

IN THE STATE OF SOUTH CAROLINA  
In the Supreme Court

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APPEAL FROM THE SOUTH CAROLINA  
WORKERS' COMPENSATION COMMISSION

S.C. SUPREME COURT

Aisha Taylor, Commissioner  
Susan S. Barden, Chair/Commissioner  
Avery B. Wilkerson, Jr., Commissioner

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Appellate Case No. 2018-000354

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Paula Russell,

Petitioner,

v.

Wal-Mart Stores, Inc.,

and

Illinois National Insurance Company,

Respondents.

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**BRIEF OF RESPONDENTS**

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## **STATEMENT OF ISSUE ON APPEAL**

- 1.) Did the South Carolina Court of Appeals properly grant Respondent's Motion to Dismiss based upon the fact that the Petitioner's appeal was interlocutory and not immediately reviewable under S.C. Code Ann. § 1-23-380?

## **STATEMENT OF THE FACTS**

Petitioner suffered a compensable injury by accident and was awarded 7% permanent partial disability in an Order from Commissioner Wilkerson dated June 8, 2011. (App. p. 9). After receiving her award, Petitioner alleged that in 2012 she developed new symptoms and argued that she suffered a change of condition for the worse. (App. p. 12). Respondents denied that the Petitioner suffered a change of condition for the worse. (Id). The parties appeared for a hearing in front of Commissioner Roche for adjudication of this issue, and in an Order dated August 5, 2013, Commissioner Roche found that Petitioner suffered a change of condition for the worse under S.C. Code Ann. § 42-17-90 and awarded benefits. (App. p. 16). Respondents filed an appeal to the appellate panel of the South Carolina Workers' Compensation Commission (the "Commission") arguing that Petitioner failed to establish by a preponderance of the evidence that she suffered a change of condition and erred in awarding benefits under the Act. (App. p. 18).

Because compensability of Petitioner's change of condition was the umbrella under which the remaining issues fell—namely the Petitioner's entitlement to an award of temporary total disability, additional medical treatment, and an additional award of permanent partial disability—Respondents argued that compensability was the threshold issue for adjudication. It would have been unnecessary to adjudicate any award before the threshold issue as to whether a

change of condition for the worse had been sustained. (App p. 21 – 24). The Commission agreed with Respondents, and in an Order dated January 30, 2014, the Commission unanimously reversed the Order of Commissioner Roche and found that the Petitioner failed to meet her burden of proving that she sustained a change of condition for the worse. (App. p. 37 – 41).

Petitioner appealed the decision to the South Carolina Court of Appeals. (App. p. 42 – 43). On January 20, 2016, the Court of Appeals found the Commission erred as a matter of law by relying exclusively on objective medical evidence in deciding whether Petitioner suffered a change of condition. (App. p. 112). Specifically, the court posited that the correct standard is by a preponderance of the evidence, which includes consideration of all evidence. (Id). The Court of Appeals, finding it unnecessary to reach the underlying merits, stated, “[b]ecause we find the Commissioner erred in requiring a change of condition be established by objective evidence and reverse and remand on that issue, the court need not consider [Russell’s] remaining issues.” (Id).

On remand to the Commission, Commissioner Campbell found that Claimant suffered a change of condition for the worse. (App. p. 132 – 144). However, as to the issue of benefits, Commissioner Campbell did not hold a new evidentiary hearing or allowing the parties to cross-examine witnesses and present evidence. Instead, he simply reinstated Commissioner Roche’s January 30, 2014 Order despite the fact that this order had been overturned by the appellate panel of the Commission years before. In Commissioner Campbell’s Order dated March 20, 2017, more than three years after the initial presentation of evidence, Commissioner Campbell ordered Respondents to commence payment of temporary total disability benefits and provide medical care. (App. p. 144 – 45). Respondents appealed the Order of Commissioner Campbell, providing detailed Grounds for Review. (App. p. 146 – 151).

On appeal, and in an Order dated September 7, 2017, the Commission found that Commissioner Campbell erred by simply reinstating the 2013 award of benefits without conducting a full evidentiary hearing allowing the parties to present updated evidence on the issues of benefits and erred by simply restating the old findings as to compensability of the change of condition claim. (App. p. 210 – 213). The Commission further found that Commissioner Campbell issued an award of benefits without any factual or evidentiary basis for such award, which denied the Respondents the opportunity to challenge the Petitioner's entitlement to any benefits, which now needs to be adjudicated using the correct standard as set forth by the Court of Appeals. (App. p. 211). The Commission vacated and remanded Commissioner Campbell's March 20, 2017, Order and ordered that the remand hearing should be *de novo*. (App. p. 213). Specifically, the Commission remanded this matter to a hearing Commissioner to review the evidence submitted at the hearing on February 11, 2013, and issue findings of fact and conclusions of law as to whether the claimant has sustained a compensable change of condition for the worse under the standard as set forth in the remand decision from the Court of Appeals. The Commission further remanded this matter for a full evidentiary hearing on the limited issue of benefits to which the claimant may be entitled if the change of condition claim is compensable.

Before the remand hearing could be held and before a final decision was rendered, Petitioner filed a Notice of Appeal with the South Carolina Court of Appeals. (App. p. 216 – 17). Respondents filed a Motion to Dismiss, citing applicable statutory and case law, based upon the fact that the appeal was interlocutory and not immediately reviewable. (App. p. 219 – 220). Petitioner conceded that the Order was not final, but instead argued that certain issues were not preserved on appeal and that an exception applies, specifically that a final agency decision would

not provide an adequate remedy. (App. p. 238). The South Carolina Court of Appeals, agreeing with Respondents, issued an Order dated December 8, 2017, granting Respondents' Motion to Dismiss. Petitioner then filed a Petition for Rehearing, which was subsequently denied in an Order from the Court of Appeals dated February 1, 2018. (App. p. 275). This petition followed.

### **STANDARD OF REVIEW**

Appeals from administrative agencies in South Carolina are governed by the Administrative Procedures Act ("APA"). *Turner v. S.C. Dep't of Health and Env. Cntrl.*, 377 S.C. 540, 661 S.E.2d 118 (Ct. App. 2008). To wit, S. C. Code Ann. § 1-23-380(A) provides that "a party who has exhausted all administrative remedies available within an agency and who is aggrieved by a final decision in a contested case is entitled to judicial review... 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." This Court has held numerous times that "[a]n agency decision that does not decide the merits of a contested case is not a final agency decision subject to judicial review." *Price v. Peachtree Elec. Servs., Inc.*, 405 S.C. 455, 748 S.E.2d 229 (2013).

Further, this Court has stated, "A 'final judgment' is defined in this context as was stated in *Charlotte-Mecklenburg*, i.e., the order must dispose of the whole subject matter of the action or terminate the action, leaving nothing to be done but to enforce by execution what has already been determined." *Bone v. U.S. Food Serv.*, 399 S.C. 566, 573, 733 S.E.2d 200, 203 (2012) (citing *Charlotte-Mecklenburg Hosp. Auth.*, 387 S.C. 265, 692 S.E.2d 894 (2010); see also *Montjoy v. Asten-Hill Dryer Fabrics*, 316 S.C. 52, 446 S.E.2d 618 (1994) (holding that an order of the circuit court remanding a case for additional proceedings before an administrative agency is not directly appealable)).

## ARGUMENT

### I. **THE COURT OF APPEALS CORRECTLY DISMISSED PETITIONER'S APPEAL AS INTERLOCUTORY.**

The South Carolina Court of Appeals, relying on long-standing precedent addressing the issue at bar, correctly dismissed Petitioner's appeal as interlocutory and not immediately reviewable under S.C. Code Ann. § 1-23-380 (2005). The Court of Appeals pointedly stated, "A party who has exhausted all administrative remedies available within the agency and who is aggrieved by a *final* decision in a contested case is entitled to judicial review." (App. p. 248) (emphasis added). Respondents request that this Court affirm the decision of the Court of Appeals—and the subsequent denial of Petition for Rehearing—and dismiss the interlocutory appeal so that final adjudication of this matter can timely be made with the South Carolina Workers' Compensation Commission.

#### **A. The Court of Appeals properly dismissed Petitioner's appeal pursuant to S.C. Code Ann. § 1-23-380.**

As outlined above, S.C. Code Ann. § 1-23-380 requires both a "final decision" and that the petitioner exhaust all administrative remedies before an appeal can be entertained by the appellate courts. Numerous cases have expounded upon the meaning of final decision as it relates to appellate review; however, perhaps most helpful is the definition contained in Black's Law Dictionary, which defines a final judgment as "[a] court's last action that settles the rights of the parties and disposes of all issues in controversy, except for the award of costs (and, sometimes, attorney's fees) and enforcement of the judgment." *Black's Law Dictionary* 919 (9<sup>th</sup> ed. 2009). Importantly, "[t]o impose a changeable definition of a 'final judgment,' in the absence

of a statutory directive to do so, would create more, rather than less, uncertainty in appellate practice in this area.” *Bone*, 404 S.C. at 81, 744 S.E.2d at 560.

In *Bone*, the claimant filed a workers’ compensation claim alleging injury to her back. The single commissioner found that the claimant failed to establish, by a preponderance of the evidence, a compensable injury by accident arising out of an in the course of her employment. The claimant appealed, and the Appellate Panel of the Commission upheld the single commissioner’s findings and conclusions. Under the procedure then in place, the claimant appealed to the circuit court. The circuit court reversed, finding that there was not substantial evidence in the record to support the findings of fact by the full Commission. The case was then remanded for further proceedings.

The defendants appealed to the Court of Appeals. The claimant moved to dismiss the appeal based upon the fact that the appeal was interlocutory and not immediately reviewable. The Court of Appeals agreed and granted the claimant’s motion to dismiss. Defendants’ petition for writ of certiorari was then granted. This Court started by noting the language of S.C. Code Ann. §1-23-380(A). This Court noted that the order under review was the Court of Appeal’s dismissal of the appeal of the circuit court’s order remanding the matter and pointed out that, “[n]o award of any kind was made.” *Id.* It continued, “It is patently clear that the order from the circuit court remanding the matter to the Commission is not a final order. However, 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. Petitioners have an adequate remedy in that they may raise the issue of compensability on appeal of a final award.” *Id.*

In supporting its decision, the Court offered further clarification of the term of art “final judgment” and stated that the term had great legal significance. *Id.* at 75, 744 S.E.2d at 557 (citing *Good v. Hartford Accident and Indem. Co.*, 201 S.C. 32, 21 S.E.2d 209 (1942). “[H]olding if a judgment determines the applicable law while leaving open questions of fact, it is not a final judgment.”). Similar to the facts in *Bone*, considerable questions of fact remain on whether or not the Petitioner suffered a change of condition for the worse, and if she has, to what benefits she may be entitled. Also similar to the facts in *Bone*, there does not exist a final order which can properly be appealed. The order of the Commission dated September 15, 2017, which does not make a determination on the threshold issue of compensability and which does not make an award of benefits and instead remands both of those issues to a single commissioner for determination. Moreover, Petitioner has an adequate remedy in that she may raise the issue of compensability of her change of condition claim, and to what benefits she is entitled, on remand.

Respondents further rely on the holding in *Montjoy*, which offered additional insight as to the issue of interlocutory appeals. In that case, and similar to the facts in *Bone*, the circuit court remanded the case to the Workers’ Compensation Commission for further proceedings. The appellant filed an appeal, and the respondent filed a motion to dismiss the appeal on grounds that it was interlocutory. *Montjoy v. Asten-Hill Dryer Fabrics*, 316 S.C. 52, 446 S.E.2d 618 (1994). The Court of Appeals agreed and dismissed the appeal under the older, predecessor statute of S.C. Code. Ann. § 1-23-390, which this Court has noted is “substantially the same as the version applicable here.” *Id.* at 52, 446 S.E.2d at 618 and *Bone*, 404 S.C. at 76, 744 S.E.2d at 557. The Court stated, “[w]e have consistently held that an order from the circuit court remanding a case for additional proceedings before an administrative agency is not directly appealable.” *Montjoy* at 52, 446. S.E.2d at 618 (see also *Owens v. Canal Wood Corp.*, 281 S.C. 491, 316 S.E.2d 385

(1984); and *Hunt v. Whitt*, 279 S.C. 343, 306 S.E.2d 621 (1981)). Again, this Court has held countless times that appeals, without a final agency decision disposing of the outstanding issues in controversy, are interlocutory and not subject to appellate review. The case at bar fits squarely within the facts and reasoning of the Court in both *Bone* and *Montjoy*, and, as such, should be dismissed.

**B. The Court of Appeals did not misapprehend or overlook *Hilton*.**

Petitioner asks this Court to blindly rely upon the holding of *Hilton v. Flakeboard America Ltd.*, 418 S.C. 245, 791 S.E.2d 719 (2016) without considering the underlying facts and whether or not the holding is applicable to factual scenario this claim. The *Hilton* narrow exception does not apply to this case. In fact, the decisions in *Bone v. U.S. Food Service and Indemnity Insurance Company of North America*, 399 S.C. 566, 733 S.E.2d 200 (2012) and *Charlotte-Mecklenburg Hosp. Auth. v. S.C. Dep't of Health and Envtl. Control*, 387 S.C. 265, 692 S.E.2d 894 (2010) are much more applicable to the facts on this claim.

In *Hilton*, the main issue was whether the claimant had reached maximum medical improvement (“MMI”) such that he was no longer entitled to additional medical treatment. The single commissioner found that claimant had not reached MMI and further found that any misrepresentations the claimant made were due to a cognitive deficit resulting from an unrelated injury. Defendants appealed and raised four general exceptions and 102 specific exceptions to the single commissioner’s order, but none of the exceptions raised the issue of the claimant’s competency. *Hilton v. Flakeboard Am. Ltd.*, 418 S.C. 245, 247, 791 S.E.2d 719, 720 (2016). The full Commission vacated and remanded the case to the single commissioner for an adjudication on claimant’s competency and whether or not claimant needed a guardian ad litem. *Hilton*, 418 S.C. at 248, 791 S.E.2d at 721.

This Court first noted that only issues raised to the Commission within the application for review are preserved. *Id.* at 249, 791 S.E.2d at 721 (citing *Ham v. Mullins Lumber Co.*, 193 S.C. 66, 7 S.E.2d 712 (1952)). This Court then clarified, “Under these *unique circumstances* where the Commission has ordered the relitigation of the entire dispute without regard to the matters raised by the appealing party, we find that requiring [claimant] to wait until the final agency decision to appeal would not provide him with an adequate remedy. Prior to the Commission’s order, *no issue regarding Hilton’s competency had been raised by the attorneys for either party.*” *Id.* at 250, 791 S.E.2d at 722 (emphasis added). This Court further elucidated its holding and highlighted the Commission’s error in *ex mero motu* ordering that defendants provide claimant with a doctor of defendants’ choosing despite no such request being made by defendants. *Id.*

In *Hilton*, the full Commission decided an issue sua sponte. The Court stated, “ Under these unique circumstances where the Commission has ordered the relitigation of the entire dispute without regard to the matters raised by the appealing party, we find that requiring Hilton to wait until the final agency decision to appeal would not provide him with an adequate remedy. *Hilton*, 418 S.C. at 250, 791 S.E.2d at 722. Indeed, the court in *Hilton* warned, “We caution that circumstances such as these that will permit the immediate appeal of an interlocutory administrative decision under section 1-23-380(A) ‘are about as rare as the proverbial hens’ teeth.”” *Id.* at 251, 791 S.E.2d at 723 (citing *State v. Lytchfield*, 230 S.C. 405, 409, 95 S.E.2d 857, 859 (1957)).

In the current case, the Commission did not raise any issues sua sponte. The only issues for determination in the case at bar are whether the Appellant’s change of condition claim is compensable and, if so, what benefits she is entitled to. Those are the exact issues that have been appealed and have been in controversy during the entirety of this claim.

**C. The Commission did not rule on any issues that were not properly preserved.**

In attempting to argue that the Commission considered issues which were not properly raised, and that the *Hilton* exception applies, Petitioner argues that Respondents had not properly preserved its appeal of an award of benefits in 2013, thereby not preserving the issue of an award of benefits in 2017. This argument is both factually and legally incorrect.

First, the Respondents properly appealed and preserved for appellate review the issues of compensability of the change of condition and an award of benefits in 2013. The only evidentiary hearing in this case was conducted by Commissioner Andrea Roche on February 11, 2013. On August 5, 2013, Commissioner Roche found that the Appellant sustained a change of condition for the worse and ordered Respondents to provide medical treatment and temporary total disability benefits. Respondents appealed the order to the full Commission. In the Form 30 appeal that was filed on August 9, 2013, Respondents specifically appealed the findings that Claimant sustained a compensable change of condition for the worse and the award of benefits, specifically including Finding #12 (The defendant shall provide medical care and attention pursuant to Claimant's change of condition) and Finding #16 (The defendant shall provide temporary total disability benefits from December 1, 2011 through the present date and continuing). Respondents specifically appealed the award of medical treatment and the award of temporary benefits based upon the finding of a compensable change of condition. On January 30, 2014, the full Commission found that the Appellant failed to prove that she sustained a compensable change of condition for the worse and found that Appellant was not entitled to any benefits under the Act. Because the full Commission found that the claimant had not sufficiently proven the threshold issue of a compensable change of condition for the worse, they did not make specific findings of fact or conclusions of law on the award of benefits as there was no

need to reach those issues in light of their ruling on the threshold compensability issue. However, it is inarguable that the Respondents clearly appealed the award of medical care and temporary compensation, as well as the threshold issue of a compensable change of condition, after the first evidentiary hearing in 2013. The order from the full Commission on January 30, 2014 reversed and vacated any award of benefits on this case based upon the threshold finding that a compensable change of condition had not been proven. (App. pp. 40 – 41). Once the full Commission issued its order, the previous findings of Commissioner Roche were null and void. *Shealy v. Aiken Cnty.*, 341 S.C. 448, 535 S.E.2d 438 (2000) (holding that, “in workers’ compensation cases, the full Commission is the ultimate fact finder.”); see also *Hunter v. Patrick Constr. Co.*, 289 S.C. 46, 344 S.E.2d 613 (1986).

Second, Petitioner argues in her brief that the findings of Commissioner Roche regarding award of benefits in her order dated August 5, 2013, were not properly appealed and became the law of the case and, right or wrong, cannot be altered. That argument is incorrect. As indicated above, the findings of Commissioner Roche regarding award of benefits were properly appealed and they were reversed and vacated by the full Commission. Those findings do not become the law of the case, but were actually reversed and vacated by the full Commission. It is the order of the full Commission, denying a compensable change of condition and awarding no benefits, that became the law of the case. See *Shealy v. Aiken Cnty.*, 341 S.C. 448, 535 S.E.2d 438 (2000).

Third, Petitioner argues that Respondents chose not to appeal the award of benefits and that respondents abandoned the award of benefits in 2013. That argument is factually incorrect and a misstatement of the procedural history of this claim. The award of benefits has been properly raised as an issue on appeal at every opportunity. Obviously, more attention has been paid to the threshold issue as to whether or not the change of condition claim is compensable in

the first place, but at no point has the award of benefits been abandoned or not been appealed. As has long been the history with jurisprudence in this state, once the threshold issue has been determined by the appellate body, that body need not consider remaining issues which are rendered irrelevant by the initial threshold ruling.

Fourth, after Commissioner Campbell issued an order on March 20, 2017, without an evidentiary hearing, Respondents again appealed and asserted that the award of medical treatment and temporary compensation was in error and asserted that they had been denied their due process rights by reinstatement of a previously reversed award as opposed to having a new evidentiary hearing. Again, the award of medical care and temporary compensation were specifically appealed. Respondents, pursuant to S.C Code Ann. Regs. 67-613(A), specifically delineated Grounds for Review in the form of questions presented appealing the award of benefits under various grounds. (App. pp. 146 – 151). Those same exceptions were also briefed and argued. (App. 160-162).

Petitioner focuses on Respondents' appeal to Commissioner Roche's order dated August 5, 2013, (App. p. 17) but fails to give due regard to the fact that the current matter relates to Commissioner Campbell's order dated March 20, 2017 (App. p. 145). Commissioner Campbell's Order blind reinstatement of four-year-old findings with no evidentiary basis and concluding that Petitioner suffered a change of condition for the worse—without complying with the instructions from the court of appeals as it relates to the correct evidentiary standard—is the Order which was appealed in the current matter. Again, Defendants provided detailed grounds for review and specifically appealed, briefed, and argued those findings. (App. pp. 146 – 151).

**D. Due process requires a new evidentiary hearing before any award of benefits can be made**

Any award of benefits in this matter without allowing the parties to have an evidentiary hearing, to present evidence, or to present testimony, had the effect of denying Respondents due process to present a defense to this claim for benefits. When the single commissioner simply reinstated the award of Commissioner Roche from 2013, which consisted of an award of ongoing temporary benefits and medical treatment, it deprived the Defendants of the opportunity to challenge the claimant's entitlement to any of those benefits or present evidence on those issues. Obviously, the Defendants had an opportunity to present evidence before Commissioner Roche's original award, but that occurred at an evidentiary hearing in February 2013. Since that time, the Defendants have had no opportunity to present any additional evidence regarding Claimant's entitlement to workers' compensation benefits. Reinstating the 2013 award of benefits denied the Defendants due process on that issue.

Effectively, Commissioner Campbell made an award of benefits that apply to the time period from November 21, 2011, through the present and continuing without any factual or evidentiary basis for such award. As indicated above, the last time either party submitted any testimony or evidence was at a hearing on February 11, 2013. On February 11, 2013, the only evidentiary hearing on this claim was conducted. Evidence was submitted and testimony was obtained concerning the Petitioner's medical treatment, ongoing injuries, and temporary disability, such that the Commissioner at that time could make a decision as to an award of benefits based upon evidence presented. No evidence or testimony has been submitted or obtained since that time. Commissioner Campbell's blind reinstatement of an award of ongoing medical treatment and ongoing temporary total disability compensation in March 2017, when

there is absolutely no evidence on any of those issues between February 2013 and March 2017 (a period of 4 years and 1 month), cannot stand. Evidence taken as to medical treatment and temporary disability in February 2013 cannot possibly support an award of ongoing benefits for the four-year period of time after that date. (App. pp. 198 – 214). Not only is there no evidence of any kind to support any such award, but Respondents were denied due process in addressing those issues.

Petitioner has argued that because the Respondents did not specifically brief the award of benefits in February 2013, that they have somehow waived their right to appeal a baseless award of benefits in March 2017. This argument is illogical and erroneous. Even assuming *arguendo* that the Respondents did not preserve an appeal of benefits in 2013, that would not preclude respondents from appealing or arguing any award of benefits after February 2013.

In this case, it is inarguable that the Respondents timely and properly appealed the award of benefits made by Commissioner Campbell in March 2017 on the basis that there is no evidentiary basis for such an award, reinstatement of vacated findings is not proper, and that the Respondents were denied due process by failure to take new evidence if an award of benefits was going to be made for years after the last hearing.

**E. The Commission's current remand sets forth the proper procedural process.**

The remand instructions from the Commission on September 15, 2017, set forth the proper procedural process. (App. p. 213). As has been asserted by Respondents in their email to the Commission and all filings, the Commission should review the evidence submitted at the hearing on February 11, 2013, and issue findings of fact and conclusions of law concerning the threshold issue as to whether the claimant has had a change of condition for the worse per 42-17-90, considering both subjective and objective evidence as set forth by the Court of Appeals. If

the change of condition is found to not be compensable, no benefits are due. If the change of condition is found compensable, there should be a full evidentiary hearing and allow both parties to submit testimony, medical records, and other additional evidence for consideration as to the issue of any award of benefits under the Act.

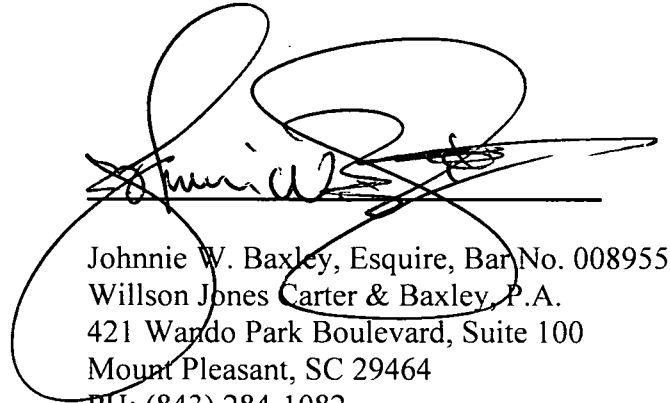
**F. The Commission properly remanded the issue of compensability of the change of condition claim.**

In its order, the Commission noted that in the interest of judicial economy, since this case was already being remanded on issue of benefits, it would be prudent to have the single commissioner issue independent factual findings on the compensability issue as opposed to simply restating what the single commissioner did in 2013. The Commission has instructed the single commissioner on remand to make detailed, independent factual findings on compensability of the change of condition claim, consistent with the decision of the South Carolina Court of Appeals, as opposed to simply restating the factual findings from 2013 in more detail.

As indicated by this Court in *Bone*, a remand order is not directly appealable, especially where petitioner still has an adequate remedy and can raise necessary issues on remand. In that case, this Court noted that Petitioners had an adequate remedy on remand in that they may raise the issue of compensability in further proceedings. *Bone v. U.S. Food Serv.*, 404 S.C. 67, 75, 744 S.E.2d 552, 560 (2012). In the instant matter, both parties may raise the issue of compensability and any benefits to which Petitioner may be entitled to under the South Carolina Workers' Compensation Act.

**CONCLUSION**

For the foregoing reasons, Respondents respectfully request the Court affirm the order of the South Carolina Court of Appeals dismissing Petitioner's appeal as interlocutory and not subject to immediate review.



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