THE STATE OF SOUTH CAROLINA
In the Court of Appeals

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SC Court of Appeals

APPEAL FROM SOUTH CAROLINA
SC Workers' Compensation Commission
Appellate Panel

Appellate Case No. 2025-001282

Mary L. Davis, Claimant, ... Appellant,

v.

Ruiz Food Products, Inc., Employer, and
Safety National Casualty Corporation, Carrier, ...Respondents.

INITIAL REPLY BRIEF OF APPELLANT

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APPELLATE JURISDICTION

A. THE DECISION OF THE FULL COMMISSION WAS A FINAL DECISION; AND

B. THE DECISION OF THE FULL COMMISSION CANNOT BE ADEQUATELY REMEDIED AFTER A FINAL DECISION.

This is an appeal from a final decision by the Commission on multiple "essential" issues before it for "decision" in this workers' compensation case. Important to the issue of appealability, this appeal is controlled by **both** SC Code §42-17-60 and SC Code §1-23-380.

The confusion concerning appealability begins with the difference between appeals from the SC Workers' Compensation Commission and appeals from almost all other Administrative Agencies. This confusion is augmented and heightened by the confusion caused by Appellate Opinions discussing the wording of §1-23-380 in reference to a final "decision" and various Opinions that change or equate "decision" to a final "judgment".

SC Code §42-17-60 establishes and our Appellate Court Rules, Rule 241(b)(7), SCACR, recognize that during the appellate process and at any time during that appellate process wherein benefits have been or are awarded, that the appeal does not operate as a supersedes and benefits must be paid which is an exception to general Administrative "decision" appeals.

For example, if this Court were to award temporary total

disability benefits at this level, the statute and case law would require the Respondents to begin to pay those benefits until a final conclusion of the appeal. In fact, prior to the Amendments in 2007 to §42-17-60, if benefits were awarded by this Court all the way back to the first date that temporary total disability benefits were alleged to be due, the Respondents would have to pay those in a lump sum. Subsequent to the 2007 Amendments, the benefits awarded prior to the Award at any Appellate level are held in abeyance and the Respondents only have to pay during the pendency of the appeal. For an actual review of all the scenarios wherein benefits have been awarded at various levels during the appeal, see Case v. Hermitage Cotton Mills, 236 S.C. 515, 115 S.E.2d 57 (1960). Note, Appellate Court Rule 241(b)(7), SCACR, only refers to the appeal statute, §42-17-60, in a workers' compensation case and not to §1-23-380. Additionally, after the 2007 Amendments to §42-17-60, any award of medical benefits has to be paid. The appealability of any final "decision" on any request for benefits of any type under the Workers' Compensation Act, pro or con, and the lack of a stay during the pendency of the appeal, is in accord with the fundamental purposes of the Workers' Compensation Act which is to ensure "swift and sure" benefits to and to prevent the victims of industrial accidents and their families from becoming charges on society. Cokely v. Robert Lee,

Inc., 197 S.C. 157, 14 S.E.2d 889 (1941). To deny immediate appealability of a denial of benefits is contrary to the very dictates of §42-17-60.

Even in non-workers' compensation Administrative Agency appeals, some non-final decisions are appealable. In Torrence v. SC Dept. of Corrections, 433 S.C. 224, 857 S.E.2d 549 (2021), the Court determined that (using the term from the Administrative Procedures Act), an Agency's "decision" was final and appealable even where there was a remand where that remand was simply ministerial in nature. This Court applied the Torrence decision in McEntire Produce, Inc. v. SC Dept. of Revenue, 886 S.E.2d 697 (SC App. 2023). The Court held that the Order of the Administrative Law Court ("ALC") was immediately appealable even though the ALC Order found most items not taxable under the exception but found that other items were taxable and remanded it. The Court cited Torrence for the proposition that the Remand was simply ministerial. However, and most importantly, again this is an appeal from a decision on entitlement to benefits by the Workers' Compensation Commission controlled by **both** §42-17-60 and §1-23-380 and not a general Administrative Agency appeal controlled by just §1-23-380. Further, the cases cited by Respondents in support of their argument are simply not final "decisions" on the merits of requests for benefits by an injured worker and were not

appealable. Those Opinions are contrary to the previous decisions of this Court cited below that found that the "decisions" were appealable as final "decisions" on the merits of a request for benefits, compensation and/or medical by the injured worker.

Brown v. Southeastern Services, LLC, 440 S.C. 105, 917 S.E.2d 925 (SC App. 2025), was right in result but was based on a misapplied premise and did not address a final "decision" on a request for benefits.

First, while Brown appropriately states the premise that workers' compensation appeals are governed by the APA and §1-23-380 and cites the precedential authority Lark v. Bi-Lo, 276 S.C. 130, 276 S.E.2d 304 (1981) establishing the maxim that the substantial evidence scope of review applies to workers' compensation appeals, Brown overlooks why in part the Court applied the APA substantial evidence standard to workers' compensation appeals. In deciding the Workers' Compensation Commission was an Agency and that §1-23-380 constituted the scope of review instead of §42-17-60's any evidence standard, the Court stated that because the General Assembly, two years after passage of the APA, created an evidentiary exception for evidence in workers' compensation cases, the General Assembly clearly considered the Commission an "Agency" and needed to create the exception. The same is true here. In 2007 the General Assembly not

only kept the mandatory requirement to pay compensation during the pendency of an appeal **but** added the requirement to pay medical during the **pendency of an appeal**. Thus, clearly indicating that both of those decisions are subject to appeal.

Further, Brown was not a final decision on the interest of or as to the party who filed the appeal. The Uninsured Employers Fund, the appellant, was simply paying compensation and medical ordered to be paid by the uninsured employer and was entitled to reimbursement from that employer. The uninsured employer did not appeal and the Court found the uninsured employer who did not appeal also had an adequate remedy of reimbursement[1]. Brown is based on this Court's decision in Rose v. JJS Trucking, 411 S.C. 366, 768 S.E.2d 412 (SC App. 2015). In Rose, the actual issue appealed was the Commission's failure at that time to transfer the making of payments of compensation from the employer and insurance carrier to the Uninsured Fund; not whether or not benefits were due and payable. Ironically and fortunately then Chief Judge Few who wrote Rose cited Rose in Russell v. Wal-Mart Stores, Inc., 476 S.C. 281, 826 S.E.2d 863 (2019) as a basis for determining that a delay in benefits to an injured worker was an inadequate remedy

[1] Appellant's Counsel cannot help but point out something that either nobody knew or failed to note to the Court which is, it is not until **after** the "Commission **determines** that the employer is subject to Title 42 and is operating without insurance or as an unqualified self-insurer ...", and "the Commission **shall notify** the Fund of the claim." The Fund was never intended to provide a free lawyer for an uninsured employer to challenge coverage.

and was a basis for immediate appeal.

In this case, there is not even a Remand. In this case, the Full Commission simply affirmed the Hearing Commissioner's final "decision" in reference to her entitlement to temporary total disability benefits denying her benefits based on her termination on February 20, 2023. The Commission further made a final "decision" and denied her any entitlement to medical treatment as a result of the accident on November 4, 2022. (Full Commission Order, 04/15/25). In Hilton v. Flakeboard Am. Ltd., 418 S.C. 245, 791 S.E.2d 719 (2016), the Supreme Court further clarified what it considered to be an intermediate decision that was appealable. The Court in that case noted that it would not provide the claimant with an adequate remedy to retry the case and then wait for an appeal of that decision. In remanding the case, the Court also noted that the claimant would possibly have to face repeated unexplained "do overs" before a final decision. There are multiple cases cited by this Court and the Supreme Court where there has been a final "decision" on a claimant's entitlement to specific benefits under the Act, and one will be cited here. In Green v. City of Columbia, 311 S.C. 78, 427 S.E.2d 685 (SC App. 1993), this Court recognized one situation where there was a final determination of a claimant's entitlement to benefits of one type under the Act. While that case is listed as being aggregated by

Hilton, the Supreme Court did not reverse that Finding of this Court. It also noted in Hilton one of the bases for appeal here which is that the Commission simply did not decide the issues raised on appeal as a basis for why that Order was immediately appealable.

The Commission has unfortunately made a final decision on the Appellant's entitlement to compensation benefits while she was in a light duty status and this is recognized by the Respondents in their Brief wherein they state that since Ms. Davis has now been declared temporarily totally disabled, and they have started weekly compensation benefits in accordance with the Act that thus, there has been a final decision on her entitlement to benefits for that period of time by the Agency.

To not recognize that a denial of temporary total disability benefits is immediately appealable would be to completely reverse the Supreme Court's and this Court's decisions in reference to appeals on that specific issue and specifically all the cases and the various situations that may arise during appeal as cited in the Case v. Hermitage Cotton Mills decision. The facts of each one of those scenarios will not be repeated here and those are set out and can be reviewed by the Court in the Case decision. Where a claimant is awarded temporary total weekly benefits and an appeal is made after the Full Commission decision, the claimant is

entitled to benefits back to the date of the award. Where a claimant is not granted benefits by the Single Commissioner but is awarded benefits by the Full Commission on appeal to the Appellate Courts, they are entitled to payment back to the date they were awarded by the Full Commission. Most importantly, where a claimant is denied benefits but yet is awarded benefits by the Appellate Court, the claimant is entitled to benefits from that date back to the date of the award of the Circuit Court or this Court, or even the Supreme Court if a Petition for Rehearing is filed. Of course, the 2007 Amendments modified that to require payment only back to the date thirty (30) days after the decision to award benefits.

Therefore, the decision by the Full Commission denying Ms. Davis temporary total disability benefits after the date of her termination based on Pollack v. Southern Wine & Spirits of America, 405 S.C. 9, 747 S.E.2d 430 (2013) is a final "decision" on her entitlement to those benefits during that period and under the interpretation of the provisions of the Act in toto, that decision is immediately appealable.

REPLY TO RESPONDENTS' ARGUMENTS

A. COMMISSIONER TAYLOR AND THE FULL COMMISSION DID NOT MAKE APPROPRIATE FINDINGS OF FACT AND FINDINGS OF FACT THAT ARE IN ACCORDANCE WITH LAW AS REQUIRED BY LAW.

The Respondents simply do not address the issue of the adequacy under law of the cursory Findings of Fact made and the

failure of the Commissioner and Commission to address "essential issues" before the Commission for decision. The first paragraph is simply a red herring as no one disputes that a Commission decision will not be overturned unless the determination is "unsupported by substantial evidence". That is simply not the issue and has nothing to do with the adequacy of the Findings of Fact made and the application of the law to those Findings.

Paragraph 2 constitutes either a simplistic and elementary understanding of the importance and necessity of detailed Findings of Fact and Conclusions of Law applied to those Findings; or is a red herring or an attempt to get the Court to chase rabbits.[2] The duty of the Commission in reference to specific Findings of Fact to set out Findings that are sufficiently definite enough so the Appellate Courts can determine that they are supported by the evidence and that the law has been properly applied is set out on p. 19 of the Appellant's Brief and will not be repeated here. That has been the law way before, but has been specifically set out by our Appellate Courts at least since 1961. In addition the Legislature because of concerns over the adequacy of Findings of Fact added yet another specific statute, SC Code §42-9-5 in 2007

[2] A saying from fox hunting wherein you want the fox hounds to stay on the scent of the fox and not follow the scent of a rabbit; or put another way, keep your eye on the prize.

which requires, and as an intentional redundancy from Appellant's Brief, that the award must be "based upon **specific and written detailed** Findings of Fact substantiating the award". As cited in Appellant's Brief at pp. 20-21, the Court does not have to look at the plethora of Opinions and need only to look at the two Hill decisions which will establish the total, total, inadequacy of the Hearing Commissioner and the Full Commission's Findings of Fact in this case. In the first, Hill v. Jones, 255 S.C. 219, 178 S.E.2d 142 (1970) decision, the Supreme Court remanded the case because of the inadequacy of the finding on one issue. In the second Hill decision, Hill v. Jones, 260 S.C. 183, 194 S.E.2d 888 (1973), the Court gave a roadmap as to what would constitute an adequate Finding of Fact and Conclusion of Law so that the Appellate Court can do its job and adequately review the Order of the Commission to make sure the evidence supports the Findings of Fact and that the law has been properly applied. **Remember**, as the Respondents state in their Brief and which they constantly want to rely on in today's world, the Commission decision cannot be overturned on appeal on a factual basis if there is substantial evidence in the Record to deny benefits to an injured worker and thus not achieve the fundamental purposes of the Act to provide swift, sure benefits

and to avoid the injured worker from being a charge on society, i.e., supported by tax dollars.

While the Appellant would assert that none of the Findings of Fact are sufficiently detailed and definite enough to meet the standard established by the Courts in Drake v. Raybestos-Manhattan, Inc., 341 S.C. 116, 127 S.E.2d 288 (1962), and Hill v. Jones, supra, or the standard established by the Legislature in the Statutes, and specifically §42-9-5, two will be listed here for purposes of argument. Commissioner Taylor Order, filed July 29, 2024; Finding of Fact #2:

> "Claimant has been receiving authorized causally related medical treatment at the direction of the defendants." (Tr.??, Dep.??, APA??)

There is simply no citation to any evidence supporting the conclusory statement that the Respondents are providing authorized medical care, either through Dr. Alan or Dr. Chokshi. The Full Commission then on review made two Findings of Fact in reference to that same issue in its April 25, 2025 Decision. Again, one of the essential issues for decision before the Commission was whether or not the Respondents were providing authorized medical care. In Finding of Fact #1 the Panel first finds:

> "The claimant is entitled to authorized causally related medical treatment for the compensable injuries to her low back, left knee and left hip

> sustained in and at-work accident on November 16, 2019."

The Full Commission then goes on and makes Findings of Fact in reference to their Findings of Fact to deny any benefits from the November 4, 2022 incident, and makes the following Finding without any supporting evidence, quoting #12 in pertinent part:

> "Again, claimant had **authorized** medical treatment for her November 16, 2019 injuries with Dr. Alan on February 27, 2023 ...." (Emp. add.) (Tr.??, Dep.??, APA??)

There is no reference to any evidence to support that part of the Finding that the visit with Dr. Alan was authorized **because there is not any**. In fact, that was one of the essential issues before the Commissioner: the Respondents failure to provide and authorize that medical care.

Again, the Hearing Commissioner in her Order makes Finding of Fact #3:

> "Dr. Alan issued claimant's light-duty work restrictions, which employer was able to accommodate."

The Full Commission followed suit in its Order and found under its Finding of Fact #3:

> "Dr. [Rodney] Alan issued claimant's light-duty work restrictions, which employer was able to accommodate."

Again, there is absolutely no reference to any of the evidence in the Findings that the Appellant was working at any time even

close to the second incident that occurred on November 4th or even within the entire year of 2022 before that date under the work restrictions of Dr. Alan. **Again, probably because that simply is not true**. It is absolutely undisputed that for the entire year prior to and at the time of the second incident Ms. Davis was working under the work restrictions of Dr. Rashed Chokshi.

Finally, the last three paragraphs are simply another red herring and an attempt to ask the Court to ignore the requirements of detailed Findings of Fact as set down by both our Appellate Courts and the Legislature. The decision on this legal issue for the Court is simple; either hold true to the law as established by this Court and the Supreme Court requiring detailed Findings of Fact and Conclusions of Law that are sufficiently definite and detailed enough for our Appellate Courts to determine that there is evidence to support those Findings and that the law has been properly applied; or ignore the law, and allow the Commission to nail worker after worker to the cross and deny them benefits without explaining why or giving a basis as to why. A review of the Orders, of both the Hearing Commissioner and the Full Commission, and the law as dictated by the Supreme Court and this Court and repeatedly by the General Assembly as compared to the Findings of Fact that

were made in this case clearly establish the basis why this Court should reverse the decision.

B. THE APPELLANT IS ENTITLED TO TEMPORARY TOTAL DISABILITY BENEFITS BECAUSE THE POLLACK DECISION DOES NOT APPLY.

In this argument, the Respondents actually merge and join two totally separate arguments made by the Appellant. The Appellant does not argue that Pollack was wrongfully decided "**and**" must be strictly limited.

Appellant's one argument is that the Commission and the Respondents are trying to expand Pollack, which is an exception to coverage whereas the law as established by the Appellate Courts is that exceptions are to be strictly construed and they are simply trying to put lipstick on a pig and turn it into a beauty queen for the insurance industry. The law is copiously set out in Appellant's argument on pp. 25-29. The Respondents actually simply ask the Court to ignore the law since the inception of the Act requiring strict construction of exceptions to providing benefits; for example, ignore this Court's decision in Foran v. Murphy USA, 420 S.C. 377, 883 S.E.2d 311 (SC App. 2017).

Next, the Respondents are correct that the Appellant does argue that Pollack was wrongfully decided as they put it. Actually, the Appellant argues Pollack does not cite nor deal with the mandatory requirements of SC Code §42-9-190 as applied

to SC Code §42-9-10 and SC Code §42-1-120. The Respondents further allege that the Appellant misreads Last v. MSI Construction, 305 S.C. 349, 409 S.E.2d 334 (1991). The Appellant would guess that they do not want to come out and say that this Court and the Supreme Court have also misread Last since 1991. Appellant's Counsel would love to argue this and would love to listen to Respondents' explanation before this Court and the Supreme Court of the actual holding in Last which will be set out in pertinent part versus the defendants argument in Pollack. In Last, the Supreme Court held:

> "Appellant argues that claimant is not entitled to receive temporary total benefits for his work-related injury **because** his loss of earning capacity to earn wages is **caused** by his incarceration and not the injury. **We disagree** ....
>
> 'Disability' is statutory defined as 'incapacity because of injury to earn the wages which the employee was receiving at the time of injury in the same or any other employment'. SC Code Ann. §42-1-120 (1985). This Court has construed this statute in various context and **held that the loss of earning capacity caused by physical injury is the pertinent measure of compensable disability.** ...
>
> **The issue is whether a claimant has suffered some loss of earning capacity as a direct result of his work-related injury.**" (Emp. add.)

Sounds like a decision as a matter of law to Appellant's Counsel. The Court will find no reference in Pollack to SC Code §42-1-120, §42-9-10, or §42-9-190. Again, Appellant cannot wait

to hear the answers and can only pray he has the opportunity to address this paradox with the Supreme Court.

Respondents state in their Brief that Pollack has been cited at least thirty-five (35) times. Appellant is not sure where that comes from because according to West it has been cited over 100 times. **However** it has only been cited in Opinions by this Court or the Supreme Court five times, and since we are not supposed to refer to Unpublished Opinions, there is only one Published Opinion that cites Pollack. In Davant v. University of SC, 418 S.C. 627, 795 S.E.2d 678 (2016), it is cited but only for the proposition that the Court will not overturn a Commission decision unless it is not based on substantial evidence and the citation has nothing to do with entitlement to or termination of disability benefits. Note, Davant is cited for support by Appellant at p. 32 of Appellant's Brief.

If Appellant is misreading Last, this Court must also be misreading Last and the requirements of §42-1-120 and §42-9-190, since this Court has actually applied Last and both of those sections on two separate occasions, both of which constitutes the law of our State and neither of which have been criticized nor overturned or limited in that regard. Those decisions are Cranford v. Hutchinson Const. Co., 399 S.C. 65, 735 S.E.2d 303 (SC App. 2013) and Davis v. UniHealth Post Acute Care, 402 S.C.

541, 741 S.E.2d 770 (SC App. 2013). In Cranford, the claimant was fired for being unsafe on the job. Chief Judge Williams wrote for the Court that because he was under work restrictions and was not at maximum medical improvement at the time he was fired for being unsafe on the jobsite, he was under a disability caused by the injury and was entitled to temporary disability benefits. In Davis, Ms. Davis, while under a doctor's care and on medications, was provided with light duty employment and fell asleep on the job in violation of company policy and was fired the next day for violation of that company policy. The Commission and this Court found no evidence of "refusal". So, again not only the Appellant but this Court is misreading Last and the requirements of SC Code §42-1-120 and §42-9-190 **neither of which are referred to in Pollack**. Note, however, Davis is cited with approval by the Court in Pollack.

Again, Appellant relishes the opportunity to argue this before the Court and cannot wait for the explanation from the Respondents and relishes the opportunity to hear the explanation from the Supreme Court reconciling Last and Pollack, and particularly discussing this with Chief Judge Few who wrote Davis. If one tries to reconcile those decisions on the basis of substantial evidence, there must be evidence of "refusal", one of the elements as a matter of law in §42-9-190.

C. **RESPONDENTS DID NOT PROVIDE OR AUTHORIZE APPELLANT'S MEDICAL CARE FOR HER LEFT HIP AND LEG.**

The Respondents not only misstate the argument being made and the issue presented but they make blanket statements in the Argument that are not supported by the evidence. Here again, they are not addressing the issue presented and are trying to divert or steer away from the issue; in other words asking the Court to chase a rabbit or trying to put lipstick on a pig. Appellant's Argument found at pp. 34&35 is two-fold; first the Commissioner did not make Findings of Fact as required by our Appellate Courts and the statutory law (see Appellant Argument I, p. 18, and III, p. 35); and the Respondents did not provide medical care for the claimant's hip and leg. Reference is made in Appellant's Argument I (Brief, pp. 22-23), and in Argument III (Brief, pp. 34-35) to the Record that the Respondents after request **never authorized the appointment and medical care including an injection that was provided by Dr. Alan on February 27, 2023**. While the Appellant makes copious and numerous references to the Record in reference to requests for authorization, failure to provide authorization and the provision of medical care without authorization, the Respondents make none and the Respondents' arguments in this regard are simply based on speculation and are beyond belief. Johnson v.

Rent-A-Center, Inc., 398 S.C. 595, 730 S.E.2d 857 (2012) (mere speculation is insufficient).

D. THE FINDINGS OF FACT CONCERNING APPELLANT'S LIGHT-DUTY WORK RESTRICTIONS WERE NOT APPROPRIATE.

As cited by the Appellant on pp. 36&37 of Appellant's Brief, the argument is not only that the Findings of Fact referred to are wrong as a matter of evidence but they are totally inadequate as a matter of law. As set out in Argument I of Appellant's Brief, under the decisions of our Appellate Courts the Findings of Fact have to be sufficiently definite and detailed enough on each essential issue before the Commission for decision so that the Appellate Court can determine whether the Findings of Fact are: 1) supported by the evidence; and 2) that the law has been properly applied to those facts. Here not only do the Findings of Fact contain nothing but conclusory statements at best unsupported by any reference to the evidence; but in fact they are contrary to the evidence. These Findings of Fact are insufficient and inappropriate as a matter of law.

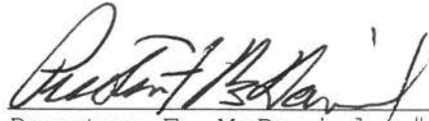
CONCLUSION

For the reasons stated herein, the Court should reverse the Decision of the Commission and award Ms. Davis benefits for the reasons as set forth hereinabove but at a minimum because as a matter of law there is no evidence in the Record that Ms. Davis "refused" light duty employment as required by SC Code §42-9-190.

Under the decisions of this Court and the Supreme Court, the decision should be reversed because of the failure of the Hearing Commissioner and the Commission to perform their statutory duty and make detailed Findings of Fact and Conclusions of Law that are sufficiently definite and detailed enough to allow for the Appellate Courts to determine that the Findings of Fact are supported by the evidence and that the law has been properly applied to those facts. The Court should further reverse the decision of the Commission concerning the provision of medical care for the Appellant's hip and back as a matter of law and at a minimum should reverse it based on a total lack of substantial evidence in the Record that the Respondents ever authorized or provided the medical care requested and performed by the authorized treating physician, Dr. Rodney K. Alan.

Finally, at a minimum, due to the numerous egregious errors of law particularly in reference to the failure to make Findings of Fact on essential issues before the Commission for decision, the Court should reverse and remand this matter for a de novo hearing on the issues or limited to a decision concerning the November 2022 incident.

Respectfully submitted,



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