

THE STATE OF SOUTH CAROLINA  
In The Supreme Court

**RECEIVED**

NOV 01 2019

APPEAL FROM SOUTH CAROLINA  
WORKERS' COMPENSATION COMMISSION

S.C. SUPREME COURT

Opinion No. 27920 (S.C. - Filed October 2, 2019)

Scott Ledford, (Employee/Claimant), ..... Petitioner,

v.

Department of Public Safety (Employer), and  
State Accident Fund (Carrier), ..... Respondents.

**REPLY TO RETURN TO PETITION FOR REHEARING**

Respondents, by and through their undersigned counsel, hereby file this Reply to  
Petitioner's Return to Petition for Rehearing filed on October 25, 2019.

- I. This Court may have overlooked or misapprehended the law or arguments involving whether Petitioner has provided necessary evidence of bias or prejudice as required by law for judicial recusal and a Commissioner's ability to threaten criminal prosecution pursuant to S.C. Code Ann. §42-9-440.**

Respondents assert that Petitioner has misinterpreted the requirement that evidence of prejudice or bias must stem from an extrajudicial source of information as set forth in Mallet v. Mallet. 323 S.C. 141, 145, 473 S.E.2<sup>nd</sup> 804, 807 (Ct. App. 1996). In its Return to the Petition for Rehearing, Petitioner argues that "threatening a party with criminal proceedings unless they settle their case is coercive, violates the Code of Judicial Conduct, and, therefore extrajudicial by definition." In support of this point, Petitioner relies on a general definition of "extrajudicial" as

“[t]hat which is done, give, or affected outside the course of judicial proceedings.” *Blacks Law Dictionary 5<sup>th</sup> Ed.*, West Pub. Co. (1979). The requirement set forth in Mallet states that evidence of bias “must stem from an extrajudicial source and result in decisions based on information other than what the judge learned from his participation in the case.” Mallet, at 145. Petitioner’s broad assertion that Commissioner Barden’s conduct was outside the course of regular judicial proceedings is different than the requirement that bias must stem from an extrajudicial *source*. (emphasis added). Respondents maintain that Petitioner has failed to identify any evidence of an “extrajudicial source” that resulted in decisions based on information Commissioner Barden learned outside of her participation in the case. All of Commissioner Barden’s findings were supported by evidence she learned through testimony at the hearing and review of the Commission file and evidence timely and properly submitted by the parties.

Further, Respondents respectfully disagree with Petitioner’s argument regarding the relevance of the Attorney General’s role in investigating and prosecuting cases of suspected false statement or misrepresentation. Petitioner’s original motion for recusal states, “Commissioner Barden told the parties’ counsel that she would initiate criminal charges against Ledford unless he settled his admitted claim against the State Accident Fund.” (App. p., 308). Respondent’s maintain that S.C. Code Ann. §42-9-440 makes this impossible. A Commissioners’ ability to unilaterally initiate criminal proceedings against an injured worker is simply not allowed under the statute. S.C. Code Ann. §42-9-400 states that the Commission refers cases of suspected false statement or misrepresentation to the Attorney General investigation and prosecution “if warranted.” If the Attorney General investigates a claim and does not feel prosecution is warranted, a Commissioner has no authority to override that decision, so a Commissioner cannot, on her own, initiate criminal proceedings. Therefore, Petitioner’s assertion that the Attorney

General's investigation of allegations of insurance fraud is irrelevant is without merit.

**II. This Court may have overlooked or misapprehended the law or arguments involving whether Petitioner already had a *de novo* review of the case by the Appellate Panel, whose order is the law of the case before this Court.**

At the outset, it should be clear Respondents have never argued this Court does not have the ability to review judicial misconduct. In fact, Respondents acknowledge mechanisms and procedures are in place for judicial discipline. This Court may properly refer any judicial misconduct it believes has occurred to the proper office for a full investigation, but in the context of this case, however, the question is whether the alleged misconduct has any bearing on the final outcome of the claim as set forth by the Appellate Panel's Order pending before this Court.

This Court would be hard-pressed to find any argument raised by the Petitioner in any portion of the record in which he found prejudice or bias with the Appellate Panel or otherwise argued he did not receive a *de novo* review of the evidence he presented at the hearing before the single commissioner. The Petitioner's argument is that the evidence presented before the single commissioner was sufficient to support his claim for the benefits he sought, and there is no argument at any point in any of the proceedings that he did not receive a full and fair review of the evidence by three (3) impartial Commissioners with whom he has found no fault.

Counsel for Petitioner struggled to answer at oral arguments what remedy he was seeking, and now forced to respond to the argument that he has already received a *de novo* hearing, Petitioner now seeks to upend administrative law in South Carolina and argue the Appellate Panel review was nothing more than "cursory." In his Return, Petitioner notes Respondents failed to cite authority for allowing "cursory administrative review to shield judicial misconduct," but ironically the Petitioner failed to cite any authority that deems the Commission Appellate Panel's review as "cursory." Further, Petitioner seems to ignore the fact that the same

arguments were presented to the Court of Appeals, whose review of the case is certainly not “cursory.” The Petitioner’s sole response to the argument that he received a *de novo* hearing seemingly eviscerates the need for Appellate Panel review as now either unnecessary or unworthy, yet the Petitioner never appealed the Appellate Panel’s finding that he was entitled to more permanent partial disability and medical treatment than he was awarded by the single commissioner. Specifically, the Petitioner noted he was “sincerely grateful [for] the Appellate Panel’s amendments to the Single Commissioner’s Decision and Order that have saved him and his family from financial bankruptcy, authorized him to receive the ongoing physical therapy and injections recommended by his physicians, and have preserved his right to seek a change of condition.” (App., pp. 276 – 277). Certainly, the Petitioner is not maintaining the result for which he was so grateful was only the result of a “cursory” administrative review, and he simply cannot have it both ways. His willingness to accept without complaint or appeal the increase in the award from the Appellate Panel indicates this new argument that Appellate Panel reviews are only “cursory” is nothing more than an unsupported attempt to generate a response to the Respondents’ point that he already received a new and impartial hearing on the merits of his claim.

### **CONCLUSION:**

Based on the arguments set forth above, Respondents respectfully submit that this Court may have overlooked or misapprehended the evidence, law, or arguments involving (1) whether Petitioner provided sufficient evidence of bias or prejudice as required by law to support a motion for recusal, (2) Commissioner’s Barden’s ability to threaten criminal proceedings pursuant to S.C. Code Ann. §42-9-440, and (3) whether Petitioner already received a *de novo* review of the evidence in the case by the Appellate Panel, whose order is the law of the case

before this Court. For the foregoing reasons, Respondents request this Court grant the petition for rehearing, reconsider this Court's original opinion, and affirm the judgment of the South Carolina Court of Appeals.



---

J. Gabriel Coggiola, Esquire  
Sarah C. Sustusky, Esquire  
Willson, Jones, Carter & Baxley, P.A.  
3600 Forest Drive, Suite 204  
Columbia, South Carolina 29204  
(803) 227-2889  
[jgcoggiola@wjlaw.net](mailto:jgcoggiola@wjlaw.net)  
Attorneys for Respondents

November 1, 2019

THE STATE OF SOUTH CAROLINA  
In The Supreme Court

**RECEIVED**

NOV 01 2019

APPEAL FROM SOUTH CAROLINA  
WORKERS' COMPENSATION COMMISSION

S.C. SUPREME COURT

Unpublished Opinion No. 2018—UP—280 (S.C. Ct. App. Filed June 27, 2018)

Scott Ledford, (Employee/Claimant),.....Petitioner,

v.

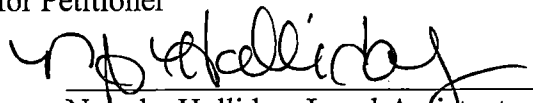
Department of Public Safety (Employer), and  
State Accident Fund (Carrier),..... Respondents.

**PROOF OF SERVICE**

The undersigned certifies that on the date indicated below, she served counsel for Petitioner with a copy of **Respondents' Reply to Petitioner's Return to Petition for Rehearing** by mailing copies of the same by United States Mail postage prepaid on November 1, 2019 to the following addresses:

E. Hood Temple, Esquire  
Hatfield Temple, L.L.P.  
Post Office Box 1170  
Florence, South Carolina 29503-1770  
Attorney for Petitioner

J. Kevin Holmes, Esquire  
The Steinberg Law Firm, L.L.P.  
61 Broad Street  
Post Office Box 9  
Charleston, South Carolina 29402  
Attorney for Petitioner



Natasha Holliday, Legal Assistant  
Willson Jones Carter & Baxley, P.A.  
3600 Forest Drive, Suite 204  
Columbia, South Carolina 29204  
(803)227-2890

November 1, 2019  
Columbia, South Carolina