

**PETITION FOR A WRIT OF CERTIORARI TO THE
COURT OF APPEALS**

THE STATE OF SOUTH CAROLINA
In The Supreme Court

THE SOUTH CAROLINA COURT OF APPEALS

Opinion No. 2016-002448 (S.C. Ct. App. filed October 6, 2017)

Exel Inc. Employer, and New
Hampshire Insurance
Company, Carrier

Respondent,

v.

Reginald Evans, Employee,
Claimant

Petitioner.

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SC Court of Appeals

PETITION FOR A WRIT OF CERTIORARI

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CERTIFICATE OF COUNSEL

Counsel for petitioner certifies that the Petition for Rehearing was made and finally ruled on by the Court of Appeals on October 6, 2017.

QUESTIONS PRESENTED

1. Whether the court of appeals erred in dismissing appeal on the basis that Petitioners failed to provide a sufficient record for review?
2. Did the court of appeals properly apply the substantial evidence standard to the evidence in this case when dismissing the appeal?
3. Did the Workers Compensation Commission improperly infuse wage loss into and as a consideration for an award made under the scheduled-member statute?
4. Did the Workers Compensation Commission improperly refuse to reimburse for legal fees?
5. Did the Workers Compensation Commission improperly refuse to order the payment of 35% Permanent Partial Disability benefits?
6. Did the Workers Compensation Commission improperly refuse to order the payment for disfigurement?

STATEMENT OF THE CASE

On February 21, 2015 Petitioner sustained right leg crush injury while working for the Respondent. As result of the injury, Petitioner suffered an open wound which became infected. The Petitioner now has a 6 to 7 inch scar on the right leg which is about 2 inches in width which became a Keloid. On July 8, 2015 an EMG study confirmed permanent nerve damage in the right leg.

On January 8, 2016 Petitioner's doctor released the Petitioner he was at maximum medical improvement. Petitioner's doctor opined the Petitioner has permanent light duty restrictions, which also include of no lifting over 20 lbs, no sitting for more than 2 hours and no standing for more than 2 hours.

The hearing Commissioner Aisha Taylor issued an order and finding which stated “ based on the medical evidence including Claimant’s impairment rating and permanent work restrictions, which we find severely limits his ability to return to work given his work history.”

FACTS

1. The Petitioner was covered employee at all times stated.
2. The Petitioner employer was covered under the Act.
3. The Petitioner did sustain a compensable injury in the course and scope of his employment to the right leg.

The Court of Appeals dismissed the appeal, The full Commission affirmed the judgment of the Commissioner. Reginald Evans, Employee, Claimant v. Exel Inc. Employer, New Hampshire Insurance Company, Carrier, Op. No. 2016-002448 (S.C. Ct. App. filed October 5, 2017). Petitioner seeks a writ of certiorari to review those decisions.

ARGUMENT

1. THE COURT OF APPEALS SHOULD NOT HAVE DISMISSED THE APPEAL ON THE BASIS OF PETITIONER FAILED TO PROVIDE A SUFFICIENT RECORD FOR REVIEW.

In *Woodson v. DLI Props*, Op. No.2011–UP–291 (S.C. Ct.App. filed June 14, 2011). “The court of appeals concluded it could not determine whether summary judgment was appropriate because the circuit court's order failed to articulate its reasons for granting summary judgment. Id. The court of appeals noted that, ordinarily, under *Bowen v. Lee Process Systems Co.*, 342 S.C. 232, 536 S.E.2d 86 (Ct.App.2000), it would vacate the circuit court's grant of summary judgment and remand the case for more specific findings and analysis. Id. However, relying in part on Rule 210(h), SCACR, the court of appeals declined to do so “because the trial court might have articulated its decision during the summary judgment hearing and [Petitioners] failed to provide a hearing transcript.” Id. (emphasis added).

Further, a decision on a motion for summary judgment is based on depositions, interrogatories, affidavits, and other evidentiary material provided by the parties. See Rule 56(c), SCRCF; see also *Quail Hill, L.L.C. v. Cnty. of Richland*, 387 S.C. 223, 234, 692 S.E.2d 499, 505 (2010) (stating appellate courts apply the same standard as the trial court under Rule 56(c), SCRCF).

Here, Petitioners provided the requisite evidentiary material to the court of appeals. Therefore, we find the court of appeals did have a sufficient record before it to permit meaningful appellate review and make a decision on the merits. See *Quail Hill*, 387 S.C. at 234, 692 S.E.2d at 505; *Hamilton v. Greyhound Lines E.*, 281 S.C. 442, 444, 316 S.E.2d 368, 369 (1984) (stating the appealing party has the burden of providing a sufficient record such that the appellate court can make an intelligent review).

The Petitioners contend that the Worker Compensation Order was sufficient for the Court of Appeals to make an intelligent review and a trial de novo.

2. THE COURT OF APPEAL DID NOT PROPERLY APPLY
SUBSTANTIAL EVIDENCE STANDARD TO THE EVIDENCE IN
THIS CASE WHEN DISMISSING THE APPEAL.

In *Woodson v. DLI Props, Op. No.2011-UP-291* (S.C. Ct.App. filed June 14, 2011). “Additionally, what the circuit court “might” have stated during the hearing on the motion for summary judgment is irrelevant, as a written order constitutes a final order and final judgment of the lower court. See *Ford v. State Ethics Comm*, 344 S.C. 642, 645-646, 545 S.E.2d 821, 823 (2001) (citing Rule 58, SCRCF) (stating “the written order is the trial judge's final order and as such constitutes the final judgment of the court”); see also *Hagood v. Summerville*, 362 S.C. 191, 194, 607 S.E.2d 707, 708 (2005) (citing S.C.Code Ann. § 14-3-330(1) (1976); Rule 72, SCRCF; Rule 201(a), SCACR; *Mid-State Distribs, Inc. v. Century Imps., Inc.*, 310 S.C. 330, 335, 426 S.E.2d 777, 781 (1993)) (“An appeal ordinarily may be pursued only after a party has obtained a final judgment.”). In the presence of a written order, the court of appeals erred in affirming summary judgment on the basis that Petitioners did not provide the hearing transcript as part of the Record. See *Ford*, 344 S.C. at 645-646, 545 S.E.2d at 823; see also Rule 56(c), SCRCF (listing the factual material that is reviewable for purposes of deciding whether to grant a motion for summary judgment).”

The Court Appeal did not give any reason for the dismal or why the Record of appeal was not sufficient.

3. THE WORKER COMPENSATION COMMISSION IMPROPERLY
INFUSE WAGE LOSS INTO AND AS A CONSIDERATION FOR AN
AWARD MADE UNDER THE SCHEDULED-MEMBER STATUTE.

In *Henton T. Clemmons, Jr., Employee, Petitioner, v. Lowe's Home Centers* the Supreme Court found: For the foregoing reasons, we conclude the Commission's findings were not supported by substantial evidence and we reverse the court of appeals. We hold Clemmons has lost more than fifty percent of the use of his back and remand to the Commission for a new hearing to determine his percentage of impairment and whether the presumption of permanent and total disability under section 42-9-30(21) has been rebutted.

Worker Commission failed to explain how it came to 35% when the employer state the Petitioner was unable to perform his duties.

4. THE WORKER COMPENSATION COMMISSION IMPROPERLY REFUSED TO REIMBURSE FOR LEGAL FEES.

In *UTICA-MOHAWK MILLS and UTICA MUTUAL INSURANCE COMPANY, Appellants, v. CURTIS ORR, Respondent*. The South Carolina Supreme Court cited *Hughes v. Enloe, 38 So. 2d 225* which found:

“Plaintiff having lost power to grip and hold the tools necessary to perform the work which he was accustomed to perform, it follows that he is unable any longer, due to this permanent injury, to perform work of the same or similar character as he was accustomed to perform prior to his injury, and therefore, in our opinion, he is entitled to compensation for permanent, total disability.

For the reasons assigned, the judgment of the Court of Appeal is reversed insofar as it denied to plaintiff his claim for compensation *Page 543 for permanent and total disability, and it is now ordered that he be awarded compensation of 65 per cent of his weekly wages of \$20.00 not to exceed 400 weeks, less a credit of compensation previously paid during 17 weeks; in all other respects the judgment of the Court of Appeal is affirmed; defendants to pay all costs.”

The Petitioner is asking the court to determine if the Petitioner is entitled to be reimbursed for paying \$7,178.42 attorney’s fees and \$605.94 for attorney’s cost and expenses.

5. THE WORKER COMPENSATION COMMISSION IMPROPERLY REFUSE TO ORDER THE PAYMENT OF 35% PERMANENT PARTIAL DISABILITY BENEFITS.

In *UTICA-MOHAWK MILLS and UTICA MUTUAL INSURANCE COMPANY, Appellants, v. CURTIS ORR, Respondent*. “Appellants complain that the total amount of compensation for partial disability may in some cases approach the amount allowable for total disability. The answer is that the weekly maximum which is allowable for total disability and for partial disability is the same. Sections 72-151 and 72-152. However, the weekly payments for partial disability are limited to a total of 300 weeks under Sec. 72-152, whereas the total may be 500 weeks for total disability under the terms of Sec. 72-151.

As noted at the outset and now repeated for emphasis, there was no appeal from the award of the Commission and *232 the correctness of it is not in question in this proceeding which is concerned only with the construction and result of the award in the light of the applicable terms of the Compensation Act. That, therefore, is the extent of our holding.

The judgment is reversed and the case is remanded to the trial court for recalculation of the payments due under the award in accord with the views herein expressed, except with respect to medical expenses as to which there was no exception. Reversed and remanded.”

In this case the Court said: "We think that the principle applied in the decision is correct because it follows the terms of the act as will be seen, but the court fell into error in failing to allow appellants credit for the overpayment of compensation as for total disability instead of partial, which was the award. This refers to the period of Feb. 5, 1953-Feb. 19, 1954. The court simply applied the percentage of partial disability to respondent's wages at the time of the accident and took 60% of it to arrive at the weekly compensation when respondent was not working."

If the Court use updated Code it would be Sections 49-9-10 and 42-9-20. However, the weekly payments for partial disability are limited to a total of 195 weeks under Sec. 49-9-30(16), whereas the total may be 500 weeks for total disability under the terms of Sec. 42-9-10. The Petitioner is asking the court to recalculate the payment due under the award in accordance with Section 49-9-10 total disability at 500 weeks. Also to determine if the Commission improperly gave a credit of overpayment of TTD benefits paid from January 8, 2016 through May 13, 2016 equaling 18 weeks totaling \$8,571.25. The Court should determine if the award should be the AWW of $(\$714.24 \times .35) \times 500$,

6. THE WORKER COMPENSATION COMMISSION IMPROPERLY REFUSED TO ORDER THE PAYMENT FOR DISFIGUREMENT.

S.C. CODE SECTION 42-9-30 (23) proper and equitable benefits must be paid for serious permanent disfigurement of the face, head, neck, or other area normally exposed in employment, not to exceed fifty weeks. Where benefits are paid or payable for injury to or loss of a particular member or organ under other provisions of this title, additional benefits must not be paid under this item, except that disfigurement also includes compensation for serious burn scars or keloid scars on the body resulting from injuries, in addition to any other compensation.

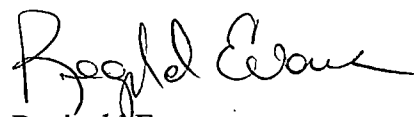
Both the Commissioner and the Full Worker Compensation Panel saw and noted the Scar on the Petitioner was a Keloid and refused to order payment for disfigurement. The Court should determine if the award should be the AWW of $(\$714.24 \times .35) \times 50$.

CONCLUSION

For the reasons stated, petitioner asks the Court to grant the petition for a writ of certiorari.

Respectfully submitted,

October 21, 2017



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THE STATE OF SOUTH CAROLINA
In The Supreme Court

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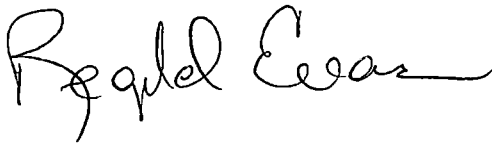
Petitioner.

CERTIFICATE OF SERVICE

I, Reginald Evans, do hereby certify that on this 21TH day of October 2017, a true and correct copy of foregoing Petitioner's Petition for a Writ of Certiorari has been served upon the Defendant by depositing the same in the U.S. Mail postage pre-paid, address as follows: Helen F. Hiser, Post Office Box 650007, Mt. Pleasant, South Carolina 29465.

Respectfully submitted,

October 21, 2017



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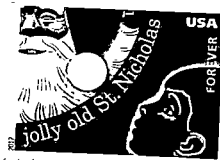
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