

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

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SC Court of Appeals

**APPEAL FROM THE SOUTH CAROLINA
WORKERS' COMPENSATION COMMISSION**

WCC File No. 2412890

Court of Appeals Case No. 2026-000328

Bobby Ledwell, Employee,.....Appellant,

v.

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

INITIAL BRIEF OF RESPONDENTS

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ISSUES ON APPEAL

1. Should the Court reverse the decision of the Commission denying the Appellant temporary total disability benefits on the basis of the Supreme Court's decision in *Pollack v. Southern Wine & Spirits of America, supra*?
2. Did the Commission err as a matter of law because its decision is not only based on a wrongful interpretation/application of *Pollack v. Southern Wine & Spirits of America, supra*, which is a limitation of benefits and must be narrowly construed, but the decision expands the law to deny benefits into an area, the accident, wherein neither the Supreme Court nor the Court of Appeals has expanded or ever stated an opinion that an Appellant should be or can be denied benefits?
3. Does the decision of the Commission to deny benefits based on the *Pollack* decision constitute 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?
4. Is the *Pollack v. Southern Wine and Spirits of America* decision upon which the Commission's decision is based wrong as a matter of law and thus the decision of the Commission should be reversed?
5. Did the Commission err 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 the parties of that potential bias and prejudice, and having failed to offer to recuse herself from hearing the claim?
6. At the request of the Court: Is the denial of temporary total disability benefits not interlocutory and is it immediately appealable as a final decision on that issue?

STATEMENT OF THE CASE

This is a workers' compensation appeal by Bobby Ledwell ("Appellant") from the Decision and Order of the South Carolina Workers' Compensation Commission Appellate Panel (the "Full Commission"), filed on December 3, 2025, which upheld the Decision and Order of the Commissioner Cynthia C. Dooley, ("Hearing Commissioner"), filed on April 22, 2025.

This claim arises from an accident occurring on July 31, 2024, whereby Appellant sustained injuries to his right middle and right ring fingers. Respondents admitted the claim as compensable but denied Appellant's entitlement to temporary total disability benefits based upon the fact Appellant was terminated for cause for a safety violation. Specifically, Appellant admittedly violated a lockout safety policy in place by his employer which led to his termination.

On September 23, 2024, Appellant filed a Form 50 Employer's Request for Hearing alleging that July 31, 2024, the Appellant has sustained an injury to his right hand middle and ring fingers. Appellant further alleged that he was entitled to temporary total disability benefits from July 31, 2024, and continuing. (Cl. Form 50). On October 23, 2024, Respondents filed a Form 51 Employer's Answer to Request for Hearing. Respondents admitted injuries to the right middle and ring fingers only, denied all other injuries, and contended they were providing causally related medical treatment. Respondents further indicated they denied Appellant's entitlement to temporary total disability benefits, as "the Appellant's restrictions would have been accommodated but for his termination for cause." (Def. Form 51).

The Hearing was set for December 10, 2024, before Commissioner Cynthia C. Dooley. Appellant filed his Amended Form 58 Pre-Hearing Brief on November 26, 2024, and Respondents filed their Form 58 Pre-Hearing Brief on November 27, 2024. Following the scheduled hearing, the Hearing Commissioner requested that both parties submit a Memorandum of Law addressing

the issue of whether *Pollack v. Southern Wine & Spirits of America* applied to the case at hand. Appellant filed his memorandum on December 20, 2024, and Respondents filed their memorandum on December 23, 2024. On January 7, 2025, the Hearing Commissioner issued proposed order instructions to Respondents whereby she determined that *Pollack* applied, and upon her review, Appellant was not entitled to temporary benefits.

On February 19, 2025, Appellant petitioned the Supreme Court for a Writ of Certiorari on the issue of the denial of Appellant's temporary total disability benefits. Respondents filed their Return to Petition for a Writ of Certiorari to the Supreme Court on March 7, 2025. On March 25, 2025, the Supreme Court declined the petition submitted by Appellant.

The Hearing Commissioner filed her Decision and Order on April 22, 2025, whereby she determined that Appellant had been terminated for cause and was not entitled to temporary total disability benefits. Appellant filed a Motion for Reconsideration on April 24, 2025, and the Hearing Commissioner denied this motion on May 8, 2025.

Appellant filed a Form 30 Request for Commission Review on May 21, 2025. The hearing in front of the Full Commission was set for August 15, 2025. Appellant filed Appellant's Brief to the Full Commission on August 11, 2025, and Respondents filed Defendants' Brief in Response to Appellant's Appeal on August 26, 2025. The Full Commission issued the Appellate Panel Decision and Order on December 3, 2025, where they upheld the findings of the Hearing Commissioner and determined that Appellant was not entitled to temporary total disability benefits. Appellant filed a Motion for Reconsideration by the Full Commission on December 8, 2025, and the Full Commission denied this Motion on January 12, 2026.

This appeal followed.

STATEMENT OF FACTS

Appellant was hired to work for Arauco North America as an electrician on December 5, 2016. (Hrg. Trans. p. 24, lines 1-8).

On the date of the accident, July 31, 2024, Appellant was called over to assist on a machine because it was having problems. (Hrg. Trans. p. 25, lines 1-6). The machine operates where a saw comes down and cuts wooden boards to the desired widths, and the boards are held in place by a pressure beam. (Hrg. Trans. p. 26, lines 2-25). The machine was having an issue with this pressure beam specifically. (Hrg. Trans. p. 25, lines 1-6). When he was called over, there were already two individuals working on the machine, Chris Howard and Steven Britt. (Hrg. Trans. p. 27, lines 10-15). It was determined that the machine had an air leak, and the decision was made to not lockout the machine when looking for the air leak (Hrg. Trans. p. 31, lines 2-14; p. 34, lines 1-3). When a machine is locked out, it means that the machine is operating at zero energy, because the power to the machine has been killed. (Hrg. Trans. p. 28, lines 3-11). During the process of trying to figure out the issue with the machine, and after deciding to not lockout the machine, Appellant sustained cuts to his fingers by slicing them on a blade. (Hrg. Trans. p. 35, lines 1-3).

At the hearing in front of the Hearing Commissioner, Appellant testified that he was trained on lockout policies as a part of his employment with Arauco. (Hrg. Trans. p. 45, lines 2-4). He testified that he was aware that the policy at Arauco is “zero energy,” meaning that you lockout any piece of equipment you are going to operate or work on. (Hrg. Trans. p. 45, lines 6-13). He had even signed documentation indicating he was aware of the policy. (Hrg. Trans. p. 45, lines 14-16). Prior to the date of the accident, Appellant had violated Arauco’s lockout policy in 2022. (Hrg. Trans. p. 45, lines 17-20). As a result, he was disciplined through a suspension for three days, and he had to make a statement to other people at the business indicating that he was aware

of what the lockout policy was. (Hrg. Trans. p. 45, line 21- p. 46, line 7). He did not dispute that he violated the safety protocol in place at Arauco, and this is not an issue in this appeal. (Hrg. Trans. p. 47, lines 1-5).

Immediately following this accident, the decision was made to suspend Appellant while an investigation was conducted into the circumstances of the accident, and Appellant was subsequently terminated on August 5th for his failure to lockout the equipment. (Hrg. Trans. p. 52, line 18-p. 53, line 21). Bonita Rhynes, the HR business partner with Arauco, testified to the safety policies in place at Arauco. (Hrg. Trans. p. 66). She confirmed that Appellant had been trained on the lockout policy, which requires locking the equipment until the equipment is totally shut down with zero energy. (Hrg. Trans. p. 67, line 17-p. 68, line 3). She further confirmed that she called Appellant on August 5th and notified him that he would be terminated, effective immediately, for failure to lockout the equipment. (Hrg. Trans. p. 72, lines 2-13).

Following this accident, Defendants provided causally related medical treatment to Appellant, and the medical treatment provided is not at issue in this case. Appellant's medical treatment is still ongoing, and his workers' compensation claim has not yet come to a resolution or settlement.

Appellant was released with work restrictions of left-hand duty only on August 1st, 2024. (Hrg. Trans. p. 75, lines 3-6). Arauco has a very robust return-to-work policy, and as a result, they can generally accommodate most work restrictions given to injured workers. (Hrg. Trans. p. 75, lines 10-16). When asked whether Appellant's work restrictions could have been accommodated by Arauco, Bonita Rhynes testified "absolutely," and indicated that he could have been working within his maintenance group, assisting other electricians, working in the storeroom, or doing other jobs. (Hrg. Trans. p. 75, lines 17-25). Ms. Rhynes confirmed that there are things Appellant could

have done with the use of only one arm, and that there was an array of tasks he could have been doing. (Hrg. Trans. p. 75, line 25-p. 76, line 4). Ms. Rhyne's further testified that had Appellant not been terminated for cause, Arauco would have been able to accommodate his light duty restrictions. (Hrg. Trans. p. 76, lines 5-11). As such, Respondents did not initiate his temporary total disability benefits as his restrictions could have been accommodated but for his termination for cause.

STANDARD OF REVIEW

"The South Carolina Administrative Procedures Act (APA) gives judicial review of decisions by the Commission." *Hartzell v. Palmetto Collision, LLC*, 415 S.C. 617, 622, 785 S.E.2d 194, 197 (2016). It is well established that "the Commission is the ultimate fact finder" in workers' compensation cases, and its findings "must be affirmed if they are supported by substantial evidence." *Holmes v. Nat'l Serv. Indus.*, 395 S.C. 305, 308, 717 S.E.2d 751, 752 (2011); see also *Muir v. CR Bard, Inc.*, 336 S.C. 266, 282, 519 S.E.2d 583 (Ct. App. 1999) ("The findings of the Commission are presumed correct and will be set aside only if unsupported by substantial evidence"); *Jordan v. Kelly Co.*, 381 S.C. 483, 674 S.E.2d 166 (2009); *Pierre v. Seaside Farms, Inc.*, 386 S.C. 534, 540, 689 S.E.2d 615, 618 (2010). Substantial evidence is evidence which, when viewed as a whole, "would allow reasonable minds to reach the conclusion the agency reached." *Pierre*, 386 S.C. at 540, 684 S.E.2d at 618. This standard does not permit substitution of judicial judgment for agency judgment; a finding "upon which reasonable men might differ will not be set aside." *Lark v. Bi-Lo, Inc.*, 276 S.C. 130, 136, 276 S.E.2d 304, 307 (1981).

ARGUMENT

I. THE COURT SHOULD UPHOLD THE DECISION OF THE COMMISSION DENYING APPELLANT TEMPORARY TOTAL DISABILITY BENEFITS ON THE BASIS OF THE HOLDING IN *POLLACK V. SOUTHERN WINE & SPIRITS OF AMERICA*, AS IT WAS PROPERLY APPLIED AND INTERPRETED.

Appellant contends that the Full Commission improperly interpreted the case law established in *Pollack v. Southern Wine & Spirits of America*, and that they improperly applied it to the facts at hand in the present case. 405 S.C. 9, 747 S.E.2d 430 (2013). Respondents disagree with Appellant and contend that *Pollack* was applied as the proper case law. As such, Respondents will be addressing Appellant’s first and second issues raised in one argument section. Under *Pollack*, the Full Commission was able to determine that Respondents properly terminated Appellants temporary total disability (“TTD”) benefits, as they would have been able to accommodate his work restrictions had it not been for his termination for cause.

A. *Pollack* establishes the rule that a claimant is not entitled to TTD benefits if the claimant’s restrictions could have been accommodated but for their termination for cause.

The controlling question in this appeal is the one our Supreme Court answered in *Pollack*: *why is the claimant not working?* If the claimant’s inability to earn wages is the direct result of a compensable injury, TTD benefits follow. If, however, the claimant is not working because he was legitimately terminated for cause, the claimant is not entitled to TTD benefits. The Full Commission’s factual findings here — that Claimant was discharged for cause after a repeated, serious violation of Arauco’s lockout/tagout policy, and that Arauco would have accommodated the claimant’s restrictions through light duty but for that discharge, should be upheld.

The claimant in *Pollack* sustained an admitted injury at work and was placed on work restrictions. 405 S.C. at 11, 747 S.E.2d at 431. The claimant’s employer accommodated these restrictions by offering light duty employment. *Id.* Approximately two months later, the claimant

was involved in an accident while driving his company vehicle. *Id.* at 12, 747 S.E.2d at 431. The employer's policy regarding accidents involving company vehicles required the reporting of any accident to a supervisor. *Id.* The claimant failed to report his accident, was suspended, and subsequently terminated after an investigation by the employer. *Id.* The claimant subsequently filed a Form 50 seeking TTD benefits from the date of his termination onward. *Id.* The employer opposed this request and asserted that the claimant was ineligible for TTD benefits based upon his termination for cause. *Id.* During the hearing on the claimant's Form 50, the claimant admitted that he was aware of the company policy and that he had previous infractions during his employment. *Id.* A representative of the employer testified at the hearing that the claimant's termination was for cause, that other employees had been terminated for failing to report accidents in the past, and that the claimant would still be working on light duty but for his for-cause termination. *Id.* at 13, 747 S.E.2d at 432. The Hearing Commissioner denied Appellant's request for TTD benefits, concluding that the claimant was terminated for cause for violating company policy, and the Full Commission affirmed. *Id.*

On appeal, the claimant in *Pollack* attempted to argue 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 compensation." *Id.* at 14-15, 747 S.E.2d at 433. In construing the claimant's argument as one for mandated payment of TTD benefits whenever an employee is discharged from an accommodated, light duty position, the Supreme Court "categorically reject[ed] such an interpretation," noting that the "fallacy of [the claimant's] position is self-evident." *Id.* at 15, 747 S.E.2d at 433. The Court emphasized that S.C. Code Ann. Section 42-9-260 and its accompanying regulations make clear that "[a]n injured employee will be entitled to TTD compensation when his incapacity to earn wages is *due to or*

because of the injury.” Id. (emphasis in original). The Supreme Court affirmed the Full Commission’s decision, finding that it was undisputed that the claimant was offered accommodations within his work restrictions, the claimant admitted to violating a company policy, and the claimant was terminated for cause. *Id.* at 16-17, 747 S.E.2d at 434. Accordingly, the Supreme Court found that the claimant was not entitled to TTD benefits as his “inability to earn wages was not *due to* or *because of* a work-related injury.” *Id.* (emphasis in original).

Put simply, if the greater weight of the evidence demonstrates the claimant’s unemployment resulted from a for-cause discharge (and not from a work-related incapacity), *Pollack* requires the Commission deny TTD benefits. Defendant Employer’s testimony regarding its willingness and ability to accommodate these restrictions is unrefuted: Bonita Rhynes confirmed that the company maintains a light duty policy and would have accommodated Claimant’s post-injury restrictions but for the termination. (Hrg. Trans p. 41, lines 75–76). Because the employer could have offered work within Claimant’s restrictions, his wage loss was not caused by his injury but rather by his discharge for cause. That factual posture is precisely the one the Supreme Court addressed in *Pollack*.

B. Appellant’s interpretation of the law improperly narrows the construction of *Pollack* and creates a temporal requirement that does not exist in the case as written.

Appellant argues that because the employer never offered the light duty employment to Appellant, *Pollack* does not apply. The offer of light duty employment is not the issue here. The issue is whether Respondents could have offered the employment, and it has been clearly established they could have. Appellant’s focus on the actual offer is attempting to narrow the established law in a way that is suitable to their argument on appeal, but not proper or sensical.

Claimant asks this Court to adopt a rigid temporal distinction: if the termination is based on a violation that occurred during the accident, TTD must be awarded because the employer could

not first provide light duty, but if termination is for a violation that occurred after the accident (i.e., while working light duty) then TTD can be denied. (App. Form 30 Notice of Appeal, pp. 1-3). This is an impracticable rule. It elevates form over substance and would lead to absurd results and perverse incentives. *See Lancaster Cnty. Bar Ass'n v. S.C. Comm'n on Indigent Defense*, 380 S.C. 219, 222, 670 S.E.2d 371, 373 (2008) HN3 ("In construing a statute, this Court will reject an interpretation when such an interpretation leads to an absurd result that could not have been intended by the legislature.").

To take this factual analysis a step further, suppose a claimant commits a clearly terminable safety violation at 9:00am, but that violation is not discovered until after his unrelated work accident at 10:00am. Three days later, after his suspension pending investigation into the safety violation, the claimant is terminated. The employer could have otherwise provided light duty. Under Claimant's proposed rule, denial of TTD would be impossible simply because the employer had not had an opportunity to provide light duty before the termination. That result would force employers into an untenable dilemma: either return an admittedly unsafe employee to the workplace (potentially creating immediate risk and liability) or face indefinite TTD exposure. The Legislature and South Carolina courts could not have intended to put employers to that choice.

Fortunately, the Supreme Court addressed and resolved this potential conundrum in *Pollack*. The Court asked a very simple question – *Why is the claimant not working?* If the answer is his termination for cause, he is not entitled to TTD benefits. If the answer is his injury, he is entitled to TTD benefits. The Legislature contemplated a similar analysis in enacting Section 42-9-260, which starts with the phrase, “[w]hen an employee has been out of work due to a reported work-related injury” S.C. Code Ann. § 42-9-260. In the case at hand, Appellant is out of work only because he committed an egregious safety violation. It is unrefuted he would be

working but for his termination. Whether the violation necessitating termination occurred before, after or during the accident is irrelevant to the ultimate issue.

Under *Pollack*, the Full Commission had to answer why the claimant is unemployed. Here, the answer is: termination for cause following a repeated breach of an essential safety rule, which is undisputed in this case, and properly leads to the termination of TTD benefits. As such, the Full Commission did not err in their interpretation or proper application of *Pollack*, and Respondents properly refused Appellant's TTD benefits.

II. THE COMMISSION DID NOT ERR AS A MATTER OF LAW BY INFUSING FAULT INTO THE WORKERS' COMPENSATION SYSTEM.

Appellant asserts that denial of TTD based on a termination for cause improperly infuses fault into a no-fault workers' compensation system. Respondents agree that the workers' compensation system is a no-fault system. However, Appellants argument is improper as it mischaracterizes the reason for the denial of the TTD benefits.

Appellant's argument conflates two distinct legal questions: Compensability and entitlement to TTD. Compensability is governed by the no-fault principles of the Act, and Defendants do not—and did not—contest the compensability of Appellant's injury itself. Entitlement to TTD is a separate inquiry: once compensability is established, the Act asks whether the Appellant's loss of earnings is caused by the work-related injury. Section 42-9-260 is instructive in its operative language: it addresses the employee who has been “out of work due to a reported work-related injury.” S.C. Code Ann. § 42-9-260 (emphasis added). Where, as here, the Appellant is out of work due to a for-cause termination and not due to a work-related incapacity, the statutory framework and *Pollack's* precedent justify denial of TTD benefits.

Thus, Defendants are not infusing fault into the compensability calculus — they are applying a neutral causation standard to determine the proper basis for TTD entitlement. The Act

contemplates precisely this comparison: is the Appellant's unemployment traceable to the compensable injury or to a non-compensable, independent cause? *Pollack* answers that question in favor of the employer, and the evidence here unmistakably demonstrates that Appellant was out of work due to this independent cause, i.e. his termination for cause.

III. THE *POLLACK V. SOUTHERN WINE & SPIRITS OF AMERICA* DECISION IS NOT WRONG AS A MATTER OF LAW.

Respondents first contend that Appellant did not properly preserve the issue of whether *Pollack* is wrong as a matter of law for appeal. Appellant preserved different issues regarding *Pollack*, such as whether this is the case to apply to this situation, however, this specific issue as presented in Appellant's Initial Brief was not properly preserved. Appellant outlined in his Statement of Issues on Appeal that his fifth issue for appeal is "Is the *Pollack v. Southern Wine & Spirits of America* decision upon which the Commission's decision is based wrong as a matter of law and thus the decision of the Commission should be reversed?" As raised, this is the first time the issue is being presented to Respondents. Appellant did not argue that *Pollack* was wrong as a matter of law in front of the Full Commission, and he is attempting to present this to the Court for the first time. This appeal is rooted in the application and interpretation of *Pollack*, not whether *Pollack* was even correct to begin with. This is not what we are here to decide, and this is merely Appellant's attempt to sway attention away from the proper application of *Pollack* to his case.

Appellant attempts to make the argument that *Pollack* is wrong as a matter of law and was not the proper case law to apply. However, Appellant's argument is wholly improper as he relies on what the law typically would be in a normal case, disregarding the fact that this situation addresses an exception to the rule regarding TTD. He also tries to root his argument in case law established prior to *Pollack* merely because he prefers how it supports his argument.

He begins this argument by citing to *Last v. MSI Construction*, which is case law that established the guidelines for when TTD benefits may be terminated. He goes on to outline the statutorily defined “disability” under S.C. Code § 42-1-120, which is defined as the “incapacity because of an injury to earn the wages the employee was earning at the time of the injury in the same or any other employment.” In Appellant’s breakdown of the law of workers’ compensation, he fails to acknowledge that the law he is citing is for the standard interpretation of TTD and disability. Appellant wholly ignores the fact that we are dealing with an exception regarding TTD benefits, an issue that he already argued and established must be “narrowly construed.” His citation to the definition and application of this law as it normally operates is irrelevant here, as this is not a normal set of facts that we are dealing with regarding TTD.

Pollack is the proper case to apply to the facts at hand. Appellant fails to demonstrate for what purpose *Pollack* would not be applicable, and the argument provided does nothing further than create a distraction from the actual issue of this case.

IV. THE FULL COMMISSION DID NOT ERR IN FAILING TO REVERSE THE HEARING COMMISSIONER.

Appellant asks this Court to reverse the Full Commission based on the Hearing Commissioner’s “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.” He contends that the Full Commission should have reversed the Hearing Commissioner for the reason laid out above. This argument fails for multiple independent reasons: (1) the law requires more than an unsupported allegation of prior involvement to require recusal; (2) the Hearing Commissioner disclosed her role when asked and Appellant’s counsel made no request for recusal at the hearing; and (3) no evidence of actual bias or prejudice appears in the record. Under settled South Carolina authority, the Commissioner’s refusal to recuse was not error.

The legal standard is well established: disqualification is required only when a judge's impartiality "might reasonably be questioned," and bald assertions of bias or prior involvement are insufficient. *See* Canon 3(E)(1)(a), Rule 501, SCACR. South Carolina courts repeatedly hold that a trial judge's failure to disqualify will not be disturbed on appeal unless the movant produces evidence demonstrating bias or prejudice. *See Patel v. Patel*, 359 S.C. 515, 524, 599 S.E.2d 114 (2004) (citing *Roche v. Young Bros., Inc.*, 332 S.C. 75, 504 S.E.2d 311 (1998)); *see also Ellis v. Procter & Gamble Distrib. Co.*, 315 S.C. 283, 433 S.E.2d 856 (1993). Likewise, a party seeking disqualification must point to some factual basis for the claim; mere allegation is not enough. *Mallett v. Mallett*, 323 S.C. 141, 473 S.E.2d 804 (Ct. App. 1996). To hold that any judge — whether a circuit judge, an appellate judge, or a justice of the Supreme Court — must automatically recuse herself merely because a party cites a case she once decided or, in a prior capacity as an attorney argued, would be untenable and absurd: it would transform routine citation into categorical disqualification, cripple judicial efficiency, and substitute a bright-line rule for the objective, fact-based standard the Code and our cases require. Such is not the reality of our judicial system.

The record shows that the Hearing Commissioner satisfied any disclosure obligation and that Appellant's counsel did not preserve a recusal claim. At the outset of the hearing the parties were given an opportunity to place their positions on the record. When Appellant's counsel stated he had "just become aware that [*Pollack*] was [the Hearing Commissioner's] case" and asked whether she had "argued that case to the Supreme Court," the Commissioner answered that she "didn't personally argue it" and explained she was present with an appellate specialist who made the oral argument. (Hrg. Trans. p. 12). Appellant's counsel immediately acknowledged he "was just wondering" and made no further inquiry; crucially, he never requested recusal, not that recusal

was required. Counsel for the claimant failed to request recusal and failed to raise any objection to the Commissioner hearing the matter. Because the disclosure was made on the record when counsel raised the issue and because counsel did not move to disqualify at that time, Appellant nonetheless waived any challenge based on nondisclosure at this stage.

Moreover, Appellant has offered no evidence that the Commissioner was actually biased or that her impartiality might reasonably be questioned. There is nothing in the Hearing record to suggest prejudice, and each of the Hearing Commissioner's factual findings were supported by the greater weight of the evidence. *See Ellis*, 315 S.C. at 285, 433 S.E.2d at 857 (finding that a judge's impartiality might reasonably be questioned when her factual findings are not supported by the record). Absent any factual showing of bias or impropriety, appellate courts will not overturn a judge's refusal to recuse.

For the foregoing reasons, the Hearing Commissioner did not err in declining to recuse herself. The record contains no evidence suggesting bias or prejudice, Appellant made no contemporaneous request for recusal at the hearing, and no authority requires reversal under these circumstances. As such, the Full Commission committed no error when they upheld her decision in lieu of remanding the case for another hearing.

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

Respondents agree with Appellant that the Supreme Court has previously issued an opinion regarding temporary total disability benefits prior to the finality of a case. In *Pollack v. Southern Wine & Spirits of Am.*, the Supreme Court was tasked with determining whether an employee was entitled to temporary total disability benefits after he had been terminated from his light duty employment position for cause. 405 S.C. 9, 747 S.E.2d 430 (2013). Respondents in *Pollack* made

the argument that the denial of benefits was not immediately appealable, and the Court indicated in only a footnote that they “disagreed and summarily reject this contention pursuant to Rule 220(b)(1), SCACR” *Id.* By citing Rule 220, SCACR, the Supreme Court did not go into detail as to why the denial of temporary total disability benefits was an immediately appealable issue. As such, there is no reasoning or basis for this issue being one in which a delayed review will not provide an adequate remedy. Respondents must gestate that this is applicable to each situation involving a denial of temporary total disability benefits, without having the supportive factors or determination that *Pollack* may have involved extenuating circumstances or different details which allowed the Court to hear this issue. While there is no clearly outlined basis for the Court’s decision, Respondents are forced to recognize that it has been previously decided on by the Court as contended by Appellant.

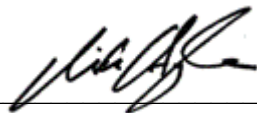
It has been long established that the right to appeal a workers’ compensation case is controlled by the Administrative Procedures Act (APA). The APA provides that “only two types of orders are immediately appealable: final decisions and intermediate orders for which delayed review will not provide an adequate remedy.” *Brown v. Southeastern Servs., H.H.I., LLC*, 446 S.C. 105, 917 S.E.2d 925 (Ct. App. 2025). The Court in *Brown* was tasked with determining whether the commission’s order was immediately appealable. *Id.* The matters determined in this order were conceded to not be a final decision, but the order addressed whether Southeastern had the number of employees required to fall under the commission’s jurisdiction and it established Claimant’s entitlement to certain temporary benefits. *Id.* at 110. The Court acknowledges that “Claimant has not reached maximum medical improvement, and the commission has not ruled on whether Claimant is entitled to an award for any permanent disability. Other disputes may well arise as this case proceeds towards a final decision.” *Id.* The Court in this case determined that

the order was not immediately appealable as it did not meet the requirements of either being a final decision or was it an intermediate order for which delayed review will not provide an adequate remedy. *Brown* establishes that orders that are not final decisions are not immediately appealable. This is no different from the appeal at hand. The case has not reached resolution, and as indicated above, other disputes may arise prior to finality that may need to be addressed by the Court of Appeals. The Court in *Brown* notes that “the purpose of the final judgment rule is to present the whole cause for determination in a single appeal and thus to prevent the unnecessary expense and delay of repeated appeals.” *Id.* at 112.

Respondents therefore contend that the issue of appealability of temporary total disability benefits is one that is interlocutory and not an issue to be determined until the resolution of the claim.

CONCLUSION

For the reasons set forth, the Full Commission’s Decision and Order dated September 5, 2025, should be affirmed in its entirety. The Full Commission properly applied and interpreted *Pollack*, where it was determined that Respondents properly denied Appellant’s temporary total disability benefits.



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