

THE STATE OF SOUTH CAROLINA  
In The Supreme Court

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APPEAL FROM SPARTANBURG COUNTY  
Court of Common Pleas

J. Mark Hayes, II, Circuit Court Judge

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Case No. 2015-CP-42-1015

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Raquel Martinez,

Respondent,

v.

Spartanburg County and  
S.C. Association of Counties  
Self-Insurance Fund,

Petitioners.

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**PETITION FOR A WRIT OF CERTIORARI**

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## CERTIFICATE OF COUNSEL

Counsel for Petitioners certify that the South Carolina Court of Appeals Order dismissing the claim pursuant to this Court's decision in Bone v. U.S. Food Service, 404 S.C. 67, 744 S.E.2d 552 (2013), was received on July 25, 2016.

### QUESTIONS PRESENTED

1. Does the application of Section 1-23-390 to Petitioners as shown in Bone v. U.S. Food Service, 404 S.C. 67, 744 S.E.2d 552 (2013), violate Petitioners' equal protection and due process rights?
2. Are the issues raised on appeal in the present matter distinguishable from the issues in Bone?

### STATEMENT OF THE CASE

Respondent Raquel Martinez ("Martinez") was employed as a Master Deputy Forensic Investigator by the Spartanburg County Sheriff's Department. On April 21, 2006, Martinez filed a Form 50 alleging that she had suffered a mental injury as a result of investigating an accident in which a Greenville County Deputy Sheriff had accidentally backed over and killed his two year old daughter. On May 12, 2006, Spartanburg County and its carrier, the South Carolina Association of Counties Self-Insurance Fund (collectively "Petitioners") filed their Form 51 denying, inter alia, that Martinez suffered a compensable mental injury as a result of any unusual or extraordinary condition of employment.

A hearing was held before Commissioner G. Bryan Lyndon on September 6, 2006, in Spartanburg, South Carolina. At the hearing, Martinez contended that while performing an investigation on April 4, 2005, as part of her duties with the Spartanburg County Sheriff's Department, she encountered an unusual and extraordinary condition of employment, which subsequently led to her mental breakdown and hospitalization. Martinez alleged she was permanently and totally disabled and requested a lump sum payment of the award. Petitioners

contended that Martinez did not suffer a compensable psychiatric injury as a result of an unusual or extraordinary condition of her employment. Petitioners asserted that Martinez was employed as a forensic investigator, that it was her job to investigate homicide and death cases, and that she was performing her regular job when she investigated the child's accidental death on April 4, 2005. On November 20, 2006, Commissioner Lyndon issued his Decision and Order finding, inter alia, that the investigation of the accident on April 4, 2005 was not an unusual or extraordinary condition of employment and not the proximate cause of Martinez's mental condition.

Within the statutory period, counsel for Martinez filed a Form 30, Request for Commission Review, setting forth grounds for review. Oral arguments were presented before an Appellate Panel on April 23, 2007, and on May 22, 2007, the Appellate Panel issued its Order unanimously affirming the Single Commissioner's Order in its entirety.

Thereafter, Martinez filed an appeal with the Spartanburg County Circuit Court. On February 25, 2009, Judge J. Mark Hayes, II, issued an Order holding that the Appellate Panel's Order lacked sufficient detail to enable the Court to determine whether those findings were supported by substantial evidence. In its Order, the Circuit Court specifically stated that "this Court is left to speculate if the proper analysis was applied by the Commission and whether the factual conclusions upon which the law was applied had a substantial basis in the record." As such, the Circuit Court reversed the Appellate Panel's Order and remanded the case back to the South Carolina Workers' Compensation Commission ("the Commission") for additional findings of fact.

Petitioners timely filed their Notice of Appeal with the South Carolina Court of Appeals on March 16, 2009. On June 15, 2011, the Court of Appeals filed its Order reversing the decision of the Circuit Court. Judge Williams, writing for the majority, concluded that the Appellate Panel's

Order was sufficiently detailed to enable appellate review and that the record contained substantial evidence to support the Commission's decision that Martinez did not suffer an unusual or extraordinary condition of her particular employment on April 4, 2005. Because the Court of Appeals concluded that there was substantial evidence that Martinez did not suffer an unusual or extraordinary condition in her particular employment, the majority did not address the issue of "proximate cause." Martinez timely filed a Petition for Rehearing, which was denied by the Court of Appeals on October 6, 2011.

On November 2, 2011, Martinez filed a Petition for Writ of Certiorari to the South Carolina Supreme Court, and the Petition was granted on February 7, 2013. The Supreme Court heard oral arguments on October 15, 2013. On January 8, 2014, the Supreme Court filed its decision and held that pursuant to Bone v. U.S. Food Service, 404 S.C. 67, 744 S.E.2d 552 (2013), the circuit court's order was not a final judgment and therefore was not appealable. Martinez v. Spartanburg County, 406 S.C. 532, 753 S.E.2d 436 (2014). As such, the Supreme Court vacated the Court of Appeals' Order and remanded the case to the Commission for further proceedings. Id.

Pursuant to the Commission's Administrative Order, filed August 15, 2014, the case was remanded to an Appellate Panel to take such action and enter an Order consistent with this Court's directive. On February 24, 2015, the Appellate Panel issued an Order with 99 findings of fact and concluded that Martinez failed to prove that the work conditions on April 4, 2005 were unusual or extraordinary in comparison to her normal conditions of employment and that her mental health condition was proximately caused by the work incident on April 4, 2005. (App. pp. 86-131).

Subsequently, on March 11, 2015, Martinez filed an appeal to the Spartanburg County Circuit Court. (App. pp. 77-78). On December 3, 2015, Judge J. Mark Hayes, II, entered an Order reversing the Appellate Panel and remanding the matter to the Commission. Judge Hayes ruled

that he had established causation of the mental health condition as a matter of law in his previous Order, and directed the Commission to find the same. (App. pp. 49-76). Petitioners filed their Motion to Alter or Amend a Judgment pursuant to Rule 59(e), S.C.R.C.P. on December 11, 2015. (App. pp. 41-46). Petitioners also filed a Memorandum in Support of their Rule 59(e) Motion raising multiple exceptions, including that the Circuit Court exceeded its scope of review under Section 1-23-380, S.C. Code Ann. (1976). On May 2, 2016, the Circuit Court issued an Order denying Appellants' Motion. (App. pp. 25-38).

On May 18, 2016, Petitioners filed their Notice of Appeal with the South Carolina Court of Appeals. (App. p. 24). On May 20, 2016, Martinez filed a Motion to Dismiss contending the Circuit Court's Order was interlocutory and not immediately appealable. (App. p. 22-23). On May 31, 2016, Petitioners filed a Return to the Motion to Dismiss arguing, *inter alia*, that the application of Bone v. U.S. Food Service, 404 S.C. 67, 744 S.E.2d 552 (2013), to this case violated Petitioners' equal protection and due process rights and that the issues of appellate review in this case were distinguishable from the issues in Bone. (App. pp. 3-21). Without specifically addressing the Petitioners' constitutional arguments, which were issues of first impression in the context of the Bone case, the Court of Appeals granted Martinez's Motion to Dismiss. Petitioners, Spartanburg County Sheriff's Office and South Carolina Association of Counties Self Insurance Fund, respectfully seek a writ of certiorari to review that decision. (App. pp. 1-2).

## ARGUMENTS

### I. **THE APPLICATION OF SECTION 1-23-390 TO PETITIONERS AS SHOWN IN BONE V. U.S. FOOD SERVICE, 404 S.C. 67, 744 S.E.2d 552 (2013) VIOLATES PETITIONERS' EQUAL PROTECTION AND DUE PROCESS RIGHTS.**

#### A. **The issues raised by Petitioners are issues of first impression for this Court.**

In Bone, this Court held that an “order remanding the matter to the Commission for further proceedings does not constitute a final judgment as required by section 1-23-390 and, therefore, is not immediately appealable.” 404 S.C. at 84, 744 S.E.2d at 562. While the Court in Bone addressed the applicability of the Administrative Procedures Act and interpreted the meaning of a “final judgment” as used in section 1-23-390, the Court did not consider the defendants’ equal protection rights or their due process rights. As such, the constitutional issues raised by Petitioners in the present case are issues of first impression for this Court.

#### B. **Bone’s application of Section 1-23-390 to Appellants violates Appellants’ Equal Protection Right under the law.**

Based on the Circuit Court’s, and the Court of Appeals’, disposition of the issues, Bone’s application of Section 1-23-390 creates an impermissible distinction between claimants and defendants, which violates equal protection. First, equal protection is applicable in workers’ compensation appellate proceedings. See Howard v. Owen Steel Co., 303 S.C. 304, 400 S.E.2d 149 (1991) (analyzing appeals to the Full Commission under equal protection). Therefore, Petitioners’ equal protection rights extend to the current proceeding.

The equal protection analysis has been set forth in multiple cases:

The equal protection clauses of our federal and state constitutions declare that no person shall be denied the equal protection of the laws. U.S. Const. amend. XIV, § 1; S.C. Const. art. I, § 3. Equal protection “requires that all persons be treated alike under like circumstances and conditions, both in the privileges conferred and in the liabilities imposed.”

McLeod v. Starnes, 396 S.C. 647, 723 S.E.2d 198 (2012) (Beatty, J., dissenting). “The *sine qua non* of an equal protection claim is a showing that similarly situated persons received disparate treatment.” Town of Hollywood v. Floyd, 403 S.C. 466, 744 S.E.2d 161 (2013).

In this claim, Bone requires that opposing litigants in the *same* litigation receive disparate treatment in a workers’ compensation appeal. Specifically, in cases in which compensability is disputed, such as the instant case, Bone would *allow* a claimant’s appeal when compensability is denied by the Court, but would *deny* defendants an appeal when compensability is decided in the claimant’s favor. This inequity is the logical progression of Bone’s requirement that the “final judgment” required by Section 1-23-390 be a “final judgment disposing of the *entirety of the action*.” Bone v. U.S. Food Serv., 404 S.C. 67, 744 S.E.2d 552 (2013)(emphasis added).

As contemplated by Bone, workers’ compensation claims often require multiple hearings to determine issues and entitlement to certain benefits: compensability, temporary disability, permanent disability, and medical treatment. This Court has recognized that “workers’ compensation benefits accrue along a time continuum.” Curiel v. Env. Management Services, 376 S.C. 23, 655 S.E.2d 482 (2007). Because of the nature of the benefits available, defining a final judgment as requiring the disposal of the whole action *impermissibly requires* the government to treat a defendant in the claim differently than a claimant. To illustrate, consider the following table in which the defendants to a workers’ compensation claim dispute compensability, but the claimant asserts entitlement to benefits.<sup>1</sup> Assume that there is an injury, but the defendants assert a legal defense such as in the instant case<sup>2</sup>:

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<sup>1</sup> The Tables illustrate the prior law, which applies in this case, that required an appeal from the Commission to be made first to the circuit court. Such appeals are now directed to the Court of Appeals for all injuries occurring on or after July 1, 2007. S.C. Code Ann. § 42-17-60 (Supp. 2012).

<sup>2</sup> Petitioners (1) deny Martinez’s mental/mental injury arose out of unusual or extraordinary conditions of her employment and (2) deny the investigation in question was the proximate cause of her mental injury.

<b>Deciding Body</b>	<b>Standard of Review</b>	<b>Prevailing Party</b>	<b>All issues Decided</b>	<b>Can Aggrieved Party Appeal/ Petition for Review?</b>
Single Commissioner	Fact Finder	Defendants	Yes	Yes
Full Commission	De Novo	Defendants	Yes	Yes
Circuit Court	Substantial Evidence/ Error of Law	Defendants	Yes	Yes
Court of Appeals	Substantial Evidence/ Error of Law	Defendants	Yes	Yes

In the above example, where the defendants prevail at every level, the claimant has every chance to prove the claim, and then to have the claim reviewed by the next reviewing body for errors of law. No one would dispute that the fairness of the judicial review as set forth in the above table. However, consider the following table, in which the defendants initially prevail on their legal argument that the claim is not compensable, but the Circuit Court remands, and, in doing so, makes an error of law:

<b>Deciding Body</b>	<b>Standard of Review</b>	<b>Prevailing Party</b>	<b>All issues Decided</b>	<b>Can Aggrieved Party Appeal/ Petition for Review?</b>
Single Commissioner	Fact Finder	Defendants	Yes	Yes
Full Commission	De Novo	Defendants	Yes	Yes

Circuit Court	Substantial Evidence/ Error of Law	Claimant	No	No
Court of Appeals	Substantial Evidence/ Error of Law			

Indeed, the second chart represents what happened in this particular case. Petitioners now assert that the Circuit Court, sitting as an appellate court, has made several errors of law. However, even if the Circuit Court has in fact made a clear error of law in Martinez's favor, because of the nature of the proceeding, Bone deprives Petitioners of a *reasonably timely* appeal. Timeliness of an appeal notwithstanding, when Petitioners are required to provide medical treatment and disability payments until all issues are finally decided by the fact finder, significant deprivation of property arguments arise. (*See Due Process Argument, infra.*) Therefore, Bone's interpretation of Section 1-23-390 essentially requires disparate treatment of litigants to the same workers' compensation claim.

This disparate treatment impermissibly infringes on a fundamental right guaranteed by the South Carolina Constitution: the right to access to the Courts. Article I, Section 9 of the South Carolina Constitution provides that "All courts shall be public, and every person shall have speedy remedy therein for wrongs sustained." In Rylee v. Marett, 121 S.C. 366, 113 S.E. 483 (1922), the Supreme Court recognized that the right to a speedy remedy includes the right of a speedy appeal.<sup>3</sup>

The inequity of appealability in this case offends the constitutional guarantee in two ways. First, Section 9 guarantees the right to "every person." Therefore, if the right to court access is

<sup>3</sup> "A lax observance of the very reasonable regulations prescribed by statute and the rules of court for perfecting appeals can but lead to unnecessary delay in the final disposition of causes in our courts, and thus work infringement of the constitutional guaranty (Section 15, Art 1, Const. 1895) that 'every person shall have speedy remedy therein for wrongs sustained.'" Rylee v. Marett, 121 S.C. 366, 113 S.E. 483 (1922).

guaranteed to every person, it is guaranteed to every person equally. The inequity of the availability of the appeal cannot stand. Second, because the speedy remedy requires a speedy appeal, the equity of the parties should require an appeal of equal speed for both parties. A claimant has access to an immediate appeal; however, should the current construction of Bone stand, then there is absolutely no speedy remedy or appeal for Petitioners in the instant case. Petitioners could be subject to provide disability benefits and medical treatment until the time of maximum medical improvement and a hearing before the Commission to determine all issues. Only at that time are Petitioners able to argue that the claim is not compensable for legal reasons that were readily available and able to be litigated prior to the Petitioners' provision of benefits.

Given that disparate treatment required by Bone implicates a constitutional right of access to the Courts, the appropriate equal protection analysis is strict scrutiny, and the Bone construction of Section 1-23-390 cannot stand. Legislation restricting or impairing a fundamental right "is subject to 'strict scrutiny' in determining its constitutionality." In re Treatment and Care of Luckabaugh, 568 S.E.2d 338, 351 S.C. 122 (2002) (citing Hamilton v. Board of Trustees, 282 S.C. 519, 319 S.E.2d 717 (Ct.App. 1984)). "To survive strict scrutiny the Act must meet a compelling state interest and be narrowly tailored to effectuate that interest." Id. In the instant case, there is no *compelling* state interest. Indeed the primary, discernable policy interest identified in Bone is "undue delay and waste of judicial resources caused by interlocutory appeals." Conserving judicial resources cannot be compared to a *compelling* interest such as national security, protecting the lives of citizens from threats of harm, etc. This matter of preference is not "compelling" when balanced with Petitioners' right to have the same appeal right as a claimant. Furthermore, a one-sided bar to appeal is insufficiently tailored to accomplish the stated goal of preventing "undue delay and waste of judicial resources" when there is no data or legislative history indicating that a

contemporaneous appeal actually wastes judicial resources. Accordingly, Section 1-23-390 impermissibly burdens the constitutional right of Petitioners to a speedy appeal.

Furthermore, even absent the protection in the South Carolina Constitution for access to the courts, any order denying the right to appeal and subjecting Petitioners to an undetermined period of benefit payment burdens a fundamental property right:

[I]t is arguable that this case should be analyzed under the strict scrutiny test as the reduction of a parent's income clearly impinges upon a **fundamental property right**. See Wingfield v. S.C. Tax Comm'n, 147 S.C. 116, 152, 144 S.E. 846, 858 (1928) (“The court appreciates the earnest plea that every person is entitled to the enjoyment of life, liberty, and property, and to the equal protection of the laws guaranteed by the federal and state Constitutions, and will protect and safeguard these fundamental rights to the extent, if necessary, of declaring invalid any legislative enactment clearly shown to be in violation of them.”).

McLeod v. Starnes, 396 S.C. 647, 723 S.E.2d 198 (2012) (Beatty, J., dissenting) (emphasis added).

The application of Bone in the present case, will clearly deprive Petitioners of a fundamental property right. Consider the following:

- Petitioners prevailed on compensability before the Commission, but the Commission’s decision was reversed by the Circuit Court;
- Under Bone, Petitioners are without recourse for immediate appeal, and the case is remanded to the Commission, which will have little choice but to adopt the Circuit Court’s improper findings of fact and award benefits to Martinez;
- Petitioners begin paying temporary total disability benefits at a compensation rate of \$462.92, and provide Martinez with psychiatric treatment.
- It takes 2.5 years and \$60,000 in medical care and prescription drugs costs to attain maximum medical improvement.
- Permanency is determined, and future medical is ordered.
- The case works its way to the Supreme Court, and shortly before oral argument, Petitioners pay the 500th week of disability, totaling \$231,460.00 (with medical treatment Appellants have now spent close to \$300,000.00).
- The Supreme Court then decides that Petitioners’ legal case against compensability has merit and rule that the case is not compensable as a matter of law.

Assuming this case unfolds as above, Martinez will have received a benefit of nearly \$300,000, to which she was never entitled. That certainly implicates a significant property right, and, practically, there is no way for Petitioners to recover this money through the workers' compensation claim that gave rise to the requirement to pay it. Bone would reason that the Petitioners' \$300,000 loss is merely the price of using judicial resources wisely; however, that outcome is untenable.

Fundamental rights aside, Bone cannot pass a rational basis test. "To prevail under the rational basis standard, a movant must show similarly situated persons received disparate treatment, and that the disparate treatment did not bear a rational relationship to a legitimate government purpose." Town of Hollywood v. Floyd, 403 S.C. 466, 744 S.E.2d 161 (2013). Petitioners assert that there is *no legitimate* purpose in providing vastly different appeal rights to claimants and defendants in the *same* litigation. Other cases discussing rational basis review discuss issues such as insurance required to drive on public roadways,<sup>4</sup> regulating relationships between physicians and physical therapists,<sup>5</sup> and regulation of on-site alcohol sales and consumption on a commercial premises.<sup>6</sup> As a generalization, the legitimate purpose test broadly relates to the state's police power in protecting its citizens and promoting public order. Petitioners assert there is *no legitimate* interest in parties to the same litigation having different appeal rights, as the appeal rights between two parties have no discernable impact on the public as a whole.

Bone states that depriving defendants of an immediate right to appeal may improve judicial economy by reducing appeals in individual cases. However, this evidentiary basis for this

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<sup>4</sup> Marley v. Kirby, 271 S.C. 122, 245 S.E.2d 604 (1978) (finding contributory negligence statute failed rational basis review and impermissibly classified injured parties).

<sup>5</sup> Sloan v. S.C. Bd. of Physical Therapy Examiner, 636 S.E.2d 598, 370 S.C. 452 (S.C., 2006).

<sup>6</sup> Denene, Inc. v. City of Charleston, 359 S.C. 85, 596 S.E.2d 917 (S.C., 2004)

assertion is far from clear. The defendants shoulder the *entire* burden of this scheme, and, in this case, the state would essentially facilitate a transfer of assets from Petitioners to Martinez, without qualification of whether and how much this scheme truly impacts judicial economy. Furthermore, the Courts should not be in a position to limit appeal based on an *outcome* as they decide, as this necessarily brings into question the neutrality of the Court in a manner that is not proper. Therefore, there is no legitimate state interest, and this statutory interpretation fails a rational basis analysis. Bone's interpretation of Section 1-23-390 offends equal protection and cannot be saved.

**C. Bone's Application of Section 1-23-390 to Petitioners Violates Petitioners' Due Process Right Under the Law.**

In effect, the Circuit Court has ordered Petitioners to pay benefits, its Order is not appealable, and this scheme offends due process. Article I, Section 22 of the South Carolina Constitution provides certain rights regarding procedures before administrative bodies:

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; nor shall he be subject to the same person for both prosecution and adjudication; nor shall he be deprived of liberty or property unless by a mode of procedure prescribed by the General Assembly, and he shall have in all such instances the right to judicial review.

(emphasis added). Judicial review of a workers' compensation proceeding is a constitutional right in South Carolina. The rights provided under Article I, Section 22 extend to the limits of due process:

[W]hen discussing Article I, Section 22, we have consistently indicated that the protections provided under this section are the equivalent of those afforded by the Due Process Clause of our state and federal Constitutions.

S.C. Coastal Conservation League v. S.C. Dep't. of Health and Environmental Control, 380 S.C. 349, 669 S.E.2d 899 (Ct. App. 2008). Due process necessarily includes the right to *meaningful* judicial review:

The procedural component of the state and federal due process clauses requires the individual whose property or liberty interests are affected to have received adequate notice of the proceeding, the opportunity to be heard in person, the opportunity to introduce evidence, the right to confront and cross-examine adverse witnesses, and the right to meaningful judicial review.

Dangerfield v. State, 376 S.C. 176, 656 S.E.2d 352 (2008) (emphasis added). No South Carolina case has clearly defined what particular process is required for “meaningful” judicial review, but other cases discussing “meaningful” point to the *temporal* nature of due process. “The fundamental requirement of due process is the opportunity to be heard ‘at a meaningful time and in a meaningful manner.’” South Carolina Nat. Bank v. Central Carolina Livestock Market, Inc., 345 S.E.2d 485, 289 S.C. 309 (S.C., 1985) (citing Armstrong v. Manzo, 380 U.S. 545 (1965)). In Armstrong, a father’s parental rights were terminated without any notice to him, although his whereabouts were easily ascertainable. When the subsequent adoption was finalized, and the natural father sought to set aside the proceedings, he had multiple burdens of proof placed on him at that point that would not have been placed on him had proper notice been given. The Supreme Court of the United States noted that “A fundamental requirement of due process is ‘the opportunity to be heard.’ It is an opportunity which must be granted at a meaningful time and in a meaningful manner.” Armstrong, 380 U.S. at 552 (internal citations omitted). The Supreme Court held that the father’s due process rights were violated because he was not provided timely notice and as a result, additional burdens were placed on him. Id. at 551. In DSS v. Wilson, 352 S.C. 445, 574 S.E.2d 730 (2002), there was a litigated allegation of child abuse against the minor’s father. The minor requested to testify outside of the presence of the father, over the objection of the father. The father was excluded from the courtroom but could still hear the testimony and had the opportunity to briefly conference with his lawyer prior to cross-examination. However, this Court found that this process did not comport with due process:

[I]f the child testifies at an intervention proceeding, the due process right to confrontation requires the child testify in the presence of her parent/defendant unless special circumstances are established. Wilson's ability to hear the minor's testimony, discuss her testimony with counsel, and cross-examine her were insufficient to satisfy due process without the determination the minor would be traumatized by testifying in her father's presence. As conceded by DSS at oral argument, the minor was the key witness against Wilson and she may have been less credible if she had testified in his presence. Because Wilson did not have the opportunity to be heard in a meaningful manner, his due process right was violated.

SCDSS v. Wilson, 352 S.C. 445, 574 S.E.2d 730 (2002).

Armstrong illustrates meaningful (temporal) notice, and Wilson illustrates meaningful (temporal) opportunity to be heard. Therefore, the right to meaningful judicial review must include contemporaneity. This temporal requirement is reflected in Section 1-23-380, the companion statute of Section 1-23-390: "A preliminary, procedural, or intermediate agency action or ruling is immediately reviewable if review of the final agency decision would not provide an adequate remedy." S.C. Code Ann. 1-23-380. Looking at the plain language of 1-23-380, the provision for immediate appeal is provided when an appeal after the passage of time is not adequate. The policy embedded in Section 1-23-380 is what Petitioners' seek here.

In this claim, the Circuit Court has made clear that, in its opinion, this case is compensable. Therefore, if the Circuit Court Order stands, Petitioners are responsible for benefits. Since there is potential for Petitioners having to pay benefits over the course of several years, totaling several hundred thousand dollars, meaningful judicial review requires a *temporal* component of appeal. Similar to Armstrong, if the appeal in this claim is deferred, Petitioners have additional burdens imposed on them that would not otherwise be imposed. First, there is *no* mechanism under the Workers' Compensation Act to compel repayment of disability, and, therefore, Petitioners would ultimately have to institute separate legal proceedings in an attempt to recover the value of the disability benefits paid.

Petitioners are further burdened because the application of the standard of review changes. In workers' compensation cases, the Commission is the ultimate finder of fact. Hunter v. Patrick Const. Co., 289 S.C. 46, 47, 344 S.E.2d 613, 614 (1986); Ross v. American Red Cross, 298 S.C. 490, 492, 381 S.E.2d 728, 730 (1989). The Appellate Court's review of these findings of fact is limited to determining whether the findings are supported by substantial evidence in the record. See Lark v. Bi-Lo, Inc., 276 S.C. 130, 276 S.E.2d 304 (1981). In the present case, the Commission issued its final order concluding that Martinez did not sustain a compensable mental injury under the Act and that the proximate cause of her mental condition was not the investigation in question, but rather the subsequent death of a relative. In support of its decision, the Commission made 99 detailed findings of fact. Since the Commission's Order finally decided compensability, the issue on appeal should be whether substantial evidence supports the Commission's findings that Martinez did not sustain a compensable injury. However, if the appeal in this claim is deferred and the Commission is forced to adopt the "findings" of the Circuit Court and issue an Order finding the claim compensable, then the issue on appeal in the future becomes whether substantial evidence supports the Commission's findings that Martinez sustained a compensable injury. This is clearly places an additional burden on Petitioners. See Tiller v. National Health Care Ctr., 334 S.C. 333, 513 S.E.2d 843 (1999)(the possibility of drawing two inconsistent conclusions from the evidence does not prevent an administrative agency's findings from being supported by substantial evidence).

**II. THE ISSUES FOR APPELLATE REVIEW IN THE CURRENT MATTER ARE DISTINGUISHABLE FROM THE ISSUES IN BONE V. U.S. FOOD SERVICE, 404 S.C. 67, 744 S.E.2d 552 (2013).**

Petitioners contend (1) that the Circuit Court did not perform a proper appellate review because the Circuit Court failed to examine the Appellate Panel's findings of fact to determine if those findings of fact were supported by substantial evidence and (2) that the Circuit Court erred as

a matter of law, and violated Section 1-23-380(5), by substituting its judgment for the judgement of the Appellate Panel as to the weight of the evidence on questions of fact.

The majority opinion in Bone states that “we have consistently held that an order of the circuit court for additional proceedings before an administrative agency is not directly appealable.” 404 S.C. at 77, 744 S.E.2d at 558. However, if Bone is applied to the current case, Petitioners lose any and all rights to challenge the validity of the appellate review performed by the Circuit Court. Since the issue of a circuit court’s abuse of authority was not raised in Bone, the present case is clearly distinguishable from Bone.

In workers’ compensation cases, the Commission is the ultimate finder of fact. Hunter v. Patrick Const. Co., 289 S.C. 46, 47, 344 S.E.2d 613, 614 (1986); Ross v. American Red Cross, 298 S.C. 490, 492, 381 S.E.2d 728, 730 (1989). Whether a causal connection exists between employment and an alleged injury is a question of fact for the South Carolina Workers’ Compensation Commission. Sharpe v. Case Produce, Inc., 336 S.C. 154, 159, 519 S.E.2d 102, 105 (1999). The Appellate Court’s review of these findings of fact is limited to determining whether the findings are supported by substantial evidence in the record. Lark v. Bi-Lo, Inc., 276 S.C. 130, 276 S.E.2d 304 (1981); Howell v. Pacific Columbia Mills, 291 S.C. 469, 354 S.E.2d 384 (1987). “Substantial evidence” necessary to support a decision of the Commission is:

‘such relevant evidence as a reasonable mind might accept as adequate to support a conclusion. . . . It must be enough to justify, if the trial were [sic] to a jury, a refusal to direct a verdict when the conclusion sought to be drawn from it is one of fact for the jury. . . . This is something less than the weight of the evidence, and the possibility of drawing two inconsistent conclusions from the evidence does not prevent an administrative agency’s finding from being supported by substantial evidence.’

Lark v. Bi-Lo, Inc., 276 S.C. 130, 136, 276 S.E.2d 304, 307 (1981); *see also*, O’Banner v. Westinghouse Electric Corp., 319 S.C. 24, 30, 459 S.E.2d 324, 327 (Ct. App. 1995) (The

determination of witness credibility and the weight to be accorded evidence is reserved to the Commission.)

The findings of the Commission are presumed correct and will be set aside only if unsupported by substantial evidence. Etheredge v. Monsanto Company, 349 S.C. 451, 562 S.E.2d 679 (Ct. App. 2002); Medlin v. Upstate Plaster Serv., 329 S.C. 92, 495 S.E.2d 447 (1998). This Court may not weigh the evidence in its review of a factual finding by the Commission. See Walker v. City of Columbia, 247 S.C. 241, 146 S.E.2d 856 (1966). An Appellate Court's review of the Commission's findings of fact is limited to determining whether the findings are clearly unsupported by substantial evidence in the record, rather than reweighing the evidence presented to the Commission. See generally, Lark v. Bi-Lo, Inc., 276 S.C. 130, 135, 276 S.E.2d 304, 306-7 (1981); Howell v. Pacific Columbia Mills, 291 S.C. 469, 471, 354 S.E.2d 384, 385 (1987); Brown v. Jordan Oil Co., 291 S.C. 272, 275, 353 S.E.2d 280, 282 (1987); O'Banner, 319 S.C. at 30, 459 S.E.2d at 327. Thus, if reasonable minds could reach the conclusion reached by the Commission, the Commission's findings must be affirmed. McGuffin v. Schlumberger-Sangamo, 307 S.C. 184, 414 S.E.2d 162, 163 (1992).

Of special note is that where the evidence is conflicting, "the Commission's findings of fact are conclusive." Sharp, 336 S.C. at 160, 519 S.E.2d at 105; See also, Hoxit v. Michelin Tire Corp., 304 S.C. 461, 405 S.E.2d 407 (1991) ("Where there is a conflict in the evidence, either of different witnesses or of the same witnesses, the findings of fact of the Commission as triers of fact are conclusive.") Indeed, the possibility of drawing two inconsistent conclusions from the evidence does not prevent an administrative agency's findings from being supported by substantial evidence. Tiller v. National Health Care Ctr., 334 S.C. 333, 513 S.E.2d 843 (1999); Clade v. Champion Laboratories, 330 S.C. 8, 496 S.E.2d 856 (1998).

In the present case, the Circuit Court assumed the role of finder of fact by making findings of fact contrary to the Appellate Panel's. This is clearly beyond the scope of the Circuit Court's appellate review under § 1-23-380 S.C. Code Ann. (1976). Moreover, the Circuit Court again failed to examine the Appellate Panel's 99 findings of fact to determine if those findings of fact were supported by substantial evidence.

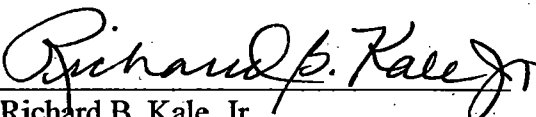
The Court did not find fault with the Appellate Panel's finding that Officer Johnson had not worked for Spartanburg County for approximately 2-3 years prior to the toddler's death, that Officer Johnson and Martinez had never worked as partners, that Martinez did not witness the accident, that Martinez had never socialized with Officer Johnson, that Martinez had never been to Officer Johnson's home, had never met Officer Johnson's wife or the child or even seen a photograph of the toddler. Instead, the Court found that evidence that Martinez and Officer Johnson knew each other, served together, and for the one year backed each other up, outweighed the Commission's findings of fact. In so holding, the Court in fact reweighed the evidence contrary to its scope of review under Section 1-23-380, S.C. Code Ann. (1976).

In reality, the Circuit Court has attempted to finally decide the issues of compensability. However, by substituting its judgement for that of the Appellate Panel's as to the weight of the evidence, the Circuit Court clearly violated the Administrative Procedures Act and abused its appellate authority. The only adequate remedy Petitioners have to challenge the Circuit Court's improper appellate review is to appeal the case to a higher appellate court. Failure to allow such appeal would be a clear violation of Petitioners' due process rights. By continually remanding a case back to the Commission, a circuit court judge, who wants a case found compensable, can set an impenetrable bar to Defendants having immediate access to a higher court for review of the lower court's improper appellate review. That is exactly what has happened in this case. The case

will be subjected to endless remands by the circuit court until the Commission finally succumbs to the circuit court's wishes.

### CONCLUSION

For the reasons stated above, Petitioners respectfully ask the Court to grant the petition for writ of certiorari.

BY:   
Richard B. Kale, Jr.  
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(864) 527-3272  
Attorneys for Petitioners

Date: August 10, 2016

THE STATE OF SOUTH CAROLINA  
In The Supreme Court

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APPEAL FROM SPARTANBURG COUNTY  
Court of Common Pleas

J. Mark Hayes, II, Circuit Court Judge

---

Case No. 2015-CP-42-1015

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Raquel Martinez,

Respondent,

v.

Spartanburg County and  
S.C. Association of Counties  
Self-Insurance Fund,

Petitioners.

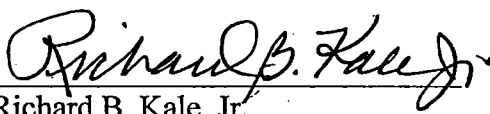
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**PROOF OF SERVICE**

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I certify that I have served the Petition for A Writ of Certiorari and Appendix on Raquel Martinez by depositing a copy of it in the United State Mail, postage prepaid, on August 10, 2016, addressed to her attorneys of record, Chadwick D. Pye, Esquire, Chadwick D. Pye, LLC, P.O. Box 6346, Spartanburg, South Carolina 29304 and J. Kevin Holmes, Esquire and David T. Pearlman, Esquire, The Steinberg Law Firm, P.O. Box 9, Charleston, South Carolina 29402-0009, and on The Honorable Jenny Abbott Kitchings, S.C. Court of Appeals, P.O. Box 11629, Columbia, South Carolina 29211.

August 10, 2016

  
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AUG 15 2016  
SC Court of Appeals

# WILLSON JONES CARTER & BAXLEY, P.A.

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August 10, 2016

(Hand Delivered)  
The Honorable Daniel E. Shearouse  
The South Carolina Supreme Court  
Supreme Court Building  
1231 Gervais Street  
Columbia, SC 29201

Re: Raquel Martinez vs. Spartanburg County  
Case No.: 2015-CP-42-1015  
WCC File No.: 0515098 DOI: 4/4/2005  
Claim No.: 58-218332  
WJC&B File No.: 0560.00114

**RECEIVED**  
AUG 15 2016  
SC Court of Appeals

Dear Mr. Shearouse:


I enclose for filing the following:

1. The original and six copies of a Petition for A Writ of Certiorari;
2. One bound copy and one unbound copy of the Appendix;
3. A filing fee check in the amount of \$100.00;
4. Proof of Service indicating that the Petition and Appendix have been served on opposing counsel.

With cordial best wishes, I am

Very truly yours,

WILLSON JONES CARTER & BAXLEY, P.A.

  
Richard B. Kale, Jr.

RBK,Jr/jw  
Enclosures

cc: J. Kevin Holmes, Esquire  
David T. Pearlman, Esquire  
Chadwick D. Pye, Esquire  
S.C. Court of Appeals

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PRIORITY MAIL

08/10/2016

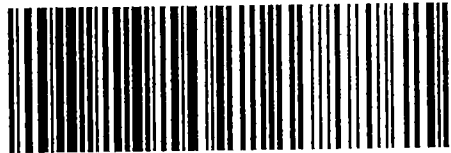
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GREENVILLE, SC 29607

**RECEIVED**

AUG 15 2016

SC Court of Appeals

THE HONORABLE JENNY ABBOTT KITCHINGS  
SOUTH CAROLINA COURT OF APPEALS  
P.O. Box 11629  
COLUMBIA, SC 29211

