Dr. O'Leary's report, upper management contacted Dougal Kear, the new general manager of Merrill Gardens., instructing him to bring Hinson back to work. [R.P. 460, lines 11-18; p. 467, lines 16-21]. Kear wrote a form letter to Hinson dated December 20, 2021. The form detailed the restrictions. [R.P. 345].

Respondent's counsel emailed the letter to Petitioner's counsel, prompting an exchange of emails between the attorneys. Petitioner's counsel requested a job description.

The job description provided showed Hinson's job as a maintenance director was well outside these restrictions, requiring lifting up to 100 pounds and pushing/pulling up to 40 lbs.

MERRILL GARDENS

ENJOY MORE

MAINTENANCE DIRECTOR

PHYSICAL DEMANDS

The physical demands and work environment described below represent the activities and surroundings of the position:

- Must be able to lift up to 60 lbs. on a frequent basis and 100 lbs. on an occasional basis, push/pull up to 40lbs., carry up to 30 lbs. for up to 100 yards, and constantly stand and walk.
- Must be physically able to climb stairs and ladders. Must be able to climb on top of and walk on a roof.
- Must be able to work within crawl spaces.
- This job requires occasional stooping, bending, twisting, crouching, kneeling and crawling.
- Specific vision abilities required by this job are close, distance, color and peripheral vision; depth perception; and the ability to adjust focus.
- This position is frequently required to communicate with clients and Team Members through talking and listening.
- While performing the duties of this job, the employee is regularly required to see, hear, and use hands to handle and feel. Specific vision abilities required by this job include close vision and color vision.
- Able to smell as necessary to discern resident's needs and building emergencies.
- Physically able to handle, grasp, and reach throughout the workday.

[R.P. 256-269].

Hinson accepted the offer and duly reported for work on December 22, 2021. As detailed more fully in the briefs, various issues arose concerning Hinson's inability to meet full-time hours due to his medical and physical therapy appointments, inability to physically perform all the tasks required of him, an incident where he called in an outside painting contractor to repaint an apartment, and allegations by Dougal Kerr of insubordination and a lack of communication.[2]

On January 4, 2022, the Carrier filed a Form 15 (Section II) terminating TTD on the grounds that "Claimant has been released to return to work at limited duty and employer has provided limited duty work with the terms upon which the Employee has been released."[3] [R.P. 44].

At some point – probably at the same time they brought him back to work – Merrill Gardens upper management decided to terminate Hinson's employment. Per Dougal Kear, the decision was made by "A combination of *our Workers' Comp rep*, my vice president of operations. Our HR of our home office made that decision." [R.P. 460, lines 11-18 (emphasis added); p. 467, lines 16-21].

Following the instructions from upper management. Kear wrote a letter of termination to Hinson stating: " . . . we made the decision to end your employment with us effective today 1/25/22." [R.P. 270]. Kear presented the letter to Hinson shortly after he reported to work on January 25, 2022. At the meeting, Kear explained the purported reasons for the termination. The testimony of Kear and Hinson is detailed in the briefs.

Later that afternoon, Claimant's counsel emailed Defense counsel stating:

> Good afternoon Mark.

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[2]Hinson testified that this was because he was at authorized physical therapy and doctor's appointments. Kear admitted he "found out later that the reason [he] couldn't reach him is because he's at the doctor appointments." [R.P. 461].

[3]Note this is incorrect, as Hinson actually returned to work. This section of the Form 15 applies to terminating TTD when the employee *refuses* limited duty work.

> Your client terminated Troy's employment this morning. As you know, I had previously expressed concerns over the fact he is physically unable to do the work and was concerned that they might fire him. They have now done so.
>
> Would you please confirm for me that TTD will be restarted effective today?

Respondents refused to restart TTD. Petitioner filed the Form 15 (Section III) on February 8, 2022. [R.P. 44].

The case was tried before Commissioner McCaskill on April 25, 2022. The sole issue at the hearing was whether Hinson was entitled to receive TTD from the date his employment was terminated.

Petitioner argued his disability was presumed to continue as he previously received temporary total disability compensation, thus the case was controlled by Grayson v. Carter Rhoad Furniture, 312 S.C. 250, 439 S.E.2d 859 (Ct.App.1993), *aff'd as modified*, 317 S.C. 306, 454 S.E.2d 320 (1995) and Cranford v. Hutchinson Constr., 399 S.C. 65, 731 S.E.2d 303 (Ct. App. 2012)[4]. He also contested the allegation that he had been fired for misconduct or cause.

Respondents relied on Pollack v. Southern Wine & Spirits of America, 405 S.C. 9, 747 S.E.2d 430 (2013)(employee fired for cause not entitled to temporary compensation where "It is undisputed that Appellant, *who never received TTD benefits*, was accommodated by Respondent within his light duty work restrictions . . ." because his lack of income was due to his own misconduct and not his disability)(emphasis added).

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[4] In Grayson, "[t]he supreme court held that because Grayson was released with work restrictions, there was in reality *no* evidence that Grayson's period of temporary total disability ever ended prior to his firing. Because Grayson's benefits were never properly terminated in accordance with Regulation 67-504, Grayson was entitled to have his benefits reinstated retroactively." Cranford at 75-76, 731 S.E.2d 308). Accord, Martin v. Rapid Plumbing, 369 S.C. 278, 631 S.E.2d 547 (Ct. App. 2006)(holding procedures to suspend or terminate temporary compensation require strict compliance).

On January 31, 2024, Commissioner McCaskill issued a Decision and Order holding (1) Defendants did not improperly stop TTD benefits; (2) Claimant is not entitled to temporary total disability payments from the date of termination, of January 25, 2022, and ongoing pursuant to *S.C. Code. Ann.* § 42-9-260; and (3) the 25% penalty pursuant to *S.C. Code. Ann.* § 42-9-260(g) is not applicable and not assessed. [R.P. 21].

Hinson timely appealed to the Appellate Panel. The Appellate Panel fully affirmed the Single Commissioner's Order.

Hinson timely appealed to the Court of Appeals. The parties filed final briefs and the Record on Appeal.

On August 22, 2025, the court wrote a letter to the attorneys stating:

> We reviewed the order(s) challenged on appeal and determined that it might not be appealable pursuant to *Brown v. Se. Servs., H.H.I., LLC*, Op. No. 6111 (S.C. Ct. App. filed May 21, 2025) (Howard Adv. Sh. No. 19 at 68). Accordingly, you must serve and file memoranda addressing the issue of appealability within ten (10) days of this letter.

The parties filed their Memoranda of Law within the deadline.

On September 24, 2025, the Court of Appeals issued an Order dismissing "the case as not immediately appealable."

Petitioner filed his Petition for Rehearing on October 9,2025. Respondents filed their Return to Petition for Rehearing on October 20, 2025. Petitioner filed his Reply to Return to Petition for Rehearing on October 21, 2025.

On November 5, 2025, the Court of Appeals denied the petition for rehearing.

This Petition for Writ of Certiorari followed.

ARGUMENT

This case presents novel and important issues in two areas: (1) whether a final order denying compensation at an intermediate stage of a workers' compensation case is appealable; and (2) resolving an apparent conflict between this Court's precedents on payment of temporary compensation to employees who are terminated for cause while presumed to be disabled. To be clear, this Petition is limited to the issue of appealability. Nonetheless, inherent in the significance of the appealability issue is the underlying question of how important issues worthy of this Court's attention and wisdom are to be reached when the right to appeal is frustrated by procedural barriers not intended by the Legislature nor the Courts. The importance of these issues and the need to provide clarification to parties, practitioners and the Commission warrants granting of the Petition.

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 of Appeals 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."

The Administrative Procedures Act provides: " A party who has exhausted all administrative remedies available within the agency and who is aggrieved by a *final decision* in a contested case is entitled to judicial review . . ." S.C. Code Ann. § 1-23-380 (2008) (emphasis added). The APA further provides that "A preliminary, procedural or intermediate agency action or ruling is immediately appealable if review of the final agency decision would not provide an adequate remedy. Id.

A. The Appellate Panel's Order is an appealable Final Order because the Appellate Panel denied *with finality* Hinson's right to an award of monetary compensation during his period of temporary disability.

The court's order dismissing the case 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 conflated a *final award* denying *intermediate compensation* with a final decision ending the entire case.[5] This was not an procedural order governing discovery or venue or denying a motion to dismiss –which is generally what is meant by an interlocutory order. In Davis this 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 the claim* against him.[6]

As in the seminal case of Bone, the issue here is what constitutes a "final decision or final judgment" under § 1-23-380. Strictly speaking, Bone addressed the definition of "final judgment" under § 1-23-390, whereas § 1-23-380 uses the term "final decision." The Court of Appeals conflated both terms, so the analysis here is essentially the same.

Bone holds the term *final judgment* means "[a] court's last action that settles the rights of the parties and disposes of all issues in controversy, except for the award of costs . . . and enforcement

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[5]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 filed for 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 the court's strict interpretation of Bone.

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of the judgment." Bone v. U.S. Food Serv., 404 S.C. 67, 78, 744 S.E.2d 552, 558-559 (2013). The employer's appeal in Bone was deemed to be interlocutory and unappealable because the circuit court had reversed and remanded the case to the Commission. As such, the Court reasoned:

> [T[here is no enforceable judgment at this stage as the Commission is tasked with further obligations in determining the extent of Bone's compensation and in setting forth a final award that constitutes an executable judgment. An order as to compensability, without addressing the claimant's current medical status and specific benefits to be awarded, is not a final judgment disposing of the entirety of the action and leaving nothing further to be done but the execution of the judgment." Id.

The first takeaway from Bone is that an appellate order reversing and remanding a case for further fact finding is not immediately appealable. This inherently makes sense for the order on remand will be immediately appealable – and will be an order with complete findings of fact and conclusions of law.

The second takeaway is that a final judgment "settles the rights of the parties and disposes of *all issues in controversy* . . ." Id. (emphasis added). This is a critical point in the analysis misapprehended by the Court of Appeals. The order on remand in Bone would not have ended the workers' compensation claim because the Commission was directed to determine the medical and compensation benefits Bone was entitled to and make an award. It is safe to assume that as Bone had received no such benefits, the award would necessarily be for medical treatment and temporary compensation. It could not be an award of final compensation ending the case.

The Commission denied Bone's case *in toto*. In Bone "all parties agree the Commission's order was a final decision subject to initial appellate review in the circuit court because it disposed of the entirety of Bone's claim." Id. The only difference here is that appeals now bypass the Circuit Court and go directly to the Court of Appeals.

The Court of Appeals appears to have relied on its own decision in Brown. In Brown, the

court reasoned:

> The purpose of the final judgment rule "is to present the whole cause for determination in a single appeal and thus to prevent the unnecessary expense and delay of repeated appeals." Workers' compensation cases frequently involve awards of temporary benefits, including medical care, followed by a period of treatment before there is a final decision adjudicating whether the injury caused any permanent disability and determining the appropriate benefits to compensate for that disability. If this order is immediately appealable, every order addressing compensability and awarding temporary benefits or medical treatment would be immediately appealable. Review of intermediate orders would cease to be a rare exception.

Brown v. Se. Servs., H.H.I., LLC, Op. No. 6111 (S.C. Ct. App. filed May 21, 2025) (Howard Adv. Sh. No. 19 at 68)(internal citation omitted).

In short, under Brown and the order in this instant case, there can only be one appeal in a case, and it can only occur if the Commission either denies the entire claim or makes an award of permanent disability compensation. Such a regime is simply unworkable.

In the case *sub judice*, Hinson filed a Form 15 (Section III) "to determine if temporary compensation has been properly terminated." The denial of that determination "dispose[d] of all issues in controversy."

The Court of Appeals appeared to rely on boilerplate language in the Appellate Panel's order stating "all other issues are held in abeyance." [R.P. 40, Finding of Fact 67]. There were no other issues in controversy. The sole issue before the Commission was whether 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.

As such, the Commission's order was a final decision subject to immediate appeal. The Court of Appeals erred in dismissing the appeal. Therefore, the Court should grant the Petition for Writ of Certiorari.

B. Even if the Appellate Panel's Order is not a final decision, the Order is immediately appealable because review of the final agency decision would not provide an adequate remedy.

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.* § 42-9-260." [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. See S.C. Code Ann. § 42-17-60 (supp. 2025)(The award of the commission . . . if not reviewed in due time, or an award of the commission upon the review, as provided in Section 42-17-50, is conclusive and binding as to all questions of fact."). See, also Wall v. C. Y. Thomason Co., 101 S.E.2d 286, 232 S.C. 153 (1957)("The adjudications and awards of compensation boards or commissions . . . 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.").

A similar, albeit less obvious scenario arose in Davis. This Court held in Davis that the employee 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 successfully argue that the denial was the law of the case. Hinson's *sole* remedy is to appeal.

The Court of Appeals seemed to presume that somehow Hinson can appeal again: "Claimant may appeal this intermediate order after a final decision is entered. If successful, he will be entitled to the relief provided by law."

In reality, there is simply no procedural process whereby Hinson could raise the issue a second time – 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 the appellate court. How can he do that when the Single Commissioner and Appellate Panel have already issued final orders on his claim for temporary compensation?

In addition to the legal prejudice, Hinson suffers actual prejudice. Consider the Court of Appeal'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*." Brown v. Se. Servs., H.H.I., LLC, Op. No. 6111 (S.C. Ct. App. filed May 21, 2025) (Howard Adv. Sh. No. 19 at 68). 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.

Petitioner 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 – an assumption consistent with Bone. Petitioner 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 of Appeals 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.[7] See Rule 241(a), SCACR (The lower

[7]The attorneys discussed the fact that disputed issues of MMI and additional medical treatment were not before the Commissioner at trial. [R.P. 453]. Petitioner's counsel stated at the outset: "We are here on [one] issue, temporary total and related 25 percent penalty." R.P. 379.

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.").

Preventing appeals other than awards of final 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.

There are myriad reasons why Petitioner is entitled to have his appeal heard by the Court of Appeals. An injured worker must be allowed to appeal an Appellate Panel order denying compensation. There is simply no alternative.

The misconception under which the Court of Appeals is laboring as to rules on appealability is a novel and important issue that needs to be clarified and corrected by the South Carolina Supreme Court. Therefore, Petitioner requests that the Court grant the petition and issue the writ of certiorari.

CONCLUSION

For the foregoing reasons, the Writ of Certiorari should be issued and the case remanded to the Court of Appeals for an opinion on the merits. Alternatively, the Court should grant the Petition and hear argument on both the issue of appealability and the merits as briefed by the parties.

Respectfully Submitted,

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