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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.

PETITION FOR REHEARING

The injured worker and Appellant, Mr. Bobby Ledwell, hereby petitions the Court pursuant to Rule 221(a), SCACR, from the Order of the Court dismissing his appeal **in an accepted case** wherein the Commission Order denied him temporary total disability benefits. The basis for the Court's Order is that the denial of temporary total disability benefits while under medical care is not a final decision of the Commission and is not immediately appealable. **The decision is wrong because the**

Supreme Court has specifically held that the denial of temporary total disability is directly and immediately appealable. Since the Order was issued on behalf of the Court by a Judge of the Court pursuant to Rule 240(j), SCACR, the Petitioner would request a hearing by a Panel and due to the importance of this decision to this worker and the workers of our State, pursuant to Rule 219(a)(b), SCACR, Mr. Ledwell would suggest that the matter be heard en banc.

The Petitioner would respectfully submit and show unto the Court that:

1. That a review by the Court will establish that **the decision to dismiss the appeal as being interlocutory and not subject to direct appeal is in direct conflict with the Supreme Court decision in Pollack v. Southern Wine & Spirits of America, 747 S.E.2d 430, 405 SC 9 (2013) wherein the Supreme Court accepted a direct appeal from an Order of the Workers' Compensation Commission denying temporary total disability benefits to the claimant in that case.** The Supreme Court in its Opinion specifically rejected the insurance company's position that the denial of temporary total disability benefits was interlocutory and ruled that the Commission's Order denying temporary total disability was immediately appealable and quoting from footnote 3 specifically:

> "Respondent contends the Commission's Order is not immediately appealable. **We disagree and summarily reject this contention** pursuant to Rule 220(b)(1), SCACR."

2. That a review by the Court, that has been made by Counsel for the Appellant, will show that **none of the decisions** of this Court or the Supreme Court addressing Orders that are considered to be interlocutory and not final in nature under SC Code §1-23-380(A) involved a situation where the injured worker was denied benefits and specifically compensation benefits. The cases which applied the so dubbed "finality rule" involved situations between employers/carriers or the Uninsured Employers Fund over who had coverage or who was immediately responsible for payment of benefits, or where an award of benefits has been made. The difference between an award of temporary benefits (and its purpose) and the denial of temporary benefits is recognized in our statutes, for example SC Code §42-17-60 and its mandatory payments during appeal and as recognized by our Courts such as this Court did in Brown v. S.E. Servs., HHI, LLC, 446 S.C. 105, 917 S.E.2d 925 (SC App. 2025):

> "We understand and expressly do not discount, the fact that this regime places the interim costs of disability and medical benefits on employers."

A denial of temporary benefits shifts the burden to the injured worker. In Brown, the Court repeatedly referred to awards of benefits in its reasoning and citations.

The Court will note from the Notice of Intent to Appeal that the Commission expanded the Pollack decision which created "an exception" to the provision of temporary total disability benefits while under medical care and where the claimant was fired for just cause "while in" a light duty capacity job; and would apply that to the accident itself and a violation of a company policy as part of the accident in this case and not while receiving temporary benefits. The decision of the Court dismissing this matter as interlocutory is simply wrong and contrary to the Supreme Court's decisions in multiple respects.

3. That while the Petitioner needs to say nothing more in support of the Motion, the Petitioner would submit to the Court as the Supreme Court held in Pollack that the denial of compensation benefits is directly appealable because it violates the fundamental principles of the Act and represents a final decision on the Claimant's entitlement to compensation. It is the fundamental principle of the Act as cited by this and the Supreme Court and as set out as one of the Objectives of the Workers' Compensation Commission to provide swift and sure benefits to the injured worker regardless of fault by placing a share of the burden resulting from industrial accidents on the employers thus preventing the injured workers and their dependents from becoming a burden to and a charge on society. Parker v. Williams and Madjanik, Inc., 275 S.C. 65, 267 S.E.2d

524 (1980); Cokely v. Robert Lee, Inc., 197 S.C. 157, 14 S.E.2d 889 (1941). Bone v. US Food Services, 404 S.C. 67, 744 S.E.2d 552 (2013) was overridden and clarified by the Supreme Court's decision in Hilton v. Flakeboard America Ltd., 418 S.C. 245 791 S.E.2d 719 (2016). In Hilton, after noting that Bone was decided in reference to SC Code §1-23-390 whereas Flakeboard was decided under SC Code §1-23-380(A) involving an alleged intermediary Order that was subject to immediate appeal, the Court then held specifically that even a preliminary procedural intermediate agency action or ruling is immediately reviewable if review of the final agency decision would not provide an adequate remedy; and that whether or not an intermediate action is immediately reviewable is to be decided on a case-by-case basis.

As noted above, the Supreme Court has already ruled that a "denial" of temporary total disability benefits is an immediately appealable Order whereas an "Award" is not. Bone, supra. The Bone majority relied on the Supreme Court's decision in Charlotte Mecklenburg Hosp. Auth. v. SC Dept. of Health & Env. Control, 387 S.C. 265, 692 S.E.2d 894 (2010), finding that the appeal was interlocutory and not a final decision and not appealable because the Circuit Court had remanded for further proceedings. The majority in dictum then shifts or transposes the final judgment rule to having to be a final judgment of all issues and all rights involved in the action instead of a final

judgment on a right of a party. Whereas, in Torrence v. SC Dept. of Corrections, 433 S.C. 224, 857 S.E.2d 549 (2021), the Court noted the difference between whether there was some additional act that needed to be fulfilled in reference to determining the rights of the parties, and if so the Order is interlocutory. Whereas, where the decision is a final decision on the rights of the parties in reference to the particular issue or right, then it constitutes a final Order and is appealable. That is the exact situation here where both the decision is to deny the Claimant weekly compensation benefits during the time that he is under medical treatment which is a final decision on his entitlement to benefits pursuant to the Act while he is under medical care, commonly referred to as temporary total disability benefits before reaching maximum medical improvement.

For all the foregoing reasons and particularly because the Supreme Court has already ruled on this issue and found that the denial of temporary total disability benefits is directly appealable, the Court should rehear this case and to allow this appeal to continue.

Respectfully submitted,

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PROOF OF SERVICE

I certify that I have served the **PETITION FOR REHEARING** on March 17, 206, by depositing a copy of it in the United States Mail, postage prepaid, and via electronic mail addressed as follows:

VIA EMAIL: nhaigler@robinsongray.com
AND US MAIL
Nicolas L. Haigler, Esquire
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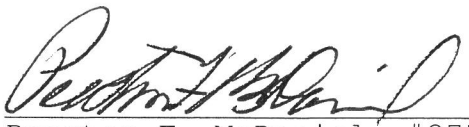
Post Office Box 11449
Columbia, South Carolina 29211

Respectfully submitted,



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Proudly representing injured workers for over 45 years.

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March 17, 2026

VIA EMAIL: ctappfilings@sccourts.org
Honorable Jenny A. Kitchings, Clerk
SC Court of Appeals
Post Office Box 11629
Columbia, South Carolina 29211

RE: Bobby Ledwell v. Arauco North America Inc.
Appellate Case No. 2026-000328

Dear Ms. Kitchings:

Please find enclosed our **PETITION FOR REHEARING** in the above-referenced matter for filing with the Court pursuant to Rule 240, along with the required filing fee sent via US Mail. By copy of this letter, I am notifying and serving Counsel for the Respondents with a copy of the Petition.

As always, I appreciate all of the courtesies and kindnesses shown to me by you, your office and the Court.

Sincerely yours,

Preston F. McDaniel

PFM/ktn
Enclosures

cc: Gerald Malloy, Esquire
Nicolas L. Haigler, Esquire