

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM SOUTH CAROLINA
WORKERS' COMPENSATION COMMISSION

WCC Case No 0726308

RECEIVED

APR 15 2015

SC Court of Appeals

Shannon Cook, Claimant, Respondent,

v.

Spartanburg Steel Products, Inc , Defendant, Petitioner.

PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED

- 1 DID THE COURT OF APPEALS ERR IN DISMISSING THIS APPEAL FOR LACK OF FINALITY?

Rule 242(d)(1) Certification

Counsel for Petitioner hereby certifies that a Motion for Rehearing and/or to Reinstate Appeal was made to the Court of Appeals on September 11, 2014, which was denied by the Court of Appeals on March 19, 2015

Pursuant to Rule 242, SCACR, Petitioner Spartanburg Steel Products, Inc hereby petitions this Court for review of the Court of Appeals' Orders dated August 29, 2014 ("2014 Order") (Appx pp 6-7) and March 19, 2015 ("2015 Order") (Appx pp 2-5) dismissing this appeal for lack of finality. The Court of Appeals' Orders are the result of inconsistency and confusion surrounding the issue of when decisions issued by the South Carolina Workers' Compensation Commission involving post-July 1, 2007 injuries are final for purposes of appellate review. In addition, the Court of Appeals' Orders are in direct conflict with this Court's discussion of and ruling on finality in Shatto v McLeod Reg. Med Ctr, 406 S C 470, 753 S E 2d 416 (2013). This Court should grant this Petition in order to clarify and provide guidance to lower courts as to when claims based on injuries that occurred after July 1, 2007 are final for purposes for appellate review.

STATEMENT OF THE CASE

Respondent Shannon Cook, Claimant below, sustained a compensable injury by accident to his lumbar spine on September 17, 2007. By Decision and Order dated June 8, 2011, Commissioner Avery B Wilkerson, Jr, awarded Claimant twenty-five percent (25%) Permanent Partial Disability to the spine. He further ordered that Claimant was entitled to future medical treatment pursuant to Dodge v Brucoli, 334 S C 574, 514 S E.2d 593 (Ct App 1999), as directed by Dr. LaTourette on his Form 14B dated June 16, 2010. Specifically, Dr LaTourette noted Claimant would require future medical care related to the work injury in the form of medications for pain, psychological evaluation and treatment, spinal injections and physical therapy.

Petitioner paid the 25% award on June 27, 2011

On May 9, 2012, within 12 months of Petitioner's last payment to Claimant, attorney Tom Gagne, who represented Claimant at the time, filed a Form 50 on Claimant's behalf, alleging a change of condition for the worse,¹ and injury to Claimant's "Spine and Psyche" only. Line 13a on the Form 50, which states "I am filing a claim I am **not** requesting a hearing at this time," was checked (Appx pp 21-24) (emphasis added). Attached to this Form 50 was a written medical report and questionnaire from Dr. Yashbir T. Rana (Appx. pp 25-28).

In 2013, Claimant terminated his relationship with Mr. Gagne and retained Ryan Montgomery as counsel. On or about May 17, 2013,² Claimant filed a Form 50 request for hearing, claiming injury not only to his back and psyche, but also to his bilateral legs and hips (Appx pp. 30-35). However, the May 2013 Form 50 did not indicate or reference the May 2012 Form 50, or allege a change of condition. Furthermore, there were no medical reports attached to the May 2013 Form 50. The May 2013 Form 50 was filed over 22 months after Petitioner's last payment to Claimant.

Finally, on August 9, 2013, over 25 months after Petitioner's last payment, Claimant filed an Amended Form 50, both requesting a hearing and alleging a change of condition. In this Amended Form 50, Claimant sought additional medical examination and treatment for his back, bilateral legs, hips and psyche. He did **not** seek or allege any permanent disability (Appx pp 37-42).

The parties filed Form 58, Pre-Hearing Briefs. On Claimant's Form 58, he alleged he was entitled to "additional medical [treatment] under the original order or as a change of

¹ Claims for a change of condition are pursuant to S.C. Code Ann. § 41-17-90, which provides that on either motion of a party or on its own, the Commission may review a prior award, and "the review must not be made after twelve months from the date of the last payment of compensation pursuant to an award provided by this title." Pursuant to the Commission's regulations, "the moving party must attach to the hearing request form a medical report(s) indicating a change in the claimant's condition." S.C. Code Reg. § 67-602(C).

² The May 2013 Form 50 is dated May 21, 2013, but the Certificate of Service is dated May 17, 2013.

condition” Specifically, Claimant sought “a finding of change of condition and an order instructing carrier to provide medical as request[ed] by their doctors, repay Medicare for the causally related medical treatment, and for any further relief the Commissioner deems appropriate Additional permanency is premature at this time and would request this issue be held in abeyance” Petitioner stated the only fact in controversy was “[w]hether claimant has sustained a change condition per S C Code § 42-17-90 ” (Appx p 44)

The parties were heard by Hearing Commissioner Susan S Barden on September 27, 2013 At that hearing, Claimant alleged he had suffered a change of condition for the worse with regard to his admitted back injury, for which he sought surgery Claimant also sought reimbursement for a C T Myelogram which he had undergone at his own expense, as well as for other co-pays he had covered (Transcript of Hearing Commissioner Hearing, held September 27, 2013, Appx p 50, lines 8-20)) (Id., p. 51, line 14 – p 52, line 20) Claimant’s counsel indicated that he was “satisfied” with Commissioner Barden’s recitation of his pending claims (Id., p. 58, lines 15-20) Petitioner denied that Claimant had sustained a change of condition for the worse and that, in any event, Claimant’s claim was barred because he failed to timely file a request for hearing on the change of condition as required under S C Code Ann § 42-17-90 (Id., p 56 line 4 – p 57, line 17). Petitioner clarified Commissioner Barden’s summary of its position by raising the applicability of Regulation 67-203(C) (Id., p 58, line 24 – p 59, line 5) No other issues were raised or identified by the parties or Commissioner Barden

Claimant testified that he wanted surgery as recommended by Dr Charles Kanos (Appx p 62, lines 12-21) He also testified that he had incurred certain co-pays (Id., p. 61, line 21 – p 62, line 6) At no point during the hearing before Commissioner Barden did Claimant request any additional relief (Id., pp 47-74) In fact, Claimant’s counsel specifically objected to a line

of cross-examination regarding whether Claimant had been offered a light-duty position with Petitioner following his compensable injury, asserting, “Objection We’re here on a change of condition I don’t know what relevance this has ” (Id., p 73, lines 3-5) Commissioner Barden overruled the objection on the basis that, “Well, it’s cross examination I’m going to let him continue and see where he’s going ” (Id., p 73, lines 6-8) This exchange demonstrates that both Claimant and Commissioner Barden understood Total Temporary Disability (“TTD”) was not pending before the Commission

Following the hearing, Commissioner Barden requested that Claimant’s counsel draft a Proposed Order, and provided 20 specific Findings of Fact to be included in the order, including findings that Claimant had sustained a change of condition for the worse, that Claimant was entitled to ongoing medical treatment with Dr. Kanos, and that Claimant had not reached maximum medical improvement (“MMI”) She determined Claimant’s average weekly wage and corresponding compensation rate. She also found that Claimant was entitled to reimbursement for a \$25 00 fee for a Motion to Compel, as well as co-pays associated with Claimant’s treatment with Dr Kanos (Appx pp 76-79) Commissioner Barden’s Finding No 17 simply stated “Permanency is premature ” (Appx p 78)

Commissioner Barden issued her Decision and Order dated November 25, 2014 (Appx. pp. 81-94) The Order stated that the “Purpose of the Hearing” was “[t]o determine only the issues on the Form 50 Change of Condition Request And/or Additional Medical Pursuant to Commission Order ” The Order included the above-referenced findings of fact, along with two additional findings that were not requested but, instead, were inserted by Claimant’s counsel. Finding of Fact No. 21 stated that “[a]ny issue relating to TTD and permanency is held in abeyance, **as the only issue before the undersigned was whether the claimant has sustained**

a change of condition for the worse” (Appx p 91) (emphasis added) Claimant’s counsel also added language to the Conclusions of Law and Ordering paragraphs to the effect that issues not addressed in the order were held in abeyance

Petitioners filed a Form 30 Request for Commission Review on December 9, 2013 (Appx pp 152-157) Petitioners specifically raised the issue of “[w]hether the Hearing Commissioner erred in Finding of Fact No. 17, wherein she states ‘Permanency is premature’ ” (Appx p 154)

An Appellate Panel of the Full Commission heard oral argument on March 17, 2014. The **only** issues argued by either party in their briefs or at that hearing concerned 1) whether Claimant had proven he sustained a change of condition for the worse; and 2) whether the Form 50s filed by Claimant’s prior or current counsel in 2012 and 2013 satisfied the requirements of S.C. Code Ann § 42-17-90 and/or S.C. Code Ann. Reg § 67-602. (Transcript of Full Commission hearing, held March 17, 2014, Appx. pp. 96-111) ³

The Commission issued its Decision and Order, dated May 20, 2014, fully affirming the Hearing Commissioner (Appx pp 113-129) The Commission reiterated Finding of Fact No. 21, stating that “[a]ny issue relating to TTD and permanency is held in abeyance, **as the only issue before the undersigned was whether the claimant has sustained a change of condition for the worse.**” (Id., p 126) (emphasis added) Although the Commission repeated language in the Conclusions of Law and Ordering paragraphs to the effect that issues not addressed in the order were held in abeyance, as noted above, the only issues before the Commission were whether Claimant had timely claimed and then proved that he sustained a change of condition for

³ Claimant also argued that Petitioner should be estopped from arguing the second point because Petitioner paid for medical examinations (Appx p 109, line 25 – p 110, line 3)

the worse. The Commission did not remand **any** issues to Commissioner Barden for consideration or determination (Appx pp 124-129)

Petitioner timely appealed to the Court of Appeals. Claimant moved to dismiss Petitioner's appeal, (Appx pp 140-141, 148-151), which Petitioner opposed (Appx pp 142-147). The Court of Appeals dismissed the appeal. (2014 Order, Appx pp 6-7). Petitioner moved for rehearing, (Appx pp 8-129), which the Court of Appeals denied (2015 Order, Appx. pp 2-5)

Petitioner now seeks a writ of certiorari to review the Court of Appeals' dismissal of their appeal.

ARGUMENT

The Court of Appeals erred when it dismissed this appeal for lack of finality. Specifically, the Court of Appeals erred by applying this Court's ruling in Bone v U S Food Serv., 399 S C 566, 733 S.E 2d 200 (2012), to the facts of this case. Bone involved a pre-July 1, 2007 injury and addressed the issue of whether an appeal of a circuit court order remanding a case to the Commission for further proceedings was immediately appealable. Bone, which analyzed the issue of appealability under S.C Code Ann § 1-23-390, does not apply to this case, which involves a direct appeal from the Commission to the Court of Appeals under S C Code Ann. §§ 1-23-380 and 42-17-60.

This Court recently explained that Bone "addressed appealability under the predecessor to section 1-23-390 of the South Carolina Code, which provided that in appeals from an administrative agency, such as the Commission, to the circuit court '[a]n aggrieved party may obtain a review of any final judgment of the circuit court by appeal to the Supreme Court.'" Shatto v McLeod Reg. Med Ctr., 406 S C 470, 474 n 2, 753 S E 2d 416, 418 n 2 (2013). The

instant appeal does not involve an appeal to or order from the circuit court. Moreover, this appeal does not involve a remand from the circuit court to the Commission for further proceedings, which was the case in Bone and which served as the basis for that decision. 399 S C at 576-77, 733 S E 2d at 205

As this Court noted in Shatto, as part of Act 387 (2006), workers' compensation appeals for injuries incurred after July 1, 2007 no longer go from the Commission to the circuit court, but instead, go directly from the Commission to the Court of Appeals.⁴ Because Bone applies to pre-July 1, 2007 injuries and this case involves a post-July 1, 2007 injury, and because the statutory requirements governing appeals are different for pre- and post-July 1, 2007 workers' compensation claims, the requirement that appeals from the circuit court be from a "final judgment," as set forth in Bone and in S C Code Ann. § 1-23-390 and cases decided under that statutory provision, is neither applicable to nor controlling in this case.

In its 2014 Order and 2015 Order, the Court of Appeals uses the terms "final decision" and "final judgment" interchangeably, whereas this Court's discussion in Shatto makes a critical distinction between the two: "rule [242(a), SCACR] speaks in terms of reviewing a '**final decision**' of the court of appeals, not a '**final judgment**'" 406 S C. at 474 n 2, 753 S E 2d at 418 n 2 (emphasis added). S C Code Ann § 1-23-380, the applicable Administrative Procedures Act ("APA") appellate provision, discusses appeals from a final **decision**, not a final **judgment**.

In Shatto, the Commission resolved two issues: 1) that Shatto was McLeod's employee, as opposed to an independent contractor, and 2) that her injuries were compensable. McLeod

⁴ Although S C Code Ann § 1-23-390 still requires that appeals from the circuit court to the Court of Appeals be from a "final judgment," this case simply does not involve an appeal from the circuit court. Instead, because this matter involves a post-July 1, 2007 injury, the appeal was from the Commission directly to the Court of Appeals.

appealed both issues. The Court of Appeals reversed the Commission's finding that Shatto was McLeod's employee, declined to reach the question of compensability, and remanded to the Commission to address Shatto's claim against another putative employer, Staff Care. McLeod appealed that decision to this Court, which held that the question of whether Shatto was an independent contractor or an employee was immediately appealable despite the fact that the Court of Appeals decided only that issue, had not reached the issue of whether Shatto's injuries were compensable, and had remanded for further proceedings.

This Court noted that appeals from the Court of Appeals are pursuant to the South Carolina Appellate Court Rules. Shatto, 406 S.C. at 474 n.2, 753 S.E.2d at 418 n.2. Rule 242(a), SCACR, provides for review of a "final decision" of the Court of Appeals and does not require a "final judgment." The same is true of S.C. Code Ann. § 1-23-380, which controls in this case and provides for appeal from a "final decision in a contested case."⁵ In this case, the Court of Appeals erroneously applied the reasoning from Bone, which was decided under Section 1-23-390's requirement for a final judgment, while at the same time acknowledging that it "dismissed the appeal pursuant to section 1-23-380" (2015 Order, Appx. p. 4). However, as noted above, Section 1-23-380 speaks to a final decision, just as Rule 242(a) provides for appeals from a final decision. The Commission Decision in this case is a final decision for purposes of appellate review.

This Court's distinction between a final judgment and a final decision is clarified in other cases pending before the Court. For instance, this Court granted certiorari review of the Court of Appeals' decision in Fore v. Griffco of Wampee, Inc., 409 S.C. 360, 762 S.E.2d 37 (Ct. App. 2014), despite the fact that, although the Court of Appeals decided some issues, it remanded the

⁵ The same is also true of S.C. Code Ann. § 42-17-60, the statute governing appeals from the Commission, which references only "the **award**" and "the **decision of the commission.**"

matter for consideration of testimony that had been proffered but not considered by the Commission and for a redetermination of the claimant's benefits in light of that testimony. Under Bone, the Court of Appeals' decision in Fore would not be final for purposes of review. However, Fore, like the instant case involved a post-July 2007 injury and, therefore, proceeded under the appellate procedures outlined in Section 42-17-60 that were effective as of July 1, 2007. This Court's acceptance of the appeal in Fore demonstrates that the appealability rules laid out in Bone do not apply to post-July 2007 injury cases.

Here, the Court of Appeals dismissed Petitioner's appeal based on the statement in the Commission's Decision and Order that "[a]ll other issues not addressed herein are hereby held in abeyance pending a final order," pointing to the issues of TTD and permanency (2015 Order). However, both parties as well as the Commission agreed that the only issues before the Commission were the determination of whether Claimant timely filed a sufficient claim for change of condition and whether he proved the same. Neither party raised or argued or presented any evidence regarding either TTD or permanency. In fact, both the Hearing Commissioner and the Commission readily acknowledged that **"the only issue before the undersigned was whether the claimant has sustained a change of condition for the worse"** (Appx p. 91) (Appx. p. 126) (emphasis added). Thus, the "boilerplate" language added to both orders by Claimant's counsel refers to issues that the orders themselves acknowledge were not and are not pending before the Commission at any level. To allow parties who prevail at the Commission level to add such vague "boilerplate" language to orders they are asked to draft for the Commission, in order to prevent appeal of otherwise final decisions of the Commission, would create a procedural "gotcha" that will be exploited by both sides and will result in widespread and undue delay of what would otherwise be appealable orders.

Claimant did not present any evidence to the Commission regarding either TTD or permanency. Because those issues were not litigated before either the Hearing Commissioner or the Commission, and there is no process in place to determine either of those issues, they cannot possibly serve as the basis for finding the Commission Decision is not final for purposes of appellate review. As noted above, the Commission did not remand any issue to the Hearing Commissioner. The Commission left nothing to be done; it ordered Petitioner to pay for Claimant's additional medical care through Dr. Kanos, including surgery, and to reimburse Claimant for certain costs he had incurred. As is the case with any compensable workers' compensation claim, at some point issues like permanency and TTD become ripe for determination, but that does not make the initial determination of compensability non-final for purposes of review, particularly when that is the only issue presented to the Commission for resolution.

It is common in workers' compensation cases to have multiple proceedings throughout the life of a claim, each of which is its own separate proceeding that addresses different aspects of an injured worker's entitlement to benefits. For example, there may be one hearing before the Commission that finally determines whether an injury arose out of and in the course of employment. There may be a subsequent hearing that determines whether a claimant has reached MMI and/or a claimant's entitlement to future medical and permanent disability benefits. And there may be yet another hearing to determine whether a claimant has experienced a changed condition for the worse, as is the case here. Just because there are various issues brought before the Commission in different proceedings over time does not render appeals of the decisions concerning each of those separately-raised proceedings interlocutory. For example, the

Court of Appeals and this Court recently reviewed a Commission decision⁶ that decided compensability in a claim involving a post-July 2007 injury but did not reach any issues of permanency because the claimant had not yet reached MMI. *See, e.g., Nicholson v. South Carolina Dept. of Soc. Servs.*, 405 S.C. 537, 748 S.E.2d 256 (Ct. App. 2013), *rev'd* 769 S.E.2d 1, 2015 S.C. LEXIS 3 (2015).

The instant case presents precisely that scenario. Although the Commission may anticipate that there will be a subsequent determination of Claimant's entitlement to further compensation and/or permanency, the Commission has finally determined all of the issues that were before it: whether Claimant timely claimed and proved that he sustained a change of condition for the worse and is entitled to medical benefits, including surgery.

Other cases relied on by the Court of Appeals do not support dismissal of the instant appeal. First, the Court of Appeals pointed to Charlotte-Mecklenburg Hosp. Auth. v. South Carolina Dept. of Health & Env't'l Control, 387 S.C. 265, 692 S.E.2d 894 (2010). Charlotte-Mecklenburg involved an appeal, pursuant to S.C. Code Ann. § 1-23-610, of a decision of the Administrative Law Court ("ALC") that granted certain motions for summary judgment and remanded to the underlying agency for a substantive determination. In particular, the ALC remanded the matter to DHEC to determine "which party, if any, was entitled to a certificate of need." Here, in contrast, there has been no remand and there are no proceedings pending before any tribunal to determine any substantive issue, other than the issues decided by the Commission and raised in this appeal.

Even under the definition of a final judgment as outlined in Charlotte-Mecklenburg and adopted by Bone, this appeal is proper: "[a] final judgment disposes of the whole subject matter

⁶ The Commission Decision in Nicholson v. S.C. Dep't of Social Services can be found at 2011 SC Wrk Comp LEXIS 321 (Dec. 29, 2011), is included in the Appendix hereto (Appx pp. 168-175).

of the action or terminates the particular proceeding or action, leaving nothing to be done but to enforce by execution what has been determined ” Charlotte-Mecklenburg, 387 S C at 267, 692 S E 2d at 895, Bone, 399 S C at 575, 733 S E 2d at 204-05 Here, the Commission has disposed of all of the claims and issues raised to it, leaving nothing to be done but to enforce the Commission Decision that granted the change of condition and ordered Petitioner to provide medical care The Commission Decision terminated the proceeding before it, leaving nothing else to be done in response to the Form 50s filed by Claimant. There was no remand for any further proceedings whatsoever. In fact, unless and until a party files another request for hearing seeking some further or additional relief, there is nothing whatsoever to be done or decided by the Commission, not even ministerial tasks.

Second, the Court of Appeals relied on Price v Peachtree Elec Serves , Inc , 405 S C 455, 748 S E 2d 229 (2013), which also involved a pre-July 2007 injury However, Price is useful for comparison purposes in that there, the first time the matter was appealed to the Commission, the Commission determined which employer was liable and remanded to the Hearing Commissioner to determine the claimant’s benefits Once the hearing commissioner determined the claimant’s benefits, another appeal ensued that went from the Commission to the Circuit Court, to the Court of Appeals to this Court This Court held that, because the Commission’s first decision was not final pursuant to Section 1-23-380, the employer had not waived its right to challenge the initial determination that it was liable to pay benefits. Unlike the instant case, in Price, the Commission’s first decision was not final precisely because it remanded to the hearing commissioner for a substantive determination of benefits In contrast, here there has been no remand and everything that was raised to the hearing commissioner and the Full Commission has been decided For the very same reason the first Commission decision

in Price was not final for purposes of appellate review, the Commission Decision in this case is both final and immediately appealable⁷

Furthermore, the concerns expressed in Bone regarding piecemeal litigation and judicial inefficiencies are not present in this appeal. First, as noted above, this case was not remanded for further proceedings and no further proceedings are pending before the Commission in this matter. Thus, there is no risk of piecemeal litigation or inefficiency. Second, there is no question regarding exhaustion of administrative remedies – the Commission admittedly has decided all of the issues that were pending before it (Appx p 91 (“the only issue before the [Hearing Commissioner] was whether the claimant has sustained a change of condition for the worse”)) (Appx p 14 (“the only issue before the [Appellate Panel] was whether the claimant has sustained a change of condition for the worse”)) The concerns raised in Bone and Charlotte-Mecklenburg, simply are not present here, where the case has not been remanded for any further proceedings.

The Court of Appeals erroneously held that the Commission “indicate[d] additional proceedings will be necessary .” (2015 Order). Instead, the Commission specifically held that the only issue before it “was whether the claimant has sustained a change of condition for the worse” (Commission Dec. p 14) The Commission Decision says nothing about further proceedings nor did it remand for any additional determinations. The Commission Decision is a final decision on all of the issues raised to it.

The Court of Appeals cited two recent decisions from that Court regarding finality, neither of which should control here. Ex parte S C Prop & Cas Ins Guar. Ass’n, 768 S E 2d

⁷ If Petitioner’s current appeal of the Commission’s Decision on the change of condition is dismissed, and some later appellate court decides that the Commission Decision was final for purposes of appeal, Petitioner could be barred completely from appealing the Commission’s determination of this issue. Such a result would constitute a denial of due process, which includes the opportunity for meaningful appeal. S C Const art I, § 22

670, 2015 S C App LEXIS 6 (Jan 28, 2015) involved ten consolidated claims for pre-July 2007 workplace injuries. The hearing commissioner determined which carrier would be liable before it decided whether any of the 10 claims were compensable. On appeal of the liability issue, the Court of Appeals held that that issue was not ripe for appeal. Unlike the present case, in Ex parte S.C. Prop & Cas., the reason the Commission decision was not final for purposes of appellate review was because “the commission has yet to determine the substantive rights of the claimants.” 2015 S C App LEXIS 6 *5. In fact, the Court of Appeals pointed out the problem created by the Commission’s decision to determine the liability issue before deciding any of the underlying pending claims for compensation. Id. **6-7. Thus, it is clear that in S.C. Prop & Cas., substantive issues – whether the claimants’ claims were compensable – that had been raised to the Commission had not been resolved, making the Commission decision not final for purposes of appellate review.

In Rose v. JJS Trucking, LLC, 768 S E 2d 412, 2015 S.C App. LEXIS 7 (Jan. 28, 2015), the issue the Court of Appeals identified as having not been resolved by the Commission, (whether the upstream employer was entitled to be reimbursed from the S C Uninsured Employers’ Fund), had been specifically raised by one of the parties to the Commission. (*See* Final Brief of the Appellants, (Appx pp 176-189), and Final Brief of Respondent, SC Uninsured Employers’ Fund to the Court of Appeals in Appellate Case No 2013-001322) (Appx. pp. 190-202). Here, in contrast, the issue on which the Court of Appeals based its dismissal was never raised by any party. In other words, and this is key, the Commission decided every single issue that was raised to it by either party. There is nothing yet to be decided by the Commission in the proceedings initiated by Claimant’s Form 50’s and Respondents’ Form 51.

There simply are no justiciable issues Claimant raised and/or argued below that were held in abeyance and/or remanded by the Commission. The issues purportedly held in abeyance, TTD and permanency, were never raised or argued to the Commission. Claimant did not present any evidence regarding either issue to the Commission. Furthermore, the fact that the issue of permanency is “premature” inherently means it has not accrued and, therefore, could not have been determined by the Commission at this time. See Sloan v Friends of the Hunley, Inc., 369 S.C. 20, 24, 639 S.E.2d 474, 477 (2006) (courts only consider justiciable controversies, defined as “when there is a real and substantial controversy which is appropriate for judicial determination, as distinguished from a dispute that is contingent, hypothetical, or abstract”), Concerned Dunes West Res., Inc. v Georgia-Pacific Corp., 349 S.C. 251, 261, 562 S.E.2d 633, 639 (2002) (declining to address questions “which may never arise” and/or “questions presented in the abstract”). To determine that a Commission decision is not final for purposes of appellate review because an unripe, unaccrued and/or unlitigated issue has not yet been decided is the height of procedural formalism. Petitioner has clearly exhausted its administrative remedies – there is no issue pending before or remanded by the Commission to be decided, and Claimant has been awarded all the relief he requested.

Finally, the Court of Appeals reasoned erroneously that this case is just like “any other workers’ compensation case where there is no practical hope of the employer receiving a refund on its payments after a successful appeal” (2015 Order, Appx. p. 5). While a carrier is obligated to make payments awarded by the Commission pending appeal of such an award, S.C. Code Ann. § 42-17-60, this case is distinctly different because there is no proceeding before either the Commission or any court to determine the issues allegedly held in abeyance. It could be years before Claimant is deemed to have reached MMI again, at which point either Claimant

or Petitioner could initiate proceedings at the Commission to resolve issues of permanency That issue was not raised below and, therefore, in reality cannot be held in abeyance in any practical sense of the phrase

CONCLUSION

For all the reasons stated herein, Petitioner respectfully requests this Court to grant certiorari review of the Court of Appeals' Orders dismissing this appeal, and hold that the Commission Decision in this case is final for purposes of appellate review

Respectfully submitted,

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April 9, 2015



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April 9, 2015

VIA U.S. MAIL

The Honorable Daniel E. Shearouse
Supreme Court of South Carolina
P.O. Box 11330
Columbia, SC 29211

RE: Shannon W Cook vs Spartanburg Steel Product and Hartford Insurance
Company of the Midwest c/o Sedgwick Claims Management Services, Inc.
Date of Accident: September 17, 2007
WCC File No.: 0726308
Our File No.: 20194.14124
Claim No.: YDS65635
Appeal No.:

Dear Mr. Shearouse:

Enclosed for filing please find the original and seven copies of Petitioner's Petition for Writ of Certiorari in the above-referenced matter. Also, enclosed are the following:

1. an original and one copy of Proof of Service of the Petition on Respondent;
2. two copies of our correspondence to the Clerk of the Court of Appeals notifying of the appeal; and
3. a Check in the amount of \$100.00.

Please file the original documents and return the clocked-in copies in the enclosed, self-addressed envelope.

If you have any questions, please contact me.

Very truly yours,

McAngus Goudelock & Courie, LLC



Helen F. Hiser

Enclosures

cc: Ryan S Montgomery, Esq.

735 JOHNNIE DODDS BLVD, SUITE
200
POST OFFICE BOX 650007
MT PLEASANT, SC 29455

843 576 2900 PHONE
943 534 0605 FAX
WWW.MGCLAW.COM

The Honorable Daniel E Shearouse

April 9, 2015

Page 2

Honorable Jenny Kitchings ✓
Beth Padgett, Sedgewick

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM SOUTH CAROLINA
WORKERS' COMPENSATION COMMISSION

RECEIVED

APR 19 2015

SC Court of Appeals

WCC Case No 0726308

Shannon Cook, Claimant, Respondent,

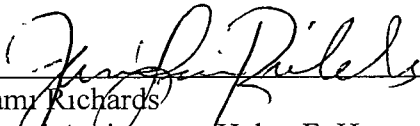
v.

Spartanburg Steel Products, Inc , Defendant, Petitioner

PROOF OF SERVICE

I certify that on the 9th day of April 2015, I served the Petitioner's **Petition for Writ of Certiorari** on Shannon Cook by depositing a copy of it in the United States Mail, postage prepaid, addressed to his attorney of record:

Ryan S Montgomery, Esq
Ryan Montgomery Attorney At Law, LLC
108 Mills Ave
Greenville, SC 29605



Jamie Richards
Legal Assistant to Helen F Hiser
McAngus, Goudelock & Courie LLC

Attorneys for Petitioner

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM SOUTH CAROLINA
WORKERS' COMPENSATION COMMISSION

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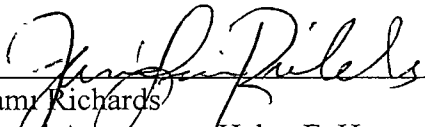
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Ryan S Montgomery, Esq
Ryan Montgomery Attorney At Law, LLC
108 Mills Ave
Greenville, SC 29605



Jamie Richards
Legal Assistant to Helen F. Hiser
McAngus, Goudelock & Courie LLC

Attorneys for Petitioner



Reply To

HELEN F. HISER
Direct Dial (843) 576-2930
helen.hiser@mgclaw.com

April 9, 2015

Via U.S. Mail

The Honorable Jenny Abbott Kitchings
Clerk of Court
South Carolina Court of Appeals
Post Office Box 11629
Columbia, South Carolina 29211

RECEIVED
APR 10 2015
SC Court of Appeals

RE: Shannon W Cook vs. Spartanburg Steel Product and Hartford Insurance
Company of the Midwest c/o Sedgwick Claims Management Services, Inc.
Date of Accident: September 17, 2007
WCC File No.: 0726308
Our File No.: 20194.14124
Claim No : YDS65635
Appeal No.:

Dear Ms. Kitchings:

Please find enclosed for filing the original and one (1) copy of the Petition for Writ of Certiorari in the above-captioned case. I would appreciate your returning a clocked-in copy of the same to me in the enclosed self-addressed, stamped envelope.

By copy of this letter, I am serving counsel of record with the above-referenced Petition for Writ of Certiorari.

Thanking you in advance for your assistance, I am

Very truly yours,



Helen F. Hiser

Enclosures

cc: Ryan S Montgomery, Esq.
Honorable Daniel E. Shearouse
Beth Padgett, Sedgwick

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APR 13 2015

20194.14124/HFH/jlr

The Honorable Jenny Abbott Kitching
Clerk of Court
South Carolina Court of Appeals
P.O. Box 11629
Columbia, South Carolina 29211

SC Court of Appeals

