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.

INITIAL BRIEF OF APPELLANT

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STATEMENT OF THE CASE

This appeal arises out of an **admitted** workers' compensation accident that occurred on July 31, 2024. Immediately following the accident, medical benefits through the Emergency Room and an orthopaedic surgeon were provided but temporary weekly compensation benefits were not started. the Appellant filed a formal claim with the SC Workers' Compensation Commission on July 13, 2024 noting that all medical care to date and continuing through the medical providers was being provided, and requesting that temporary disability benefits be paid. (Form 50 Claim, 09/13/24). Ten (10) days later after Notice of Representation of the Respondents, the Appellant filed a request for hearing noting that a rehab nurse had been assigned and apparently all medical care had been authorized. However, temporary disability benefits had not been provided and was the issue on which a hearing was requested. (Form 50 Hearing, 09/23/24). On the next day, September 24th, because weekly benefits were not being paid, Appellant sent a letter to the Commission asking that the Commission set a hearing and pursuant to the Act requested that a hearing be immediately set on the claim with thirty (30) days' notice as required by SC Code §42-17-20 and §1-23-320. (Bracy ltr., 09/24/24). Thirty (30) days later on October 23rd, the Respondents filed a response to the request for hearing noting that causally related medical treatment was being provided for the admitted injuries and denied the employee's entitlement to temporary total disability benefits on the basis that,

> "the claimant's restrictions **would have been accommodated** but for his termination for cause". (Form 51, 10/23/24).

On October 31st, the matter was set for hearing January 9, 2025 and then by Reset Notice November 5th was reset for hearing on December 10, 2024. (Reset Notice, 11/05/24)

On November 25th, the Appellant filed his Prehearing Brief and on November 26th, filed an Amended Prehearing Brief and Amended APA Submissions. (PHB/Amended PHB & APAs as Amended, 11/26/24) In his Prehearing Brief under "Legal issues involved", the Appellant in part stated:

> "Thus, workers compensation is a no fault system as to the injury and nothing arising out of the injury in reference to fault denies a claimant their entitlement to workers' compensation benefits for continuing disability. Pollack did not change that. Pollack is clearly a situation where while on light duty work provided by his employer he violated a totally unrelated to the accident policy which resulted in his termination. Thus, the termination for cause cannot be related to something that occurred during the work related accident."

The Respondents filed their Prehearing Brief and APA Submissions November 27, 2024. (Def. PHB & APAs, 11/27/24). The hearing was held on December 10th before Commissioner Dooley. (Hr. Tr., 10/10/24). At the conclusion of the hearing even though the injured worker was now over four months without subsistence, the Commissioner requested Memorandums on whether the Pollack v. Southern Wine & Spirits of America, 405 S.C. 9, 747 S.E.2d 430 (2013) applied to this situation involving an admitted accident where the employee as part of the accident violated a company policy and was terminated for that violation, was placed under work restrictions but light duty employment was never offered or provided, and the employer/carrier's position is that light duty "would have been provided" but for his termination for cause. Appellant timely submitted his Memorandum of Law December 20th and Respondents asked for an extension and filed their Memorandum December 23rd. (Memorandums, 12/20/24 & 12/23/24).

On January 7th, the Hearing Commissioner issued Order Instructions to Respondents' Counsel; and on January 8th Appellant's Counsel asked for an amendment to the Order Instructions. (Order Instructions, 01/07/25; Dooley ltr., 01/08/25). Amended Order Instructions were issued on January 15th and the Order was issued on April 22nd, three months later denying benefits based on Pollack. (Amended Order Instructions, 01/15/25; Order, 04/22/25). A Motion for Reconsideration was filed April 24, 2025 which was denied by Form Order on May 8, 2025. (Motion for Reconsideration, 04/24/25; Order, 05/08/25).

The Appellant filed a Form 30 Request for Review on May 21, 2025, and after Briefs were filed the matter came before the

Appellate Panel by virtual hearing on September 15, 2025. (Cl. Form 30, 05/21/25; Cl. Brief to FC, 08/11/25; Def. Brief to FC, 08/26/25). Appellant and Respondents were given ten (10) minutes to argue and Appellant three (3) minutes in Reply. On that same day September 15th the three-member Panel entered their votes on Vote Sheets affirming the decision of the Hearing Commissioner and made no separate Findings of Fact as required by Regulation concerning the additional issues raised for review before the Full Commission, and without making any additional Findings of Fact on the Vote Sheets, assigned the Order not to a Commissioner but to a Staff Attorney to write. (FC Hr. Tr., 09/15/25; Vote Sheets, 09/15/25). The Appellate Panel Order affirming the Hearing Commissioner's Decision was filed December 3, 2025 and added an additional Conclusion of Law addressing one issue raised as to whether or not the Commissioner should have recused herself. (FC Order, 12/03/25). A Motion for Reconsideration and a Return to the Motion were filed and by Form Order, the Motion was denied January 12, 2026. (Motion, 12/08/25; Return, 12/22/25; Form Order, 01/12/26). A Notice of Appeal and Amended Notice of Appeal were filed (Notice of Appeal, 02/11/26; Amended Notice of Appeal, 02/23/26).

As the Court record will reflect, an Order was issued to dismiss the appeal as being interlocutory. A Petition for Rehearing was filed on the basis that the Supreme Court in

Pollack, which serves as the basis for this appeal, held that the denial of temporary total disability benefits to the injured worker is immediately appealable. A Return to the Motion was filed and an Order was then issued by the Court reinstating the appeal, with the parties being directed to address the appealability issue as part of their Briefs.

STATEMENT OF FACTS

The appeal arises out of an **admitted** July 31, 2024 accident for which medical care was and is being provided but the Respondents refused to start and/or pay temporary total disability (TTD) benefits on the basis the injured worker, violated a company policy as part of the accident and was terminated for such violation.

Admitted, Stipulated, and Uncontested Facts:

It is uncontested that Mr. Ledwell was called by fellow maintenance staff as an electrician to look at the reed switches on a large commercial saw because the pressure beam which holds wood in place to be cut by that large saw was malfunctioning. (Hr. Tr. p. 25, ll. 4-16; p. 25, l. 24 - p. 26., l. 23; p. 27, l. 10 - p. 28, l. 2). The reed switches checked out but the pressure beam continued to malfunction and they continued to hear a pressure leak. (Hr. Tr. p. 29, l. 24 - p. 31, l. 14). The fellow employees and Mr. Ledwell were seeking to find the pressure leak when the accident occurred, wherein he severely cut three fingers on his right hand on the large commercial saw. (Hr. Tr. p. 31, l. 15 - p. 33, l. 25; p. 35, l. 24 - p. 35, l. 4). While Mr. Ledwell testified as to the reasons he did not believe that he could lock out and tag out of the machine before looking for the pressure leak, **he admits and it is stipulated** that the company has a lock out, tag out policy which means and requires that the equipment upon which you are working is to be shut off before working on the equipment. Mr. Ledwell admitted and concedes and it is stipulated by Appellant and Respondents that the company has that written lock out, tag out policy which he knew about, had been trained on, and which requires that you not work on equipment if it is not shut off; and that as part of that policy, a violation could be grounds for termination. (Hr. Tr. p. 45, ll. 1-16; p. 46, l. 19 - p. 47, l. 5; p. 67, l. 11 - p. 68, l. 5).

The following is also agreed to and is uncontested: Mr. Ledwell was taken by management personnel from the Plant to the Emergency Room for treatment and the Emergency Room took him out of work from July 31 through August 3, 2024 immediately following the accident. (Cl. APA p. 17). It is agreed the Employer referred him to OrthoCarolina where he was seen on August 1, 2024 by the authorized treating orthopaedic surgeon, Dr. John Smid, who on August 1st released him to return to work, left-hand work only, and no use of the right hand. (Def. APA p.

2). It is uncontested and agreed that the Appellant continued under the care of Dr. John Smid and remained under his care as of the date of the hearing on December 10, 2024, and from August through the date of the hearing Mr. Ledwell remained under the same work restrictions from Dr. John Smid, which was restrictions of, "no use of right hand/arm, left-handed duty only". (Cl. APA p. 21; Hr. Tr. p. 41, ll. 4-20).

It is further agreed, stipulated and uncontested that on August 1st the Employer contacted the orthopaedic clinic, set up medical care, and also notified the Appellant by text that he was suspended pending an investigation and was notified by the Employer on Monday, August 5th by telephone that he was being terminated effective immediately for failure to lock out of the piece of equipment. (Hr. Tr. p. 68, l. 9 - p. 69, l. 24; p. 71, l. 17 - p. 72, l. 17).

Finally it is agreed, stipulated, and uncontested that neither the Employer nor its Insurance Carrier ever offered or procured Mr. Ledwell light duty employment within his restrictions following the work-related accident. (Hr. Tr. p. 15, l. 19 - p. 16, l. 1; p. 17, ll. 18-25; Form 51, 10/23/24; Hr. Tr. p. 75, l. 3 - p. 76, l. 11).

STANDARDS OF REVIEW

In addition to the standard of review of decisions made by the SC Workers' Compensation Commission as first established in

1981 in the case of Lark v. Bilo, Inc., 276 S.C. 130, 276 S.E.2d 304 (1981), the following principles of review apply to workers' compensation claims and are pertinent to this case and before the Court for review.

The Act and its provisions shall be given a liberal construction and interpretation in furtherance of the beneficial purposes for which it was designed. It is the established law of this State that any reasonable doubt as to the construction of the workers' compensation law must be resolved in favor of the claimants, its provisions reconciled if possible, its purposes effectuated and its presumptions and penalties directed towards the end of providing coverage rather than non-coverage. Cokely v. Robert Lee, Inc., 197 S.C. 157, 14 S.E.2d 889 (1941).

Workers' compensation statutes are to be liberally construed in favor of coverage in order to serve the beneficent purposes of the Workers' Compensation Act and only exceptions and restrictions on coverage are to be strictly construed. Foran v. Murray USA, 420 S.C. 377, 803 S.E.2d 311 (SC App. 2017).

James v. Anne's, Inc., 390 S.C. 188, 701 S.E.2d 730 (2010) quoting:

> "Workers' compensation statutes are construed liberally in favor of coverage. It follows that **any exception to workers' compensation coverage must be narrowly construed**." (emp. add.)

Where there are no disputed facts, the question of whether a job-related accident is compensable under workers' compensation laws is a question of law. Brown v. Peoplease Corp., 402 S.C. 476, 741 S.E.2d 761 (SC App. 2013).

ARGUMENTS

I. THE COURT SHOULD REVERSE THE DECISION OF THE COMMISSION DENYING THE APPELLANT TEMPORARY TOTAL DISABILITY BENEFITS ON THE BASIS OF THE ACTUAL HOLDING IN THE POLLACK v. SOUTHERN WINE & SPIRITS OF AMERICA DECISION.

First, the answer and reason the Court should reverse the Commission's decision applying and expanding Pollack v. Southern Wine & Spirits of America, supra, to a violation of a company policy that occurs during the accident itself and where Respondents did not but "**would have** offered light duty" but for the violation lies within the Pollack decision and quoting from the Pollack decision:

> "Appellant seeks to avoid the law of substantial evidence by suggesting that 'as a matter of law when the injured worker is under work restrictions, the employer **must** either **offer suitable employment** within the injured worker's capacity or pay temporary total disability benefits'. **We do not disagree with Appellant's proposition**, but it has no application here, **for it is premised on the false assumption that the Respondent did not offer suitable employment within his restrictions**. It is **beyond dispute** that Respondent **offered Appellant continued employment within his light duty restrictions**, **which was accepted by the Appellant**. Thus, in this case we are presented with a factual determination, not a question of law."

It is clear that the Court in Pollack did not even reach the requirements of SC Code §42-9-190 because the Court assumed and stated as a fundamental principle in its decision that where the employee is under work restrictions the law requires that the employer and its insurance carrier must either offer suitable employment to the injured worker within his capacity or pay temporary total disability benefits. The entire Pollack decision is based upon the premise that the employer had to and did offer light duty work within the employee's restrictions and that he was then terminated for cause while performing that light duty job.[1]

In this case, it is agreed, stipulated, and uncontested that Respondents **did not offer** Mr. Ledwell light duty employment within his restrictions. Thus, under the clear holding in Pollack, Pollack does not constitute a defense or a basis for denying Mr. Ledwell temporary total disability benefits because the Respondents never offered light duty employment to Mr. Ledwell.

II. THE COMMISSION ERRED AS A MATTER OF LAW BECAUSE ITS DECISION IS NOT ONLY BASED ON A WRONGFUL INTERPRETATION OF POLLACK v. SOUTHERN WINE & SPIRITS OF AMERICA, SUPRA, BUT THE DECISION EXPANDS THE LAW TO DENY BENEFITS INTO AN AREA, THE ACCIDENT ITSELF, WHEREIN NEITHER THE SUPREME COURT NOR THE COURT OF APPEALS HAS EXPANDED OR EVER STATED AN OPINION THAT A CLAIMANT SHOULD OR CAN BE DENIED BENEFITS.

The Supreme Court has repeatedly ruled that the provisions of the Act or any law or any decision by our Appellate Courts

[1] Note also written totally unrelated company policy and event, not related to accident or work restrictions.

under any concept creating "**exceptions**" to providing coverage under the Act are, and quoting the Supreme Court:

> "Contrary to the "**general rule that a work-related injury is compensable**" and is "an exception" to workers' compensation coverage and **must be "strictly construed"**.

Barnes v. Charter One Realty, 411 S.C. 391, 768 S.E.2d 651 (2015), reh. den., 2015. Barnes v. Charter One Realty cites to James v. Anne's, Inc., supra, for the generally accepted fundamental principles established by our Courts since 1937 (first decision) that the Act is to be liberally construed in favor of coverage to serve the "beneficent purposes" of the Workers' Compensation Act and **any exceptions** to an accident being compensable are to be "**strictly construed**" and strictly limited. Both Barnes and James cite that 1937 fundamental principle, and again quoting James:

> "Workers' compensation statutes are construed liberally in favor of coverage. It follows that **any exception to workers' compensation coverage must be narrowly construed**." (emp. add.)

In James v. Anne's, Inc., supra, the Westlaw Keynote citing cases on that principle contains 4 pages and 68 cases dating back to and from 1932 under the Longshoreman's Act and under the 1936 Workers' Compensation Act.

Most importantly to this case, Barnes involved a very similar situation wherein it involved a past precedent of the

Supreme Court as applied by the Court of Appeals wherein in Crosby v. Walmart Stores, Inc., 330 S.C. 489, 499 S.E.2d 253 (SC App. 1998) the Court of Appeals applied the idiopathic fall concept. In Barnes, the Supreme Court limited the idiopathic fall concept to a "**narrow**" interpretation and to the specific facts of the Crosby decision. Because Crosby and the idiopathic fall concept involve an "**exception**" to the general fundamental principle that coverage is to be extended to any workers' compensation claim and compensation awarded, the Court meticulously went through Crosby as it did in James and awarded benefits and reversed the attempt by the Commission to deny benefits. The Court will agree that the Pollack decision is an "**exception**" to a worker's entitlement to compensation benefits after an injury. As such, it is to be narrowly and strictly construed, **not expanded** especially into areas where the Supreme Court and this Court have not applied it. As an exception, it must be narrowly and strictly construed, not expanded. Therefore, this being an expansion of the Pollack decision, and particularly into an area where neither the Supreme Court nor this Court have spoken and where there is no decision in that area denying benefits, the Commission committed an error of law by expanding the decision which must be reversed.

III. THE DECISION OF THE COMMISSION TO DENY BENEFITS BASED ON THE POLLACK DECISION CONSTITUTED AN ERROR OF LAW AND MUST BE REVERSED BECAUSE IT WOULD INFUSE FAULT INTO THE ACCIDENT ITSELF AS A BASIS FOR DENYING BENEFITS TO AN INJURED WORKER.

It is a general maxim and fundamental principle of workers' compensation that workers' compensation is a no-fault system, and this principle is cited by the South Carolina Workers' Compensation Commission to this day as one of the "**Objectives**" of the Commission which is to:

> "provide sure, prompt and reasonable income and medical benefits to work-related accident victims ... "**regardless of fault**".

In several cases this Court and the Supreme Court have reiterated that fundamental principle in their decisions. In Gray v. The Club Group, Ltd., 339 S.C. 173, 528 S.E.2d 435 (Ct. App. 2000); cert. den. 12/11/2000, the employer, and most importantly its insurance carrier, argued that because the claimant was going at a high rate of speed he should be barred from recovery because the accident that resulted in his death was in part his "fault"; in other words, he committed a violation of law as part of the accident, and quoting this Court from Gray:

> "The general rule in South Carolina is 'fault has no bearing upon an employee's right to recovery workers' compensation benefits' and finds application only in those cases where it is shown that the acts of the employee are so serious and aggravated as to evident willful intent to injure."

Then Gray goes on to quote from Larsons:

> "When an employee is in performance of the duties of the employer, the fact that the injury was sustained while performing the duty in an unauthorized manner, or **in violation of instruction** or **rules** of the employer, **does not make the injury one incurred outside of the scope of employment**."

See also: Jordan v. Dixie Chevrolet, 218 S.C. 349, 409 S.E.2d 344 (1950). In this case, it is conceded and agreed that the Respondents take the position that they are not required to pay Mr. Ledwell temporary disability benefits because he violated a company policy as part of the accident; or in other words, the accident was in part his fault. The Court need only ponder on the ramifications of expanding fault into the accident itself. The employee was speeding when the accident occurred; he did not put on his safety equipment; he did not follow instructions; he was standing where he was told not to stand; he violated the company leave policy; or the claimant tested positive on a drug screen. Numerous examples can be given for the fault of the employer (ex., violating OSHA, EPA, etc.) or a fellow servant. However, whose fault the accident is has nothing to do with the entitlement to benefits.

IV. THE <u>POLLACK v. SOUTHERN WINE & SPIRITS OF AMERICA</u> DECISION UPON WHICH THE COMMISSION'S DECISION IS BASED IS WRONG AS A MATTER OF LAW AND THE DECISION OF THE COMMISSION SHOULD BE REVERSED.

While pursuant to the Constitution this Court is required to follow the precedents of the Supreme Court, where those precedents are in conflict, this Court is free to follow the precedent that in its opinion is correct as a matter of law.

The Supreme Court and this Court following the precedents of the Supreme Court have repeatedly held that where the facts are undisputed in a workers' compensation case, the Supreme Court and this Court are free to decide the case as a matter of law and thus the Appellate Court is not constrained by the substantial evidence standard of review. <u>Davaut v. University of South Carolina and the State Accident Fund</u>, 418 S.C. 627, 795 S.E.2d 678 (2017) (the undisputed facts, employee leaving campus crossing public street to employer owned parking lot; determination of whether or not injury occurred in the course of employment is a matter of law for decision by the Courts); <u>Jordan v. Dixie Chevrolet</u>, <u>supra</u> (the facts were undisputed that the claimant, a garage employee, was sitting during an idle period in the front seat of an automobile on which another employee was working and the claimant removed a tear gas bomb from glove compartment and pulled carter pin releasing contents injuring claimant's eyes and whether or not the claimant sustained injury by accident arising out of and in the course of his employment is a matter of law for decision by the Courts). Accord, Ardis v. Combined Ins. Co., 380 S.C. 313, 664 S.E.2d 628 (SC App. 2008).

SC Code §42-9-190 provides and quoting the statute:

> "If an injured employee refuses employment procured for him suitable to his capacity and approved by the Commission, he shall not be entitled to compensation at any time during the continuance of such refusal." (emp. add.)

In Last v. MSI Construction, 305 S.C. 349, 409 S.E.2d 344 (1991), the Supreme Court sets out as a matter of law the requirements of the statute that must be addressed as to whether an employer may stop an injured worker's temporary total disability benefits and addresses the essential elements of proof that must be present within the facts for the employer and/or its insurance carrier to stop workers' compensation benefits to the injured worker.

As stated by the Supreme Court as a matter of law, the issue is and quoting the Court:

> "Thus, the fact that a claimant is unemployable for reasons other than his injury is not dispositive. **The issue is whether a claimant has suffered some loss of earning capacity as a direct result of his work-related injury**." (emp. add.)

The Court then went on to detail **under law** the essential issues of fact upon which there must be evidence for the insurance carrier to stop weekly disability compensation benefits to an injured worker. The Court first set out the statutory law, SC Code §42-1-120 which statutorily defines "disability" as the:

> "incapacity because of injury to earn the wages the employee was earning at the time of the injury in the same or any other employment". (emp. add.)

The Supreme Court then went on to state that the Supreme Court has:

> "construed this statute in various contexts and held that the loss of earning capacity **caused by the physical injury** is the pertinent measure of compensable disability".

The Court then addressed the other two essential elements upon which there must be evidence in making the determination of whether or not a claimant is entitled to weekly disability compensation benefits, which are:

first, whether the claimant is under and/or in need to medical care for his injury; and

second, whether or not he has reached maximum medical improvement.

Thus, the Court ruled as a matter of law that:

1. where the claimant is under a doctor's care, has not reached maximum medical improvement; and

2. has a disability, meaning a loss of earning capacity as a result of his work-related injury,

the claimant is entitled to and the insurance carrier cannot stop weekly compensation disability benefits.

In all of the cases and decisions of the Supreme Court and this Court prior to and after Last and actually including Pollack, the evidence was uncontested on those elements; that is to say injured worker under medical care, under work restrictions/suffering from a loss of earning capacity and was not at maximum medical improvement. Thus, the question as a matter of law was, is, and should always be, where the claimant is still under medical care for his injuries and has not reached maximum medical improvement: whether the injured worker has suffered, "**some loss of earning capacity**" as a result of his "**work-related injury**" that prevents him from returning to full duty work.

The Last decision and the other decisions that will be set out below are in direct conflict with the decision in Pollack because Pollack is contrary to the law concerning disability, SC Code §42-1-120 and §42-9-10, and the application of those legal principles and the legal requirements set out under SC Code §42-9-190. Pollack inserts fault into a determination of an injured worker's entitlement to weekly compensation benefits while he is under a disability and under medical care, and is contrary to law. Paraphrasing and applying a quote from John Wayne - the employer's fault, the employee's fault, a third-party's fault, nobody's fault; an injured worker who is under a disability is entitled to weekly compensation benefits.[2]

Yes, the employer had, has, and hopefully will always have the right to terminate any employee at any time for justifiable reasons including violation of a company policy. However, up until Pollack, if they terminated an injured worker while he was on light duty restrictions and thus had "some loss of earning capacity" and he could not return to his regular full-time job due to the injury caused disability, with the employer or any other company, the employer and more importantly the insurance carrier, bore the financial "burden" under this Court and the Supreme Court's decisions to bear "part of the burden" and had to pay temporary disability benefits until the worker reached maximum medical improvement. The law and our Court's decisions up until Pollack, and the law after Pollack actually (see for example: SC Code Ann. §42-17-60) has placed the burden of financial loss on the party (parties) who is (are) most able to bear it which is the employer and its insurance carrier, not the injured worker. Discarding the common law and fault,

> "by substituting therefore the principle of liability on the part of the employer, regardless of fault, to compensate the employee... based on wages".

[2] John Wayne to Richard Boone in the 1971 Western film, "Big Jake".

Mendenhall v. Anderson Hardwood Floors, LLC, 401 S.C. 558, 738 S.E.2d 251 (2013).

In all of the other cases decided by this Court and the Supreme Court, **the evidence in the Record** on those fundamental issues that must be addressed in reaching a determination of whether or not a claimant was entitled to continuing temporary total disability benefits, **was undisputed**. (emp. add.) The claimant was under medical care; was suffering from a disability; was on light duty restrictions; was unable to return to a full duty job; and had not reached maximum medical improvement. However as noted, Pollack adds fault and under the Pollack application of the law, Mr. Hines (Hines v. Hendrix Canning Co., 263 S.C. 399, 211 S.E.2d 220 (1975)) would not have been entitled to temporary total disability benefits because it was his fault that he went back to school preventing the employer from making light duty work available. Mr. Last (Last v. MSI Construction, supra) was at fault and his fault caused the employer not to be able to make light duty work available while under medical care because he was in jail. Ms. Orr (Orr v. Elastomeric Products, 323 S.C. 342, 474 S.E.2d 448 (SC App. 1996) was at fault for her being unable to undergo medical care because she made the unfortunate decision to get pregnant and it was her fault her employer could not make light duty work available. It was Ms. Davis's (Davis v. Unihealth Post Acute

Care, 402 S.C. 541, 471 S.E.2d 770 (SC App. 2013) fault that she was terminated for violating a company policy while in a light duty job because she fell asleep on the job. Important to this case also is the fact that in every case including Pollack reference is made to and a determination was made by the Courts as to whether or not there was a "refusal" of light duty work. SC Code §42-9-190 in pertinent part, "... **refuses employment** ...".

Further, the decisions by this Court and the Supreme Court in two other cases are instructive in reference to fault not being an issue in a claimant's entitlement to workers' compensation benefits while under light duty restrictions. In Grayson v. Carter Rhoad Furniture, 317 S.C. 306, 454 S.E.2d 320 (1995), the Supreme Court held that because Mr. Grayson had been released with work restrictions there was no evidence that his period of temporary disability had ended and he was entitled to continuing weekly disability benefits. In Cranford v. Hutchinson Constr. Co., 399 S.C. 65, 731 S.E.2d 303 (SC App. 2012), like Mr. Grayson, Mr. Cranford, was on light duty restrictions when he was terminated. In both cases because his disability continued, the Supreme Court and this Court ordered that disability benefits be reinstated. Mr. Grayson had been terminated for lack of a driver's license (in other words, his fault) and Mr. Cranford was terminated because he was being somewhat unsafe on the job. (Again, his fault). Fault has nothing to do with the payment of disability benefits and has nothing to do with the legal requirements of SC Code §42-9-190, §42-1-120, and §42-9-10. The Court should follow the dictates of the decisions of the Supreme Court which are correct under law, which include Last, Hines, and Grayson, and not follow Pollack, which is in direct conflict with those decisions and the statutory law of our state.

V. THE COMMISSION ERRED AS A MATTER OF LAW BY FAILING TO REVERSE THE DECISION OF COMMISSIONER CINDY DOOLEY BECAUSE OF HER POTENTIAL FOR BIAS AND PREJUDICE AND DUE TO HER FAILURE TO NOTIFY PARTIES OF THAT POTENTIAL BIAS AND PREJUDICE, AND HAVING FAILED TO OFFER TO RECUSE HERSELF FROM HEARING THE CLAIM.

Commissioner Cindy Dooley, who heard this matter as the Hearing Commissioner, was the defense attorney in Pollack v. Southern Wine & Spirits of America, supra, case before the Supreme Court.

The Commission is subject to the Code of Judicial Conduct under SC Code §42-3-250. Under Rule 501, Judicial Conduct, SCACR, Cannon 3(E), a Judge shall disqualify himself or herself in a proceeding in which the Judge's impartiality "might reasonably be questioned ...". In this case, once the Respondents raised Pollack as a defense, the Appellant would submit that Commissioner Dooley was bound by the Code of Judicial Conduct to at least advise the parties of her involvement in Pollack since she was being asked to apply, and not only to apply but to expand Pollack into the accident itself thus allowing the parties to make a decision as to whether or not she should recuse herself due to the appearance of bias and prejudice on her behalf in reference to the Pollack decision and its application in this case. It was an error of law for the Commission to not remand this matter for a new hearing before another Commissioner.

The question is not whether or not Commissioner Dooley should have recused herself; the question is knowing of this potential bias on her behalf, did she have an obligation under the Code of Judicial Conduct to notify the parties of this potential bias since the decision she was asked to make is specifically based on the Pollack v. Southern Wine & Spirits of America, supra, decision.

VI. AT THE REQUEST OF THE COURT: THE DENIAL OF TEMPORARY TOTAL DISABILITY BENEFITS IS NOT INTERLOCUTORY AND IS IMMEDIATELY APPEALABLE AS A FINAL DECISION ON THAT ISSUE.

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, supra, 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."

A review by the Court, that has been made by Counsel for the Appellant, will show and establish to the Court 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 established and 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 fundamental purposes) and the denial of temporary benefits is recognized in our statutes, for example SC Code Ann. §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 and charity. 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.

While the Appellant needs to say nothing more in support, the Appellant 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 Appellant's entitlement to temporary compensation. It is the fundamental principle of the Act as cited by this Court 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., supra. 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, ("no award of any kind was made"). 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 morphs 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 addressed 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 versus where the decision is a final decision on the rights of the parties in reference to the particular issue or right, in which case it constitutes a final Order and is appealable. That is the exact situation here where the decision is both 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 compensation benefits pursuant to the Act while he is under medical care, commonly referred to as temporary total disability benefits before reaching maximum medical improvement.

Finally, under a liberal interpretation and in reference to the reading of the statutes, the statutes specifically set forth and provide that the intent of the legislature has always been to allow the injured worker an immediate right of appeal concerning their entitlement to benefits under the Act. For example, SC Code Ann. §42-17-60 specifically provides for the payment of weekly compensation benefits during the appeal and was amended in 2007 to expand that to include the provision of medical care where that medical care has been ordered by the Commission during the pendency of the appeal. In Case v. Hermitage Cotton Mills, 236 S.C. 515, 115 S.E.2d 57 (1960), the Supreme Court reviews all the previous scenarios presented to the Court that can occur during the appeal as to the payment of weekly compensation benefits during the pendency of the appeal, including where those are awarded by the Single Commissioner and awarded by the Full Commission; denied by the Single Commissioner and awarded by the Full Commission; either awarded at both levels or denied at one or both levels before the Commission and then reinstated or ordered by the Circuit Court. That review of the case law specifically includes where, again, benefits are reinstated or are ordered on appeal by an Appellate Court, at that time the Circuit Court, during the remainder of the period of the appeal. The decision that the denial of the payment of weekly compensation benefits is not appealable is contrary to that statute specifically. It is also contrary to the dictates of SC Code §42-17-20 which provides for an immediate hearing where there is a disagreement in either starting or continuing weekly compensation benefits in the cases that had been decided under that statute; for example, Singleton v. Young Lumber Co., 236 S.C. 454, 114 S.E.2d 837 (1960); Halks v. Rust Engineering Co., 208 S.C. 39, 36 S.E.2d 852 (1946).

Workers' compensation is different from most other administrative agency appeals as it involves multiple types of benefits and rights and the misapplication or overly broad application of the finality rule stems in part from applying the Rule based on Court precedents concerning decisions in reference to other agencies versus to the workers' compensation statute and its provision of swift, sure compensation, medical or other benefits. The Appellant veribly believes that when the Court looks at all the decisions involving a final decision of a claimant's entitlement to benefits under the Act including, for example, lifetime compensation benefits for brain injury versus 500 week total disability versus a scheduled member award for the brain or other body parts, organs, or members; or entitlement to temporary weekly compensation benefits; or entitlement to medical benefits that the application of the finality rule and applying it to a final decision of all benefits, temporary or permanent, thus the entire workers' compensation case is not proper. The finality rule in a workers' compensation case should be whether or not there is a final determination as to the entitlement to the specific benefits requested along the time continuum and under the Workers' Compensation Act.

CONCLUSION

For the foregoing reasons, the Court need go no further than a review of the Pollack decision which clearly requires that there has to be an "offer" of light duty employment before an employer and its insurance carrier can deny weekly compensation benefits where the claimant is under medical care and has not reached maximum medical improvement, and is under work restrictions of any nature. In this case, it is admitted and undisputed that the Respondents never offered Mr. Ledwell light duty employment and took the position that because he had committed a safety violation as part of the accident, that but for that safety violation they would have offered him workers' compensation benefits.

The Pollack decision is wrong as a matter of law. Where the facts are undisputed that the claimant is under medical care and under light duty restrictions, has not reached maximum medical improvement, and is unable to return to his full-duty job under the requirements of SC Code §42-9-190 the decision is a matter of law. Where the above stated facts are undisputed, the injured worker is entitled to compensation until he reaches maximum medical improvement unless he "refuses employment procured for him suitable to his capacity", and then only, "during the continuance of such refusal". Mr. Ledwell would not have refused at any time any offer of employment within "his capacity" had he been offered light duty employment. The employer bears part of the burden for industrial accidents and under the Act which ensures swift and sure benefits to the injured worker, part of that burden is that while the injured worker is not at maximum medical improvement and is suffering from a disability, the employer has two options: provide him with light duty employment or pay him temporary disability benefits. Yes, the employer can fire the employee at any time for any reason but when he is under work restrictions and under a disability and has not reached maximum medical improvement, they have to pay him disability benefits.

Respectfully submitted,

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