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SC Court of Appeals

**THE STATE OF SOUTH CAROLINA
In the Court of Appeals**

**APPEAL FROM THE SOUTH CAROLINA
WORKERS' COMPENSATION COMMISSION**

WCC File No. 0100434

Emitt R. Gunnells, Claimant, Appellant,

vs.

**Galey & Lord Industries, Employer, and Arrowpoint Capital
Corporation, Carrier, Respondents.**

PETITION FOR REHEARING

**STEPHEN J. WUKELA
WUKELA LAW FIRM
S.C. Bar No. 68351
Attorney for Appellant
PO Box 13057
Florence SC 29504
843-669-5634
stephen@wukelalaw.com**

The Appellant hereby moves that the Court grant rehearing of its December 10, 2025 Order on the grounds that the Court overlooked or misapprehended certain points of the Appellant's arguments as set out herein:

I. BACKGROUND

This appeal arises from an Order of the Workers' Compensation Commission Appellant Panel dated May 9, 2022; suspending the Appellant's weekly lifetime benefits in a brain damage award from 2003.

Over three (3) years ago, on May 11, 2022, two (2) days after the Commission's Order, the Appellant filed a Notice of Appeal to this Court.

The Respondents did not raise any objection to the jurisdiction of this Court to review the decision of the Commission. Rather, both parties submitted to the jurisdiction of this Court.

The Appellant filed his Initial Brief on August 22, 2022, and Respondents filed their Initial Brief on October 12, 2022. The Respondents did not raise, in their Initial Brief, any objection with regard to the jurisdiction of this Court to review the decision of the Commission.

The Appellant filed his Final Brief on October 12, 2022. Respondents filed their Final Brief on November 17, 2022. The Respondents did not raise, in their Final Brief, any objection as to the jurisdiction of this Court to review the decision of the Commission.

On May 6, 2025, this Court notified the parties that the Court would hear oral arguments on June 3, 2025. The Respondents did not, at that point, raise any objection to the jurisdiction of this Court to review the decision of the Commission.

On May 22, 2025, twelve (12) days before oral arguments were set to be heard on the briefs filed by the parties two and one-half (2½) years prior, the Respondents, for the first time, moved to dismiss the appeal on the grounds that this Court lacks jurisdiction to hear the matter.

By Order of December 10, 2025, the Court dismissed the appeal; finding that, pursuant to S.C. Code §42-17-60, the Appellant improperly filed his notice of appeal with the clerk of court of the Court of Appeals, rather than the clerk of the circuit court and, therefore, the appeal must be dismissed.

II. ARGUMENT

A. Rule 204 Transfer

Rule 204 (a), S.C.A.C.R. provides:

(a) **Improperly Filed Cases.** In the event that the notice of appeal is filed in the wrong appellate court, the appellate court in which the matter is filed shall issue an order transferring the case to the appropriate appellate court.

(Rule 204(a) SCACR)

The Respondents do not argue that the Court lacks subject matter jurisdiction to review the decisions of the Workers' Compensation Commission. Nor do the

Respondents dispute that this Court has appellate jurisdiction over appeals from the Workers' Compensation Commission in pre-July 1, 2007 accidents, after intermediate review by the circuit court.

Respondents argue, instead, that the notice of appeal was filed in the wrong appellate court; and should have been filed, initially, in the circuit court.

Rule 204 provides that “[I]n the event that the notice of appeal is filed in the wrong appellate court, the appellate court in which the matter was filed *shall* issue an order transferring the case to the appropriate appellate court.” (emphasis added).

The Appellant contends that the Court has subject matter and appellate jurisdiction to review the decisions of the Workers' Compensation Commission; and should consider the merits of the appeal.

In the alternative, the Appellant argued in its Opposition to Respondents' Motion to Dismiss (p. 4, fn. 2), at oral argument, and argues here, that upon finding that the Court lacks appellate jurisdiction because the notice of appeal was filed in the wrong appellate court, Rule 204 S.C.A.C.R. requires that the Court transfer the case to the appropriate appellate court; here, the circuit court.

The Court's Order does not address Rule 204 transfer.

The Appellant respectfully requests that the Court consider the application of Rule 204 and transfer the matter to the Circuit Court rather than dismissing it altogether.

B. S.C. Code §1-23-380 (A)(1)

South Carolina Code §1-23-380 (1), effective June 16, 2008 for *all* cases involving judicial review of administrative decisions (irrespective of date of accident) provides that “[p]roceedings for review are instituted by serving and filing notice of appeal as provided in the South Carolina Appellate Court Rules...”

South Carolina Appellate Court Rule 203(d)(2) provides that, aside from certain Public Service Commission appeals, “[u]nless otherwise required by statute, all other appeals from administrative tribunals shall be filed the Clerk of the Court of Appeals.”

The Respondents point to S.C. Code §42-17-60; which provides that, in pre-July 1, 2007 accidents, parties “may appeal from the decision of the [workers’ compensation] commission to the court of common pleas...”

However, S.C. Code §42-17-60 does not address how to institute such an appeal, **or where to file the notice of appeal**¹.

¹ Nor does the Supreme Court’s decision in Pee Dee Reg’l Transp. v. S.C. Second Inj. Fund, 375 S.C. 60 (2007)(construing § 42-17-60 and finding appellate jurisdiction in the Circuit Court where appellant filed a notice of appeal in both the Circuit Court and the Court of Appeals).

Certainly, it stands to reason that appeals should be filed with the appellate court with appellate jurisdiction.

However, the Respondents' Motion is based on technicality. Technically, South Carolina Appellate Court Rule 203(d)(2) directs the appellate to institute administrative appeals by filing notices of appeal with the clerk of the court of appeals, unless otherwise required by statute.

S.C. Code §42-17-60 does not address how to institute an appeal of the workers' compensation commission, or where to file the notice of appeal.

Thus, technically, as to pre-2007 accidents, S.C. Code §1-23-380 (A)(1) and S.C.A.C.R 203(d)(2) control how one *initiates* a workers' compensation appeal.

While, pursuant to S.C. Code §42-17-60, appeals from the Workers' Compensation Commission are decided, initially, by the circuit court, such appeals are *initiated* by filing a notice of appeal with the clerk of the court of appeals, pursuant to S.C. Code §1-23-380 (A)(1) and S.C.A.C.R 203(d)(2).

Our law recognizes the principle that appeals should be decided on their merits; not on procedural technicalities. Thus, the Court has adopted Appellate Court Rule 204; which provides that “[I]n the event that the notice of appeal is filed in the wrong appellate court, the appellate court in which the matter was filed *shall* issue an order transferring the case to the appropriate appellate court.” (emphasis added).

Whether the appeal should have, technically, been filed with the clerk of the circuit court, or the clerk of the court of appeals, it was promptly filed and should be decided on its merits by either the Court of Appeals or the Circuit Court.

C. Waiver

The notice of appeal in this matter was filed on May 11, 2022 over three years ago. The parties filed their final briefs in October and November 2022. The Respondents raised no objection to this Court's jurisdiction.

It was not until May 22, 2025, twelve days before oral argument, that the Respondents first objected to this Court's jurisdiction.

Respondents do not challenge the Court's subject matter jurisdiction, i.e. the Court's power to hear workers' compensation matters. Nor do they argue that the Court lacks the jurisdiction to review decisions of the Workers' Compensation Commission *on appeal*.

Rather, the Respondents, belatedly, make a *procedural* objection that the appeal was filed in the wrong appellate court and should have, first, been heard by the circuit court.

Unlike jurisdictional matters, procedural objections may be waived. See, S.C.A.C.R. 208(b)(2); 208(b)(1)(B)(providing for parties' abandonment of points not argued in briefing).

By failing, for over three years, to raise the procedural objection as to which appellate court should first hear the appeal, Respondents waived that procedural objection.

If the Court finds the objection unwaivable, the appropriate remedy is a procedural one: transferring the case to the appropriate appellate court pursuant to South Carolina Appellate Court Rule 203(d)(2).

The Appellant respectfully requests that the Court reconsider its Order of December 10, 2025 in light of the arguments above.

Respectfully submitted,

WUKELA LAW FIRM

BY: 
STEPHEN J. WUKELA
ATTORNEY FOR APPELLANT
WUKELA LAW FIRM
PO BOX 13057
FLORENCE SC 29504
843-669-5634
stephen@wukelalaw.com

Florence, South Carolina

December , 2025

**THIS OPINION HAS NO PRECEDENTIAL VALUE. IT SHOULD NOT BE
CITED OR RELIED ON AS PRECEDENT IN ANY PROCEEDING
EXCEPT AS PROVIDED BY RULE 268(D)(2), SCACR.**

**THE STATE OF SOUTH CAROLINA
In The Court of Appeals**

Emmitt R. Gunnells, Employee, Appellant,

v.

Galey & Lord Industries, Employer, and Arrowpoint
Capital Corporation, Carrier, Respondents.

Appellate Case No. 2022-000655

Appeal From The Workers' Compensation Commission

Unpublished Opinion No. 2025-UP-406
Heard June 3, 2025 – Filed December 10, 2025

DISMISSED

Stephen J. Wukela, of Wukela Law Firm, LLC, of
Florence, for Appellant.

D. Tyler Hembree, of McAngus, Goudelock & Courie,
LLC, of Greenville, for Respondents.

PER CURIAM: Emmitt R. Gunnells appeals an order from the Appellate Panel of the South Carolina Workers' Compensation Commission that affirmed the single commissioner's decision directing Galey & Lord Industries and the South Carolina Insurance Guaranty Association (collectively, Respondents) to stop paying weekly

benefits to Gunnells to allow them to recoup their inadvertent overpayment of \$22,619.16 in permanent disability benefits.

Respondents moved to dismiss the appeal, arguing this court lacks appellate jurisdiction to review this matter. We agree and dismiss the appeal.

Respondents assert that at the time of Gunnells's injury in 2001, section 42-17-60 of the South Carolina Code (Supp. 2006) required that a claimant must appeal a decision of the Workers' Compensation Commission to the circuit court.

Respondents contend that because Gunnells failed to appeal the decision to the circuit court, this court is without appellate jurisdiction.

Gunnells asserts Respondents abandoned this issue by failing to raise it in their brief. Gunnells further argues any failure to comply with a procedural requirement does not affect this court's subject matter jurisdiction over this case.

We dismiss this appeal for lack of appellate jurisdiction. Section 42-17-60 provides that either party may appeal an award of the Commission to the court of appeals; however, this version of the statute became effective on July 1, 2007, with the passage of Act No. 111 and applies only to injuries that occurred on or after that date. *See* Act No. 111, § 30, 2007 S.C. Acts 599, 630-31; S.C. Code Ann. § 42-17-60 (Supp. 2007); *Pee Dee Reg'l Transp. v. S.C. Second Inj. Fund*, 375 S.C. 60, 62, 650 S.E.2d 464, 465 (2007) ("The language of Act 111 is not ambiguous and clearly states that it applies only to injuries that occur on or after July 1, 2007. Therefore, the change regarding the appeal procedure, like all other provisions of the Act, is only applicable to Workers' Compensation cases in which the injury occurred on or after July 1, 2007."). Injuries that occurred prior to July 1, 2007, are governed by the previous version of the statute, which required parties to appeal to the circuit court. *See Pee Dee Reg'l Transp.*, 375 S.C. at 62, 650 S.E.2d at 465. Gunnells suffered his injury on January 14, 2001. Because Gunnells was injured prior to July 1, 2007, and appealed directly to this court rather than first appealing to the circuit court, this court lacks appellate jurisdiction to review the Appellate Panel's decision.

Accordingly, Gunnells's appeal is

DISMISSED.

KONDUROS, MCDONALD, and VINSON, JJ., concur.