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.

REPLY TO RETURN TO PETITION FOR REHEARING

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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

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[1]Rose 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.

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[2]Russell 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.

Respectfully Submitted,

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Attorney for Appellant

October 21, 2025
Columbia, South Carolina

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PROOF OF SERVICE

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

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October 21, 2025

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MICHAEL R. PARKS
ATTORNEYS AT LAW

October 21, 2025

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

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

Dear Ms. Kitchings:

Enclosed for filing please find a copy of our **Reply to Return to Petition for Rehearing** along with our **Proof of Service** regarding the above-referenced matter. Please have your staff file and return to us a clocked copy of our **Reply to Return to Petition for Rehearing** and **Proof of Service.**

By copy of this letter and attachments, we are serving defense counsel, Mark Davis, Esquire, and Jeffrey Kuykendal, Esquire with a copy of same as indicated by our attached **Proof of Service.**

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

Sincerely,

Wanda Powell
Paralegal for Stephen B. Samuels

/wp
Enclosure(s) as stated

cc: Mark Davis, Esquire.
Jeffrey Kuykendal, Esquire