IN THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM THE SOUTH CAROLINA
WORKERS' COMPENSATION COMMISSION

Avery B. Wilkerson Jr., Chair, Commissioner
T. Scott Beck, Commissioner
R. Michael Campbell, Commissioner

SCWCC File No. 1102937
S.C. Court of Appeals Case No. 2019-001141

Barry Adickes, Claimant, Respondent,

v.

Philips Healthcare, Employer, and Fidelity and
Guarantee Insurance Company, Carrier, Appellants.

APPELLANTS' FINAL BRIEF

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STATEMENT OF ISSUES ON APPEAL:

1. Did the Commission Err in its Calculation of Adickes' Permanent Wage Loss Award?
2. Did the Commission err in holding that Appellants were under an obligation to continue payment of weekly wage loss benefits to Adickes after this Court issued Op. No. 2018-UP-027?
3. Did the Commission err in finding that Appellants' delay in authorization of a medication constituted willful disobedience of an Order, subjecting Appellants to fines and penalties for same?

STATEMENT OF THE CASE:

This case was originally before this Court in 2016 - 2018, pursuant to Adickes' request for a permanent wage loss award. (R. 70). In 2015 – 2016, the ALJ and Appellate Division awarded Adickes a lump sum award of 340 weeks of permanent partial disability benefits under S.C. Code Ann. § 42-9-20. (R. pp. 1-18, 19-34). Appellants filed a Notice of Appeal of the aforementioned Appellate Division Order to this Court on March 17, 2016 and properly commenced weekly benefits pursuant to the Appellate Order. (R. pp. 147-148). Appellants argued that the Appellate Division erred in not limiting the wage loss award to 340 weeks from the date of accident, pursuant to the language of S.C. Code Ann. § 42-9-20. (Id.). Following oral arguments before this Court, an unpublished Opinion was issued on January 17, 2018, Op. No. 2018-UP-027. (R. pp. 35-39).

This Court agreed with Appellants argument and found that the Appellate Panel erred in extending the timeframe and award for PPD benefits in contravention of the plain language of S.C. Code Ann. § 42-9-20 and the legislative intent for compensation. (R. pp. 37-39). As such, in Op. No. 2018-UP-027, this Court reversed the Appellate Division's award of 340 weeks of permanent benefits, holding that the "plain language of the statute limits PPD benefits to 340 weeks from the

date of injury, contrary to the Appellate Panel's interpretation and award. This statute explicitly mandates that in 'no case' will PPD benefits be available to a claimant beyond the term of 340 weeks 'from the date of injury.'" (R. p. 38). This Court went on to note that the applicable portion of S.C. Code Ann. § 42-9-20 reads "[I]n no case shall the period covered by such compensation be greater than three hundred forty weeks from the date of injury. We find this to be a limiting clause that restricts the time frame and amount of coverage and should be strictly interpreted." (Id.). Op. No. 2018-UP-027 reversed the Appellate Panel's award of 340 weeks' compensation commencing January 17, 2014 and remanded to the Workers' Compensation Commission for a new calculation of benefits consistent with the plain language of S.C. Code Ann. § 42-9-20. (R. p. 39).

This Court specifically noted that the case was being remanded "to the Appellate Panel for a new calculation" of Adickes' wage loss award; rather, following the remand, this case was heard before **two** separate Commissioners and oral arguments took place before **two** separate Appellate Panels. The procedural history following this Court's 2018 Order was as follows:

REMAND PROCEEDINGS:

The Full Commission issued a Remittitur Routing Sheet on July 16, 2018, assigning the case to a Single Commissioner. (R. p. 40). Following this, the case was initially set before Commissioner McCaskill and then Commissioner Barden. During this time, the undersigned asked the Commission on multiple occasions why the calculation wasn't being performed by the Appellate Division. (R. pp. 798-805). The Commission informed that parties that the Appellate panel felt the Single Commissioner that heard should perform the calculation; however, the Commission eventually placed the case on Commissioner Barden's calendar because "the policy is to set the matter before the jurisdictional Commissioner, not the hearing Commissioner." (R. pp.

798, 802). The undersigned also asked the Commission on numerous occasions why a hearing was necessary, and was only provided with a response that Commissioner Barden wanted one. (R. pp. 798-805).

A hearing was held before Commissioner Susan Barden on October 19, 2018, at which time she allowed the parties to put their respective positions on the record, pursuant to the request by Adickes' counsel. (R. p. 630). Commissioner Barden issued an Order on January 17, 2019[1], wherein she held that that this Court in Op. No. 2018-UP-027 did not reverse the date that the initial Single Commissioner had ordered wage loss benefits to begin, so she held that Adickes' wage loss award should commence as of January 17, 2014, the date of his termination, and should extend **beyond** 340 weeks from his date of injury. (R. pp. 49-50). Commissioner Barden disagreed with Appellants' contention that permanent wage loss awards begin as of the date of MMI, because "the issue of MMI is immaterial in a wage loss claim," since S.C. Code Ann. § 42-9-20 does not distinguish between temporary and permanent benefits. (R. pp. 46, 49). Lastly, Commissioner Barden held that the final sentence of S.C. Code Ann. § 42-9-20 operates to "prolong" a PPD award beyond the 340 week limitation, since the "plain reading" of the language does not entitle the Employer to a credit of TTD paid. (R. p. 48). As such, she held that Adickes was entitled to an additional 7 weeks and 5 days of PPD benefits beyond the 340 week limitation. (R. p. 50).

Appellants appealed Commissioner Barden's Order to the Appellate Division, asserting that her calculation of Adickes' permanent wage loss award was in contravention of the guiding statutory authority and case law, as well as this Court's decision in Op. No. 2018-UP-027. (R. pp. 230-232). Adickes also appealed Commissioner Barden's Order, arguing that the she erred in (1) failing to rule that limiting the award on both the front and back ends would be violative of due

[1] This Order was prepared by Adickes' Counsel. Commissioner Barden executed same without making any changes to the proposed Order.

process, and (2) failing to rule that Appellants are precluded from arguing that wage loss benefits may not be ordered before MMI as the issue was not properly preserved before the Court of Appeals. (R. pp. 233-234).

Oral Arguments were held before the Appellate Panel on April 30, 2019. (R. p. 754). Contrary to the explicit remand language in Op. No. 2018-UP-027, Adickes argued that the date of commencement of his wage loss award was not reversed. (R. p. 765, lines 19-24). He further argued that "MMI is irrelevant," and "the only thing that MMI signifies is in a wage loss claim is what further medical care ... is it wide open, or is there going to be some limitation on medical care? That's what the MMI thing matters about." (R. p. 768, lines 5-11). Adickes also argued that the last line of the statute provided additional weeks of benefits beyond the 340-week limitation. (R. p. 772, lines 18-25).

The Appellate Panel confirmed Commissioner Barden's Order in full[2], holding that she "followed the directions from the Court of Appeals on remand, and issued an Order that follows the plain reading of Section 42-9-20 and supporting case law." (R. pp. 62-63). The Appellate Panel acknowledged that all of the weeks owed to Adickes had accrued, and ordered Appellants to pay interest of 7.5% on benefits owed between the dates of January 17, 2014 and when Appellants commenced benefits following the 2016 Appellate Panel decision. (R. p. 64).

As months continued to pass while the parties awaited a decision from the Appellate Division, Appellants became concerned about not being able to recoup an overpayment on Adickes' permanent benefits. Thus, the decision was made to suspend Adickes' weekly benefits on February 5, 2019, as Appellants had paid beyond the proper calculation of his permanent wage

[2] The Appellate Panel executed an Order fully prepared by Adickes' counsel, without making any changes to same.

loss award. On February 6, 2019, Appellants suspended payments of weekly wage loss benefits to Adickes.

THIRD SINGLE COMMISSIONER HEARING:

While the Order on remand was pending before the Appellate Panel, Adickes requested a hearing seeking recommencement of his weekly permanent wage loss benefits, arguing that Appellants were still under an Order to continue payment of weekly permanent benefits. (R. p. 268). Adickes also sought penalties associated with delays in authorizations of his prescriptions, alleging that Appellants did so willfully. (Id.).

A hearing was held before Commissioner Melody James on April 19, 2019. (R. p. 668). Appellants argued the issue of payments of his permanency award was improper to be heard as it was pending before the Appellate Division. (R. p. 269; R. p. 671, lines 10-17). Appellants further argued that there was no longer an obligation to continue payment of weekly permanent wage loss benefits pursuant to Op. No. 2018-UP-027, as 340 weeks from the date of injury ended on September 26, 2017. (R. pp. 269-272; R. p. 674, line 18; R. p. 675, line 10). Finally, Appellants asserted that the delays in providing prescription authorizations was an unfortunate mistake, which did not rise to the level of willful disobedience of a prior Order of the Commission. (R. pp. 272-273; R. p. 674, lines 1-17).

Commissioner James issued an Order on June 19, 2019[3], holding that Appellants had illegally terminated his benefits because there was no order allowing Appellants to stop payment of benefits commenced pursuant to S.C. Code Ann. § 42-17-60. (R. pp. 56-58). She ordered recommencement and subjected Appellants to a 10% penalty on all unpaid weekly benefits. (R. pp. 57-58). Commissioner James also held that Appellants had willfully disobeyed a prior Order

[3] This Order was prepared by Adickes' Counsel. Commissioner James executed same without making any changes to the proposed Order.

for a period of 27 days, and were subject to fines of $200.00/day pursuant to S.C. Code Ann. § 42-3-175. (Id.).

Appellants appealed Commissioner James' Order to the Appellate Division, Following oral arguments, the Appellate Division upheld Commissioner James' Order in its entirety, yet increased the daily fine imposed to $500.00/day[4]. (R. pp. 65-72).

STATEMENT OF THE FACTS:

This case has a complicated procedural history dating back to 2014. Given the current posture of this case, a full recitation of the facts is unnecessary. Appellants rely on and fully incorporate herein the Summary of Evidence detailed in Appellant's Final Brief to this Court filed in COA case No. 2016-000514, but point to the below facts relevant to this appeal:

Dr. Barron performed an IME on the Claimant on December 12, 2012, at which time he opined that "unfortunately, [Adickes] has not responded to surgical treatment on his right shoulder." (R. pp. 8, 493-495). Dr. Barron did not place Adickes at MMI when he performed the IME in 2012; rather, he specifically noted that Adickes had not been rated in regard to his right shoulder and recommended that he undergo a right shoulder arthrogram. (R. p. 495).

Adickes did not seek any additional treatment for his right shoulder after his IME with Dr. Barron. Prior to the hearing before Commissioner McCaskill, the Appellants scheduled a "rate and release" appointment with Dr. Rentz, Adickes' authorized physician for his right shoulder. (R. pp. 581-584). The Claimant was evaluated by Dr. Rentz on September 14, 2014, at which time he reported continued pain in his right shoulder, pain with overhead activities and some popping with

[4] This Order was prepared by Adickes' Counsel. The Appellate Division executed same, the only change being the increased amount of daily fines assessed against Appellants.

motion. (R. p. 583). Rather than providing a rating, Dr. Rentz recommended that Adickes undergo a right shoulder MRI scan and to return following same. (Id.).

Adickes underwent a right shoulder MRI scan on October 10, 2014. (R. p. 579). Rather than returning to Dr. Rentz for review, Adickes provided the MRI scan to his IME physician, Dr. Barron. After review of same, Dr. Barron completed a questionnaire wherein he assigned a 15% rating to Adickes' right shoulder. (R. p. 496). Specifically, Dr. Barron opined that Adickes would "most probably eventually require additional surgery to the right shoulder based on the MRI findings as well as the ongoing symptoms." (Id.). It was this questionnaire response, dated January 14, 2015, that persuaded Commissioner McCaskill that Adickes was at MMI for all of his injuries:

> 3. It is the defendants' position that this claim is not ripe for a determination of permanency. They contend that the Claimant is not at MMI for his shoulder.
>
> 4. ***The Claimant contends that the questionnaire from Dr. Jerry L. Barron provides a determination of MMI***.
>
> 5. I have reviewed the questionnaire of Dr. Barron and ***must agree with Claimant's counsel as to a determination of MMI.***
>
> 6. Dr. Barron opines to a reasonable degree of medical certainty that the Claimant, " ... has sustained a permanent impairment of 15% to the right shoulder and 0% to the left shoulder."
>
> 7. While ratings are necessary to determine disability to the shoulders, if any, the language is also determinative as to MMI. Assigning "permanent impairment" to the shoulders attests to Dr. Barron's opinion that the shoulders are not going to get any better than they are now. In other words, they are in a condition of "permanent" - plain meaning of the word - impairment. ***Given that fact, I find that the Claimant has reached maximum medical improvement for the shoulders***.
>
> (R. p. 11, *emphasis added*)

STANDARD OF REVIEW:

Judicial review of a Workers' Compensation Appellate Panel's Decision is governed by the substantial evidence rule of the Administrative Procedures Act. Lark v. Bi-Lo, Inc., 276 S.C. 130,

276 S.E.2d 304 (1981). Pursuant to the APA, the Court of Appeals' review in a workers' compensation proceeding is limited to deciding whether the decision of the Appellate Panel of the Workers' Compensation Commission is unsupported by substantial evidence or is controlled by some error of law. Hall v. Desert Aire, Inc., 376 S.C. 338, 656 S.E.2d 753 (Ct. App. 2007).

For purposes of judicial review of the Appellate Panel of the Workers' Compensation Commission, "substantial evidence" is not a mere scintilla of evidence nor the evidence viewed blindly from one side of the case, but is evidence which, considering the record as a whole, would allow reasonable minds to reach the conclusion the Appellate Panel reached in order to justify its action. Pratt v. Morris Roofing, Inc., 357 S.C. 619, 594 S.E.2d 272 (2004), Jones v. Georgia-Pacific Corp., 355 S.C. 413, 586 S.E.2d 111 (2003).

The possibility of drawing two inconsistent conclusions from the evidence does not prevent an administrative agency's findings from being supported by substantial evidence. Sharpe v. Case Produce, Inc., 336 S.C. 154, 519 S.E.2d 102 (1999); DuRant v. South Carolina Dep't of Health and Envtl. Control, 361 S.C. 416, 604 S.E.2d 704 (Ct. App. 2004).

Under the scope of review established by the APA, this Court may not substitute its judgment for that of the appellate panel as to the weight of the evidence on questions of fact, but may reverse where the decision is affected by an error of law. Liberty Mut. Ins. Co. v. South Carolina Second Injury Fund, 363 S.C. 612, 611 S.E.2d 297 (Ct. App. 2005); Frame v. Resort Servs. Inc., 357 S.C. 520, 593 S.E.2d 491 (Ct. App. 2004); S.C. Code Ann. § 1-23-380(A)(6)(d)(2005).

ARGUMENT AND CITATION OF AUTHORITY:

This Court first saw this case in 2016, on appeal of the 2016 Appellate Panel Decision and Order which deemed Adickes to be at MMI for all of his work-related injuries, determined that he

sustained a permanent loss of earning capacity pursuant to S.C. Code Ann. § 42-9-20 and awarded a permanent wage loss award of 340-weeks of benefits. (R. pp. 29, 33-34).

On appeal, this Court issued an unpublished opinion, Op. No. 2018-UP-027, holding that the Appellate Panel decision was Affirmed in Part, Reversed in Part and Remanded. (R. pp. 35-39). Specifically, Op. No. 2018-UP-027 reversed the Appellate Panel's wage loss award, holding that the pain language of S.C. Code Ann. § 42-9-20 explicitly limits permanent wage loss awards to 340 weeks from the date of injury. (R. p. 38). This Court went on to explain that the legislature's intent was for PPD benefits to compensate an injured Claimant for the loss of earning capacity over the designated 340 weeks from the date of injury, rather than compensate an injured Claimant with a 340-week "award" of PPD benefits for specific injuries. (Id.). This Court explicitly laid out the remand directives in the last sentence of the Opinion: "**Accordingly, we reverse the Appellate Panel's award of 340 weeks' compensation commencing January 17, 2014, and remand for a new calculation of benefits consistent with the plain language of section 42-9-20**." (R. p. 39).

Yet, over 17 months after the case was remanded to the Commission, the Appellate Panel issued an Order not in compliance with the holding of Op. No. 2018-UP-027 or the remand directives. (R. pp. 59-64). Rather, the Appellate Panel held that this Court did not reverse the date that Adickes' wage loss began, so it held that his permanent wage loss award commenced as of the date of his termination, January 17, 2014. (R. p. 63, Concl. of Law ¶¶ 1-2). Further, summarily dismissing Appellant's argument that permanent awards commence as of the date of MMI, the Appellate Panel concluded that this Court did not reverse or remand on those grounds, so determining an MMI date was beyond the scope of the remand directives for the Appellate Panel. (Id. at Concl. of Law ¶¶ 3-5). Additionally, the Appellate Panel awarded Adickes a wage loss

award for a period extending beyond 340-weeks from his date of accident. (Id. at Concl. of Law ¶ 6, Order ¶¶ 3-4).

The fact that the Appellate Panel issued an Order in stark contrast to the explicit remand directives provided by this Court is just as confounding as the plain-language-of-the-statute question that brought this case before this Court in 2016. The holding in Op. No. 2018-UP-027 was clear. This Court explicitly reversed the PPD award of 340 weeks of permanent wage loss benefits commencing as of January 17, 2014. The remand directives in Op. No. 2018-UP-027 were clear. The Appellate Panel was to determine when his wage loss award commenced and perform a calculation of his permanent award based on same, limited to 340 weeks from his date of injury.

A. THE COMMISSION ERRED IN ITS CALCULATION OF ADICKES' PERMANENT WAGE LOSS AWARD.

1. ADICKES SOUGHT A PERMANENT AWARD.

Adickes has unequivocally sought permanent disability benefits throughout the pendency of this claim. In all of his initial pleadings, all of which are unamended or stricken, Adickes specifically indicated the type of disability benefits he was seeking: **permanent**. In the very first pleading filed in this case, Adickes' September 23, 2014 Form 50 Request for Hearing, in response to whether he was seeking Temporary Total Disability Benefits, Adickes responded: TTD has been paid. (R. p. 73). He left the box next to "A determination of permanency is premature at this time" unchecked. (Id.). Rather, he placed a check next to the box indicating that he was seeking a **permanency** disability of the following nature and extent: Wage Loss. (Id.). Similarly, in his January 6, 2015 Form 58 Pre-Hearing Brief, Adickes indicated that the legal issues involved were as follows: Extent of **Permanent** Wage Loss under 42-9-20; lump sum payment; Dodge medicals under § 42-15-60. (R. p. 76). Adickes made no request for temporary benefits. (Id.).

Following the McCaskill Order, Adickes maintained his request for **permanent** benefits to the Appellate Panel and this Court through the following arguments:

> Claimant is entitled to **permanent** partial wage loss disability benefits for 340 weeks ... Here, the Claimant's **permanent** partial disability began after two separate periods of total disability ... A review of the relevant evidence and testimony supports Mr. Leonard's expert vocation opinion that Claimant suffered a **permanent** loss of earning capacity as a result of his work-related injury.
>
> (R. pp. 141, 144-145).
>
> Dr. Barron's **permanent** impairment rating to Barry's right shoulder is evidence that a **permanency** award is appropriate.
>
> (R. p. 157).

Yet, in complete contrast to the above arguments and in a veiled attempt to recover benefits for which he didn't seek, Adickes is now taking the position that the statute makes no distinction between temporary and permanent benefits, arguing that he is entitled to wage loss benefits from the date of disability. (R. p. 256).

Adickes points to the definition of "disability" contained in § 42-1-120, arguing that it does not distinguish between temporary or permanent disability. (Id.). Appellants agree that those two words are not found within the language of § 42-1-120 - they don't need to be. The distinction between temporary and permanent benefits has been contemplated by the courts. In summary, the South Carolina courts have held that the rationale for ceasing temporary benefits upon a finding of MMI is to permit entry of a permanent award, noting that a degree of permanent disability cannot be determined prior to MMI (Hines v. Hendricks Canning Co.), termination of temporary benefits and replacement with permanent benefits is proper upon finding of MMI, (Gilliam v. Woodside Mills), and an explicit finding by the WC Commission as to whether the Claimant had reached MMI from injuries to his arms from a work-related accident was necessary

because it was relevant to Claimant's entitlement to permanent benefits. (Cranford v. Hutchinson Const.). 263 S.C. 399 (1975); 319 S.C. 385 (1995); 399 S.C. 65, 731 S.E.2d 303 (Ct. App. 2012).

Adickes never sought temporary benefits, so he is barred from seeking same at this time.

2. PERMANENT AWARDS COMMENCE AS OF THE DATE CLAIMANT REACHES MMI FOR ALL WORK-RELATED INJURIES.

The Commission erred in concluding that the commencement date of Adickes' wage loss award was not reversed, as this Court expressly indicated otherwise in the remand directives: "Accordingly, we **reverse the Appellate Panel's award of 340 weeks' compensation commencing January 17, 2014,** and remand for a new calculation of benefits consistent with the plain language of section 42-9-20." (R. p. 39).

During the remand proceedings, Adickes repeatedly provided instructions to the Commissioners which were in direct contravention to this Court's explicit directives laid out in Op. No. 2018-UP-027. Adickes informed the Commission that this Court held that his wage loss award was to commence as of the date of his termination, January 17, 2014, and he went as far as to instruct the Commission that this was the law of the case which could not be disrupted. Specifically, Adickes' counsel made the following misrepresentations to the Single Commissioner and Appellate Panel on remand:

> ...the Court of Appeals did not reverse the findings of when the wage loss began. They simply said it was limited by the 340 weeks from the date of injury. That wasn't overturned. **That's the law of the case**. I think on remand, **respectfully, I don't think you have a choice but to do simply that. So, that's the law of the case** ... And then they go on to say, "the record is clear, Adickes did not suffer a wage loss until he was terminated from employer." So, I think they have explicitly affirmed that; they certainly didn't overturn it ... Again, **I don't think they remanded this case for a different decision in terms of when the wage loss began.** They simply said that you can't get wage loss beyond 340 weeks from the date of injury, and that's what the calculation that was envisioned by the Court of Appeals was remanded.

(R. p. 642, lines 10-25; R. p. 643, lines 3-7; R. p. 662, lines 17-22; *emphasis added*).

First, the opinion of the Court of Appeals **did not reverse the finding in Commissioner McCaskill's August 27, 2015 Order where he found that Claimant's disability began January 17, 2014.** The Court of Appeals simply found that Claimant's award must be reduced by the number of weeks that elapsed between the date of injury and the date Claimant's disability began. The date on which Claimant became disabled was therefore never overturned by either the Appellate Panel of the Commission or by the Court of Appeals and is **consequently the law of the case.**

(R. pp. 224-225, *emphasis added*).

The record is clear that Adickes did not suffer a wage loss until he was terminated from the employer. Commissioner McCaskill found that that's when his wage loss started; the Appellate panel found that's when his wage loss started; and the **Court of Appeals explicitly states it here that that's when his wage loss began. They did not remand this case for some issue regarding Maximum Medical Improvement** ... They remanded a math problem back. Basically it was you can't get more than 340 weeks from the date of injury. But he worked two and a half years, so deduct that period. **That's what the remand is all about ... I don't think you ever have to get into any of this MMI stuff because it's not on remand to you.**

(R. p. 766, lines 16-22; R. p. 767, lines 15-19; R. p. 770 lines 23-25; *emphasis added*).

The law of the case is that benefits commence as of January 17, 2014 ... Furthermore, the Court of Appeals expressly affirmed the date benefits began ... **The issue of and date of Maximum Medical Improvement is beyond the scope of remand from the Court of Appeals** ... **The Court of Appeals did not direct or empower the Commission to determine a date of MMI. To do so at the behest of Defendants would be to go down a rabbit hole beyond the scope of the remand of the Court of Appeals and would be reversible error.**

(R. pp. 253-256).

Regardless of Adickes' assertions to the Commission, the language of Op. No. 2018-UP-027 is clear. The commencement date of Adickes' wage loss award was explicitly reversed, so the issue was properly before Commissioner Barden and the Appellate Panel, and is now back before this Court.

The Commission erred in concluding that that the issue of MMI is immaterial in a wage loss claim. It is well established in South Carolina that workers' compensation benefits run on a certain timeline, and that permanent benefits are awarded after a Claimant has reached MMI. The

South Carolina Supreme Court held that "workers' compensation benefits accrue along a time continuum: temporary total disability benefits are available from the date of injury through the date of maximum medical improvement; post-MMI benefits may then be awarded either as permanent total or partial disability, or as a percentage of impairment to a scheduled member. Curiel v. Environmental Management Services, 376 S.C. 23, 29, 655 S.E.2d 482, 485 (2007). Likewise, in Smith v. S.C. Dep't of Mental Health, the Court explained that the rationale for ceasing temporary benefits upon a finding of MMI is to permit entry of a permanent award, and noted that the degree of permanent disability cannot be determined prior to MMI. 335 S.C. 396, 399, 517 S.E.2d 694 (1994), citing Hines v. Hendricks Canning Co., 263 S.C. 399, 211 S.E.2d 220 (1975).

As discussed above, the Supreme Court in Curiel held that workers' compensation benefits accrue on a time continuum: temporary total disability (TTD) benefits are available from the date of injury through the date of MMI, and post-MMI benefits may be awarded either as permanent total or permanent partial disability, or as a percentage impairment to a scheduled member. 376 S.C. 23, 29 (2007), citing Smith v. NCCI, Inc., 369 S.C. 236, 631 S.E.2d 268 (Ct. App. 2006).

As such, Adickes' permanent wage loss award should commence the date he reached MMI for all of his work-related injuries.

a. Adickes Arguments to the Contrary Should be Disregarded.

Adickes is well aware of the legal precedents pertinent to the issue of when permanent awards commence, as he made these arguments leading up to Op. No. 2018-UP-027. In the years of 2014 – 2016, Adickes adamantly argued that a permanent award was warranted because he had reached MMI for all of his work-related injuries, as follows:

> Here, the overwhelming preponderance of evidence in the record clearly indicates that Claimant reached **Maximum Medical Improvement** for the work-related injuries sustained on March 22, 2011 ... The medical evidence supports that Claimant reached **MMI for all of his work-related injuries.** If a surgical recommendation prevented **MMI** designation ... they could ostensibly never reach MMI under Defendant's logic and remain in a perpetual legal limbo ... [A]s the ratings are **permanent** in nature, this **language is also determinative as to MMI** ... Using the plain language of the words "permanent impairment," it is only logical for a determination of **MMI** upon the assignment of such ratings ... Therefore, the Single commissioner was correct in finding that Claimant reached **MMI for all of his work-related injuries as of Dr. Barron's January 14, 2015** statement.
>
> (R. pp. 133, 135-136, 145, *emphasis added*).
>
> No physician has opined Barry is not at **MMI** ... They said the claim was not ripe; that Barry had not reached **MMI** because Barry did not have disability ratings for his shoulders. Barry would actually have those ratings by the hearing.
>
> (R. pp. 155, 158, *emphasis added*).

Recognizing that maintaining the above arguments is detrimental to the determination of when his wage loss award should commence following Op. No. 2018-UP-027, Adickes has now wholly abandoned the above MMI arguments. Turning a blind eye to the controlling legal authorities, Adickes now argues that MMI is immaterial to a wage loss award, so the date of the designation is unnecessary.

Adickes now cites many cases, arguing that they stand for the proposition that MMI is irrelevant and unnecessary in a wage loss claim, all of which are irrelevant or distinguishable to the case at hand. Adickes argues that the Outlaw decision stands for the proposition that when loss of earning capacity manifests itself in relation to MMI is of no consequence. Outlaw v. Johnson Service Co., 254 S.C. 486, 176 S.E.2d 152 (1970). In reality, the phrases "MMI" and/or "maximum medical improvement" are nowhere to be found in the entire Outlaw opinion. The Outlaw court dealt with the issue of whether the degree of medical impairment impacts a general disability award, which has nothing to do with the timing of MMI.

Adickes argues that the McMahon decision stands for the proposition that an individual can be permanently disabled and still yet to achieve MMI. McMahon v. S.C. Department of Education, 417 S.C. 481, 790 S.E.2d 393 (Ct. App. 2016). In reality, the McMahon court specifically stated that the court's decision did not hinge on whether the Claimant had reached MMI. Since McMahon had died due to unrelated causes after his injury, the McMahon court's focus was on whether a Claimant could be entitled to a posthumous adjudication of permanent disability, under § 42-9-280.

Adickes argues that the Bass decision stands for the proposition that a declaration of MMI is irrelevant to the award of permanent partial disability. Bass v. Kenco Group, 366 S.C. 450, 622 S.E.2d 577 (Ct. App. 2005). In reality, the holding from Bass states: "A declaration of MMI is irrelevant to the award of permanent partial disability ***in this case***." (emphasis added). Bass suffered two compensable injuries – a shoulder injury and a subsequent mental injury resulting from same. The Bass court analyzed whether a Claimant could be entitled to permanent benefits having only reached MMI for his physical injuries, since there was no clear designation of MMI for his mental injury. The Bass court focused on the rationale for ceasing temporary benefits in favor of permanent benefits upon a finding of MMI, since the designation indicates that the injury is permanent. Thus, the court noted that the Claimant's psychologist, Dr. Estefano, stated that the Claimant would continue to suffer mentally as long as he suffers from his work-related injury. It follows that, since his physical injury was deemed to be permanent, the Court found that his mental injury was also permanent in nature. This holding is only applicable to cases with particular facts as those in Bass. Here, Adickes did not sustain a psychological injury; thus, his reliance on Bass is misplaced.

Adickes cites Dodge as standing for the proposition that MMI is a distinctly different concept from disability. Dodge v. Bruccoli, Clark, Layman, Inc., 334 S.C. 574, 514 S.E.2d 593 (Ct. App. 1999). The Dodge court was faced with the issue of whether a Claimant is entitled to additional medical treatment following designation of MMI, which is not an issue here.

Adickes' new, and wholly conflicting, position that MMI is immaterial to a wage loss award, is diametrically opposed to arguments Adickes made leading up to this Court's issuance of Op. No. 2018-UP-027. As such, his argument that MMI is immaterial to a wage loss award should be disregarded by this Court as Adickes is judicially estopped from making these assertions. *See generally* Hayne Federal Credit Union v. Bailey, which states in part that "judicial estoppel precludes a party from adopting a position in conflict with one earlier taken in the same or related litigation." 327 S.C. 242, 489 S.E.2d 472 (1997).

b. Adickes Reached MMI for All of His Work-Related Injuries on January 14, 2015.

It is undisputed that Adickes had been placed at MMI for his head and cervical spine prior to the first hearing in this case, so the question is when Adickes reached MMI for his last body part – his right shoulder. Dr. Barron did not find Adickes to be at MMI when he evaluated him in 2012; rather, he recommended that Adickes undergo a right shoulder MRI scan. (R. pp. 493-495). At Appellants request, Adickes returned to his authorized physician right before the hearing in 2014 for a "rate and release"; yet Dr. Rentz didn't place him at MMI or assign a rating, rather, he recommended Adickes undergo an MRI scan. (R. pp. 581-584). Once he underwent this scan in October of 2014 and same was provided to Dr. Barron (rather than his ATP), Dr. Barron finally assigned an impairment rating to Adickes' right shoulder. (R. p. 496).

There is a clear date in which Adickes can be found to have reached "MMI for all work-related injuries," which is the date that Dr. Barron completed the questionnaire response that assigned a rating to his right shoulder. In fact, it was this rating that compelled Commissioner McCaskill to deem Adickes at MMI for his right shoulder, making the claim ripe for a permanency determination, as evidenced by the Findings of Fact contained in his Order:

> 5. The Claimant contends that the questionnaire from Dr. Jerry L. Barron provides a determination of MMI.
>
> 6. I have reviewed the questionnaire of Dr. Barron and must agree with Claimant's counsel as to a determination of MMI.
>
> (R. p. 11 Find. of Fact ¶¶ 5-6)

Contrary to Adickes' recent arguments, there is a date of MMI. In fact, leading up to Op. No. 2018-UP-027, Adickes indicated his support of the MMI date argued by Appellants. Adickes made the following arguments in his brief to the Appellate Panel:

> Therefore, the Single Commissioner was correct in finding that Claimant reached **maximum medical improvemen**t for all of his work-related injuries as of Dr. Barron's **January 14, 2015** statement ... the medical evidence supports that the Claimant reached MMI for all of his work- related injuries.
>
> (R. pp. 136, 145 *emphasis added*).

Now, in yet another about-face, Adickes argues that if the Commission finds that the date of MMI does matter, the Commission should find that the Claimant reached MMI on November 2, 2012, the date of designation related to his cognitive injuries. Adickes cites no legal authority in support of this newfound argument that the Claimant need only be placed at MMI for the injury found to have contributed to the loss of earning capacity, simply because there is no legal support. Adickes should be estopped from taking this contrary position.

Adickes was placed at MMI for all of his work-related injuries as of the date of Dr. Barron's questionnaire response, **January 14, 2015**, which is when his permanent wage loss award should commence.

3. THE COMMISSION ERRED IN HOLDING THAT ADICKES' PERMANENT WAGE LOSS AWARD COULD EXTEND BEYOND 340-WEEKS FROM HIS DATE OF ACCIDENT, IN CONTRAVENTION TO THIS COURT'S DIRECTIVES IN OP. NO. 2018-UP-027.

This Court stated in no uncertain terms that "the statute explicitly mandates that in 'no case' will PPD benefits be available to a claimant beyond the term of 340 weeks 'from the date of injury.'" Op. No. 2018-UP-027. Where a case that has been appealed is remanded by the court to the workers' compensation commission with specific directions, the commission must proceed in accordance with those directions. Bobo v. Marshane Corp., 302 S.C. 86, 88, 394 S.E.2d 2, 4 (Ct. App. 1990). The Commission had an obligation to comply with the 2018 Remand Order from this Court, which it failed to do. Rather, the Appellate Panel held that the proper application of S.C. Code Ann. § 42-9-20 allows for a Claimant to receive credit for TTD benefits received, somehow interpreting this to mean that a wage loss award can be extended beyond the 340-week limitation. (R. pp. 63-64).

While Adickes was quick to instruct the Commission as to which holdings couldn't be disrupted on remand, he failed to acknowledge the one holding which was explicitly established in Op. No. 2018-UP-027 - wage loss awards cannot extend beyond 340-weeks from the date of injury. Adickes argues that the final sentence of the S.C. Code Ann. § 42-9-20 warrants an extension of a wage loss award according to the amount of weeks of temporary benefits received. (R. p. 258). He further argues that Appellants' position to the contrary is "non-sensical." (R. p. 259). In reality, interpreting this sentence as a means to increase the available weeks of wage loss

benefits is non-sensical, as there is not a single word supporting the proposition that a Claimant is entitled to double recovery of temporary benefits when receiving a permanent wage loss award.

Just as with the other sections of this statute, the plain language of this sentence is unambiguous. Simply put, since wage loss awards are much more restricted than PTD awards, the legislature saw it fit to place this safeguard within S.C. Code Ann. § 42-9-20 in order to prevent the award from any additional reductions. Awards of permanent total disability ("PTD") benefits and permanent partial disability ("PPD wage loss") benefits are both predicated on showing a loss of earning capacity (partial vs. total), but they differ significantly when it comes to how the awards are calculated.

In a PTD award under S.C. Code Ann. § 42-9-10(A), the Claimant is entitled to a payout of 500 ***total*** weeks of total disability benefits, temporary and permanent combined. Thus, calculation of a PTD award is simple math: 500 weeks less the number of weeks of benefits paid to date. In contrast, PPD wage loss awards are limited by the timeframe in which a Claimant could potentially be entitled to same. It is this very difference that necessitated the inclusion of the last line of S.C. Code Ann. § 42-9-20, which states:

> In case the partial disability begins after a period of total disability, the latter period shall not be deducted from a maximum period allowed in this section for partial disability.

The facts of this case help illustrate this sentence in action: Adickes was out of work for nearly 8 weeks after the date of accident, so Appellants provided temporary total disability benefits for that period. This is the "period of total disability" referenced in the above section. Adickes is now being awarded permanent partial disability benefits, which is the "partial disability beginning after a period of total disability" referenced in the above section. The "period of total disability"

is the "latter period" in the above sentence, and the statute directs that "the latter period shall not be deducted from the maximum period allowed in this section for partial disability."

Here, 340 weeks from Adickes' date of accident fell on September 24, 2017. Although Adickes received temporary benefits early on in the claim, the last sentence of § 42-9-20 operates to keep the 340-week date in place, preventing Appellants from arguing that Adickes is now only entitled to 332 weeks and 2 days of wage loss benefits. Thus, this sentence operates as a protection to Adickes, and Appellants have never argued otherwise.

While this sentence is certainly for the benefit of a Claimant, it unquestionably does not **extend** the 340-week limitation as argued by Adickes. Frankly, Appellants are confounded as to how this sentence could be interpreted to extend the 340-week limitation period; regardless, the Commission's "application" of this provision amounts to a double recovery for Adickes, which was certainly not the legislature's intent.

B. THE COMMISSION ERRED IN HOLDING THAT APPELLANTS HAD AN OBLIGATION TO CONTINUE PAYMENT OF WEEKLY PERMANENT WAGE LOSS BENEFITS FOLLOWING THIS COURT'S OP. NO. 2018-UP-027.

The Commission held that Appellants illegally terminated weekly compensation benefits and, therefore, ordered Appellants to reinstate Adickes' weekly permanent wage loss benefits as of February 6, 2019, with an assessed 10% penalty on the "unpaid disability installments." (R. pp. 70-71, Findings of Fact ¶¶ 4-7, Concl. of Law ¶¶ 1-2). The Commission's holding that Appellants unlawfully suspended Adickes' weekly disability benefits is in direct contravention to the controlling authorities on the issue of an Employer's payment obligations while pursuing an appeal.

1. APPELLANTS PROPERLY PAID ALL BENEFITS DUE TO CLAIMANT RELATED TO THE PRIOR APPEAL TO THIS COURT.

The Appellate Panel erred in holding that Appellants were obligated to continue making weekly wage loss payments to Adickes following Op. No. 2018-UP-027. Appellants agree that an appeal does not act as a supersedeas, which is why Appellants properly commenced payment of weekly permanent wage loss benefits when this case was taken up on appeal in 2016. There is no dispute that Appellants properly commenced weekly benefits as ordered under the Full Commission Order and continued providing medical treatment during the appeal of same to the Court of Appeals.

The Supreme Court in Case v. Hermitage Cotton Mills performed an extensive analysis of its prior decisions concerning the application of the supersedeas provision in order to remove any confusion as to an employer's payment obligations following an appeal. 236 S.C. 515, 530, 115 S.E.2d 57, 66 (1960). At the time of the Hermitage decision, the pertinent statute[5] read:

> In case of an appeal from the decision of the commission on questions of law, such appeal shall operate as a supersedeas for thirty days only and ***thereafter*** the employer shall be required to ***make payment of the award*** involved in the appeal or certification until the questions at issue therein shall have been fully determined in accordance with the provisions of this Title."
>
> (S.C. Code 1952 § 72-356, emphasis added).

With regard to the payments to be made, the Hermitage court recognized that the language "make payment of the award" was susceptible to different interpretations. The Court noted that, on one hand, the phrase could refer only to weekly continuing payments awarded to the Claimant but, on the other, it could refer to all benefits awarded to the Claimant in the Award, including disfigurement, medical expenses, and accrued weekly compensation from the date of accident. (Id.

[5] The Hermitage court analyzed this question under § 72-356, the predecessor to S.C. Code Ann. § 42-17-60.

at 533). In its analysis, the Hermitage court recognized that the thirty-day supersedeas was indicative of the legislative intent to provide an employee with financial aid, in the extent of weekly benefits, so long as the award shall remain in force. (Id. at 531). At the same time, the court was keenly aware of the employer's concern of paying an award that could be reversed on appeal and having no way of recouping those payments. (Id. at 533). As such, the Supreme Court held in Hermitage that the statute should be construed in fairness to both the employee and employer; therefore, the Court held that employers appealing a Full Commission Award are only required to pay the ***weekly benefits accruing after the Full Commission decision***. (Id. at 533 - 534, *emphasis added*).

S.C. Code Ann. § 42-17-60 was modified in 2007 to further clarify that the Employer is only obligated to pay two types of benefits while on appeal: weekly compensation and medical benefits. S.C. Code Ann. § 42-17-60 reads:

> In case of an appeal from the decision of the commission on questions of law, the appeal does not operate as a supersedeas and, after that time, the employer is required to ***make weekly payments of compensation and to provide medical treatment ordered by the commission*** involved in the appeal or certification until the questions at issue have been fully determined in accordance with the provisions of this title.

The 2016 Appellate Panel ordered Appellants to commence benefits as of January 17, 2014 for a period of 340 weeks, which entitled Adickes to weekly benefits until July 24, 2020. Thus, when Appellants appealed the 2016 Appellate Panel Award in March of 2016, Appellants were under an Order to provide ongoing weekly benefits to Adickes and properly commenced same.

2. APPELLANTS WERE UNDER NO OBLIGATION TO CONTINUE WEEKLY PAYMENTS TO ADICKES FOLLOWING OP. NO. 2018-UP-027.

In January of 2018, this Court explicitly held that Adickes was not entitled to weekly benefits beyond 340 weeks from the date of accident, which was September 24, 2017. (R. pp. 35-39). Thus, as of the date this Court issued Op. No. 2018-UP-027, the 340-week limitation date had already passed. As such, Appellants were not under any obligation to continue payment of weekly wage loss benefits to Adickes while the case was on remand.

The Supreme Court's holding in McLeod v. Piggly Wiggly Carolina Co. demonstrates an Employer's payment obligations when the case is on remand by the Court of Appeals. 280 S.C 466, 313 S.E.2d 38 (Ct. App. 1984). In McLeod, the Full Commission deemed McLeod's back condition compensable, awarded a period of TTD benefits for a period before the Full Commission Award, and awarded PPD benefits of 25% loss of use of his back. The Circuit Court affirmed, and Piggly Wiggly appealed. While on appeal, the Circuit Court ordered Piggly Wiggly to make weekly payments of the PPD benefits accruing ***after*** the date of the Full Commission award, pursuant to the Case v. Hermitage decision. (Id. at 472). The Supreme Court issued an Order affirming, reversing and remanding the Circuit Court Order. (Id. at 471-473). Specifically, the McLeod Court affirmed the compensability of his back condition, but reversed the 25% PPD award under § 42-9-20 and remanded for a redetermination as to the degree of partial loss of use. (Id. at 471). The court also affirmed McLeod's entitlement to TTD but remanded for a determination of the proper dates of the TTD award. (Id. at 471-472).

Citing Hermitage, the court held that it was proper for the Employer to make payment of the permanent partial disability award accruing after the Full Commission Order while on appeal, since those payments are in the nature of support. (Id. at 472). The McLeod Court went further than Hermitage, in that it also issued an opinion as to an Employer's payment obligations when

certain issues remain on remand to the Full Commission. In McLeod, the Full Commission was tasked with determining the proper period of TTD and the degree of partial loss of use of his back – both of which are benefits considered to be in the nature of support. The Supreme Court ended its Opinion with this: "Accordingly, all issues on appeal are affirmed except the ones related to the extent of partial loss of use and the award of Temporary Total Disability benefits. Those two issues are remanded for further factual findings in accordance with this opinion. ***Because of the remand, no payments shall be required until the expiration of the thirty-day period following the Commission's decisions on the remanded issues***. (Id. at 472, *emphasis added*). In other words, the supersedeas payment obligations were suspended unless/until the Employer chose to appeal the Full Commission's determination of the issues following remand.

As detailed above, the McLeod court explicitly held that the Employer was no longer obligated to continue payment of weekly benefits under S.C. Code Ann. § 42-9-20 while the issue was on remand to the Full Commission. Here, in Op. No. 2018-UP-027, this Court agreed that Adickes was entitled to benefits under S.C. Code Ann. § 42-9-20 and remanded for a calculation of same. These scenarios couldn't be more similar. Appellants commenced payment of the PPD award as of the date of the Full Commission Award, so it is undisputable that the additional benefits that may be awarded to Adickes on remand are benefits which occurred ***prior*** to the Full Commission's Order.

Just like in McLeod, the remaining issue on remand is the calculation of benefits under S.C. Code Ann. § 42-9-20; thus, Appellants were under no obligation to continue payment of weekly benefits following Op. No. 2018-UP-027.

3. APPELLANTS DID NOTHING "ILLEGAL" BY SUSPENDING ADICKES' WEEKLY BENEFITS; THEREFORE, THE COMMISSION'S ASSESSMENT OF FINES/PENALTIES IS IN ERROR.

Appellants expected the Full Commission to perform the calculation and issue an order shortly after the remand (pursuant to the directives), so rather than suspending, Appellants continued payment of his weekly benefits as a courtesy. Appellants paid weekly benefits to Adickes for 70 weeks beyond the date of the Court of Appeals decision. As it became evident that Adickes would incur an overpayment due to the ongoing weekly benefits, Appellants suspended his weekly benefits on February 5, 2019 to avoid the situation contemplated in Hermitage, where Appellants would be unable to recover benefits from an employee which were in excess of his actual entitlement.

Adickes has no legal entitlement to ongoing weekly benefits as there is no Order in the case awarding same, so it cannot be said that Appellants have broken any laws by discontinuing those paid voluntarily. Rather than seeking fines and penalties against Appellants, Adickes should be thankful that Appellants opted to provide him ongoing financial assistance during a large portion of the remand proceedings.

C. THE COMMISSION ERRED IN FINDING THAT APPELLANTS WILLFULLY DISOBEYED A PRIOR ORDER

It is well-established that the Commission has the ability to impose sanctions on either party under certain circumstances. Specifically, under S.C. Code Ann. § 42-3-175, the Commission is allowed to impose sanctions based on "willful disobedience" of an Order; however, "willful disobedience" is a high bar, and should not be attributed in most situations. Further, the party seeking contempt has the burden of proving the necessary elements by clear and convincing evidence, the highest standard of proof known to the civil law. Durlach v. Durlach, 359 S.C. 64,

596 S.E.2d 908, 912 (2004); Miller v. Miller, 375 S.C. 443, 457, 652 S.E.2d 754, 761 (Ct. App. 2007). The conduct proscribed or prescribed by the Order must be set forth in "clear and certain" terms; it must be stated specifically and definitely rather than by implication. Welchel v. Boyter, 260 S.C. 418, 421, 196 S.E.2d 496, 498 (1973). The contemptuous conduct must be a *"*willful disobedience*"* of the Order, *i.e.*, contempt does not lie for a violation resulting from mistake, misunderstanding, confusion, or negligence. Henderson v. Henderson, 298 S.C. 190, 197, 379 S.E.2d 125, 129 (1989) (*emphasis added*). To be "willful," the disobedience must be done "voluntarily and intentionally with the specific intent to fail to do something" required by the Order (the prescribed conduct). State v. Sowell, 370 S.C. 330, 336, 635 S.E.2d 81, 83 (2006), quoting Spartanburg County DSS v. Padgett, 296 S.C. 79, 82-83, 370 S.E.2d 872, 874 (1988).

The word "willful" is used in portions of the South Carolina Workers' Compensation Act in relation to defenses provided to the Employer. With regard to the "willful intent" to injure defense, the courts have held that the "willful intent" defense finds application only in those cases where it is shown the acts of the employee are so serious and aggravated as to evidence a willful intent to injure. Ziegler v. S.C. Law Enforcement Div., 250 S.C. 326, 329, 157 S.E.2d 598, 599 (1967). Further, in Reeves v. Carolina Foundry and Machine Works, the Court of Appeals held that the word "willful" means more than just "intentional." 194 S.C. 403, 9 S.E.2d 919 (1940). The Reeves Court determined that the phrase "willful intent" means deliberate intent or formed intent. (Id.). The burden of establishing such defense rests on the party asserting it. (Id.).

Moreover, this statute was previously analyzed by the Commissioner that heard this issue, Commissioner James. Richie v. Propel Peo, d/b/a Sonic Drive-In, WCC No. 1300421, 2014 WL 7927738 (S.C. Work Comp. Comm. Feb. 11, 2014), and was later affirmed by the Full Commission Richie v. Propel Peo, d/b/a Sonic-Drive-In, WCC No. 1300421, 2015 WL 851340

(S.C. Work Comp. Comm. Jan 6, 2015). In analyzing whether the defendants were subject to sanctions under this statute, Commissioner James held that, "willful contempt is an act with the specific intent to do something the law forbids, or with the specific intent to fail to do something the law requires to be done; that is to say, with bad purpose either to disobey or disregard the law." (Id.)

Appellants admit that there was a few weeks of delay in authorization of Adickes' medications prescribed by Dr. Howard Mandell. During that time, it is undisputed that Appellants remained in constant communication with Adickes' counsel about the status of approval. While Appellants concede to the delays, in no way did Appellants delay the authorizations intentionally or do so to deliberately disregard the law. Adickes raised this issue to the Commission, and is claiming that the Appellants are in contempt of an Order; therefore, it is his burden to prove that the Appellants acted with the requisite willful intent.

Adickes provided no evidence showing that Appellants acted with a bad purpose or intent to disobey the law; as such, the assessment of fines and penalties was in error.

CONCLUSION:

Pursuant to the applicable legal authorities and directives from the Court of Appeals set out in Op. No. 2018-UP-027, Adickes is entitled to a wage loss award commencing the date he reached MMI for all of his compensable injuries (January 14, 2015) through 340 weeks from his date of accident (September 24, 2017). Further, Appellants were entitled to suspend Adickes' weekly wage loss benefits as of February 6, 2019, and should not be subject to fines/penalties due to suspending benefits that were being paid on a voluntary basis. Lastly, although there were

delays in providing authorizations for Adickes' medications, Appellants did not act intentionally or do so to deliberately disregard the law, so fines/penalties are unwarranted.

WHEREFORE, Appellants pray that this Court reverse the Appellate Panel Decisions and Orders in their entirety and issue an appropriate award.

Respectfully submitted this AUGUST 17, 2020.

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