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S.C. SUPREME COURT

The South Carolina Court of Appeals

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August 22, 2025

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Re: Troy Hinson v. Merrill Gardens
Appellate Case No. 2024-001975

Dear Counsel:

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.

Very truly yours,

Catherine Harrison, deputy
CLERK

The South Carolina Court of Appeals

Troy Hinson, Claimant, Appellant,

v.

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

Appellate Case No. 2024-001975

ORDER

This appeal arises out of an order of the Workers' Compensation Commission finding Appellant sustained a compensable injury but is not entitled to temporary total disability payments. The order specifically states all other issues are held in abeyance.

The order on appeal is not a final decision or final judgment as those terms are defined in precedent. *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).

Further, the record does not demonstrate that this order decides issues that must be reviewed immediately for appellate review to be adequate. Claimant may appeal this intermediate order after a final decision is entered. If successful, he will be entitled to the relief provided by law.

For these reasons, we dismiss this case as not immediately appealable. The remittitur will be sent as provided by Rule 221(b), SCACR.

31021

FOR THE COURT

Columbia, South Carolina

cc: Stephen Benjamin Samuels, Esquire
Richard Mark Davis, Esquire
Jeffrey Brandt Kuykendal, Esquire

FILED
Sep 24 2025

The South Carolina Court of Appeals

Troy Hinson, Claimant, Appellant,

v.

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

Appellate Case No. 2024-001975

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.



J.



J.



J.

Columbia, South Carolina

FILED
Nov 05 2025

cc:

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Richard Mark Davis, Esquire
Jeffrey Brandt Kuykendal, Esquire

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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Attorney for Appellant

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-*

¹In 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.

²Court 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, Hinson has no income, little physical ability to earn an income in building maintenance, and a complete inability to challenge this ruling until he reaches MMI, tries his case, and receives an award of permanent disability compensation. He cannot retry the instant ruling, so must instead wait on his doctors to place him at MMI and then try his case simply to obtain a final judgment of permanent compensation allowing him to appeal. Indeed, he is virtually compelled to try the case because recovering past due temporary compensation

is foreclosed if he settles. In short, he has no adequate remedy other than appeal.

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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October 9, 2025
Columbia, South Carolina

Attorney for Appellant

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.

RETURN TO PETITION FOR REHEARING

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*Attorneys for Respondents Merrill Gardens,
LLC and Church Mutual Insurance Company*

Pursuant to the Court's direction as stated in its October 13, 2025 letter, Respondents Merrill Gardens, LLC and Church Mutual Insurance Company (collectively "Respondents") provide the following Return to the Petition for Rehearing filed by Appellant, Troy Hinson ("Appellant"). Respondents respectfully request that the Court deny the Petition for Rehearing.

ARGUMENT

Appellant repeatedly expressed befuddlement, in light of this Court's September 24, 2025 dismissal of his appeal, as to how and when he could appeal the unanimous decisions of the single commissioner and the full commission that he is not entitled to temporary total disability ("TTD") benefits after he was terminated for cause by Merrill Gardens, LLC. Yet, he repeatedly answers his own questions. As Appellant acknowledges multiple times, until there is a final determination on his alleged permanent disability, an appeal, including an appeal of the denial of his TTD benefits, is interlocutory. Thus, the objections Appellant raises to this Court's dismissal of his appeal are illusory at best.

Appellant argues that his failure to appeal a denial of TTD benefits would render his lack of entitlement to TTD benefits the "law of the case." However, the law of the case doctrine would not be applicable, as the denial of Appellant's temporary total disability benefits would not become law of the case unless this Court affirmed the denial by the Commission. *See Lifschultz Fast Freight, Inc. v. Hanysworth, Marion, McKay & Guerard*, 334 S.C. 244, 245, 513 S.E.2d 96, 96-97 (1999) (emphasis added) (the doctrine of the law of the case "applies only to subsequent proceedings in the same litigation **following an appellate decision.**"); *Ross v. Med. Univ. of S.C.*, 328 S.C. 51, 62, 492 S.E.2d 62, 68 (1997) (emphasis added) ("[t]he doctrine of the law of the case prohibits issues [that] **have been decided in an prior appeal** from being relitigated in the trial court in the same case."). Put simply, the law of the case doctrine would

not preclude Appellant from appealing, at the appropriate time, the determination by the South Carolina Workers' Compensation Commission (the "Commission") that he was not entitled to TTD benefits.

Appellant also argues he would have no ability to appeal a denial of TTD benefits if he were satisfied with a determination as to his permanent disability. This argument ignores the fundamentals of appellate practice. At the conclusion of the matter – once Appellant receives a determination of his permanent disability – there would be a final decision and he could appeal any prior order about which he disagreed. In fact, whether or not he was satisfied with the final determination by the Commission would be irrelevant. Appellant would be required to specify each and every order by the Commission he was appealing. *See* SCAR 203(d). Put simply, Appellant would not have to be dissatisfied with the ultimate determination by the Commission to appeal one of its earlier decisions.

Appellant further argues that it is not fair to make an employee wait to appeal. Appellant acknowledges this Court's determination that an award concerning temporary benefits is not immediately appealable. *See Brown v. Se. Servs., HHI, LLC*, 917 S.E.2d 925 (Ct. App. 2025) ("[b]ecause the commission's order is neither a final decision nor is it the type of interlocutory order that has to be reviewed immediately to ensure adequate appellate review, we dismiss this case as not immediately appealable."). However, Appellant argues that because *Brown* dealt with a decision adverse to the employer or insurance carrier, it should not apply to him as an employee. There is no basis in South Carolina appellate jurisprudence that lays out one set of rules for employers and insurers and another for the employee.

In fact, Appellant's argument that it is uniquely unfair to an employee rings hollow. Even if he were correct that an employer or insurance carrier could financially weather an

adverse decision on an award concerning TTD benefits better than an employee, as he notes, a successful appeal on such an adverse ruling would leave an employer or insurance carrier with only the remedy of trying to recoup money from the employee, who, in Appellant's telling, has nothing from which an employer could recover. Whereas, an employee who, at the proper time, successfully appeals an adverse award on TTD benefits would be more likely to recover from the employer or insurance carrier. Put simply, any unfairness is mutual and irrelevant. As Appellant notes, it is not a perfect system, but there is no basis to make one set of appellate rules for employers and another for employees.

Appellant also suggests his financial condition means he has no adequate remedy and his interlocutory appeal should be immediately considered. This argument ignores that South Carolina Courts have made it clear, immediate appeals of interlocutory orders are rare. *See Hilton v. Flakeboard Am. Ltd.*, 418 S.C. 245, 252, 791 S.E.2d 719, 723 (2016) *quoting State v. Lytchfield*, 230 S.C. 405, 409, 95 S.E.2d 857, 859 (1957) ("circumstances...that will permit the immediate appeal of an interlocutory administrative decision under section 1-23-380(A) 'are about as rare as the proverbial hens' teeth.'"). If adverse financial impacts were sufficient to allow an interlocutory appeal to be immediately considered, virtually all interlocutory appeals would be immediately appealable. One side or the other could always state that allowing the case to proceed to a final determination would be financially detrimental.

Additionally, Appellant argues workers compensation law is unique and cannot be evaluated like civil litigation cases because workers compensation cases involve multiple hearings and decisions.¹ Respectfully, many civil litigation cases involve multiple hearings and multiple decisions. Regardless, Appellant asserts it would be "an absurd result" if the losing

¹ Appellant also argues the impact of this Court's decision on family law cases. It goes without saying that this case is not a family law case and such arguments are irrelevant.

party were not able to appeal to this Court whether an accident was work-related, followed by appeals to this Court over adverse decisions concerning medical treatment, followed by appeals to this Court over adverse decisions concerning temporary compensation, followed by the final appeal over a determination of permanent disability. *See* Petition for Rehearing at p 6. Again, respectfully, Appellant has it backwards. The absurdity exists when those issues are constantly and repeatedly appealed to this Court as opposed to being addressed once when there is a final decision. *See Brown*, 917 S.E.2d at 925 (if the order addressing an award of temporary benefits were 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.”).

Finally, Appellant argues he will be forced to try his case as any settlement would foreclose his ability to appeal the denial of his total temporary disability benefits. As an initial point, Appellant’s argument is incorrect. The parties to a settlement could certainly agree that an employee’s right to appeal a TTD benefit award was preserved. Regardless, even if the argument were factually correct, almost all claimants or litigants who are faced with an unappealable interlocutory order face the same problem. Most of the time those claimants or litigants must reach a final decision before they can appeal. Thus, they are faced with the choice of trying their case or reaching finality in some other fashion. In essence, Appellant argues that all orders, interlocutory or otherwise, should be immediately appealable, which has no support in South Carolina law.

CONCLUSION

This Court was correct in denying Appellant’s appeal as not immediately appealable.

October 20, 2025

Respectfully submitted,

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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,

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Merrill Gardens, LLC, Employer, and
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REPLY TO RETURN TO PETITION FOR REHEARING

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Attorney for Appellant

Appellant, by and through his undersigned attorneys, hereby files this Reply to Return to Petition for Rehearing. **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.**

Respondents suggest that Appellant's objections to the Court's dismissal of his appeal "are illusory at best." [Return to Petition for Rehearing, page 1].

Respondents argue that "the law of the case doctrine would not be applicable . . . unless this Court affirmed the denial by the Commission." The fatal flaw in this argument is that the statute explicitly provides:

The award of the commission, as provided in Section 42-17-40, 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.*
S.C. Code Ann. § 42-17-60 (2007)(emphasis added).

This is a plain unvarnished definition of the law of the case doctrine.

"It is a fundamental rule of law than an appellate court will affirm a ruling by a lower court if the offended party does not challenge that ruling." Jean Hoefer Toal, Appellate Practice in South Carolina 214 (3rd ed. 2016), *citing Biales v. Young*, 315 S.C. 166, 432 S.E.2d 482 (1993). Justice Toal went on to explain "The principles of 'law of the case' are also applicable to intermediate appeals." Id., page 216.

The Workers' Compensation Act is equally clear that after a single commissioner issues an award "an application for review [must be] made to the [full] commission within fourteen days from the date when notice of the award shall have been given . . ." S.C. Code Ann. § 42-17-50 (2007). "If no application is made for review of the hearing commissioner's award, that award becomes

effective as the award of the Commission.” Wall v. C. Y. Thomason Co., 101 S.E.2d 286,288, 232 S.C. 153 (1957).

An aggrieved party in a workers’ compensation case has no option but to appeal a final decision awarding or denying monetary compensation or medical treatment, thus resolving the merits of the claim before the Commission – even if it does not end the case. See Davis v. S.C. Dept. of Corrections, 444 S.C. 138, 906 S.E.2d 569 (2024)(“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.*”)(emphasis added). A party *has* to appeal at least to the Appellate Panel, lest the ruling become the law of the case. From there a party has to continually appeal up to the supreme court unless the appellate body (appellate panel or appellate court) either remands for further proceedings or dismisses as interlocutory. See Bone v. U.S. Food Serv., 404 S.C. 67, 84, 744 S.E.2d 552, 562 (2013)(“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.”).

Respondents also argue the dismissal of this particular appeal is of no import because “At the conclusion of the matter – once Appellant receives a determination of his permanent disability – there would be a final decision and he could appeal any prior order about which he disagreed. . . . Put simply, Appellant would not have to be dissatisfied with the ultimate determination by the Commission to appeal one of its earlier decisions.” [Return to Petition for Rehearing, page 2]. Such a procedure works perfectly well in the world of jury trials – since there is ultimately only one trial and one judgment. It does not work in workers’ compensation.

Under Respondents’ theory, Hinson could wait to appeal the current order until the case is

tried to an award of permanent disability. That seems implausible – not to mention reckless – given the law of the case doctrine set out in the Act. Even if he could, such an approach is highly impractical. Most cases settle without a hearing. Forcing Hinson to try his case on permanent disability rather than settle would create an additional burden on the commission and frustrate the public policy favoring settlement over litigation. See Riley v. Ford Motor Co., 414 S.C. 185, 198, 777 S.E.2d 824 (2015)(confirming South Carolina's “strong public policy favoring the settlement of disputes.”).

Notwithstanding Respondents’ confidence that an unappealed order of a single commissioner denying temporary compensation could somehow be appealed at a later stage, the Act indicates this is not possible. S.C. Code Ann. § 42-17-50; 42-17-60 (2007). A claimant cannot relitigate the temporary compensation issue at a second single commissioner. Nor can he appeal it to the appellate panel. Or perhaps he can, but even then the appellate panel is bound by its previous final decision and would have to dismiss the appeal – possibly even with sanctions for filing an appeal without merit. See Reg. 67-703 (allowing Commission to charge a \$250.00 fee “if the Commission determines that the appeal was without merit . . .”). There is no direct appeal to the Court of Appeals from the single commissioner.

Lastly Respondents points out that “any unfairness is mutual and irrelevant” in allowing an employee to appeal an order denying the claim while prohibiting an employer from appealing an order awarding the claim. In all candor and respect to the Court, Appellant agrees that the Court’s strict and formulaic interpretation of Bone is unfair to both sides. Orders that determine the merits of the claim, such as the one appealed here, should be appealable to both sides.

The rule that an *employer or carrier* suffers no true prejudice by being unable to immediately

appeal an award of medical benefits and temporary compensation is a judicial construct. As this Court stated in Brown, “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). See, also, Rose v. JJS Trucking,¹ 411 S.C. 366, 368, 369 768 S.E.2d 412, 413 (Ct. App. 2015)(holding parties have an adequate remedy when the only alleged prejudice is delaying the payment of money between insurance providers).

The rationale behind this apparent disparity is a recognition that workers’ compensation “laws should be construed liberally in favor of the employees and their dependents, in furtherance of the beneficent purposes for which they were enacted, and to avoid any incongruous or harsh results.” Cokeley v. Robert Lee, Inc., 197 S.C. 157, 14 S.E.2d 889 (1941). The courts did not want payment of compensation and medical treatment to be delayed by excessive litigation, appeals and remands. It was most certainly not the intent of the Bone court to frustrate the purposes of the Act. Indeed, the Bone court explicitly held the employer’s appeal was interlocutory because the case had been remanded for payment of benefits to the employee. The court was seeking to speed up the

¹Rose is instructive in the sense that the employer did not appeal the order awarding medical benefits and compensation to the employee. The employer appealed the refusal of the hearing commissioner “to order a transfer of responsibility pursuant to subsection 42–1–415(A) of the South Carolina Code (2015).” The commission refused to order the transfer, finding the issue of transfer was ‘not ripe for adjudication at this time.’” Id. While the Court noted in dicta that “The commission also determined Rose had not reached maximum medical improvement, and thus did not rule on his claim for permanent disability,” the holding was based on the fact that the Commission did not rule one way or the other on the transfer of responsibility and that the dispute between the two insurance companies could be addressed at a later hearing and, if necessary, appealed. In short, the appeal in Rose did not involve the merits of the final order awarding benefits to Rose. Indeed, the appellant appealed the Commission’s refusal to address an issue altogether on the grounds of ripeness. Moreover, the failure to appeal the order on the merits meant that the award to Rose became the law of the case.

payment of benefits to the employee; not delay them. “Common sense indicates that a compensation law passed to increase workers’ rights (because their common law rights were too narrow) should not thereafter be narrowly construed.” Pierre v. Seaside Farms, Inc., 689 S.E.2d 615, 386 S.C. 534 (2010).

Respondents argue “[t]he absurdity exists when those issues are constantly and repeatedly appealed to this Court as opposed to being addressed once when there is a final decision.” [Return to Petition for Rehearing, page 4]. Yet, this case involves one issue. Once the appeal is decided, the issue will not rise again in the same case. There is no risk of being “trapped in a cycle of remands for years” as the dissent posited in Bone. Bone v. U.S. Food Serv., 399 S.C. 566, 733 S.E.2d 200 (2012)(Hearn, J., dissenting).

The procedural problem with repeated remands does not lie with the appellate courts; it lies with the Commission. Our supreme court addressed this problem in two cases involving interlocutory orders. See, e.g., Russell v. Wal-Mart Stores, Inc., 426 S.C. 281, 286, 826 S.E.2d 863, 865 (2019) (repeated cycle of unnecessary appeals and remands within the Commission deprived the parties of an adequate remedy, thus was immediately appealable);² Hilton v. Flakeboard America Limited, 418 S.C. 245, 791 S.E.2d 719 (2016)(“Under these unique circumstances where the Commission has ordered the relitigation of the entire dispute without regard to the matters raised by the appealing party, we find that requiring Hilton to wait until the final agency decision to appeal would not provide him an adequate remedy.”). One presumes that Russell and Hilton (and Davis) have clarified the law, such that a future cycle of remands will be avoided in the future.

²Russell is on appeal again after remand and is set for oral argument before the Court on October 1, 2024.

From Hinson's point of view, this case is more like Russell, Hilton and Davis. He is the one suffering because he has been denied benefits with no recourse to this court. 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 of a final order on the issues raised at trial 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.

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THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM SOUTH CAROLINA
Workers' Compensation Commission

Appellate Case No. 2024-001975

Troy Hinson, Claimant, ... Appellant,

v.

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

MEMORANDUM OF LAW AS TO APPEALABILITY

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

ARGUMENT

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

The Decision and Order of the Appellate Panel is immediately appealable because it is a “final decision” denying with finality Hinson’s right to an award of monetary compensation. The Administrative Procedures Act provides: “ A party who has exhausted all administrative remedies available within the agency and who is aggrieved by a *final decision* in a contested case is entitled to judicial review . . .” S.C. Code Ann. § 1-23-380 (2008) (emphasis added). The statute’s use of the term *final decision* rather than *final judgment* cannot be accidental.

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

A “final decision” as used in section 1-23-380, concerning review by the court of appeals, has been treated similarly to the term “final judgment” that appears in section 1-23-390 (entitled, “Supreme Court review”) and governs review by this Court of a lower court’s decision. Cf. S.C. Code Ann. § 1-23-390 (Supp. 2023) (“An aggrieved party may obtain a review of a final judgment of the circuit court or the court of appeals pursuant to this article by taking an appeal in the manner provided by the South Carolina Appellate Court Rules as in other civil cases.”). While we recognize the similarity of sections 1-23-380 and 1-23-390 because they both govern judicial review, *we note they concern two distinct stages in the review process, so they are not interchangeable*. However, the essential requirement of finality remains constant.

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

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

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

Id.

From this pragmatic standpoint, the Court holds:

In our view, the intent of the South Carolina General Assembly is to allow the Appellate Panel to administratively review a final “award” (*grant or denial of a claim*) by the single commissioner (under section 42-17-50), and then to permit, in turn, judicial review of the “final agency decision” of the Appellate Panel in a direct appeal to the court of appeals (under section 1-23-380). Routinely allowing multiple, intervening appeals prior to a final agency decision on a claim would only lengthen the laborious review process, which in Davis’s case has already extended over eight years without a determination of the merits of the claim.

[Id. at 129].

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

The second aspect of appealability under the Administrative Procedures Act is “A preliminary, procedural, or intermediate agency action or ruling is immediately reviewable if review

of the final agency decision would not provide an adequate remedy.” S.C. Code Ann. § 1-23-380 (2008).

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

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

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

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

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

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

Id.

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

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

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

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

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

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

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

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

CONCLUSION

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

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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.

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ARGUMENT

Pursuant to the Court's direction as stated in its August 22, 2025 letter, Respondents Merrill Gardens, LLC and Church Mutual Insurance Company (collectively "Respondents") provide the following supplemental arguments concerning whether this appeal is immediately reviewable.

Reviews by the Court of Appeals of decisions by the South Carolina Workers' Compensation Commission (the "Commission") are limited to reviews of final decisions by the Commission or decisions that cannot be adequately remedied unless reviewed prior to a final decision. *See* S.C. Code Ann. § 1-23-380 (2024); *Brown v. Se. Servs., HHI, LLC*, 917 S.E.2d 925 (Ct. App. 2025) ("[b]ecause the commission's order is neither a final decision nor is it the type of interlocutory order that has to be reviewed immediately to ensure adequate appellate review, we dismiss this case as not immediately appealable."). Here, the decision of the Commission was neither a final decision nor a decision that cannot be adequately remedied unless reviewed prior to a final decision.

A. The Decisions of the Commission Was Not a Final Decision.

Final decisions are those judgments by the Commission finally disposing of the whole subject matter of the action. *See Bone v. U.S. Food Serv.*, 404 S.C. 67, 84, 744 S.E.2d 552, 562 (2013); *Charlotte-Mecklenburg Hosp. Auth. v. S.C. Dept. of Health & Env't Control*, 387 S.C. 265, 267, 692 S.E.2d 894, 895 (2010) ("[a] final judgment disposes of the whole subject matter of the action or terminates the particular proceeding or action, leaving nothing to be done but to enforce by execution what has been determined.").

Here, it should be undisputed that the Commission did not dispose of the whole subject matter of the action. This appeal arises from the claim by Appellant, Troy Hinson ("Appellant"),

that he was eligible for temporary benefits under the Workers Compensation Act and that he had not reached maximum medical improvement. The Commission has not ruled on whether Appellant is entitled to an award for permanent disability. Accordingly, this is not a final decision or final judgment. *See Brown*, 917 S.E.2d at 925 *citing Rose v. JJS Trucking*, 411 S.C. 366, 368, 768 S.E.2d 412, 413 (Ct. App. 2015).

Accordingly, Appellant's appeal is premature and must be dismissed.

B. The Decision of the Commission Can Be Adequately Remedied After a Final Decision.

Similarly, the decision of the Commission can be adequately remedied after a final decision. This second category of immediate review represents a narrow exception. *See Hilton v. Flakeboard Am. Ltd.*, 418 S.C. 245, 252, 791 S.E.2d 719, 723 (2016) *quoting State v. Lytchfield*, 230 S.C. 405, 409, 95 S.E.2d 857, 859 (1957) ("circumstances...that will permit the immediate appeal of an interlocutory administrative decision under section 1-23-380(A) 'are about as rare as the proverbial hens' teeth.'"). This case is not one of those rare occasions.

As the Court in *Brown* noted, if the order in that case, which addressed an award of temporary benefits, were 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*, 917 S.E.2d at 925. Accordingly, this Court has expressly rejected immediate review of a decision by the Commission on the propriety of the very same temporary benefits Appellant sought.

Moreover, if, at the appropriate time, Appellant appeals and the Court of Appeals overturns the unanimous decisions of the Commission, Appellant will have an adequate remedy as he will receive the monies he was owed. Thus, an adequate remedy would exist even if this appeal is delayed until after a final determination.

Accordingly, Appellant's appeal is premature and must be dismissed.

CONCLUSION

For the reasons stated herein, this Court should dismiss Appellant's appeal.

Respectfully submitted,

September 2, 2025

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THE STATE OF SOUTH CAROLINA
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ISSUES ON APPEAL

1. Whether the Single Commissioner erred as a matter of law by denying Appellant's claim for temporary total disability compensation in that it failed to follow the binding precedent of Cranford v. Hutchinson Construction and Grayson v. Carter Rhoad Furniture along with failing to follow Martin v. Rapid Plumbing, all of which show that on the procedural and substantive law governing this case Appellant was entitled to be paid compensation following Employer's withdrawal of light duty work.
2. Whether the Commission erred as a matter of law in finding Hinson was legitimately terminated for cause when the alleged misconduct occurred before he was taken out of work for surgery and the termination was a calculated conspiracy by upper management including the workers' compensation representative to bring him back to work and terminate him to evade payment of TTD.
3. Whether the Commission erred as a matter of law in failing to find Hinson remained disabled when he was under a 5-pound restrictions which disqualified him from all employment, such that his inability to work was due to his injury and not due to the termination of his employment.

STATEMENT OF THE CASE

This is an appeal from a Decision and Order of the Workers' Compensation Commission.

Appellant Troy Hinson was employed as the maintenance director for Merrill Gardens, an assisted living facility in Columbia, South Carolina. Hinson injured himself on July 29, 2021. After a brief period out of work during which temporary total disability compensation (TTD) was paid, Merrill Gardens brought him back to work on December 22, 2021, under a 5-pound lifting restriction. Merrill Gardens then fired Hinson on January 25, 2022.

The Carrier filed a Form 15 (Section II) terminating compensation on January 4, 2022 terminating compensation effective December 19, 2021. [R.P. 44]. Hinson filed a Form 15 (Section III) hearing request on February 8, 2022. [R.P. 44].

The case was tried before Commissioner Gene McCaskill on April 15, 2022. In a Decision and Order dated January 31, 2024, Commissioner McCaskill held Claimant Troy Hinson sustained a compensable injury to his lumbar spine and developed an inguinal hernia. He further 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].

Hinson timely filed a Form 30 (Notice of Appeal) on January 29, 2024. [R.P. 32].

Oral argument before the Appellate Panel was heard on August 26, 2024. The Appellate Panel issued a Decision and Order affirming the Single Commissioner on November 1, 2024. [R.P. 22-43].

This appeal followed.

STATEMENT OF THE FACTS

Troy Hinson was employed as the maintenance director at Merrill Gardens, an assisted living facility in Columbia. Hinson was hired on June 8, 2021.

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. Hinson continued to work under light duty, although was paid temporary total disability compensation [TTD] from July 29-August 2, 2021 and August 13-23, 2021.

Hinson went back on TTD when underwent surgery for his hernia on October 29, 2021. [R.P. 198]. On November 18, 2021, Dr. Moffat allowed Hinson to return to light duty lifting no more than 15 pounds. The restriction was to be in place for 6-weeks (through December 30, 2021). [R.P. 161].

For his back, Hinson treated with Dr. O'Leary from September 10, 2021 through January 10, 2022. He was initially placed on restrictions of no pushing, pulling, lifting or carrying over 10 pounds with no kneeling, squatting, crawling or climbing. [R.P. 153-154]. On November 1, 2021, Dr. O'Leary wrote Hinson completely out of work. [R.P. 163].

On December 13, 2021, Dr. 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 with the 5-pound lifting restrictions, the workers' compensation representative along with Merrill Gardens' vice-president of operations and human resources director contacted the Dougal Kear, the new general manager of Merrill Gardens. They instructed 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]. Defense counsel emailed the letter to Claimant's counsel, prompting an

exchange of emails between the attorneys. Claimant's counsel requested a job description. On December 22, 2021, he wrote an email to Defense counsel stating:

Hi Mark,

What exactly will Troy be doing that benefits the employer?

There are no actual jobs within this restriction. We don't want him put in a punitive or retaliatory position.

Defense counsel provided the job description on December 22, 2021. The job was classified as *VERY HEAVY* with the following physical demands:

 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 40 lbs., 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 argument, 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.¹

On January 4, 2022, the adjuster 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.” [R.P. 44]. 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.

On January 12, 2022, Claimant’s counsel sent another email to Defense counsel:

Hi Mark.

Troy Hinson called me this morning. Apparently his boss has told him he needs to go on disability because he cannot do the work that needs to be done.

I think the problem is that Troy is on work restrictions which preclude him from working as the maintenance man for the apartment complex. In short, there is no economic benefit to the employer by having him there given his restrictions.

Would you please call me? I don't want Troy to get fired over this (not that he has given me any expectation that is actually going to happen) and end up in a battle over TTD. Seems as if the employer doesn't really have work within his restrictions, then he needs to go back on TTD.

Thoughts? Can you call me about this? Thanks.
[R.P. 268].

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].

¹Hinson 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].

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 at *infra* pages 16-20.

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

Good afternoon Mark.

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. Hinson filed the Form 15 (Section III) on February 8, 2022. [R.P. 44].

Hinson returned to Dr. Moffat on January 26, 2022 reporting an aggravation of the hernia. Dr. Moffat ordered an injection – which was denied by Defendants. He wrote “it does not seem advisable for him to return to a maintenance type job with manual labor given his symptoms and its impact on his quality of life.” [R.P. 228-229].

After several injections and physical therapy failed to provide relief, Dr. O’Leary referred Hinson to Dr. LaMotta for a surgical evaluation. [R.P. 169]. On March 16, 2022, Dr. LaMotta opined he was not a surgical candidate, instead referring him for chronic pain management (denied by Defendants). Dr. LaMotta placed Hinson on permanent restrictions of of no pushing, pulling, lifting or carrying over 15 pounds with no kneeling, squatting, crawling, twisting or work at heights.”

[R.P. 243-249].

The case was tried before Commissioner McCaskill on April 25, 2022. On January 31, 2024, Commissioner McCaskill issued an Decision and Order. He held (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].

This appeal followed.

STANDARD OF REVIEW

A court may reverse or modify the Commission's decision if substantial rights of the appellant have been prejudiced because the administrative findings, inferences, conclusions or decisions are affected by other error of law. Broughton v. South of the Border, 336 S.C. 488, 520 S.E.2d 634, 637 (Ct. App. 1999). Upon a proper appeal under the Worker's Compensation Act when only a question of law is involved, the facts having been concluded by the finding of the Commission, the appellate court as to review and correction of errors has plenary powers. Jolly v. Atlantic Greyhound Corp. 207 S.C. 1, 35 S.E.2d 42 (1945).

The evidence will ordinarily be regarded as sufficient where the circumstances shown tend to establish the ultimate facts in issue and provide a basis from which they reasonably may be inferred. An award cannot, however, be based upon mere possibilities, probabilities, surmises or conjectures. Broughton v. South Carolina Game and Fish Dept., 219 S.C. 50, 64 S.E.2d 152 (1951). The substantial evidence rule, prescribed in the statute, means the appellate court will not overturn a finding of fact by an administrative agency unless there is no reasonable probability that the facts could be as related by a witness upon whose testimony the finding was based. Lark v. Bi-Lo, Inc., 276 S.C. 130, 276, S.E.2d 304 (1981). However, when only one reasonable inference can be deduced from the evidence, it becomes a question of law for the courts. Kinsey v. Champion American Service Center, 268 S.C. 177, 232 S.E.2d 720 (1977). The Commission must consider all the evidence in the record when developing its findings of fact. Hendricks v. Pickens County, 335 S.C. 405, 517 S.E.2d 698 (Ct. App.1999).

"It is true that the Appellate Panel is the ultimate fact-finder and does not have to accept even uncontradicted evidence. In this sense, the factual decisions of the Appellate Panel may appear to be akin to those implicit in a jury's verdict, which appellate courts may not generally disturb as long

as the verdict can be reconciled with any evidence reasonably supporting it. But the decisions of administrative agencies, such as the Appellate Panel, are different from jury verdicts in several important respects. One difference is that juries need not explain the reasoning behind their decisions, while the Appellate Panel must. Another difference is that the Appellate Panel's decisions cannot stand if they cross the line drawn by § 1-23-380. Unlike a jury verdict, the Appellate Panel's factual decisions may be reversed if they are arbitrary or clearly wrong, which they are here.” Russell v. Wal-Mart, Op. No. 28258 (S.C. Sup. Ct. filed Jan. 29, 2025) (Howard Adv. Sh. No. 5 at 18).

ARGUMENT

1. The Commission made an error of law in failing to award TTD based on the binding precedent of *Cranford* and *Grayson*.

The Appellate Panel held this case fell under the rubric of Pollack v. Southern Wine & Spirits of America, 405 S.C. 9, 747 S.E.2d 430 (2013). It held “[w]e find that Claimant was terminated for cause and, as such, is not entitled to payment of TTD.” [R.P. 38, Finding of Fact 52; p. 40, Conclusion of Law 3]. This ruling is error as this case is controlled by Cranford v. Hutchinson Constr., 399 S.C. 65, 731 S.E.2d 303 (Ct. App. 2012)(temporary total disability compensation should have awarded as a matter of law because employee was not at MMI and had never been released to work without restrictions). Despite Cranford being argued before both the Single Commissioner and Appellate Panel, the Commission completely ignored this binding case law in its analysis.

Pollack and Cranford deal with different fact patterns. In Pollack, the employee suffered an admittedly compensable back injury and was put on a 15-pound lifting restriction. Because he was a supervisor, he was able to work his regular job with accommodations for the restrictions. He was ultimately fired for failing to report an accident causing property damage to one of the employer’s delivery trucks. The supreme court affirmed the Commission’s finding that an employee who is terminated for cause while working light duty – “*who never received TTD benefits*” – is barred from receiving TTD under the rationale that his inability to work is due to his own misconduct rather than his injury. Pollack v. Southern Wine & Spirits of Am., 405 S.C. 9, 16, 747 S.E.2d 430, 434 (2013)

In Cranford, the employee also suffered an admitted back injury. He was out of work for three weeks, during which time his employer paid him \$265.00 per week in lieu of TTD. He returned to work on light duty but then was terminated eighteen days later for “being unsafe on the job site.” The employer refused to pay TTD arguing Cranford was terminated for cause. The

Commission agreed and denied Cranford's claim for TTD. On appeal, this Court held TTD had to be paid because he was still under work restrictions and had not reached MMI.

The distinction between Pollack and Cranford is that Pollack had never been disabled.² He lost no time from work because the employer was always able to accommodate his restrictions. As no TTD was paid, Pollack was never presumed disabled and never came under the protections of § 42-9-260. Conversely, Cranford had been disabled and received salary in lieu of TTD before returning to work. His situation was controlled by the statute and regulations governing payment, suspension and termination of TTD. Indeed, the Pollack court observed that "It is undisputed that Appellant, **who never received TTD benefits**, was accommodated by Respondent within his light duty work restrictions." Pollack v. Southern Wine & Spirits of America, 405 S.C. 9, 747 S.E.2d 430 (2013)(emphasis added). Because Hinson had been paid TTD (like Cranford and Grayson), he was deemed to be disabled and thus received protections unavailable to Pollack.³ See, also Davis v. Unihealth Post Acute Care, 402 S.C. 541, 741 S.E.2d 770 (Ct. App. 2013)("After UniHealth terminated that employment, its own agreement that she was disabled and its refusal to provide alternative employment required UniHealth to pay her temporary total compensation until the payments could be properly terminated.").

Cranford exactly followed our supreme court's earlier decision in Grayson v. Carter Rhoad

²Pollack, Cranford and Grayson are all good law. Although Pollack came out one year after Cranford, the court never mentioned, let alone overruled, Cranford and Grayson. Furthermore, because Cranford followed Grayson it was not implicitly overruled by a higher court.

³To be clear, the issue here is not whether the employer could legally terminate Hinson's employment. The issue is whether Hinson is entitled to an additional period of TTD because the employer stopped providing employment within his restrictions and refused to restart TTD.

Furniture, 312 S.C. 250, 439 S.E.2d 859 (Ct.App.1993), *aff'd as modified by* Grayson v. Carter Rhoad Furniture, 317 S.C. 306, 454 S.E.2d 320 (1995). In Grayson, “[t]he supreme court held that because Grayson was released with work restrictions, there was in reality *no* evidence that Grayson’s period of temporary total disability ever ended prior to his firing. Because Grayson’s benefits were never properly terminated in accordance with Regulation 67-504, Grayson was entitled to have his benefits reinstated retroactively.” Cranford at 75-76, 731 S.E.2d 308). Accord, Martin v. Rapid Plumbing, 369 S.C. 278, 631 S.E.2d 547 (Ct. App. 2006)(holding procedures to suspend or terminate temporary compensation require strict compliance).

Strikingly, the facts of these two cases are virtually identical to the facts in this case, As explained by this Court in Cranford:

Like Grayson, Cranford was injured while working for his employer and was paid temporary compensation while out of work. Grayson was released to work with the instructions to “be somewhat careful with lifting.” Similarly, Cranford’s discharge report from Conway Medical Center instructed Cranford to refrain from “heavy lifting” and “strenuous activity.” In addition, Dr. Ellis, the attending surgeon at Conway Medical Center, instructed Cranford to “take it easy.” No other physician treated Cranford prior to him returning to work; thus, as in Grayson, there is no other evidence in the record Cranford was released to work without restriction.

Both employers terminated their employees shortly after the employees returned to work while the employees were still under work restrictions. Grayson was fired for not having a driver’s license and Cranford was fired for being unsafe on the job site. Both terminations occurred approximately three weeks after returning to work. Prior to the firing, Grayson signed a Form 17, agreeing he was able to return to work. Cranford, on the other hand, never signed a Form 17, but instead had his benefits unilaterally terminated on the grounds that he had “returned to work at least 15 days and no temporary partial compensation [wa]s due.”

While Regulation 67–504 was amended in 1997, under the prior and amended version, Hutchinson’s firing of Cranford after the fifteen-day window would still require Hutchinson to pay temporary disability unless: (1) a physician determines Cranford is able to “return to work without restriction”; OR (2) A PHYSICIAN determines Cranford has reached Maximum medical improvement such that permanent disability benefits, as opposed to temporary benefits, should be awarded if warranted. See Smith v. S.C. Dep’t. of Mental Health, 335 S.C. 396, 399, 517

S.E.2d 694, 695–96 (1999) (“Clearly, if an employee has reached MMI and remains disabled, then his injury is permanent. This is precisely the reason to terminate temporary benefits in favor of permanent benefits upon a finding of MMI.”). Cranford v. Hutchinson Constr., 399 S.C. 65, 731 S.E.2d 303 (Ct. App. 2012).

In the instant case, it is undisputed that Hinson was (1) under a 5-pound lifting restriction thus “unable to work without restriction;” (2) not at MMI; (3) previously received TTD; and (4) was terminated shortly after returning to work. This fact pattern matches the facts of Cranford and Grayson; not Pollack.

It should also be noted that after his termination Hinson continued to receive medical treatment. Dr. Mattei wrote him completely out of work on February 4, 2022. [R.P. 149]. At that point, there were no restrictions to accommodate. Hinson had gone from partially disabled to totally disabled.

Further support for reversing the Commission comes from the procedural violations associated with the Form 15 (Section II). The Employer filed a Form 15 ostensibly terminating temporary compensation because “Claimant has been released to work at a limited duty and employer has provided limited duty work consistent with the terms upon which the Employee has been released.” [R.P. 44].

As this Court explained in Martin v. Rapid Plumbing:

The rationale given by Rapid Plumbing is only applicable when suitable employment is offered but not accepted. See S.C.Code Ann. § 42-9-190 (1985) (“If an injured employee refuses employment procured for him suitable to his capacity and approved by the Commission he shall not be entitled to any compensation at any time during the continuance of such refusal.”). Thus, had Martin refused to return to work, Rapid Plumbing would have had legal justification to terminate his temporary compensation. Because Martin willingly returned to work, but was unable to continue work after one day, the reason given by Rapid Plumbing did not apply.

Even if Rapid Plumbing could have stopped temporary total disability benefits, it failed to follow the proper procedure for doing so as outlined by section 42-9-260 and regulation 67-504. Rapid Plumbing terminated the compensation on August 10,

2002, but failed to file and serve the Form 15 until at least August 28, 2002, and failed to attach the supporting documentation as required by section 42-9-260. These deficiencies are not mere technicalities, but are substantial deviations from the statutory procedure. The circuit court was correct in finding Rapid Plumbing wrongfully terminated temporary benefits.

Martin v. Rapid Plumbing, 369 S.C. 278, 631 S.E.2d 547 (Ct. App. 2006)(holding 18 day delay in filing Form 15 and failure to attach documentation were substantial procedural deviations requiring imposition of mandatory 25% penalty).

As the Form 15 in the instant case did not comply with the statute, it was ineffective as a matter of law. Moreover, even if it were deemed to be effective, it merely suspended Hinson's temporary compensation for the period when he returned to work. His right to temporary compensation was never legally terminated. See 25A S.C Code Ann. Reg. 67-510 (2007)(providing for additional compensation or penalty for unauthorized suspension of temporary compensation benefits). It was legal error of the Commission to hold "Defendants did not illegally suspend or terminate TTD benefits." [R.P. 40-41, conclusions of law 4, 6].

In Martin, this Court reversed the Commission's denial of temporary compensation on the above grounds. The Court should follow Martin and hold that Hinson's temporary compensation was never legally terminated such that Hinson would be entitled to receive ongoing temporary compensation plus a mandatory 25% penalty.

The Commission committed multiple errors of law under Martin, Cranford, and Grayson. Therefore, the decision below should be reversed. This case should be remanded to the Commission with instructions to award temporary compensation to Appellant.

2. Even if Pollack is the controlling authority in this case, the Court should find that Hinson was not legitimately terminated for misconduct occurring while he was on accommodated duty and award him TTD on a running award from January 25, 2022.

The Pollack court instructed the Commission that “an employer’s denial of TTD benefits must be “scrutinized carefully . . . remaining sensitive to an employer’s possible motivation to ‘look for’ a reason to fire an injured worker.” Pollack v. Southern Wine & Spirits of America, 405 S.C. 9, 747 S.E.2d 430 (2013). A closer look at the evidence shows that Merrill Gardens brought Hinson back to a job he could not do with the intent of terminating him for cause (largely based on alleged past transgressions) to avoid liability for TTD.

The job of Maintenance Director has specific physical demand requirements::

- Must be able to lift up to 60 lbs. on a frequent basis and 100 lbs. on an occasional basis, push/pull up to 40 lbs., 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, crouching, kneeling and crawling.

[R.P. 251].

On December 13, 2021, Dr. O’Leary put Hinson on restrictions of no pushing, pulling, lifting and carrying over 5 pounds, along with no twisting or stretching. [R.P. 171]. *Under these restrictions, Hinson is unable to meet any of the above requirements of the job.* Dougal Kear confirmed this, testifying: “The majority of the job [is really physical].” [R.P. 469, lines19-25].

Knowing full well that Hinson was under a 5-pound restriction, Merrill Gardens nonetheless put Hinson back into the exact same position he had been working before his injury: Maintenance Director. Kear testified that to get the maintenance work done, Merrill Gardens had to call on “The regional maintenance director, maintenance director – his name is Jeff – from another community

and myself and also our chef.” [R.P. 466, lines 7-23].

This begs the question of why? What was in it for them? It makes no economic sense to bring an injured employee back to work a critically important position in an assisted living facility when he can’t do the job. The only answer is that Merrill Gardens intended all along to fire Hinson shortly after he returned to work, thus setting up a Pollack defense. We know this because of who made these decisions and the ostensible reasons given for Hinson’s termination.

Kear testified that the decision to bring Hinson back and ultimately fire him a few weeks later were 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]. The fact the *workers’ compensation representative* and a vice president at the home office made the decision to terminate Hinson – rather than his actual manager – confirms that Merrill Gardens was not calling Hinson back to work for a legitimate business reason unrelated to workers’ compensation.

Kear wrote a letter of termination to Hinson stating:

Due to instances of insubordination, failure to complete tasks, lack of communication to the GM, other team members, business tenant, and residents, actions that jeopardized life-safety, and continuing performance issues that have been discussed with you, we made the decision to end your employment with us effective today 1/25/22.
[R.P. 270].

Despite these seeming serious allegations, *there is no written documentation of any such events, nor is there documentation of meetings, counseling sessions, or verbal or written warnings.* Merrill Gardens is a large corporation with about 100 communities nationwide. It has written disciplinary policies requiring verbal and written warnings which were not followed in this case.
[R.P. 457, line 18-p. 459, line 10]. Kear had no documentation nor evidence of any misconduct

occurring prior to Hinson's return to work in December 2021. Indeed, Kear only started working for Merrill Gardens at the end of November 2021. [R.P. 436, lines 22-25]. Despite the lack of supporting evidence, Kear testified to the supposed reasons his supervisors ordered him to fire Hinson. His testimony reveals it to be a sham.

Respondents' counsel asked Kear why Mr. Hinson was terminated. Kear responded "the first two were the incidents that occurred prior to him going out on the last time he left for the hernia surgery." Kear – without any firsthand knowledge – testified that it was "alleged" Hinson had made two mistakes: (1) miswiring a cooktop on a stove causing it to short out; and (2) improperly turning a mixing valve causing it to break resulting in high water temperatures.⁴ [R.P. 446-447]. It is undisputed that there is no record of either of these alleged incidents and that Hinson was never trained, counseled, warned or disciplined as a result. The accusations were not raised with him until the day Kear fired him.

The third allegation did occur during Kear's tenure. Kear accused Hinson of insubordination, giving the specific example of Hinson bringing in an outside painting crew to paint an apartment without permission.⁵ However, Hinson obtained permission from David Dixon, the regional maintenance director (and Hinson's trainer). Kear was simply angry that Hinson went to Dixon instead of him. He testified: "[Hinson] said to me that David [Dixon] looked at it and said go ahead and get a painter. Which my question to Troy was why didn't you come and – you still need to

⁴ As to the cooktop, Hinson testified that he "assumed I did it right. Everything was good when I left." He testified he had never been written up or given a formal warning, nor had he even heard anything about the cooktop until the day he was fired. [R.P. 414, line 18-p. 416, line 6].

He testified Dougal "brought up the . . . mixing valve, which I did not mess up." [R.P. 423, lines 19-25].

⁵Hinson was unable to paint the apartment due to his restrictions – a fact known to Kear.

communicate to me. That was the key. Gotta let me know because I have to sign off on that.” [R.P. 462 line 22-p. 463, line 23]. Kear’s bruised ego is not a legitimate reason to terminate someone, nor was termination warranted given that Hinson obtained permission from the regional maintenance director.

Kear’s other allegations concern a supposed lack of communication⁶ and Hinson’s physical inability to do the work Kear wanted done. Kear was frustrated because: “I expected him in the building. And when I couldn’t find him, then he would call me later, ‘Well, I was at a doctor’s appointment.’ And I said, “Well, I didn’t know you had a doctor’s appointment today. You never told me.” Yet, Kear knew Hinson had physical therapy appointments on Tuesdays and Thursday plus injections and doctor visits. [R.P. 460, line 16-p. 461, line 21].

Kear testified:

the only thing I said to him in a conversation was – because he kept saying to me, “I just can’t do this. I can’t do the job. I can’t do this.” And I said, “Well, Troy, the only thing I can do is go by what I have documented from – for a healthcare provider. If you need to get this changed, you need to go to that provider and talk to the provider and get reevaluated and then come back to me with different restrictions and we will accommodate that.

[R.P. 453, lines 12-24].

Terminating an injured worker because he cannot do heavy work without exceeding the restrictions from his doctor is blatantly retaliatory and illegal. On cross-examination Hinson denied that “Mr. Kear never asked you to exceed your restrictions” and confirmed “that [he was] asked to exceed [his] restrictions.” [R.P. 427, lines 1-13].

Hinson described the conversation with Kear when he was terminated. Hinson called in that morning to say he was coming in but that he had been sick the night before with sniffles. He also

⁶Kear admitted on cross-examination that insubordination was “something where you would have to document it to the personnel file.” [R.P. 457, lines 12-17].

told Kear he had reinjured his abdomen and back replacing a door strip on the previous Thursday.⁷ He testified Kear “said, well, come in and I’ll test you [for Covid].” When Hinson arrived he saw that Kear was busy in his office, so he clocked in and went to work.

He testified:

So then I got a call for about I guess 20 or 30 minutes after I was in the shop from Dougal [Kear] to come to his office. I came to his office. He started questioning me about a stove and then about a water valve and then said I wasn’t communicating with him. That I was being insubordinate because I didn’t report to his office for a Covid test. And since I didn’t report directly to his office for a Covid test, I was being fired for being insubordinate.⁸
[R.P. 413, line 14-p. 415, line 1].

The best example of Kear’s duplicity is when he was asked a straightforward question about whether Merrill Gardens could hire a person with a 5-pound restriction for a job that requires lifting 60 pounds frequently and 100 pounds occasionally. This is a softball question to which the answer is obviously “no.” Despite repeated opportunities to prove himself an honest and credible witness, Kear bobbed and weaved, ultimately refusing to give a clear answer to the question. After dodging a series of questions, Kear was asked:

If you had two applicants who came to you each with 30 years of experience, identical in every way, identical except one man says I got this five-pound restriction. This other person comes in and says I can do it all. I can lift your 60 pounds. I can lift your 100 pounds. No difference between the two. Which one are [you] going to hire?

⁷The reinjury was documented on a follow-up visit by Dr. Moffat, Hinson’s hernia surgeon. The visit was on January 26, 2022; the day after Hinson was terminated. After noting the “repetitive stress on this repair from his job,” Dr. Moffett opined “it does not seem advisable for him to return to a maintenance type job with manual labor given his symptoms and it impact on his quality of life.” [R.P. 228-229].

⁸Hinson related these events to Dr. Mattei on February 9, 2022 and Dr. Moffat on January 26, 2022 (the day after he was fired). [R.P. 148-149, 224, 228-229]. The fact his reports to the doctors shortly after he was terminated are consistent with his hearing testimony 4-months later is a strong indicia of credibility.

[R.P. 474, line 24-p. 475, line 7].

Instead of simply admitting that the only option is the applicant who can meet the lifting requirements of the job, Kear responded with the nonsensical answer: “If a new hire I’m going to hire the one that’s the most qualified.” He repeated this nonresponsive answer three times. [R.P. 475]. This is a witness who was being patently evasive.

Appellant recognizes that the Commission is the sole judge of credibility. Appellant further recognizes that the substantial evidence standard of review is relatively deferential. Nonetheless, as our supreme court recently held, “the Appellate Panel’s decisions cannot stand if they cross the line drawn by § 1-23-380. Unlike a jury verdict, the Appellate Panel’s factual decisions may be reversed if they are arbitrary or clearly wrong, which they are here.” Russell v. Wal-Mart, Op. No. 28258 (S.C. Sup. Ct. filed Jan. 29, 2025) (Howard Adv. Sh. No. 5 at 18).

The supreme court’s admonitions in Pollack and Russell about the close scrutiny to be given to an employer’s stated rationale for terminating an employee working accommodated duty are the key here. Kear’s attempt to justify the termination fails when looked at in this light. Merrill Gardens’ home office made the decision to bring Hinson back to work in his regular job with a five-pound lifting restriction that plainly prevented him from doing his job. The home office then fired him on specious grounds without prior warning, counseling or discipline in violation of its own policies. The decision to terminate Hinson was made at the corporate level; not by Kear. Kear was merely the messenger

This Court can and should find that the Commission’s decision in finding Hinson was legitimately fired for misconduct is arbitrary and clearly wrong. The decision below should be reversed and remanded with instructions to award temporary compensation to Hinson.

3. As Hinson's restrictions prevent him from working in his occupation, he should be awarded TTD on a running award because his inability to work is due to his restrictions; not his alleged termination for cause.

At the time of his termination, Hinson was under a 5-pound lifting restriction. There are no jobs listed in the Dictionary of Occupational Titles for someone with such an extreme limitation.⁹ On the day he was fired, Hinson was incapable of obtaining any job on the open market, let alone a maintenance job requiring frequent lifting of 60 pounds.

This is important because Pollack cannot be a death sentence for TTD. Pollack is based on the principle that where an employee is fired for misconduct in a no-lost-time case while working accommodated employment then his inability to earn wages is presumed to be due to his misconduct and not his disability. Pollack v. Southern Wine & Spirits of America, 405 S.C. 9, 747 S.E.2d 430 (2013).

The flip side of this is that if an employee is unable to work for the same wages in other employment, then his lost earnings are presumed to come from his limitations which then entitles him to TTD notwithstanding the fact he was terminated. Note this is also a distinguishing factor in Cranford and Grayson. This analysis was succinctly stated by the Colorado Supreme Court:

As long as limitations resulting from an industrial injury contribute to a claimant's inability to secure employment at pre-injury wage levels, compensation benefits are

⁹ The Department of Labor's Dictionary of Occupational Titles lists various physical demand levels required in various occupations. The lowest category of sedentary work exceed Hinson's 5-pound restriction.

S-Sedentary Work - Exerting up to 10 pounds of force occasionally (Occasionally: activity or condition exists up to 1/3 of the time) and/or a negligible amount of force frequently (Frequently: activity or condition exists from 1/3 to 2/3 of the time) to lift, carry, push, pull, or otherwise move objects, including the human body. Sedentary work involves sitting most of the time, but may involve walking or standing for brief periods of time. Jobs are sedentary if walking and standing are required only occasionally and all other sedentary criteria are met.
<https://www.dol.gov/agencies/oalj/PUBLIC/DOT/REFERENCES/DOTAPPC>

payable for loss of earning capacity. If, on the other hand, the injury and its *sequelae* play no part in the workers inability to find suitable employment, there is no compensable loss of earning capacity. PDM Molding, Inc. v. Stanberg, 898 P.2d 542 (Colo.1995).

In the instant case, Hinson was under restrictions that prevented him from doing any work at all – other than the special accommodations made by Merrill Gardens (which he was still unable to meet).

Furthermore, these were not his only restrictions. Hinson saw his hernia surgeon on January 26, 2022 – the day after he was fired. Dr. Moffatt wrote he “presents with worsening left incontinodynia after resuming work. . . . He does get some relief with gabapentin and ice packs, but the repetitive stress on this repair from his job seems to be impacting his quality of life and ability to do this job. . . . In the interim, it does not seem advisable for him to return to a maintenance type job with manual labor given his symptoms and its impact on his quality of life.” [R.P. 228-229]. Note that the injection ordered by Dr. Moffatt at this visit was denied by Defendants.

Hinson saw his family doctor, Dr. Mattei, on February 9, 2022. After recounting the history of the injury, return to work, problems working and the termination, Dr. Mattei wrote “Patent has worsened pain in the area of his hernia and low back. **Patient cannot work at this time** as he still needs further help with his low back and a CT for his hernia. I feel for the patient financially because he cannot work at this time.” [R.P. 148-149 (emphasis added)].

To summarize, Dr. Moffat recommends Hinson not do maintenance work, Dr. O’Leary had him on a 5-pound lifting restriction (since relaxed to 10-pounds and then 15-pounds), and Dr. Mattie has him completely out of work as of February 9, 2022. Hinson is not a supervisor like Darren Pollack; he works a job requiring heavy lifting up to 100 pounds. By any reasonable definition, he is disabled. His inability to earn wages is due to the restrictions from his injuries; not his supposed

misconduct.

For Hinson to support his family, he would have to find a job within those restrictions.¹⁰ Moreover, he would have to tell any potential employer that he was under the care of an orthopaedic surgeon, and requires epidural steroid injections and injections for his hernia complications. If he lied about these facts he would not only be subject to immediate termination upon discovery, he would also be barred from receiving medical treatment should he reinjure himself.¹¹

By the same token, knowing of his medical condition, no employer in their right mind would hire him. Even if a less than sedentary job within these restrictions exists, no rational employer would risk hiring him for fear of “buying” a major workers’ compensation claim. See Geathers v. 3V, Inc., 371 S.C. 570, 641 S.E.2d 29 (2007)(under last injurious exposure rule, “the insurer on the risk at the time of the second injury [is] solely liable when the second injury aggravates the first injury.”).

¹⁰Hinson was challenged by Respondent’s counsel as to whether he had attempted to find work. He acknowledged he had not because: “I haven’t been able to – I’m not able to work, to tell you the truth. . . . I’m waiting to go – my pain – I was supposed to get my pain nerve shot las week, but it got denied.” [R.P. 428, lines 3-16]. He was also asked:

Q. What do you think would happen if you were to actually to apply to somebody and say these are my restrictions? I want that job in maintenance. What do you think is going to happen?

A. They’re going to move on to the next person.
[R.P. 430, lines 5-22].

¹¹The new employer would have no liability under the “fraud in the application defense.”See, e.g. Cooper v. McDevitt & Street, 260 S.C. 463, 196 S.E.2d 833 (1973). Conversely, Merrill Gardens would be relieved from further liability for medical treatment under the “intervening accident” rule. See Whitfield v. Daniel Const. Co., 226 S.C. 37, 40, 83 S.E.2d 4602(1954)(“every natural consequence which flowed from this injury, unless the result of an independent intervening cause, sufficient to break the chain of causation, is likewise compensable.”)

Should the Commission's order stand, Troy Hinson is barred from receiving workers' compensation benefits, barred from receiving unemployment compensation, and barred from finding a job. And there is nothing he can do about it.

This "harsh and incongruous result" cannot be the intent of the Legislature. Unless we as citizens have lost all sense of conscience, it cannot be the public policy of this State for "injured employees and their dependents [to become] charges on society." Cokeley v. Robert Lee, Inc., 197 S.C. 157, 14 S.E.2d 889 (1941). See, also Pierre v. Seaside Farms, Inc., 386 S.C. 534, 689 S.E.2d 615 (2010)("Common sense indicates that a compensation law passed to increase workers' rights (because their common law rights were too narrow) should not thereafter be narrowly construed.");

The Court should find Hinson is disabled as a matter of law and award TTD on a running award. Alternatively, even if he is not considered disabled by the restrictions from Dr. Moffatt and O'Leary, he should be paid TTD from February 9, 2022 when he was written completely out of work by Dr. Mattei.

CONCLUSION

For the foregoing reasons, the Decision and Order below should be reversed and remanded with instructions to the Commission order payment of TTD beginning on January 26, 2022 and continuing on a running award until stopped by Order of the Commission or written consent of the parties.

Respectfully Submitted,



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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.

CERTIFICATE OF COUNSEL

The undersigned certifies that this Final Brief of Appellant complies with Rule 211(b),
SCACR.

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COUNTERSTATEMENT OF ISSUES ON APPEAL

1. Whether the Single Commissioner and the Full Commission erred as a matter of law by denying Appellant's claim for temporary total disability compensation after Appellant was terminated for cause by Merrill Gardens, LLC.
2. Whether the decisions by the Single Commissioner and the Full Commission were sufficient under the substantial evidence rule.

STATEMENT OF THE CASE

Appellant, Troy Hinson (“Appellant”), appeals from the unanimous decisions of the single commissioner and the full commission that he is not entitled to temporary total disability payments after he was terminated for cause by Merrill Gardens, LLC (the “Employer”).

On April 15, 2022, Commissioner Gene McCaskill heard evidence on this issue. On January 31, 2024, Commissioner McCaskill held that Appellant was “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. Appellant timely filed a notice of appeal to the full commission.

On August 26, 2024, the full commission heard oral arguments on Appellants’ appeal. The full commission issued a decision unanimously affirming the decision by Commissioner McCaskill on November 1, 2024. R pp 22-43.

Appellant appeals from those decisions.

STATEMENT OF THE FACTS

Appellant was hired June 8, 2021 as the maintenance director for Employer, who operates an assisted living facility in Columbia, South Carolina (the “Facility”). R pp 352-354, 404 & 422. Appellant acknowledge that he was hired to be a maintenance supervisor, perform maintenance, and supervise housekeeping. R p 404. As for housekeeping work, while Appellant would occasionally vacuum or wipe down elevators and doorknobs, the employed housekeepers did most of the actual housekeeping work and he simply supervised them. R p 404. As for maintenance work, prior to his compensable injury, Appellant testified his maintenance job responsibilities included walking the grounds, picking up trash in the year and parking lot,

cleaning up the trash room, cutting up boxes, and taking mail to apartments, and some more physical tasks. R p 405.

On July 29, 2021, Appellant injured himself during the course and scope of his employment. R pp 352-354 & 419. Respondents accepted Appellant's claim and he was paid temporary total disability compensation.

Appellant returned to work in August 2021 and worked light duty until he underwent surgery on October 29, 2021. R pp 418-420. On December 13, 2021, Appellant's doctor authorized him to return to work with certain restrictions. R pp 408-409. On or about December 20, 2021, Appellant was offered a job to return to work as the maintenance director to work within the required restrictions and Appellant accepted. R pp 345 & 409. He directly reported to Dougal Kear, the general manager with 17 years in healthcare administration. R pp 436 & 439.

On January 4, 2022, a form 15 was filed terminating Appellant's temporary total disability benefits because Employer provided him work within his restrictions. R pp 345-346.

After he returned, Appellant acknowledged he was asked to change batteries and filters, do safety checks on residents, check eyewash stations and fire extinguishers, patch holes, and perform touch up painting. R pp 407-408. Mr. Kear indicated that a lot of Appellant's job was compliance as he would do checks, order supplies for housekeeping, make sure the building looked good, report any damage, attend to resident requests and determine what needed to be done and who could do it. R pp 441-442. Appellant's duties fell within his restrictions because Employer reassigned the more physical aspects of the job to other employees. R pp 441-442. Appellant agreed that the maintenance work he could not perform within his restrictions was done by other employees or vendors. R pp 407-408. Further, Appellant acknowledged that if there was something that exceeded his restrictions he was to contact Mr. Kear. R p 426.

Mr. Kear explained the he was supposed to meet with Appellant first thing in the morning every day to discuss the necessary tasks and at the end of the day to determine what was completed. R pp 410 & 442-443. When there were tasks beyond Appellant's restrictions, Mr. Kear or two other maintenance employees would perform them. R p 443. Mr. Kear noted the goal was to continue Appellant's light duty work until he could be released to full capacity. R pp 444-445.

However, Mr. Kear noted that Appellant would fail to show up in the morning and he would have to try and find him, get him on the radio, call him, or text him. R pp 445-446. Further, the housekeepers he supervised could not find him. R pp 445-446. Ultimately, Appellant was terminated on January 25, 2022. R p 446.

Appellant agrees he made mistakes in his job. R p 434. Mr. Kear noted that Appellant was terminated for numerous reasons. R pp 446-450. Prior to his October surgery, he incorrectly rewired a cooktop, which created a fire danger for the elderly residents and he improperly turned the mixing valve which caused it to break. R pp 446-450. He failed to properly check water temperatures, as rather than check the temperatures in all 15 lavatories, as was required by his job, he only checked at the source of the water, which could lead to residents being exposed to dangerously hot water. R pp 446-450. Additionally, as noted, he would fail to attend meetings with Mr. Kear, he could not be found and then would simply say he had left because he had an appointment despite it not being at a time of any known appointments. R pp 446-450. He would leave for scheduled medical appointments and not return when the appointments concluded and he would not show up on time. R pp 446-450. He failed to communicate with Mr. Kear and with the residents. R pp 446-450. Finally, he authorized

worked by outside vendors without approval from Mr. Kear, his direct supervisor. R pp 446-450.

Mr. Kear emphatically noted that Appellant's termination had nothing to do with his injury and that if he had not been terminated for cause, he would still be able to accommodate his light-duty work restrictions. R pp 452-453. Since being terminated, Appellant has not made any effort to find work, but acknowledges that he could have continued to perform light duty work at Employer. R pp 427-429. After Appellant's termination, Respondents declined Appellant's request to restart temporary total disability payments as Appellant had been terminated for cause.

STANDARD OF REVIEW

In workers' compensation cases, the full commission is the ultimate finder of fact. *See Shealy v. Aiken Cnty.*, 341 S.C. 448, 455, 535 S.E.2d 438, 442 (2000); *Frame v. Resort Servs. Inc.*, 357 S.C. 520, 528, 593 S.E.2d 491, 495 (Ct. App. 2004) (“[t]he final determination of witness credibility and the weight to be accorded evidence is reserved to the Appellate Panel.”). The factual determinations by the full commission will not be overturned “unless there is no reasonable probability that the facts could be as related by a witness upon whose testimony the finding was based.” *Lark v. Bi-Lo, Inc.*, 276 S.C. 130, 136, 276 S.E.2d 304, 307 (1981); *Jones v. Georgia-Pacific Corp.*, 355 S.C. 413, 416, 586 S.E.2d 111, 113 (2003) (“[t]his Court will not overturn a decision by the Commission unless the determination is unsupported by substantial evidence.”). Accordingly, “an appellate court may not substitute its judgment for that of the agency as to the weight of the evidence on questions of fact, but may reverse when the decision is affected by an error of law.” *Pollack v. Southern Wine & Spirits of America*, 405 S.C. 9, 747 S.E.2d 430 (2013) *citing* S.C. Code Ann. § 1-23-380(5).

ARGUMENT

Appellant makes two essential arguments. First, he argues that the single commissioner and the full commission erred as a matter of law by applying the *Pollack* case instead of *Cranford v. Hutchinson Constr.*, 399 S.C. 65, 731 S.E.2d 303 (Ct. App. 2012) and *Grayson v. Carter Rhoad Furniture*, 317 S.C. 306, 454 S.E.2d 320 (1996). Second, he argues that the single commissioner and the full commission should have reached a different factual determination based on the evidence surrounding Appellant's termination for cause from Employer. For the reasons stated below, Appellant's arguments fail.

A. The Single Commissioner and the Full Commission did not Err as a Matter of Law.

There was no error of law as *Cranford* and *Grayson* address the question of whether temporary total disability benefits were properly suspended or terminated pursuant to the applicable regulations and statutes. Whereas, *Pollack* addresses the question of whether temporary total disability benefits must be started when an employee is terminated for cause. Thus, the analysis of *Pollack* by the single commissioner and the full commission was appropriate in this case.

Not only is the issue in this appeal more appropriately addressed by *Pollack*, the decisions in *Cranford* and *Grayson* are inapplicable as they are based on a subsequently amended regulation. *Cranford* and *Grayson* involve the suspension or termination of temporary total disability benefits based on S.C. Code Ann. Vol. 25-A, Worker's Compensation Regulation 67-504 ("Reg. 67-504"). However, since the decisions in *Cranford* and *Grayson* Reg. 67-504 has been amended. In both *Cranford* and *Grayson*, Reg. 67-504 required the employer to pay temporary total disability benefits unless (1) the employee was able to "return to work without restrictions;" or (2) the employee had reached maximum medical improvement such that he was

entitled to permanent disability benefits.¹ See *Cranford*, 399 S.C. at 75, 731 S.E.2d at 308-309; *Grayson*, 317 S.C. at 309, 454 S.E.2d at 322. As neither employee in either case had reached maximum medical improvement or were released to “work without restrictions” the Court held in both cases the employer was required to pay temporary total disability benefits to the employee because those benefits were never properly terminated. See *id.*

Reg. 67-504 now provides “[t]he employer’s representative may terminate or suspend temporary compensation during the first one hundred fifty days after the employer received notice of the injury pursuant to Section 42-9-260. When compensation is terminated or suspended, the employer’s representative shall complete Section I and Section II of the Form 15, Temporary Compensation Report.” S.C. Code Ann. § 42-9-260(B) provides: “[o]nce temporary disability payments are commenced, the payments may be terminated or suspended immediately at any time within the one hundred fifty days if:...(5) the employee has been released by the treating physician to limited duty work and the employer provides limited duty work consistent with the terms upon which the employee has been released.” Put simply, the law has changed since *Cranford* and *Grayson*, so that temporary total disability benefits can be terminated or suspended even if an employee returns to work “with restrictions.”²

In this case, it is undisputed that Respondents provided a Form 15 suspending Appellant’s temporary total disability benefits based on the provision of limited duty work. Further, the facts support, and the single commissioner and the full commission found, Employer

¹ Reg. 67-504 provided “[w]hen the claimant reaches maximum medical improvement and the authorized health care provider reports the claimant is able to return to work without restriction to the same job or other suitable job, and such a job is provided by the employer, or the claimant agrees he or she is able to return to work without restriction, the employer’s representative may suspend compensation benefits by complying with section D below.” See *Cranford*, 399 S.C. at 75 n.2, 731 S.E.2d at 308 n.2.

² Appellant’s reliance on *Martin v. Rapid Plumbing*, 369 S.C. 278, 631 S.E.2d 547 (2006) is equally misplaced as the employee in that case returned to work without restrictions pursuant to § 42-9-260(B)(1), but did not “remain at work for a minimum of fifteen days.” Thus, termination of his temporary total disability benefits was improper. See *id.* at 289, 631 S.E.2d at 553. Here, Appellant returned to work pursuant to § 42-9-260(B)(5), which does not require presence at work for fifteen days. Regardless, even if it did, Appellant returned for more than fifteen days.

provided limited duty work consistent with the terms upon which Appellant had been released. Accordingly, Appellant's temporary total disability benefits were properly terminated when he returned to Employer in December 2021.

Thus, as his temporary total disability benefits were properly terminated, the relevant issue is whether Appellant was entitled to have temporary total disability benefits restarted as a result of his termination from Employer. An employee's entitlement to temporary total disability payments requires that he is "out of work **due to** a reported work-related injury." *See* S.C. Code Ann. § 42-9-260(A) (emphasis added). Thus, if an employee, who suffered a compensable injury, is terminated for cause, the employee is not entitled to temporary total disability payments. *See Pollack*, 405 S.C. at 15-16, 747 S.E.2d at 433-434.

In *Pollack*, an employee suffered an admitted injury to his back and returned to work as a drivers' supervisor with restrictions. *See id.* at 11, 747 S.E.2d at 431. While the employee was investigating an accident involving a driver, he hit the side of another vehicle leaving only "a line of dirt on the vehicle" and no real property damage. *See id.* at 12, 747 S.E.2d at 431-432. The employee did not report his own minor accident in violation of the employer's policy. *See id.* at 12, 747 S.E.2d at 432. The employee was suspended, but reinstated by his local superiors, only to be terminated by the corporate office just over two months after having returned from injury. *See id.*

Thereafter, the employee filed a claim for temporary total disability. *See id.* The employer testified that, but for the employee's violation of the company policy in failing to report his accident, the employee would have continued to work with his restrictions. *See id.* at 13, 747 S.E.2d at 432. The hearing commissioner and the full commission found the employee was not entitled to temporary total disability because he was terminated for cause. *See id.*

The South Carolina Supreme Court held that S.C. Code Ann. § 42-9-260 provides that temporary total disability may begin when “an employee has been out of work *due to* a reported work-related injury...for eight days[.]...” *See id.* at 14, 747 S.E.2d at 433 (emphasis in original). The Court continued that when an employer offers suitable employment within the injured employee’s restrictions, entitlement to temporary total disability benefits is based on whether the employee’s inability to earn wages was the result of a work-related injury or termination for cause. *See id.* at 15-16, 747 S.E.2d at 433-434.

Here, like the employee in *Pollack*, Appellant suffered a compensable injury and returned to work in his same role with restrictions. While working in that role, Appellant was terminated for cause. As discussed below, Appellant’s termination was justified, and was certainly not so capricious for this Court to overturn the unanimous decisions of the single commissioner and the full commission. Accordingly, the single commissioner and the full commission, by evaluating Appellant’s claim for temporary total disability benefits based on the precedent stated in *Pollack*, did not err as a matter of law.

B. The Single Commissioner and Full Commission Made the Correct Factual Determination.

Appellant has a heavy burden to convince this Court that the unanimous decisions of the single commissioner and the full commission were not supported by substantial evidence and were unreasonable. “This Court will not overturn a decision by the Commission unless the determination is unsupported by substantial evidence.” *Jones*, 355 S.C. at 416, 586 S.E.2d at 113 *citing Lark*, 276 S.C. at 136, 276 S.E.2d at 307. “Substantial evidence is evidence which, considering the record as a whole, would allow reasonable minds to reach the conclusion that the administrative agency reached to justify its action.” *Id.* at 417, 586 S.E.2d at 113 *quoting Howell v. Pacific Columbia Mills*, 291 S.C. 469, 471, 354 S.E.2d 384, 385 (1987).

As the South Carolina Supreme Court noted in *Pollack*, a determination of whether an employee was terminated “due to or because of” an injury or for cause “is a quintessential factual question for the fact-finder, the Commission.” *See Pollack*, 405 S.C. at 15-16, 747 S.E.2d at 433. Thus, the Supreme Court in that case, and this Court in this case, “is limited to determining whether substantial evidence supports the Commission’s finding that Appellant’s inability to earn wages was a result of his termination for cause, not his work-related injury.” *See id.* at 16, 747 S.E.2d at 434.

While Appellant’s Initial Brief is full of rhetorical questions, speculation and conspiracies concerning Employer’s allegedly improper motives for terminating Appellant, there is no evidence to back them up. The primary thing Appellant relies on is the advertised description for the job of a maintenance director noting various lifting requirements that would have exceeded Appellant’s restrictions. However, Appellant ignores that in his job offer, and in practice, his responsibilities were limited to those duties that were within his restrictions. R pp 345, 407-408, 426 & 441-442.

Moreover, Appellant points to the involvement of management and workers’ compensation representatives in the decision to terminate Appellant as evidence of an improper motive. While ensuring a personnel decision does not violate the applicable law does not seem to point to a nefarious plot and is what occurred in *Pollack*, it is clear both the single commissioner and the full commission were sensitive to the possibility that Employer terminated Appellant as a mere pretext to end temporary total disability benefits, as alleged by Appellant. R pp 18-19 & 30. They found, with the single commissioner having the benefit of observing the witnesses, based on the totality of the evidence that Employer was justified in terminating Appellant for cause. R pp 18-19 & 30.

Moreover, there is substantial evidence Appellant was terminated for cause. Employer, through its general manager Mr. Kear, emphatically noted that Appellant's termination had nothing to do with his injury and that if he had not been terminated for cause, he would still be able to accommodate his light-duty work restrictions.³ Appellant himself admitted he made mistakes in his job and acknowledged that others performed work that exceeded his restrictions. Mr. Kear detailed the multitude of reasons why Appellant was terminated, including poor performance, insubordination and absenteeism. Ultimately, based on the "greater weight of the evidence," both the single commissioner and the full commission unanimously found Appellant was terminated for cause. Therefore, there is no basis for this Court to overturn the factual determinations of the single commissioner or the full commission.

CONCLUSION

For the reasons stated herein, this Court should affirm the decisions of the single commissioner and the full commission.

³ Appellant's arguments that he was "incapable of obtaining any job" is belied by the fact that he worked for Employer and noted himself that had he not been terminated he was able to continue to work light duty for Employer. R p 428.

May 16, 2025

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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.

CERTIFICATE OF COUNSEL

I certify that this **Final Brief of Respondents** complies with Rule 211(b) SCACR.

May 16, 2025

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ARGUMENT

1. The Commission made an error of law in failing to award TTD based on the binding precedent of *Cranford* and *Grayson*.

Respondents argue that “the issue in this appeal is more appropriately addressed by *Pollack*, the decisions in *Cranford* and *Grayson* are inapplicable as they are based on a subsequently amended regulation.” [Brief of Respondents, page 5]. Essentially, Respondents are arguing that Cranford and Grayson have been legislatively overruled. Respondents are incorrect.

It is true that Regulation 67-504 was amended after the supreme court’s decision in Grayson v. Carter Rhoad Furniture, 317 S.C. 306, 454 S.E.2d 320 (1995). That amendment became effective on April 25, 1997. Thus, while the previous regulation was in effect when Grayson was decided in 1989, it most certainly was not when Cranford was decided in 2012.¹ Indeed, in Cranford this Court explicitly discussed the amendment holding:

While Regulation 67–504 was amended in 1997, under the prior and amended version, Hutchinson’s firing of Cranford after the fifteen-day window would still require Hutchinson to pay temporary disability unless: (1) a physician determines Cranford is able to “return to work without restriction”; OR (2) A PHYSICIAN determines Cranford has reached Maximum medical improvement such that permanent disability benefits, as opposed to temporary benefits, should be awarded if warranted.

Cranford v. Hutchinson Constr., 399 S.C. 65, 731 S.E.2d 303 (Ct. App. 2012)

The reference to Regulation 67-504 is merely academic. As the events in the instant case

¹Regulation 67-504 was amended again in 2018, albeit with minor grammatical changes which have no relevance to the issues in the instant case.. This version is virtually identical to the 1997 version. Paragraph A allowed compensation to be suspended or terminated “during the first one hundred fifty days after the employer **has** notice of the injury according to Section 452-9-260.” The 2018 amendment changed “**has** notice of” to “**received** notice of.” The 2018 amendment also changed the requirement to “serve **two copies of** the Form 15 immediately on the claimant . . .” to “serve the Form 15 immediately on the claimant . . .” ; Reg. 67-504 (2018),Reg. 67-504 (1997).

occurred more than 150 days after notice of the accident, the applicable regulation is 67-505.

To aid the Court in understanding the procedural issues, the Court should be aware that the statute governing payment, suspension and termination of temporary compensation was completely rewritten in 1996 – which is what necessitated a rewrite of the regulations the following year.

A. Legislative History and the Development of 150-day Grace Period.

To make sense of how Cranford and Grayson remain good law, one has to examine how compensation was handled in the past and what factors motivated the Legislature to enact the 150-day grace period in the first place. The Legislature has always intended that worker's compensation benefits be provided to injured workers with a strong degree of certainty. As families depend on a regular income, temporary compensation is meant to be as constant and reliable as a paycheck.²

From almost the very beginning, the Act included two key provisions: (1) an agreement to pay compensation would be irrevocable by the employer; and (2) compensation could not be suspended or terminated without appropriate due process protection for the employee.³

²See S.C. Code Ann. § 42-9-90 (1985)(providing for 10% penalty if compensation not timely paid); § 42-9-220 ("Compensation under this Title shall be paid periodically, promptly and directly to the person entitled thereto"); § 42-9-230 ("installments paid weekly must be paid on the same day of the week"); § 42-9-240 ("compensation shall be paid in installments weekly"); § 42-9-260 (1996)("Failure to comply with this section shall result in a twenty-five percent penalty imposed upon the carrier or employer computed on the amount of benefits withheld in violation of this section").

³In 1952, the Workers' Compensation Act was amended to require notice to the Commission: "Upon making the first payment and upon suspension of payment for any cause, the employer shall notify the Commission, in accordance with a form prescribed by the Commission, that payment of compensation has begun or been suspended as the case may be." S.C. Code § 72-177 (1962).

In 1974, the Act was again amended, this time to require an evidentiary hearing before termination or suspension of compensation: "The commission shall provide by rule the method and procedure by which benefits may be suspended or terminated for any cause, but the rule must provide for an evidentiary hearing and commission approval prior to termination or suspension

The “Agreement as to Compensation” is governed by S.C. Code Ann. § 42-17-10 (1985).

The section provides that:

[i]f . . . the employer and the injured employee . . . reach an agreement in regard to compensation under this title, a memorandum of the agreement in the form prescribed by the Commission, accompanied by a full and complete medical report shall be filed with the Commission within fifteen days after agreement has been reached by the parties for approval of the Commission; otherwise, such agreement shall be voidable by the employee or his dependents. . . . If approved by the Commission, the memorandum shall for all purposes be enforceable by a court's decree as specified in this title.

S.C. Code Ann. § 42-17-10 (1985).

The “form prescribed by the Commission” is the Form 15. See, Lowther v. Standard Oil Co. of New Jersey, 206 S.C. 286, 33 S.E. 2d 889 (1945). The Form 15 has *always* been binding on the employer. Section 42-17-10 specifically states that the Form 15 “shall be *voidable by the employee*” if not filed with the Commission by the employer. S.C. Code Ann. § 42-17-10 (1985)(emphasis added). This language makes it clear that an Agreement to Pay Compensation is binding on the employer regardless of whether it is filed for approval with the Commission. It is the signature of the employer’s representative that creates the binding effect; not later action by the Commission.

Over the years, the appellate courts have consistently confirmed that an agreement to pay compensation is irrevocable and binding on the employer. In Allen, the supreme court held: “The question of whether claimant sustained an injury by accident . . . was finally adjudicated by the agreement as to compensation which was duly approved by the Industrial Commission and formal award entered thereon. Appellants cannot now retry the basic issue of liability.” Allen v. Benson Outdoor Advertising Company, 236 S.C. 22, 112 S.E. 2d 722, 723 (1960). Shortly thereafter, the

unless such prior hearing is expressly waived in writing by the recipient.” S.C. Code § 72-177 (1974). This language remained unchanged until the 1996 amendments.

court affirmed the general principle by quoting with approval the Rhode Island Supreme Court: “We are of the opinion that the Legislature intended to guard the injured employee against just such a situation and that, while encouraging the parties to enter into agreements without the necessity and expense of a judicial hearing, it took care that such agreements should not easily be avoided by providing, in effect, that they should have the same force as decrees of the court in settling the rights and obligations of the parties.” Singleton v. Young Lumber Co., 236 S.C. 454, 114 S.E.2d 837 (1960), *quoting* Carpenter v. Globe Indem. Co., 14 A.2d 235 (R.I. 1940). In 1990, the court reaffirmed the general principle by citing to both Allen and Singleton for the proposition that, “Once the Commission approves a compensation agreement, the agreement becomes as binding as a judicial decree and the facts contained therein are as definitely settled as factual findings incorporated in a decree.” McCreery v. Covenant Presbyterian Church, 303 S.C. 271, 400 S.E.2d 130 (1990).

In 1996, a few years after McCreery, the Legislature addressed two nagging problems which had arisen with the binding effect of an agreement to pay compensation. Employers were reluctant to start compensation without first fully investigating a claim. The understandable fear that they would be irrevocably locked into paying for a non-meritorious claim resulted in long delays for injured workers. The second concern was that the requirement for an evidentiary hearing before stopping compensation was proving to be cumbersome for employers and a drain on the Commission’s resources.

The Legislature responded with a superbly crafted and elegant piece of legislation. They substantially rewrote § 42-9-260 by creating a 150-day grace period during which employers could unilaterally suspend or terminate compensation for specified reasons – including when a “good faith investigation by the employer reveals grounds for denial.” S.C. Code Ann. § 42-9-260 (B)(3)(1996).

However, *no changes* were made to the procedure for suspending or terminating temporary compensation *after* the 150-day grace period. See S.C. Code Ann. § 42-9-260 (B)(3)(1996). The amendment retained the previous procedure for suspension or termination after the grace period. *Compare* S.C. Code Ann. § 42-9-260 (F)(1996), *with* S.C. Code § 72-177 (1974). After 150 days, an agreement to pay compensation remains binding on the employer. The Legislature believed 150 days was an appropriate length of time in which to complete a good faith investigation – as shown by setting the starting point as “one hundred fifty days from the date the injury or disease is *reported* . . .” Id.

The creation of the 150-day grace period necessitated modifications in the Form 15. As the employer was now allowed to start, suspend or terminate compensation during the grace period without an evidentiary hearing, the Commission removed the requirement for the Form 15 to be approved by a Commissioner. In lieu of a hearing or the claimant’s consent, the revised Form 15 simply required proof that one of the grounds specified in § 42-9-260(B) had been met. The employee’s due process rights were satisfied by (1) requiring documentation of the grounds for suspension or termination, (2) requiring immediate service and filing of the Form 15; and (3) providing for an expedited hearing if requested by the employee. See S.C. Code Ann. § 42-9-260 (B-C)(1996); 25A S.C. Code Ann. Reg. 67-504 (1997). See also Martin v. Rapid Plumbing, 369 S.C. 278, 631 S.E.2d 547 (Ct.App. 2006)(mandating strict compliance with statutory procedure for terminating temporary compensation within the first 150 days).

The Legislature plainly intended to solve a problem and make the system more efficient during the early stages of a claim. However, the Legislature retained existing law on the binding effect of paying compensation once the grace period had expired. After 150 days, the claimant’s

right to compensation has vested such that it cannot forcibly be stopped without the procedural due process of an evidentiary hearing.

B. Application of the statute and case law to the case at bar.

The case *sub judice* occurred after the 150 day period. Hinson gave notice of his injury on July 9, 2021. The 150-day period ended on December 5, 2021. After a period during which temporary total disability compensation (TTD) was paid, Merrill Gardens brought Hinson back to work on December 22, 2021, under a 5-pound lifting restriction. Merrill Gardens fired him on January 25, 2022.

Because Hinson returned to work *with restrictions* after the 150-day grace period ended, this case is not governed by Regulation 67-504; it is governed by Regulation 67-505. It is ironic that had Hinson refused to return to work under Merrill Gardens' ostensible offer of light duty work, Merrill Gardens would not have been able to suspend TTD without an evidentiary hearing. Because Hinson willingly went back to work, Employer was able to suspend TTD without an evidentiary hearing under § 42-9-260 (B)(1) and 42-9-260(F) via the Form 15 (Section II).

Regulation 67-505 was enacted to comply with the statute's requirement that:

After the one-hundred-fifty-day period has expired, the commission shall provide by regulation the method and procedure by which benefits may be suspended or terminated for any cause, but the regulation must provide for an evidentiary hearing and commission approval prior to termination or suspension unless such prior hearing is expressly waived in writing by the recipient or the circumstances identified in Section 42-9-260(B)(1) or (B)(2) are present.

S.C. Code Ann. § 42-9-260 (1996).

Paragraph E of the Regulation states: "When the claimant completes fifteen calendar days of work, . . . the employer's representative immediately shall submit a completed Form 17 to the claimant for signature." Reg. 67-505 E. The regulation goes on to require that the employer shall

file the signed 17 to terminate compensation and, if the employee refuses to sign, the employer “shall file a Form 21” to request a hearing to terminated compensation.

The above statute and regulations govern this case. This court has previously reversed the Commission’s denial of temporary compensation when “[e]ven if [the employer] could have stopped temporary total disability benefits, it failed to follow the proper procedure for doing so as outlined by section 42-9-260 and regulation 67-504.” The Court held “These deficiencies are not mere technicalities, but are substantial deviations from the statutory procedure. The circuit court was correct in finding [the employer] wrongfully terminated temporary benefits.” Martin v. Rapid Plumbing, 369 S.C. 278, 289, 631 S.E.2d 547 (Ct.App. 2006).

Here, the Employer never offered a Form 17 to Hinson.⁴ This matters because it means that TTD was merely suspended; not terminated. When the Employer withdrew the offer of light duty employment on January 25, 2022, it was required to immediately restart payment of TTD as a matter of law – because Hinson was still under work restrictions and had not reached MMI.

This is the same scenario presented in Cranford and Grayson. This Court relied on Grayson in Cranford observing “The 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 temporary benefits reinstated.” Cranford v. Hutchinson Constr., 399 S.C. 65, 74-75731 S.E.2d 303, 308 (Ct. App. 2012)(internal citations omitted).

⁴The Form 17 requires the Claimant to agree that he or she returned to work “with restrictions but at a salary not less than before the injury; without restrictions;” or that “The claimant agrees he or she was able to return to work on [date].”

Respondents argue “Put simply, the law has changed since *Cranford* and *Grayson*, so that temporary total disability benefits can be terminated or suspended even if an employee returns to work ‘with restrictions.’” [Brief of Respondents, page 6]. Respondents are, again, incorrect in their citation of the statute and regulations. Nothing has changed.

For example, in a footnote, Respondents state Martin is inapplicable because “Appellant returned to work pursuant to § 42-9-260(B)(5) which does not require presence at work for fifteen days. Regardless, even if it did, Appellant returned to work for more than fifteen days.” [Brief of Respondents, page 6, note 2]. In reality, the employer in Martin improperly suspended TTD under the very code section cited by Respondents. See S.C. Code Ann. § 42-9-260 B (5)(1996)(“Once temporary disability payments are commenced, the payments may be terminated or suspended immediately at any time within the one hundred fifty days if . . . the employee has been released by the treating physician to limited duty work and the employer provides limited duty work consistent with the terms upon which the employee has been released”).

The Court explained the difference:

The rationale given by Rapid Plumbing is only applicable when suitable employment is offered but not accepted. Thus, had Martin refused to return to work, Rapid Plumbing would have had legal justification to terminate his temporary compensation. Because Martin willingly returned to work, but was unable to continue work after one day, the reason given by Rapid Plumbing did not apply.
Martin v. Rapid Plumbing, 369 S.C. 278, 289, 631 S.E.2d 547 (Ct.App. 2006)(emphasis added).

Respondents use this erroneous interpretation of the statute to argue that “as [Hinson’s] temporary total disability benefits were properly terminated, the relevant issue is whether Appellant was entitled to have temporary total disability benefits restarted as a result of his termination from Employer.” [Brief of Respondents, page 7]. As discussed above, the Commission erred in even

reaching the issue of termination because Hinson’s temporary compensation was never “properly terminated.” It was merely suspended. After 150 days, the claimant’s right to compensation has vested such that it cannot forcibly be stopped without the procedural due process of an evidentiary hearing. See Last v. MSI Const. Co., Inc., 305 S.C. 349, 409 S.E.2d 334 (1991)(terminating temporary compensation benefits of incarcerated worker would unconstitutionally deprive him of a vested property interest without due process of law).

Respondents argue (and the Commission held) that Pollack controlled the outcome of this case. Respondents state “Here, like the employee in *Pollack*, Appellant suffered a compensable injury and returned to work in his same role with restrictions. While working in that role, Appellant was terminated for cause.” [Brief of Respondents, page 8]. Respondents’ statement is *almost* correct. The difference is that Pollack did not *return to work in his same role*. He never left work. He simply continued working at his same wage as a supervisor – a role he was able to continue despite his restrictions because his job had no physical requirements outside of his restrictions.

The Pollack court made this same distinction stating “It is undisputed that Appellant, **who never received TTD benefits**, was accommodated by Respondent within his light duty work restrictions.” Pollack v. Southern Wine & Spirits of America, 405 S.C. 9, 747 S.E.2d 430 (2013)(emphasis added). No one disputes that Pollack is good law under its specific facts. The question is whether Pollack applies to people who were called back to work *while receiving TTD benefits due to their disability* only to be fired a few weeks later while still under restrictions – as in Grayson, Cranford and the instant case.

The public policy behind Pollack is a reasonable one. An employer should not be compelled to pay TTD when it legitimately terminates a **nondisabled employee** who commits misconduct. In

those cases, the terminated employee bears the burden of showing his lack of work is due to his disability rather than his misconduct. Yet even under Pollack, the court recognized an employer's possible motivation to 'look for' a reason to fire an injured worker." Pollack v. Southern Wine & Spirits of America, 405 S.C. 9, 747 S.E.2d 430 (2013).

If the Pollack court intended to create a blanket rule barring payment of compensation even where an employer could bring back a disabled employee only to fire him a few weeks later, then the court would have explicitly overruled Cranford and Grayson. Cranford was published on June 13, 2012 – a mere eleven months before Pollack was published on July 17, 2013.

Different policy considerations apply when the employee has not been provided "*continued employment* within his light duty restrictions" as was the case in Pollack. Id. (emphasis added). The Legislature addressed the situation here – where a disabled employee receives temporary compensation, returns to work under restrictions, and then goes back out of work under the same disability. Section 42-9-260 was enacted to protect a disabled employee's right to ongoing compensation right up to the point where he reaches MMI. See Curiel v. Envtl. Mgmt. Servs. (MS), 376 S.C. 23, 655 S.E.2d 482 (2007) ("Essentially, workers' compensation benefits accrue along a time continuum: temporary total disability benefits are available from the date of injury through the date of [MMI]; post-MMI benefits may then be awarded either as a permanent total or partial disability, or as a percentage of impairment to a scheduled member."). See, also Pierre v. Seaside Farms, Inc., 386 S.C. 534, 689 S.E.2d 615 (2010) ("Common sense indicates that a compensation law passed to increase workers' rights (because their common law rights were too narrow) should not thereafter be narrowly construed.").

To this end, the Legislature enacted substantive and procedural protections for disabled

employees – protections that are triggered once the employee becomes unable to work due to his work-related disability. Those protections were never triggered in Pollack. They were triggered here and they continue to provide ongoing protection to Hinson up until the point he reaches MMI.

Cranford and Grayson are distinguished from Pollack because both employees received TTD and were deemed disabled before the employer called them back to work for a brief period before firing them for cause. The employee in Pollack worked continuously after his injury, never became disabled, and was not paid TTD. As Hinson's situation is identical to Cranford and Grayson, there is no evidence his period of disability ever ended and he is entitled to be paid TTD as a matter of law. Accordingly, the Court should reverse the decision below and hold that Cranford is entitled to TTD from January 25, 2022 and continuing.

2. Even if *Pollack* is the controlling authority in this case, the Court should find that Hinson was not legitimately terminated for misconduct occurring while he was on accommodated duty and award him TTD on a running award from January 25, 2022.

Respondents argue that “Appellant has a heavy burden to convince this Court that the unanimous decisions of the single commissioner the full commission were not supported by substantial evidence and were unreasonable.” [Brief of Respondents, page 8]. All parties agree the termination for cause issue is reviewable under the substantial evidence standard of review.

Substantial evidence is not a rubber stamp. Unlike summary judgment for example, there is no requirement to construe the facts and evidence in the light most favorable to the moving party. For the Court to meaningfully review this case, the Court must examine all the evidence with a neutral objective eye. Whilst the Court cannot make its own factual findings based on its own view of the preponderance of the evidence, it can and should reverse unsupportable findings. As our

supreme court recently stated, “Unlike a jury verdict, the Appellate Panel’s factual decisions may be reversed if they are arbitrary or clearly wrong, which they are here.” Russell v. Wal-Mart, Op. No. 28258 (S.C. Sup. Ct. filed Jan. 29, 2025) (Howard Adv. Sh. No. 5 at 18).

The parties diverge when it comes the facts and inferences which can be drawn from the evidence. Respondents argue “While Appellant’s Initial Brief is full of rhetorical questions, speculation and conspiracies concerning Employer’s allegedly improper motives for terminating Appellant, there is no evidence to back them up.” [Brief of Respondents, page 9]. To say there is “no evidence” is a bold statement.

Consider first who made the decision to terminate Hinson. Was it Dougal Kear, the man on the scene; the one who worked closely with him; his direct supervisor under light duty? Surely if Hinson was such a bad employee, Kear would have made the decision. Or at the very least, he would have made the recommendation to upper management that Hinson was a poor employee who should be terminated.

Kear’s own testimony proves that he had nothing to do with the termination – other than to deliver the message. He testified the decision to bring Hinson back and ultimately fire him 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. 459, lines 11-18 (emphasis added); p. 467, lines 16-21]. This is an undisputed fact. Yet it appears nowhere in the Appellate Panel’s order.

The Appellate Panel found “[Respondents] contend that Claimant was terminated for absences from work as well as a lack of communication and insubordination.” [R.P. 34, Finding of Fact 9]. The absences from work occurred when Hinson was seeing a doctor or other medical provider for treatment. Merrill Gardens may not have liked that Hinson had to miss work to be

treated for his injury, but it is not a valid reason for termination. Kear knew Hinson had physical therapy appointments on Tuesdays and Thursday plus injections and doctor visits. [R.P. 460, line 16-p. 461, line 21]. There is no documentation of Hinson ever being warned or counseled for missing work, nor is there documentation of days or hours he might have missed for reasons other than medical treatment. His time cards confirm he clocked out on Tuesday and Thursday afternoon for physical therapy. [APA pages 236-244]. In short, there is no evidence to support “absence from work” as misconduct warranting termination.

The same is true of lack of communication and insubordination. Terminating Hinson for calling in an outside painting crew after obtaining permission from the training supervisor (a fact admitted by Kear) is equally spurious. And so far as the supposed incidents involving a cooktop and a mixer valve, there is no evidence either occurred or was as serious as alleged by Merrill Gardens. Kear had no first hand knowledge nor any written documentation that either event occurred. And had they been as serious as alleged, then surely Hinson would have been written up for them. Or at least Merrill Gardens would have documented his file. None of this existed. When one actually *looks* at the evidence, it can be seen that the reasons given as justification for terminating Hinson are simply after-the-fact pretexts created for this litigation. See Pollack v. Southern Wine & Spirits of America, 405 S.C. 9, 747 S.E.2d 430 (2013)(“[W]e do agree with Appellant that an employer's denial of TTD benefits must be scrutinized carefully.”).

The Commission never made findings about these essential issues – issues which it framed itself in its order. It never tried to match up the Employer’s allegations with its proof (or lack of proof). Instead, the Commission summarily found “In comparing the two, we simply find Mr. Kear’s testimony more believable. We are not persuaded that Claimant’s situation with the

Employer was as toxic a scenario as he believes.” [R.P. 38, Finding of Fact 58]. Such a finding is an obvious way to turn the case into a question of credibility – a he said/she said intended to deprive this Court of the ability to review and reverse.

Respectfully, this Court should not abdicate its duty to provide meaningful review merely because the Commission couched its ultimate conclusion on credibility. The facts and events occurring leading to Hinson’s termination are not difficult to discern. This brief relies largely on Kear’s testimony because his testimony reveals the lack of evidence and foundation for a finding of misconduct warranting termination.

The Court should hold that the Commission’s findings as to Merrill Gardens’ termination of Hinson are unsupported by substantial evidence. The decision below should be reversed.

CONCLUSION

For the foregoing reasons, the Decision and Order below should be reversed and remanded with instructions to the Commission order payment of TTD beginning on January 26, 2022 and continuing on a running award until stopped by Order of the Commission or written consent of the parties.

Respectfully Submitted,



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May 9, 2025
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THE STATE OF SOUTH CAROLINA
In The Court of Appeals

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SC 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.

CERTIFICATE OF COUNSEL

The undersigned certifies that this Final Reply Brief of Appellant complies with Rule 211(b),
SCACR.

Respectfully Submitted,



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