

THE STATE OF SOUTH CAROLINA
In the Supreme Court

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S.C. SUPREME COURT

APPEAL FROM THE SOUTH CAROLINA
WORKERS' COMPENSATION COMMISSION
APPELLATE PANEL

Appellate Case No. 2020-001133
W.C.C. File Nos. 1322789, 1423445, 1503655, 1519702, 1719990

Terry Capone, Petitioner,

v.

City of Columbia, Employer, and
Companion Third Party Administrator, LLC, Carrier, Respondents.

RESPONDENTS' RETURN TO PETITION FOR WRIT OF *CERTIORARI*

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Pursuant to Rule 242(f), SCACR, Respondents City of Columbia, Employer, and Companion Third Party Administrator, LLC, Carrier, respectfully submit this Return in opposition to the Petition for Writ of *Certiorari*.

STATEMENT OF THE CASE

Appellant *pro se* Terry Capone (“Capone”) seeks appellate review of two evidentiary rulings by the South Carolina Worker’s Compensation Commission relating to its file numbers 1322789, 1423445, 1503655, 1519702, and 1719990. The first order, dated April 20, 2020, denied Capone’s motion to supplement the record before the Commission. The second order, also dated April 20, 2020, denied Capone’s motion to add parties as respondents in the Commission proceedings. These Orders are attached collectively as Exhibit 1 to this Return.

Capone challenged the April 21 Orders via his Notice of Appeal filed in the South Carolina Court of Appeals dated April 22, 2020. In its Order dated April 29, 2020, the Court of Appeals dismissed Capone’s appeal on the basis the Commission orders were interlocutory and, therefore, not subject to immediate review pursuant to *Bone v. U.S. Food Service*, 404 S.C. 67, 84, 744 S.E.2d 552, 561 (2013). Thereafter, the Court of Appeals denied Capone’s petition for rehearing via Order dated August 13, 2020. The Orders dismissing the appeal and denying rehearing, as well as the briefing submitted by the parties, are included in the Appendix compiled for this Court.

ARGUMENT

I. THIS COURT SHOULD DENY APPELLANT’S PETITION FOR *CERTIORARI* BECAUSE THE COURT OF APPEALS CORRECTLY DISMISSED THE APPEAL AS INTERLOCUTORY.

As the Court of Appeals correctly observed in its Orders dismissing this appeal and denying rehearing, Capone’s underlying workers’ compensation claims remain pending before

the Commission. The Commission orders he challenges on appeal are evidentiary in nature and do not constitute final orders disposing of the entire controversy. Thus, inasmuch as the orders challenged on appeal are interlocutory and do not constitute a final adjudication of all issues in this case, the appeal was properly dismissed. This Court should deny the petition for certiorari.

South Carolina and the Workers' Compensation Commission "adhere to the final judgment rule. Accordingly, subject to certain exceptions, an appeal lies only from a final judgment." *Brunson v. American Koyo Bearings*, 367 S.C. 161, 165, 623 S.E.2d 870, 872 (Ct. App. 2005), *reh'g denied* (Jan. 19, 2006), citing *Hagood v. Sommerville*, 362 S.C. 191, 194-195, 607 S.E.2d 707, 708 (2005); S.C. Code Ann. §§ 1-23-380 and -390; Rule 201(a), SCACR. "An order which does not finally end a case or prevent a final judgment from which a party may seek appellate review usually is considered an interlocutory order from which no immediate appeal is allowed." *Hagood*, 362 S.C. at 195, 607 S.E.2d at 709 (citing *Tatnall v. Gardner*, 350 S.C. 135, 138, 564 S.E.2d 377, 379 (Ct. App. 2002)).

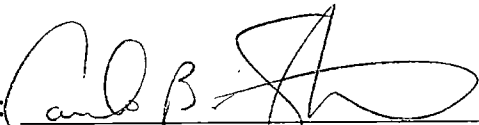
The Orders on appeal in the instant case are not final orders and do not prevent a final judgment. A "final judgment" is an order that must dispose of the whole subject matter of the action or terminate the action, leaving nothing to be done but to enforce what already has been determined. *Bone*, 404 S.C. at 75, 744 S.E.2d at 557 (citing *Charlotte-Mecklenburg Hosp. Auth. v. S.C. Dep't of Health and Envtl. Control*, 387 S.C. 265, 267, 692 S.E.2d 894, 895 (2010); *Long v. Sealed Air Corp.*, 391 S.C. 483, 706 S.E.2d 34 (Ct. App. 2011)). Consistent with the holdings of *Bone* and *Long*, the orders below do not dispose of the entire case. Since no final judgment has been rendered, the Court of Appeals properly dismissed Capone's appeal and remanded to the Commission for further proceedings consistent with the Commission's Orders. Moreover, this case does not present the likelihood or "possibility of repeated unexplained 'do overs'

before a final decision of the Commission” sufficient to warrant immediate review. *Russell v. Wal-Mart Stores*, 426 S.C. 281, 287, 826 S.E.2d 863, 287 (2019) (quoting *Hilton v. Flakeboard America Limited*, 418 S.C. 245, 252, 791 S.E.2d 719, 723 (2016)). Dismissal was appropriate, and this Court should deny the Petition.

CONCLUSION

Based on the foregoing, Respondents City of Columbia, Employer, and Companion Third Party Administrator, LLC, Carrier, respectfully urge the Court to deny Petitioner’s Petition for Writ of *Certiorari*.

September 24, 2020

By: 

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