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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM THE
SC Workers' Compensation Commission
Appellate Panel

Appellate Case No. 2026-000328

Bobby Ledwell, Claimant,..... Appellant,

v.

Arauco North America Inc., a/k/a Flakeboard
America Limited, Employer, and Sentry Casualty
Company, Carrier,..... Respondents.

AMENDED
NOTICE OF APPEAL

The Appellant, Bobby Ledwell, appeals the Appellate Panel Decision and Order of the SC Workers' Compensation Commission filed December 3, 2025, and served via email on December 3, 2025, and also the Appellate Panel Motion Order denying Appellant's Motion for Reconsideration served via email on January 12, 2026. A copy of both Orders are attached hereto.

Pursuant to SC Code §42-17-60, the grounds of the appeal which involve specific, fundamental and egregious errors of law

ISSUES RAISED IN THE REQUEST FOR REVIEW BEFORE THE SC WORKERS
COMPENSATION COMMISSION APPELLATE PANEL WHICH ARE HEREBY RAISED ON
APPEAL:

1. That pursuant to SC Code of Laws §42-17-50 and 60, the Claimant requests a review of all of the Findings of Fact, the Conclusions of Law, the Order and Award and of all rulings and decisions made by the Commissioner at the hearing, as contained in the Record or as made at any unrecorded pre-hearing conference, and in any communications concerning the claim, Order, Award and Decision rendered by the Hearing Commissioner in this matter.

2. That the Hearing Commissioner and the Commission erred as a matter of law by reaching a decision denying the Claimant temporary disability compensation benefits based on Pollack v. Southern Wine & Spirits of America, 305 S.C. 9, 747 S.E.2d 430 (2013) which precatory to an employer and/or an insurance carrier being able to deny an injured worker benefits, at a minimum, requires that an offer of light duty employment be made and the worker has to be in light duty employment at the time of the termination for cause.

3. That the Hearing Commissioner and the Commission erred as a matter of law by expanding the Pollack v. Southern Wine & Spirits of America, supra, decision as a basis to deny benefits into an area, the accident itself, wherein neither the Supreme Court nor Court of Appeals has stated an opinion that a claimant should or can be denied benefits and by failing to apply the Act "liberally" in favor of benefits to the injured worker with exceptions to coverage being strictly applied and limited.

4. That the Hearing Commissioner and the Commission erred by entering a decision based on Pollack v. Southern Wine & Spirits of America, supra, denying the claimant benefits by applying that decision to the accident itself which imposes fault into the accident.

5. That the Commission erred as a matter of law by applying Pollack v. Southern Wine & Spirits of America, supra, decision which infuses fault (violation of a company policy) into the accident itself which makes the Workers' Compensation Act volative of due process of law and of the right to trial by jury.

6. Since the Hearing Commissioner was the Attorney of Record for the employer/carrier in the Pollack case, who

actually tried Pollack and then argued Pollack before the Supreme Court as Attorney of Record for the insurance carrier and the employer, which was unknown to the Claimant at the time of the hearing in this claim, the Commissioner and Commission erred as a matter of law in violation of the Judicial Code of Ethics which provides a Commissioner shall, "disqualify himself or herself in a proceeding in which the judge's impartiality might reasonably be questioned, including but not limited to, circumstances where: a) the judge has a personal bias or prejudice concerning a party or a party's lawyer or personal knowledge of disputed evidentiary facts concerning the proceeding, or c) the Commissioner has more than an de minimus interest in the outcome of the proceedings which may substantially affect the Commissioner's decision in the proceedings by not informing the litigants of the potential conflict and allowing the parties to decide whether to allow her to proceed as the Hearing Commissioner.

7. As to the Commissioners responsibility to make Findings of Fact and Conclusions of Law as required by SC Code §42-17-50, the Hearing Commissioner as affirmed by the Commission erred as a matter of law by failing to make Findings of Fact as to whether or not under §42-9-190 the employer and/or insurance carrier offered and/or procured work within the Claimant's residual capacity following the injury within his residual capacity while under medical treatment; and erred by not making a Conclusion of Law as to the applicability of SC Code §42-9-190.

8. That the Hearing Commissioner as affirmed by the Commission erred as a matter of law and committed misfeasance in Office by her failure to comply with her Oath of Office and by failing to apply the fundamental dictates of the Workers' Compensation Act which requires a liberal construction of the Act in favor of benefits to the injured worker, and contrary thereto, by expanding the Pollack decision, a limitation on compensation benefits, into an area where in the Court of Appeals and Supreme Court have not ruled.

ISSUES RAISED BY AND SET FORTH IN THE MOTION FOR RECONSIDERATION BY THE SC WORKERS' COMPENSATION APPELLATE PANEL:

The Full Commission erred as a matter of law by failing to grant Reconsideration of the Full Commission Panel Decision affirming the Decision of the Hearing Commissioner to deny Mr. Ledwell temporary disability compensation benefits based on the Pollack v. Southern Wine and Spirits of America decision and by

failing to address Review issues not addressed in the original Panel decision to wit:

1. The Commission is to "liberally" construe the Act in favor of benefits to the injured worker and "narrowly" construe any exceptions to the provision of compensation benefits to the injured worker and to enter a decision in accordance with the Supreme Court and Court of Appeals decisions interpreting and applying the law to various fact situations; and with the Pollack decision being an exception to the provision of compensation benefits to an injured worker, that decision must be "narrowly" construed, thus the Commission erred by not "narrowly" construing the exception.

2. The Commission erred as a matter of law by applying Pollack to the undisputed facts in this claim to wit: Mr. Ledwell was working when the accident and the violation of the company policy occurred simultaneously; he was placed on light duty by an authorized treating medical provider; and most importantly, it is uncontested that the employer never offered light duty and terminated him immediately for violation of the company policy that occurred as part of the accident.

3. Since the Supreme Court did not apply and did not address SC Code §42-9-190 and its requirements in the Pollack decision, wherein under §42-9-190 to be denied compensation benefits while under medical care a claimant has to refuse employment "procured for him" within his work capacity; and the worker is not entitled to compensation only "during the continuance of such refusal"; and since the Supreme Court and the Court of Appeals have both applied §42-9-190 to the same undisputed facts which exist in Mr. Ledwell's case and have reached the same decision as a matter of law, which is the worker's entitlement to compensation. Last v. MSI Construction, 305 S.C. 349, 409 S.E.2^d 334 (1991); Davis v. UniHealth Post Acute Care, 402 S.C. 541, 741 S.E.2^d 770 (SC App. 2013) (notably the Supreme Court did not grant certiorari on the decision). The Commission erred as a matter of law by not addressing SC Code §42-9-190.

4. The Commission Panel committed an error of law because it did not address all of the essential issues before it for review. In Request for Review #8, the Claimant specifically asked for a ruling by the Full Commission on the legal issue of:

"The Hearing Commissioner erred by failing to make Findings of Fact as to whether or not under

§42-9-190 the employer/or insurance carrier offered and/or procured work within the Claimant's residual capacity following the injury, and specifically whether or not the Claimant was offered light duty work within his residual capacity while under medical treatment ...

The Commissioner also erred by not making a Conclusion of Law as to the applicability of SC Code §42-9-190 and the Pollack decision as to the necessity of making an offer of light duty employment and being on light duty employment at the time that a subsequent violation of a company policy occurred." (Emp. add.)

5. The Commission Panel erred as a matter of law by making additional Conclusion of Law #5 on failure to recuse in its Order because Conclusion of Law #5 does not actually address and does not apply the proper standard concerning refusal which is: whether the Hearing Commissioner should have offered to recuse herself; and is not whether her being an Attorney of Record in Pollack had any "prejudicial effect on her ruling". Under the Code of Judicial Ethics a Judge or Commissioner shall:

"disqualify himself or herself in a proceeding in which the Judge's impartiality might reasonably be questioned, including but not limited to (C), whether the Commissioner has more than a di minimis interest in the outcome of the proceedings which may substantially effect the Commissioner's decision in the proceedings".

6. The Commission erred as a matter of law in the Request for Review under #9, wherein the Claimant asked for a decision by the Panel as to whether or not the Commissioner as a matter of law had failed to apply the fundamental dictates of the Workers' Compensation Act by not applying a "liberal" construction in favor of benefits and by expanding the Pollack decision into an area where the Court of Appeals and Supreme Court have not ruled, and using that expansion of that "exception" decision to deny benefits to an injured worker.

AS TO PROCEDURES BEFORE THE FULL COMMISSION:

1. The Commission Panel erred as a matter of law in violation of SC Code §1-23-340; §1-23-350; §1-23-360; §42-9-5; §42-17-40; §42-17-50; and the appellate decisions of our Appellate Courts by assigning to and allowing a staff attorney to write the Order for the Full Commission Panel by abdicating as the administrative agency decision makers their statutory duty to make and by the Panel not making detailed Findings of Fact and Conclusions of Law.

Respectfully submitted,



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