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S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM THE SOUTH CAROLINA
WORKERS' COMPENSATION COMMISSION

APPELLATE CASE NO. 2022-000655

Emitt R. Gunnells, Claimant,Appellant,

vs.

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

PETITION FOR A WRIT OF CERTIORARI

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CERTIFICATE OF COUNSEL

Counsel for petitioner certifies that the Petition for Rehearing was made and finally ruled on by the Court of Appeals on January 15, 2026.

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QUESTIONS PRESENTED

- A. SHOULD THE COURT OF APPEALS HAVE TRANSFERRED THE CASE TO THE APPROPRIATE APPELLATE COURT: THE CIRCUIT COURT?**

- B. DID RESPONDENTS WAIVE THEIR OBJECTION AS TO THE PROPER APPELLATE COURT?**

- C. DID THE COMMISSION ERR IN FINDING THAT THE APPELLANT’S “LIFETIME INDEMNITY AWARD ENDS ON OR ABOUT DECEMBER 31, 2032; ACCORDING TO THE LIFE EXPECTANCY TABLES”?**

- D. DID THE COMMISSION ERR IN FINDING THAT THE RESPONDENTS MAY CEASE PAYMENT OF BENEFITS OF APPELLANT’S LIFETIME AWARD ON OR ABOUT DECEMBER 1, 2023 IN ORDER TO RECOUP AN OVERPAYMENT?**

STATEMENT OF THE CASE

This is a Workers' Compensation case.

The Court of Appeals dismissed the Claimant's appeal; finding that, pursuant to the pre-2007¹ version of S.C. Code §42-17-60 (Supp. 2006) the appeal should have, initially, been filed in the Circuit Court.

Appellant sought rehearing; arguing that, pursuant to Rule 204 SCACR, the Court of Appeals should transfer the appeal to the Circuit Court; rather than dismissing the appeal.

The Court of Appeals denied rehearing and this Petition followed.

The merits of the appeal involve a twenty-three-year-old lifetime benefits award the Appellant received as a result of a physical brain injury that the Claimant suffered in an accident on January 14, 2001.

By Order of January 7, 2003, the Single Commissioner found the Appellant was entitled to weekly benefits "...continuing for Claimant's lifetime." (Order, 01/07/2003, R. p. 28)(emphasis added).

¹ In 2007 the Legislature amended S.C. Code §42-17-60 such that appeals from the Commission go directly to the Court of Appeals. However, in Skinner v. Westinghouse Elec. Corp., 380 S.C. 84 (2008), this Court held that, even after the amendment, cases involving injuries that occurred before July 1, 2007, must first be appealed from the Commission to the Circuit Court.

By Order of September 23, 2003, the Commission found that the Appellant was entitled to that weekly benefit, "...for the remaining years of his life" or the balance of five hundred (500) weeks, whichever is greater." (Order, 09/23/2003, R. p. 41)(emphasis added). Neither of those Orders was appealed; they are both the law of the case.

The Appellant continued to receive weekly Workers' Compensation benefits.

Over seventeen years later, in 2021, the Respondents petitioned the Commission to reduce the Appellant's weekly benefits, or, in the alternative, to suspend the Appellant's benefits, in order to recoup an overpayment. The Appellant opposed the Respondent's petition.

By Order of August 16, 2021, the Single Commissioner found:

The lifetime indemnity award ends on or about December 31, 2032, according to the mortality or life expectancy tables.
(Order, 08/16/2021, R. p. 51).

Commission went on to Order that:

Thus, on or about December 31, 2023, Petitioners can cease payment of benefits until the debt for the credit is fully satisfied. Thereafter, if Claimant is still living, Petitioners are to resume payment of permanent disability benefits until his death.
(Order, 08/16/2021, R. pp. 51-52).

The Appellant appealed to the Commission Appellate Panel, which affirmed.

On May 11, 2022, two (2) days after the Commission Appellate Panel's Order, the Appellant filed a Notice of Appeal in the Court of Appeals.

The Appellant filed his Initial Brief with the Court of Appeals on August 22, 2022. Respondents filed their Initial Brief with the Court of Appeals on October 12, 2022.

The Respondents did not raise, in their Initial Brief, any objection with regard to the jurisdiction of the Court of Appeals to review the decision of the Commission.

The Appellant filed his Final Brief with the Court of Appeals on October 12, 2022. Respondents filed their Final Brief on November 17, 2022.

The Respondents did not raise, in their Final Brief to the Court of Appeals, any objection as to the jurisdiction of the Court of Appeals to review the decision of the Commission.

On May 6, 2025, the Court of Appeals 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 the Court of Appeals to review the decision of the Commission.

On May 22, 2025, twelve (12) days before oral arguments were heard before the Court of Appeals, the Respondents, for the first time, moved to dismiss the appeal on the grounds that the Court of Appeals lacked jurisdiction to hear the matter.

By Order of December 10, 2025, the Court of Appeals dismissed the appeal; finding that, pursuant to the provisions of S.C. Code §42-17-60 (Supp. 2006) applicable on the January 14, 2001 date of accident, 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.

The Appellant Petitioned for Rehearing on December 23, 2025; requesting that the Court of Appeals address transferring the case to the Circuit Court under Rule 204 SCACR. On January 15, 2026, the Court of Appeals denied rehearing.

This Petition followed.

STANDARD OF REVIEW

The Court interprets statutes and rules of procedure de novo. See, e.g., Catawba Indian Tribe v. State, 372 S.C. 519 (2007).

The Administrative Procedures Act (“APA”) governs this Court’s review of decisions of the Commission. Lark v. Bi-Lo, Inc., 276 S.C. 130, 276 S.E.2d 304 (1981). The Court can reverse or modify the Commission’s decision if the substantial rights of the appellants have been prejudiced because the decision is affected by an error of law or is clearly erroneous in view of the reliable, probative and substantial evidence on the whole record. See S.C. Code Ann. §1-23-380(A)(6)(d), (e)(2005).

ARGUMENTS

A. THE COURT OF APPEALS SHOULD HAVE TRANSFERRED THE APPEAL TO THE APPROPRIATE APPELLATE COURT: THE CIRCUIT COURT

Rule 204(a), SCACR 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 did not argue that the Court of Appeals lacked subject matter jurisdiction to review a decision of the Workers' Compensation Commission. Nor do the Respondents dispute that the Court of Appeals has appellate jurisdiction over appeals from the Workers' Compensation Commission in pre-July 1, 2007 accidents, after intermediate appellate review by the Circuit Court.

Instead, Respondents argue that, pursuant to the version of §42-17-60 (Supp. 2006) applicable to pre-2007 accidents, (such as the instant accident), the notice of appeal was filed in the wrong appellate court and should have been filed, initially, in the Circuit Court.

Rule 204 SCACR 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 of Appeals 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), and in Appellant’s Petition for Rehearing that upon finding that the Court of Appeals lacks appellate jurisdiction because the notice of appeal was filed in the wrong appellate court, Rule 204 SCACR requires that the Court of Appeals transfer the case to the appropriate appellate court; here, the circuit court.

The Court of Appeal’s Order did not address Rule 204 transfer.

The Appellant petitioned for rehearing; requesting that the Court of Appeals consider the application of Rule 204 and transfer the matter to the Circuit Court, rather than dismissing it altogether.

By Order of January 15, 2026, the Court of Appeals denied Appellant’s Petition for Rehearing without addressing Rule 204 SCACR.

Respectfully, Rule 204 SCACR. requires that the appeal be transferred to the appropriate appellate court: the Circuit Court.

B. RESPONDENTS WAIVED THEIR PROCEDURAL OBJECTION AS TO THE PROPER APPELLATE COURT.

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 the Court of Appeal's jurisdiction.

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

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

Rather, the Respondents, belatedly, made 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, SCACR 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.

Nonetheless, if the Court of Appeals found the procedural objection unwaivable, the appropriate remedy was a procedural one: transferring the case to the appropriate appellate court pursuant to South Carolina Appellate Court Rule 204.

C. THE COMMISSION ERRED IN FINDING THAT THE APPELLANT'S "LIFETIME INDEMNITY AWARD ENDS ON OR ABOUT DECEMBER 31, 2032; ACCORDING TO THE MORTALITY OR LIFE EXPECTANCY TABLES".²

1. Pursuant to the Commission's Order of September 23, 2003, it is the law of the case that "...the Carrier shall continue permanent disability payments to the Appellant in the amount of Five Hundred Ten and 65/100 (\$510.65) Dollars for the remaining years of his life or the balance of five hundred (500) weeks, whichever is greater."

² The Court of Appeals did not address the merits of the appeal. While the appellant argues that the case should be transferred to the Circuit Court for determination on the merits; in the abundance of caution, the appellant also argues the merits of the appeal herein below.

By Order of January 7, 2003, the Single Commissioner found the Appellant was entitled to weekly benefits “**...continuing for Claimant’s lifetime.**” (Order, 01/07/2003, R. p. 28)(emphasis added).

By Order of September 23, 2003, the Commission found that the Appellant was entitled to that weekly benefit, “**...for the remaining years of his life** or the balance of five hundred (500) weeks, whichever is greater.” (Order, 09/23/2003, R. p. 41)(emphasis added).

Neither of those Orders was appealed; they are both the law of the case.

The Commission’s Order of August 16, 2021, (Order, 08/16/2021) affirmed by the Commission Appellate Panel (Order, 05/09/2022, R. p. 68, ¶ 7), erroneously amended the Orders of January 7, 2003 and September 23, 2003, and in the place of, “lifetime”, and “...for the remaining years of his life...”, the Commission’s Order of August 16, 2021, erroneously substituted, “...December 31, 2032...”

We do not know whether the Appellant will die on December 31, 2032.

What we do know, which is the law of the case, is that the Respondents shall continue to pay \$510.65 “for the remaining years of [the Appellant’s] life.” (Order, 09/23/2003)(emphasis added).

The Commission's Order of August 16, 2021, affirmed by Order of May 9, 2022, is, therefore, in error, violates the law of the case, and should be reversed.

2. Even if it were not the law of the case that Appellant must receive benefits "...for the remaining years of his life...", the Commission's Order, finding the Appellant's lifetime indemnity award ends on or about December 31, 2032, is in error as a matter of law.

On January 7, 2003, the Commission awarded the Appellant lifetime benefits

Pursuant to S.C. Code §42-9-10(C). In particular, §42-9-10(C) provides:

Notwithstanding the five-hundred-week limitation prescribed in this section or elsewhere in this title, any person determined to be totally and permanently disabled who as a result of a compensable injury is a paraplegic, a quadriplegic, or who has suffered physical brain damage is not subject to the five-hundred-week limitation and shall receive the **benefits for life**.

S.C. Code §42-9-10(C)(emphasis added)).

S.C. Code §42-9-10(C) and the January 7, 2003, Order use the term "life."

The Single Commissioner, in the Order of August 16, 2021, and the Commission Appellate Panel in its May 9, 2022 Order, substituted for that term "life", a date certain: December 31, 2032; the end date of the Claimant's statutory life expectancy.

The Claimant's entitlement to benefits for his "life" is established by statute, and is law of the case and cannot be changed.

The Commission substituted the term "life" with a date certain for the Claimant's death; concluding, implicitly, that the Legislature's reference to "life" in §42-9-10(C) refers to the Appellant's statutory life expectancy set by the life expectancy table in S.C. Code §19-1-150. (See Order, 08/16/2021, R. p.51 (finding "the lifetime indemnity award ends on or about December 31, 2032, according to the mortality or life expectancy tables"))).

The Commission's substitution of the statutory life expectancy date in place of "life" is error as a matter of law.

The Court of Appeals has previously addressed this issue in another context. In the case of Floyd v. C.B. Askins & Co., 382 S.C. 84 (Ct. App. 2009), the Court of Appeals addressed the question of whether the term "life" in §42-9-10(C) referred to the date of statutory life expectancy.

There, a Claimant received a lifetime award pursuant to S.C. Code §42-9-10(C) for physical brain damage. He died from an unrelated cause before reaching his statutory life expectancy date. Beneficiaries sought an award of the balance of his benefits to be paid through his statutory life expectancy date. The Court of Appeals declined; finding that the award under S.C. Code §42-9-10(C) was for the

Appellant's lifetime, not his statutory life expectancy; and, therefore, his benefits abated upon his death.

Thus, pursuant to Floyd v. C.B. Askins & Co. a Claimant who dies before his statutory life expectancy is not entitled to receive benefits through the date of their statutory life expectancy; instead, the benefits in a lifetime award abate upon the Claimant's death.

Here, in conflict with Floyd, the Commission substituted for Appellant's natural "life", the date of his statutory "life expectancy", finding:

The lifetime indemnity award ends on or about December 31, 2032, according to the mortality or life expectancy tables.

(Order, 08/16/2021, R. p. 51).

Such finding is an error and should be reversed.

D. THE COMMISSION ERRED IN FINDING THAT THE RESPONDENTS MAY CEASE PAYMENT OF BENEFITS OF APPELLANT'S LIFETIME AWARD ON OR ABOUT DECEMBER 1, 2023 IN ORDER TO RECOUP AN OVERPAYMENT.³

The single Commissioner Ordered that Respondents may cease payment of temporary total disability benefits on December 1, 2023, eight years and eleven

³The Court of Appeals did not address the merits of the appeal. While the appellant argues that the case should be transferred to the Circuit Court for determination on the merits; in the abundance of caution, the appellant also argues the merits of the appeal herein below.

months prior to Appellant's statutory life expectancy, in order to recoup an overpayment. (Order, 08/16/2021, R. p. 51-52). The Commission Appellate Panel affirmed. (Order, 09/09/2022, R. p. 68).

S.C. Code §42-9-210 sets out the method by which deduction from compensation of payments made by the Carrier when not due and payable, may be made. The statute is explicit that "...such deductions shall be made by shortening the period during which compensation must be paid and not by reducing the amount of the weekly payment." S.C. Code §42-9-210.

Section 42-9-210 prohibits the reduction of weekly payments to recover overpayments. Section 42-9-210 allows a Carrier to recover overpayments only by "shortening the period during which compensation must be paid"; that is, by ceasing payments the appropriate number of weeks before the end of the period during which compensation must be paid on an award.

Compensation, in this case, must be paid for the Appellant's lifetime. Therefore, §42-9-210 would only allow the Carrier to recover an overpayment by ceasing payments the appropriate number of weeks before the Appellant's death.

Of course, no one knows when the Appellant will die.

Thus, by operation of S.C. Code §42-9-10(C) and §42-9-210, the date upon which the Carrier may cease payments to recoup an overpayment in a brain damage

case involving a lifetime benefit award cannot be determined.

The Legislature could have used the term “statutory life expectancy” in place of the term “life”, in S.C. Code §42-9-10(C). They chose not to.

The Legislature could have provided that in catastrophic cases involving brain damage or paralysis a Claimant shall receive benefits for the fixed period set at out the tables in S.C. Code §19-1-150. They did not.

The Legislature chose, instead, in serious and catastrophic cases involving brain damage, paraplegia or quadriplegia, to provide benefits for “life.” The term is plain and unambiguous.

The Legislature enacted two statutes, §42-9-10(C) and §42-9-210; the plain language of which leaves carriers unable to recoup overpayments of compensation from Claimants with catastrophic injuries such as brain damage, paraplegia or quadriplegia.

S.C. Code §42-9-210 only allows overpayments to be recouped by shortening the period of an award. A lifetime award under §42-9-10(C) has no fixed period to shorten, since the date of one’s death is uncertain.

In any event, if the Carrier sought to challenge the Commission’s finding that the Appellant must receive benefits, “...for the remaining years of his life...” they were required to do so over twenty-two years ago, on an appeal from the

Commission's Order of September 23, 2003. They did not. That Order is the law of the case.

CONCLUSION

In conclusion, your Petitioner requests that the Court consider the novel issues of:

(1) Whether Rule 204(a) SCACR applies to Appeals from the South Carolina Workers' Compensation Commission such that, in the event the notice of appeal is improperly filed in the Court of Appeals rather than the Circuit Court, the Court of Appeals shall issue an order transferring the appeal to the Circuit Court;

(2) Whether a Respondent can (and, here, did) waive objection to a case being improperly filed in the wrong Appellate Court; and

(3) the proper application of S.C. Code §42-9-210 to overpayments in lifetime awards made under S.C. Code §42-9-10(c).

Respectfully submitted,

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