

THE STATE OF SOUTH CAROLINA

In the Supreme Court

PETITION FROM THE COURT OF APPEALS

John C. Few, Chief Justice

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JUL - 8 2014

S.C. Supreme Court

Opinion No.: 2013-002491

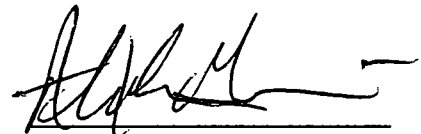
Alexander Guice,.....Petitioner,

v.

US Food Service, Inc., and ACE  
American Insurance Company  
c/o Gallagher Bassett Service, Inc.,.....Respondents.

NOTICE OF  
PETITION FOR WRIT OF CERTIORARI

Alexander Guice seeks a review of the order of the Honorable John C. Few dated April 24<sup>th</sup>, 2014. Petitioner received notice of entry of the June 5<sup>th</sup>, 2014 order denying petition for reinstatement on June 9<sup>th</sup>, 2014.



Alexander Guice  
Post Office Box 13281  
Tampa, FL 33681  
(813) 562-0547  
Petitioner, Pro Se

Erin L. Hantske, Esquire  
Post Office Box 650007  
Mt. Pleasant, SC 29465  
(843) 576-2946  
Attorney for Respondents

July 5, 2014

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Post Office Box 650007  
Mt. Pleasant, SC 29465  
(843) 576-2946  
Attorney for Respondents

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## QUESTIONS PRESENTED FOR REVIEW

1. Did the Appellate Court Order dated April 24<sup>th</sup>, 2014 violate the Petitioner's constitutional right to be heard?
2. Did the Appellate Court Order dated April 24<sup>th</sup>, 2014 fail to correct error(s) of law contained in the record?
3. Did the Appellate Court Order dated April 24<sup>th</sup>, 2014 deviate from the "Standard of Review" scope of the Appellate Court's authority pursuant to the South Carolina Administrative Procedures Act?
4. Does the executive director of the Workers' Compensation Commission have the authority to render decisions in contested cases brought before the Workers' Compensation Commission?

## FACTS OF THE CASE

Alexander Guice (hereafter "injured worker" "claimant" "Appellant" or "Petitioner") was hired as a delivery driver by US Foodservice, Inc. (hereafter "employer" "Defendant" "Respondent") located at 120 Longs Pond Road, Lexington, SC 29072 on October 1<sup>st</sup>, 2001. The parties are bound by the South Carolina Workers' Compensation Act (hereafter "Act"). On May 5<sup>th</sup>, 2005 claimant was injured in a work-related accident while in the performance and scope of claimant's duties. Claimant notified employer of the work related injury on May 5<sup>th</sup>, 2005. The work-related injury was admitted by the parties. At the time of the work-related injury, the mutually agreed average weekly wage of claimant was \$1,161.00 per week (App., p. 190).

The Workers' Compensation Commission (hereafter "commission")

assigned this matter Case Number 0506205. On or around May 16<sup>th</sup>, 2005 Claimant retained the legal services of Robert G. Bacon, Esq. and Harry Pavilack & Associates, P.A. and later, the Bacon Law Firm, LLC (hereafter "Attorney Bacon") (App., p. 191-192). Claimant attended all required medical appointments. On October 27<sup>th</sup>, 2005 the authorized treating physician, namely, Alan Tamadon, MD (hereafter "Dr. Tamadon") opined maximum medical improvement, or "MMI". In particular, Dr. Tamadon; (1) assigned a 5% percent impairment rating to the whole person of claimant; (2) assigned permanent lifting restrictions; and (3) reported to the employer that claimant could no longer perform the duties of a delivery driver (App., p. 205-210).

The medical opinion of Dr. Tamadon was never challenged. When Dr. Tamadon opined MMI on October 27<sup>th</sup>, 2005 claimant had received temporary compensation payments for approximately 175 days, including the first 150 days (App., p. 212). Subsequent MMI, employer never offered or otherwise afforded claimant suitable work to accommodate claimant's incapacity. On or around November 2<sup>nd</sup>, 2005 employer terminated claimant on the grounds of "permanent lifting restrictions" and "no position available" (App., p. 211). Claimant immediately informed Attorney Bacon of the termination; however Attorney Bacon took no legal action on behalf of claimant.

Subsequent the termination of employment, the employer and employer's representative suspended all payments of compensation to claimant and reduced claimant's average weekly wage from \$1,161.00 to \$592.56 (App., p. 213). Claimant informed Attorney Bacon that claimant was not receiving compensation payments; however Attorney Bacon took no legal action on behalf of claimant.

On or around December 13<sup>th</sup>, 2005 claimant was involuntarily separated from claimant's now ex-wife. Claimant was homeless.

On or around December 16<sup>th</sup>, 2005 claimant received telephonic correspondence from Attorney Bacon. Claimant informed Attorney Bacon that claimant was homeless and still was not receiving compensation payments. Attorney Bacon informed claimant that employer's representative was offering \$20,000.00 to settle the workers' compensation claim. Attorney Bacon further stated that if claimant did not accept the offer, Attorney Bacon did not know when claimant could expect to receive another compensation payment. Attorney Bacon never advised claimant of any legal or civil rights afforded to the claimant under the Act.

On December 22<sup>nd</sup>, 2005, and in the office of Attorney Bacon, claimant signed the Settlement Agreement and Release. No hearing, formal conference, or informal conference before the commission was ever convened. Subsequent to claimant signing the Settlement Agreement and Release, claimant received an envelope from the employer's carrier which contained three (3) compensation checks reflecting withheld compensation payments from November 7<sup>th</sup>, 2005 to December 17<sup>th</sup>, 2005 (App., p. 222-224). The checks were paid out at the reduced average weekly wage of \$592.56.

On or around January 5<sup>th</sup>, 2006 Commissioner David W. Huffstetler approved the aforementioned Settlement Agreement and Release (App., p. 214-221). Subsequent the approval of the Settlement Agreement and Release, claimant received a check for \$13,333.33 from Attorney Bacon, as Attorney

Bacon retained \$6,666.66 or 33.3% of the settlement amount as attorney fees. Claimant has not received another payment from the employer's representative to date. At the time compensation payments were terminated, on "December 4<sup>th</sup>, 2005" as asserted by the employer's representative, claimant had received temporary compensation payments for approximately 213 days, including the first 150 days (App., p. 212).

The employer's representative never filed a WCC Form 21 with the commission requesting a stop payment hearing. Attorney Bacon never filed any action with the commission on behalf of claimant with respect to employment or compensation payments, and the commission never convened a stop payment hearing in this matter.

Claimant relieved Attorney Bacon as counsel of record (App. p. 193-196). On December 7<sup>th</sup>, 2012 Claimant duly served a WCC Form 27 (Subpoena) upon Attorney Bacon, commanding the same to provide unto claimant a copy of the client file regarding W.C.C. Case Number 0506205; however, to date, Attorney Bacon has failed to comply with the Subpoena (App. p. 197). Claimant filed a WCC Form 50 requesting a hearing with the commission, alleging *inter alia*; (1) the employer unlawfully terminated claimant; (2) the employer's representative unlawfully terminated temporary total compensation payments; and (3) claimant was subjected to misrepresentation by Attorney Bacon (App., p. 225-228).

Employer's Representative filed and served a WCC Form 51 denying claimant's employment and compensation payments were unlawfully terminated on the grounds that the parties entered into the Settlement Agreement and Release, and that ("... he (claimant) entered into a clincher settlement agreement

to resolve his claim related to his accident of May 5, 2005") (App., p. 363-368). On January 29<sup>th</sup>, 2013 the commission issued a Notice of Hearing, scheduling a hearing regarding WCC Case Number 0506205 to be heard in Summerville, SC on March 28<sup>th</sup>, 2013 (App., p. 229).

Claimant filed several motions with the commission, and in particular, a "Motion for Transfer of Jurisdiction", seeking the district assigned to hear WCC Case Number 0506205 be transferred from "District 4" (Charleston) to "District 7" (Richland) based on the employer's address of 120 Longs Pond Road, Lexington, SC 29072, which was not objected to, and mutually agreed with by the Defendants' (App., p. 231-237). On February 22<sup>nd</sup>, 2013 Single Commissioner Susan S. Barden (hereafter "Commissioner Barden") issued an Order cancelling claimant's previously scheduled March 28<sup>th</sup>, 2013 hearing and dismissing all motions filed with respect to WCC Case No.: 0506205 on the grounds that ("Claimant settled his claim (WCC# 0506205) through a Full and Final Settlement Agreement...") (App., p. 238).

Commissioner Barden issued the February 22<sup>nd</sup>, 2013 order while within the assigned jurisdiction of District 2 (Anderson) (App., p. 240-242). On February 28<sup>th</sup>, 2013 Appellant filed a WCC Form 30 requesting a review of Commissioner Barden's February 22<sup>nd</sup>, 2013 Order (App., p. 239). On March 4<sup>th</sup>, 2013 Claimant filed and served a "Motion for Reinstatement of Employment and Release of Temporary Total Compensation Payments (hereafter "Motion for Reinstatement")" (App., p. 243-254). On March 14<sup>th</sup>, 2013 Defendants' filed and served a "Reply" to the Motion for Reinstatement (App., p. 255-258).

A review of the aforementioned "Reply to Motion for Reinstatement" confirms Defendants' failed to "affirm or deny" the averments contained in claimant's aforementioned "Motion for Reinstatement". On March 17<sup>th</sup>, 2013 claimant filed and served an "Answer to Motion for Reinstatement", wherein claimant asserted Rule 8(d) of the South Carolina Rules of Civil Procedure (SCRCP) (App., p. 259-262). On March 18<sup>th</sup>, 2013 claimant filed and served a proposed order granting the motion for reinstatement (App., p. 263-265).

On March 25<sup>th</sup>, 2013 and without a request for additional documents from the parties by single jurisdictional Commissioner Andrea C. Roche (hereafter "Commissioner Roche"), Defendants' submitted correspondence to Commissioner Roche reiterating the February 22<sup>nd</sup>, 2013 Order of Commissioner Barden (App., p. 266-268). The unrequested March 25<sup>th</sup>, 2013 correspondence to Commissioner Roche from Defendants' did not "affirm or deny" the averments contained in the aforementioned "Motion for Reinstatement".

On March 27<sup>th</sup>, 2013 Gary M. Cannon, Executive Director of the commission (hereafter "Mr. Cannon") issued correspondence to claimant with regards to WCC Case Number 0506205, and in particular, the aforementioned 'Motion for Reinstatement', wherein Mr. Cannon summarily dismissed the same on the grounds that ("... the Commission does not have subject matter jurisdiction for the issues set forth in the motion.") (App., p. 269).

To date, neither jurisdictional Commissioner Roche nor the commission has ever adjudicated the aforementioned 'Motion for Reinstatement'.

On April 8<sup>th</sup>, 2013 Appellant appealed the March 27<sup>th</sup>, 2013 decision of Mr.

Cannon to the Lexington County Court of Common Pleas (hereafter “lower court”), which assigned the matter Case Number 2013-CP-32-01272 (App., p. 270-278). On May 2<sup>nd</sup>, 2013 Respondents’ filed a ‘Motion to Dismiss’ (App., p. 279-283). On June 10<sup>th</sup>, 2013 the lower court issued an “Order Granting Defendants’ Motion to Dismiss” on the grounds that (“... Claimant... has failed to exhaust all administrative remedies within the workers’ compensation forum prior to initiating this appeal...” ) (App., p. 284-285). The aforementioned Order did not include a reference or citation of authority relied upon by the lower court in support of its rationale granting the dismissal of the appeal.

Appellant filed a “Motion for Reconsideration” challenging the lower court’s opinion; however, the lower court issued an Order on September 6<sup>th</sup>, 2013 denying Appellant’s motion (App., p. 292-293). Upon notice of the lower court’s September 6<sup>th</sup>, 2013 decision, on or around November 22<sup>nd</sup>, 2013, Appellant filed and served a Notice of Appeal, challenging the June 10<sup>th</sup>, 2013 order of the lower court with the Court of Appeals (hereafter “appellate court”) which assigned the appeal Case Number 2013-002491 (App., p. 4-8). On January 31<sup>st</sup>, 2014 Appellant filed and served an “Appellant’s Initial Brief” and “Designation of Matter” with the appellate court (App., p. 9-39).

On February 28<sup>th</sup>, 2014 Respondents’ filed and served a “Motion to Dismiss Appeal” (App., p. 40-159). On March 10<sup>th</sup>, 2014 Appellant filed a “Return and Counterclaim to Motion to Dismiss Appeal” (App., p. 160-294). Respondents’ filed a “Reply to Motion to Dismiss Appeal” on March 18<sup>th</sup>, 2014 (App., p. 295-303). Appellant filed a “Reply to Counterclaim to Motion to Dismiss” on March

22<sup>nd</sup>, 2014 (App., p. 304-332).

On April 24<sup>th</sup>, 2014 the appellate court issued an Order granting Respondents' Motion to Dismiss Appeal; however, the aforementioned appellate court Order also remanded the case back to the lower court (App., p. 2-3). On May 1<sup>st</sup>, 2014 Appellant filed and served a "Petition for Reinstatement" (App., p. 333-341). On May 8<sup>th</sup>, 2014 Respondents' filed and served a "Return to Petition for Reinstatement" (App., p. 342-348).

On May 12<sup>th</sup>, 2014 Appellant filed and served a "Reply to Petition for Reinstatement (App., p. 349-371). On June 5<sup>th</sup>, 2014 the appellate court issued an Order denying Appellant's petition for reinstatement (App., p. 1). To date, Petitioner has been unemployed since being terminated by employer on November 2<sup>nd</sup>, 2005.

### **CONCISE STATEMENT OF THE CASE**

Respondents' unlawfully terminated Petitioner's employment. The grounds relied upon for termination, in particular, "permanent lifting restrictions" and "no position available" were a direct result of injuries sustained in the admitted work-related injury of May 5<sup>th</sup>, 2005. Respondents' never offered or afforded suitable employment to accommodate Petitioner's incapacity. Respondents' termination of employment violated S.C. Code Reg. § 67-506(D) ("After the one hundred fifty day period, when the claimant is receiving temporary compensation and the authorized health care provider assigns an impairment rating and reports the claimant is unable to return to work at the same or other suitable job, the employer's representative must continue payment of temporary

compensation until the Commission finds the employer's representative may terminate temporary compensation.”).

Respondents' unlawfully terminated Petitioner's entitled temporary total compensation payments. At the time Respondents' alleged terminating Petitioner's temporary total compensation payments, in particular, on December 4<sup>th</sup>, 2005, Petitioner had received temporary compensation payments for approximately 213 days, including the first 150 days. As noted above, S.C. Code Reg. § 67-506(D), by way of S.C. Code Ann. § 42-9-260(F) (“After the one-hundred-fifty-day period has expired, the commission shall provide by regulation the method and procedure by which benefits may be suspended or terminated for any cause, but the regulation must provide for an evidentiary hearing and commission approval prior to termination or suspension...” ) controls the continued payment of temporary compensation payments.

Furthermore, S.C. Code Reg. § 67-506(E) (“To request a hearing for permission to terminate temporary compensation, the employer's representative shall file a Form 21 with the Judicial Department. (1) The employer's representative shall serve a copy of the Form 21 on the claimant according to R.67-211. (2) The employer's representative shall certify temporary compensation is current or no hearing will be set.”) controls the mandatory procedures required to be taken for Respondents' to lawfully terminate temporary total compensation payments to Petitioner. However, as of this date; (1) Respondents' have never filed with the commission a Form 21; (2) The commission has never convened a stop payment hearing; and (3) The

commission has never issued an order granting the suspension or termination of temporary total compensation payments to Petitioner as required by law.

The grounds relied upon by Respondents in support of the termination of both Petitioner's employment and temporary total compensation payments, in particular, the entrance into and subsequent approval of the aforementioned Settlement Agreement and Release, is without merit. In particular, S.C. Code Ann. § 42-1-610 states in relevant part ("No contract or agreement, written or implied, and no rule, regulation or other device shall in any manner operate to relieve any employer, in whole or in part, of any obligation created by this Title except as otherwise expressly provided in this Title."). Furthermore, S.C. Code Ann. § 42-1-620 states in relevant part ("No agreement by an employee to waive his rights to compensation under this Title shall be valid.").

The reliance of S.C. Code Reg. § 67-801(E) by the Respondents to continue the unlawful termination of employment and temporary total compensation payments is controlled or otherwise overruled by; (1) S.C. Code Ann. § 42-1-610; (2) S.C. Code Ann. § 42-1-620; (3) S.C. Code Ann. § 42-9-260(F); and (4) S.C. Code Reg. § 67-506(D) and (E) of the Act.

Petitioner continues to be subjected to "extrinsic fraud" by Attorney Bacon<sup>1</sup>. In the instant case, a review of the record confirms Attorney Bacon took no legal action on behalf of Petitioner when Respondents' unlawfully terminated Petitioner's employment and entitled temporary total compensation payments while representing Petitioner from May 2005 to December 2012. Attorney Bacon never advised Petitioner of his rights afforded under the South Carolina Workers Compensation Act. Attorney Bacon has intentionally concealed the Petitioner's

client copy of Case File 0506205 in willful noncompliance of the duly served subpoena which was served upon same on December 7<sup>th</sup>, 2012.

Still further, Attorney Bacon abused the Petitioner's novice understanding of the law as well as Petitioner's limited education, which consisted of completion of the 10<sup>th</sup> grade and recipient of a General Equivalency Diploma or "G.E.D." (App., p. 203). Attorney Bacon's actions, which constituted extrinsic fraud, are sufficient grounds to warrant the setting aside of the Settlement Agreement and Release, as well as all subsequent orders and decisions issued in this matter. **See Evans v. Gunter**, 294 S.C. 525, 529, 366 S.E.2d 44, 46 (1988) (quoting H. Lightsey, J. Flanagan, South Carolina Civil Procedure, 408 (2nd ed. 1985)).

With respect to the 'Motion for Reinstatement', Mr. Cannon acted in excess of his authority, as established in S.C. Code Ann. § 42-3-80, when Mr. Cannon issued the March 27<sup>th</sup>, 2013 decision, acting in a *de facto* manner, to dismiss the aforementioned motion for reinstatement. Commissioner Roche never adjudicated the motion for reinstatement, as required by law, pursuant to S.C. Code Ann. § 42-3-20(C) ("The commissioners shall hear and determine all contested cases...") and corresponding S.C. Code Reg. § 67-707(C)(2)(c) ("... The Commission will act upon the motion and issue an order before the review hearing is held."). Finally, the Act does not establish administrative

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<sup>1</sup> In *Chewing*, the Appellate Court held "the subornation of perjury by an attorney and/or the intentional concealment of documents by an attorney are actions which constitute extrinsic fraud." *Id.* at 82, 579 S.E.2d at 610.

remedies or procedures for a party to challenge a decision in a contested case rendered by the executive director of the commission. As such, Mr. Cannon's unlawful March 27<sup>th</sup>, 2013 decision prejudiced the substantial rights afforded to Petitioner.

With respect to the appellate court Order dated April 24<sup>th</sup>, 2014 the Appellate Court's scope of review required the Appellate Court to: (1) affirm the lower court's opinion; or (2) reverse the lower court's opinion; or (3) remand or modify the lower court's opinion, based solely upon the application of law, the review of the whole record, and evidence presented to the lower court, which the Appellate Court failed to do. **See** Corbin v. Kohler Co., 351 S.C. 613, 571 S.E.2d 92 (Ct. App. 2002); see also Lockridge v. Santens of America, Inc., 344 S.C. 511, 515, 544 S.E.2d 842, 844 (Ct. App. 2001) ("Any review of the commission's factual findings is governed by the substantial evidence standard.").

Furthermore, the April 24<sup>th</sup>, 2014 Order violated the Petitioner's constitutional right to be heard, as the same made no reference to the more than four (4) arguments properly submitted and contained in the Petitioner's "Return and Counterclaim to Respondents' Motion to Dismiss Appeal". Instead of providing any rationale or commentary with respect to the Petitioner's arguments, the April 24<sup>th</sup>, 2014 Appellate Court Order provided one (1) sentence with respect to the Petitioner's arguments, in particular, ("Appellant has filed a return") (App., p. 2).

The five (5) word sentence afforded to the argument(s) duly submitted by Petitioner with respect to Respondents' 'Motion to Dismiss Appeal', as contained in the aforementioned April 24<sup>th</sup> appellate court Order failed to meet the standard

of affording the Petitioner the constitutional right to be heard, pursuant to S.C. Const. art. I, 22 (“No person shall be finally bound by a judicial or quasi-judicial decision of an administrative agency affecting private rights except on due notice and an opportunity to be heard...”).

Based on the fact no oral arguments were heard by the appellate court, the stating, addressing, and rationalizing of all arguments submitted by the parties were critical in affording both the parties a fair and impartial adjudication of the Motion to Dismiss Appeal, which the appellate court failed to do.

The April 24<sup>th</sup>, 2014 Appellate Court Order failed to correct the error(s) of law contained in the record with respect to; (1) the Respondents’ unlawful termination of Petitioner’s employment on November 2<sup>nd</sup>, 2005; and (2) the Respondents’ unlawful termination of temporary total compensation payments on or around December 4<sup>th</sup>, 2005.

Petitioner duly filed the ‘Petition for Reinstatement’; however, the appellate court proceeded to violate the Petitioner’s constitutional right to be heard, a second time, by failing to state, address, or provide a rationale either in support of, or opposition to, the clearly stated arguments contained in the Petition for Reinstatement (App., p. 333-341, 349-371), and instead stattg, (“...the Court is unable to discover that any material fact or principle of law has been either overlooked or disregarded...”).

## **ARGUMENT**

### **AUTHORITY OF THE SUPREME COURT TO REVIEW FINAL DECISIONS FROM THE COURT OF APPEALS**

Rule 242(a) SCACR states in relevant part, “The Supreme Court, or any

two (2) justices thereof, may in its discretion, on motion of any party to the case or on its own motion, issue a writ of certiorari to review a final decision of the Court of Appeals.”

In the instant case, Petitioner asserts there are “special and important” reasons in support of the Supreme Court exercising sound judicial discretion to grant a writ of certiorari. Petitioner would allege unto the character of reasons to be considered reflects; (1) the direct involvement of substantial constitutional issues, with respect to the right to be heard and intentionally uncorrected error(s) of law in the record by the appellate court; and (2) a novel question of law, with respect to the authority, or lack thereof, of the executive director’s ability to render decisions in contested cases before the commission.

**Argument # 1: Did the Appellate Court Order dated April 24<sup>th</sup>, 2014 violate the Petitioner’s constitutional right to be heard?**

A review of the Appendix in terms of the April 24<sup>th</sup> appellate court Order, and in particular; (1) the “Return and Counterclaim to Motion to Dismiss Appeal” (App., p. 160-294); and (2) the “Reply to Counterclaim to Motion to Dismiss Appeal” (App., p. 304-332) confirms the Appellate Court Order dated April 24<sup>th</sup> failed to address and/or rationalize the argument(s) submitted by Petitioner, which violated Petitioner’s protected constitutional right to be heard.

The April 24<sup>th</sup> Appellate Court Order constituted a “blind-sided” or “one-sided” viewing of the record and opinion, from the rationale and perspective of the Respondents, by the appellate court. The April 24<sup>th</sup> appellate court Order prejudiced the substantial rights afforded to Petitioner pursuant to S.C. Const. art. I, 22.

**Argument # 2: Did the Appellate Court Order dated April 24<sup>th</sup>, 2014 fail to correct error(s) of law contained in the record?**

A review of the record, and in particular; (A) the October 27<sup>th</sup>, 2005 MMI medical report of authorized health care provider Dr. Tamadon, wherein Dr. Tamadon; (1) assigned a five percent impairment rating; (2) assigned permanent lifting restrictions; and (3) reported to the Respondents' that Petitioner was unable to perform the duties a delivery driver (App., p. 205-210); and (B) WCC Form 18- Periodic Report-, filed with the commission by the Respondents, which confirmed that as of October 27<sup>th</sup>, 2005 Petitioner had received temporary compensation for approximately 175 days, including the first 150 days (App., p. 212); **confirms** that Respondents unlawfully terminated Petitioner's employment on November 2<sup>nd</sup>, 2005 (App., p. 211) and Petitioner's entitled temporary total compensation payments on or around December 4<sup>th</sup>, 2005, in violation of S.C. Code Reg. § 67-506(D).

No stop payment hearing has ever been convened by the commission in the instant case. The commission has never issued an Order granting permission for the Respondents to suspend or otherwise terminate temporary total compensation payments, as lawfully required, pursuant to S.C. Code Ann. § 42-9-260(F) and corresponding S.C. Code Reg. § 67-506(E). Petitioner cannot waive, resolve, or otherwise agree to settle his lawful right to employment and compensation by way of Settlement Agreement and Release pursuant to S.C. Code Ann. § 42-1-610 & 620.

The appellate court had the authority, and an adjudicative responsibility, pursuant to the Standard of Review and S.C. Code Ann. § 1-23-380(5)(a)-(e)

("...modify the decision if substantial rights of the appellant have been prejudiced because the administrative findings, inferences, conclusions, or decisions are: (a) in violation of constitutional or statutory provisions; (b) in excess of the statutory authority of the agency; (c) made upon unlawful procedure; (d) affected by other error of law; (e) clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record..." ) to set aside all previous decisions and orders in the instant case, immediately reinstate Petitioner's employment and order the immediate release of temporary total compensation payments, but the appellate court failed to do so. **See** Liberty Mut. Ins. Co. v. South Carolina Second Injury Fund, 363 S.C. 612, 611 S.E.2d 297 (Ct. App. 2005); Frame v. Resort Servs., Inc., 357 S.C. 520, 593 S.E.2d 491 (Ct. App. 2004); and Stephen v. Avins Constr. Co., 324 S.C. 334, 478 S.E.2d 74 (Ct. App. 1996).

The April 24<sup>th</sup> Order of the appellate court remanding the instant case back to the lower was improper. The error of the appellate court to modify the lower court's June 10<sup>th</sup>, 2013 order with respect to correcting the error(s) law as it directly relates to the unlawful termination of Petitioner's entitled employment and temporary total compensation payments prejudiced the substantial rights afforded to Petitioner.

**Argument #3: Did the Appellate Court Order dated April 24<sup>th</sup>, 2014 deviate from the "Standard of Review" scope of the Appellate Court's authority pursuant to the South Carolina Administrative Procedures Act?**

The March 27<sup>th</sup>, 2013 decision rendered by Mr. Cannon (App., p. 269) with respect to the aforementioned 'Motion for Reinstatement' constituted a final judgment, based on the fact the commission, and in particular, Commissioner Roche, never adjudicated the motion for reinstatement as required by law, pursuant to S.C. Code Ann. § 42-3-20(C) and corresponding S.C. Code Reg. §

67--707(C)(2)(c).

Under the scope of review, the appellate court, after a review of an appeal from the commission, could; (1) affirm the lower court's opinion; or (2) reverse the lower court's opinion; or (3) remand or modify the lower court's opinion, based solely upon the application of law, the review of the whole record, and evidence presented to the lower court, which the Appellate Court failed to do. **See** Corbin v. Kohler Co., 351 S.C. 613, 571 S.E.2d 92 (Ct. App. 2002); see also Lockridge v. Santens of America, Inc., 344 S.C. 511, 515, 544 S.E.2d 842, 844 (Ct. App. 2001) ("Any review of the commission's factual findings is governed by the substantial evidence standard.").

In the instant case, a review of the April 24<sup>th</sup> appellate court order confirms the appellate court granted the Respondents' motion to dismiss appeal AND remanded the case back to the lower court, to be considered at the same time of the Appellate Panel's Decision and Order dated July 17<sup>th</sup>, 2013 (App., p. 151-156). However, the opinion deviated from the scope of review, in particular, by not affirming the lower court's opinion dated June 10<sup>th</sup>, 2013. If the appellate court did not affirm the lower court's June 10<sup>th</sup>, 2013 opinion, then the motion to dismiss appeal should have been denied. Furthermore, the decision of the appellate to have the issue of the March 27<sup>th</sup>, 2013 challenged decision of Mr. Cannon considered at same time as the appeal of June 17<sup>th</sup>, 2013 Appellate Panel Decision and Order was also improper.

In particular, based on the fact Commissioner Roche never adjudicated the motion for reinstatement as required by law, pursuant to S.C. Code Ann. §

42-3-20(C) and corresponding S.C. Code Reg. § 67--707(C)(2)(c), the July 17<sup>th</sup>, 2013 Decision and Order of the Appellant Panel should have been vacated with prejudice.

The appellate court's decision to "dismiss and remand" the appeal constituted an improper deviation from the scope of review afforded to the appellate court under the Administrative Procedures Act.

**Argument #4: Does the executive director of the Workers' Compensation Commission have the authority to render decisions in contested cases brought before the Workers' Compensation Commission?**

A review of the Appendix confirms that both parties directed all correspondence with respect to the motion for reinstatement to the at the time District 7 jurisdictional commissioner, Commissioner Roche (App., p. 263-268); however, Mr. Cannon rendered a decision on March 27<sup>th</sup>, 2013 summarily denying and dismissing the motion for reinstatement (App., p. 269).

Furthermore, both opinions from the lower court dated June 10<sup>th</sup>, 2013 and the April 24<sup>th</sup> appellate court, respectively, failed to address or rationalize whether or not Mr. Cannon acted in excess of the authority of the executive director of the commission when Mr. Cannon rendered the March 27<sup>th</sup>, 2013 decision. S.C. Code Ann. § 42-3-80 establishes the duties and responsibilities of the executive director of the commission; however, none of the duties and responsibilities establish the authority of the executive director to render decisions in contested cases before the commission. There are no stated administrative procedures within the Workers' Compensation Act with relation to procedures a party may take to challenge decisions rendered by the executive director.

An opinion is required with regards to the authority of the executive director to render decisions in contested case before the commission. Without an opinion from the Court, the March 27<sup>th</sup>, 2013 decision rendered by Mr. Cannon could serve as a precedent, which could be used in future contested case before the commission, particularly when a party to a contested case is a self-represented litigant, with the inability to afford or otherwise retain legal counsel, and in possession of a novice understanding of the law.

### CONCLUSION

Based on the foregoing, Petitioner moves the Court to act *sua sponte* or in the alternative, to grant this petition for writ of certiorari based on a review of the record and the merits contained herein.

Respectfully submitted,



Alexander Guice  
Post Office Box 13281  
Tampa, FL 33681  
(813) 562-0547  
Petitioner, Pro Se

July 5, 2014

**THE STATE OF SOUTH CAROLINA**

**In the Supreme Court**

**PETITION FROM THE COURT OF APPEALS**

**John C. Few, Chief Justice**

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**Case No.: 2013-002491**

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**Alexander Guice,.....Petitioner,**

**v.**

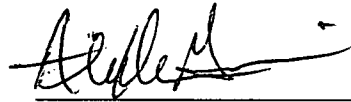
**US Food Service, Inc., and ACE American Insurance  
Company c/o Gallagher Bassett Service, Inc.,.....Respondents.**

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**CERTIFICATE**

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I hereby certify that a petition for rehearing was made in the above style caption on May 1<sup>st</sup>, 2014 and finally ruled on by the Court of Appeals on June 5<sup>th</sup>, 2014.



Alexander Guice  
Post Office Box 13281  
Tampa, FL 33681  
(813) 562-0547  
Petitioner, Pro Se

July 5<sup>th</sup>, 2014