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**SC Court of Appeals**

THE STATE OF SOUTH CAROLINA  
In the Supreme Court

APPEAL FROM THE SOUTH CAOLINA COURT OF APPEALS

James E. Lockemy, Chief Judge of the Court of Appeals

John D. Geathers, Court of Appeals Judge

Blake A. Hewitt, Court of Appeals Judge

Veronica Rodriguez, Employee ..... Respondent,

V.

Peggy Evers, Employer, and NorGuard Insurance Company, Carrier .....Appellants.

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RESPONDENT'S RETURN TO APPELLANTS'  
AMENDED PETITION FOR WRIT OF CERTIORARI

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## COUNTER-STATEMENT OF THE CASE

The “Statement of the Case” section of the *Petition for Writ of Certiorari* and the *Amended Petition for Writ of Certiorari* filed by Peggy Evers and NorGuard Insurance Company correctly recites the procedural history of this matter. By way of her counter-statement of the case, Respondent Veronica Rodriguez would add the following five things.

First, Commissioner Mike Campbell correctly found that Claimant/Respondent was an independent contractor yet was covered under the Workers’ Compensation Act as a statutory employee. (Pet. p. 2). Documentary evidence and Employer’s testimony showed that Employer “deducted worker compensation insurance premiums from each of the Claimant’s pay checks during her period of employment. (R. p. 6; p. 27, line 3; p. 28, line 20; p. 29, line 23; p. 30, line 13; p. 31, lines 11-25). “[A]ll premiums were paid twice each month by involuntary deduction from Claimant’s pay check.” (R. p. 6). Employer “testified she also deducted workers compensation insurance premium contributions from all of her subcontractors similarly situated as Ms. Rodrigues.” (R. p. 6). Evidence also showed that Employer, through supervisory Molly, exercised control over Claimant by directing her to wait for the supervisor after Claimant’s injury; then, by directing Claimant to meet the supervisor at the Employer’s office that same day, prior to receiving medical care; by instructing Claimant to seek medical care of her choice; and Employer “had total control over her work assignments and schedule each week. Claimant had no control.” (R. pp. 5, 9). Other evidence showed that Carrier had initially monitored and approved Claimant’s care, X-rays, MRI and provided a prescription card. (R. pp. 5, 7). In finding Claimant/Respondent to be a statutory employee of Peggy Evers, and in establishing their statutory employer/employee relationship, Com. Campbell honed in with specific attention on the financial records submitted by the Defendant/Appellants, holding: “A review of the financial records submitted by the Defendant (Def APAs, pp. 1-35) *reveals the magnitude of the workers compensation insurance*

*premium deduction* from the Claimant alone to be approximately \$1913.18 when calculated from August 15, 2015 to December 5, 2016.” (emphasis added) (*Id.*). Additionally, Com. Campbell held that “[...] *due to the withholdings from the Claimant’s payments by the Employer for the workers’ compensation insurance premiums and pursuant to SEC 42-1-400 of the ACT, I hereby find Defendants are responsible for providing workers compensation benefits under the Act to the Claimant.* Based on the preponderance of the evidence, *particularly the financial records of the defendant Peggy Evers/Cleaner Concepts ... I find the doctrine of estoppel prevents the carrier from denying coverage.*” (emphasis added) (R. pp. 11-12). Thus, Com. Campbell’s determination that Respondent was a statutory employee, thus covered under the Act, was proper, and Appellants’ are estopped from denying coverage.

Second, regarding the attempt to introduce new evidence into the record following the initial hearing of November 3, 2017, Appellants contend that it was unknown to then defense counsel at the time of the original hearing that surveillance efforts commissioned by the carrier revealed Respondent cleaning a house on November 2, 2017. (Pet. p. 2). This characterization is directly contrary to the Record. Appellants’ moved to reopen the record to allow them to submit video surveillance evidence that they had ordered two days before the hearing, on November 1, 2017 and was created on November 1 and 2, 2017 (for the November 3, 2017 hearing). (Respondent’s Final Brief to the Court of Appeals, p. 5). Appellants’ motion stated that they were “unaware” of the “results” of the surveillance at the time of the hearing; that their counsel learned about it when he “checked his email” after, but the day of, the hearing; and, that they “came to be in receipt” of it on November 8, 2017. (*Id.*). Appellants’ motion to reopen conceded that the surveillance evidence existed at the time of the hearing but stated that it “had not been reduced to a format” suitable for use at the hearing. (*Id.*). Respondent filed a Return to the Motion to Reopen,

objecting on several grounds, including that the evidence did not constitute newly discovered evidence because it was known to Appellants' counsel prior to the hearing and it could have been secured for the hearing. (*Id.*). Further, in its' Form 30, Request for Full Commission review of Com. Campbell's Decision and Order and the appeal of the Commission's denial of the Appellants' Motion to Admit Newly Discovered Evidence, Appellants concede that "defendants had undertaken surveillance of the Claimant due to the lack of any noticeable injury while the Parties were waiting for the originally-scheduled hearing that was on October 23, 2017, which was unable to proceed due to lack of time and the schedule of the Georgetown County Court House. (R. p. 24, ¶ 23). This statement, too, is inconsistent with and contrary to the record. Appellants' seek to characterize their inability to introduce this "newly discovered evidence" because it was "unknown to then defense counsel" (Pet. p. 7); however, this characterization is directly contrary to the record and thus without merit.

Third, Respondent strongly disagrees with the assertion that the Court of Appeals' order denying Appellants' second Petition for Hearing and dismissing this appeal was patently erroneous and resulted in an unjust decision which affirms the Commissions' dismissal of Petitioners'/Appellants' appeal. Respondent would instead argue that Appellants' request to reinstate appeal should be denied, as the Court of Appeals correctly found the Commission's decision to deny Appellants' request to reinstate their appeal was within the sound discretion of the Commission and was thus proper. That disagreement is explored in the argument section of this *Return*.

Fourth, Respondent strongly disagrees with the assertion that the Court of Appeals' denial of Appellants' Petition for Rehearing to reinstate Petitioners' appeal to the Workers Compensation Commission amounted to a substantial deprivation to Petitioners' due process rights. In fact,

Appellants were afforded due process and they were the ones who failed to follow the proper administrative procedures. Had Appellants' honored the due date clearly printed on the Form 31, their appeal would not have been dismissed. That disagreement is explored in the argument section of this *Return*.

Fifth, Respondent would draw attention to one aspect of this case's procedural posture: the Petitioners have appealed an Order from the Court of Appeals denying Appellants' second Petition for Rehearing. (Pet. p. 4)(Order, Aug. 5, 2020). The Court of Appeals held that "[T]he Commission has not reached a final decision on the merits of the Claimant's contested case. Thus, the underlying orders are not immediately appealable to this court. Therefore, this appeal is dismissed." (*Id.*) citing *Bone v. U.S. Food Service*, 404 S.C. 67, 74-75, 744 S.E.2d 552, 556-57)(2013)(defining a final judgment as an order which disposes of the entire case and explaining issues like compensability may be raised on appeal of the final award). Petitioners appealed Commissioner Campbell's Order and Denial of Motion to Reinstate Appeal to the Court of Appeals; the Court of Appeals upheld the Commission's denial to Reinstate Appeal in its Order dated May 6, 2020. (Pet. p. 3, Ct. App. Op. May 6, 2020). On May 20, 2020, Petitioners filed a Petition for Rehearing, which was granted. The Court of Appeals withdrew its May 6, 2020 Opinion, substituted a new Opinion filed on June 6, 2020. Petitioners filed a second Petition for Rehearing of the June 6, 2020 decision. On August 5, 2020, the Court of Appeals issued a written order denying this request. (App. Order Denying Reh'g).

Petitioners appealed the Worker's Compensation Commission's (Commission's) dismissal of their appeal from the Single Commissioner, Com. Mike Campbell, and the denial of their motion to reinstate to the Court of Appeals. Appellants/Petitioners appealed Com. Campbell's Order finding that the Claimant/Respondent was a statutory employee and awarding various temporary

benefits. The Commission administratively dismissed the appeal after Appellants/Petitioners did not file their appellate brief. Appellants/Petitioners petitioned the Commission to reinstate, which the Commission denied. Appellants/Petitioners then appealed to the Court of Appeals, which dismissed the appeal as not immediately appealable under S.C. Code Ann. §1-23-380 (Supp. 2019). Respondent respectfully requests an Order denying both Appellants' Petition for Writ of Certiorari and Amended Petition for Writ of Certiorari.

### ARGUMENTS

**Because the Petitioners' Appealed an Order from the South Carolina Workers' Compensation Commission Which Leaves the Merits of Respondent's Claim Unresolved, the Court of Appeals Correctly Dismissed Petitioners' Appeal.**

The Petitioners offer three reasons that this Court should grant certiorari to review the order dismissing this case. First, Petitioners argue that declining judicial review of the Commission's dismissal of their appeal leaves Petitioners (sic) without an adequate remedy, arguing that deferring appeal on compensability until the Commission's final adjudication as the Court of Appeals reasons is not only inadequate, but *totally unavailable*; thus, Petitioners ONLY remedy is this Court's consideration of the merits of their request to reinstate the appeal to the Commission. See (Pet. pp. 4-5)(emphasis in original). Second, Petitioners' argue that the Commission arbitrarily applied a regulation to deprive Petitioners of a statutory right of appeal in violation of due process of law; they submit that the Commissions' dismissal of their appeal is arbitrary, capricious, an abuse of discretion and/or an unwarranted exercise in discretion "in violation of every tenant of due process codified by the APA and the Act." See (Pet. p.7) Third, Petitioners argue that they have shown good cause for reinstatement of their appeal to the Full Commission. (Pet. p. 11).

None of these arguments should be persuasive. For the reasons set forth below,

Respondent respectfully requests an Order denying the Petition for Writ of Certiorari.

**I. The Court of Appeals correctly dismissed Petitioners' Appeal of an Order of the South Carolina Workers' Compensation Commission. Appeals from the South Carolina Workers' Compensation Commission are controlled by the Administrative Procedures Act, and a final judgment is required before a claim may be heard by the Appellate Courts.**

The South Carolina Workers' Compensation Commission's ("The Commission") Judicial Conference Decision and Order denying Petitioners' Motion to reinstate Appeal is not a final judgement subject to judicial review, and the Petitioners' Petition should be denied. "The Administrative Procedures Act (APA) was enacted in 1977 and 'purports to provide uniform procedures before State Boards and Commissions for judicial review after the exhaustion of administrative remedies.'" *Bone v. U.S. Food Service*, 404 S.C. 67, 73, 744 S.E.2d 552, 556, (2013) (citing *Lark v. Bi-Lo, Inc.*, 276 S.C. 130, 132, 276 S.E.2d 304, 305 (1981)). The APA establishes the standard for judicial review of decisions of the South Carolina Workers' Compensation Commission. *Bone*, 744 S.E.2d 556.

Under Section 1-23-380(A) of the APA, "[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 ..." S.C. Code Ann. § 1-23-380(A) (Supp. 2019) (emphasis added). Similarly, Section 1-23-390 of the APA, governing further appellate review, provides: "An aggrieved party may obtain a review of a *final judgment* of the circuit court of the court of appeals pursuant to this article by taking an appeal in the manner provided by the South Carolina Appellate Court Rules as in other civil cases." S.C. Code. Ann. § 1-23-390 (Supp. 2019) (emphasis added).

The Supreme Court of South Carolina reviewed an appeal from an Administrative Law Court in *Charlotte-Mecklenburg Hosp. Auth. v. S.C. Dep't of Health & Env't'l Control*, 387 S.C.

265, 692 S.E.2d 894 (2010), and reasoned that appeals in administrative agencies are governed solely by the APA, not by the general appealability statute of Section 14-3-330(1), which allows review of “[a]ny intermediate judgement” involving the merits. *Charlotte-Mecklenburg*, 692 S.E.2d at 894. In *Charlotte-Mecklenburg*, this Court further indicated that concepts applicable in general appeals were not applicable under the APA, as specialized statutes prevail over more general statutes. *Id.* Similarly, the Supreme Court reviewed this scenario in the workers’ compensation context in *Bone*, and after reviewing the reasoning in *Charlotte-Mecklenburg*, the Court stated: “We apply this reasoning in concluding that the meaning of a ‘final judgement’ as used in section 1-23-390 is not defined by using the exceptions that are present in the general appealability statute, whether or not the statute is specifically referenced.” *Bone*, 744 S.E.2d at 557. Accordingly, the *Bone* decision mandates that a final judgement be issued in a workers’ compensation claim before the claim is appealable to a higher court.

The term “final judgement” was specifically interpreted by the Supreme Court of South Carolina in *Bone* with regard to workers’ compensation appeals:

This Court’s jurisprudence is in accord with the definition of a final judgment found in Black’s Law Dictionary. It 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 enforcement of the judgment.

*Bone*, 744 S.E.2d at 558 (citing Black’s Law Dictionary 919 (9th ed. 2009)). The *Bone* Court further stated: “The legislature, in using a well-known term of art such as ‘final judgment,’ meant exactly what ‘final judgment’ has always been understood to mean: something that finally disposes of the whole subject matter of the action or terminates the action, leaving nothing to be done but to execute the judgment...” *Bone*, 744 S.E.2d at 561.

**A. The May 21, 2018 South Carolina Workers' Compensation Judicial Conference Decision and Order does not constitute a final judgment, and the Order is not immediately appealable.**

Respondent sustained an admitted injury on December 5, 2016 when she fell while carrying soiled linens down the stairs leading off the front porch of a house she was cleaning, injuring her right knee, back and neck. (R. p. 5). The Single Commissioner, Com. Mike Campbell, presided over the initial evidentiary hearing on the merits of the claim on November 3, 2017. (R. p. 2).

On November 10, 2017, prior to entry of Com. Campbell's Order, Appellants filed a "Motion to Reopen the Record or Alternatively to Admit New Evidence" so as to submit surveillance video into the record. (As referenced) (R. p. 36, ¶ 4). On November 24, 2017, Claimant filed her Return to that Motion, objecting to the motion as defective and objecting to the evidence as undisclosed impeachment evidence. (11/24/2017 Return to Motion). Appellants' Motion to Reopen was denied by Com. Campbell on December 12, 2017. (12/12/2017 Motion Order).

On January 5, 2018, Com. Campbell issued his "Decision and Order" on the merits in Claimant's favor. (R. pp. 2-13). Appellants timely appealed the single Commissioner's decision, as well as the December 12, 2017 Order denying the Motion to Reopen, to the Full Commission in accordance with § 42-17-50, on January 19, 2018. (R. pp. 20-24). However, Appellants failed to follow the procedure prescribed by law for perfecting their appeal and the appeal was administratively dismissed in accordance with S.C. Code Regs. 67-705(H)(3). (R. App. p. 2). On March 27, 2018, Appellants' filed a "Motion to Reinstate Appeal" seeking reinstatement for good cause. (03/27/2018 Mot. To Reinstate Appeal ¶¶ 5-14) (R. pp. 36-37). The Motion was unanimously denied by the Full Commission (Com. Campbell abstaining) on April 16, 2018. (R. p. 16).

On April 26, 2018, Appellants filed with the Commission a “Motion to Reconsider” its order denying the motion to reinstate, reiterating their good cause grounds, contending that the Commission abused its discretion and violated Appellants’ due process rights by denying the motion to reinstate. (04/26/2018 Mot. to Reconsider ¶¶ 2-10) (R. pp. 40-42). On May 4, 2018, Appellants filed an “Amended Motion to Reconsider and/or for Rehearing” with the Commission, repeating the arguments and contentions in the original motion to reconsider. (R. pp. 49-51).

On May 7, 2018, Claimant filed a “Return” to the motion to reconsider, contending that it was noncompliant with R.67-215(D), did not show good cause under R.67-705 and that Claimant would be prejudiced by reinstatement. (R. pp. 54-57). Appellants’ motion was unanimously denied by the Full Commission (Com. Campbell abstaining) on May 21, 2018. (R. p. 17). On June 12, 2018, Appellants filed a Notice of Appeal with the South Carolina Court of Appeals from that May 21, 2018 order. (R. p. 59).

Petitioners’ argue that the Commission’s administrative action was improper. Further, Petitioners’ contend that “Surely, S.C. Code §1-23-380 cannot be applied in a manner that would leave dubious Commission action totally unassailable, which will be the result here if the Court declines to address the propriety of the Commission’s action at this juncture.” (Pet. p. 6). The Commission’s administrative action (refusing the reinstate Appellants’ appeal) can hardly be said to be dubious, when not once, but twice, the Full Commission<sup>1</sup> voted in favor of dismissal of the Motion to Reinstate: first on April 16, 2018 (R. p. 68) and then again on May 21, 2018 (R. p. 34).

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<sup>1</sup> A six-member full commission panel, exclusive of the original hearing commissioner, determines whether good cause exists to reinstate an appeal that has been administratively dismissed; whereas, a three-member appellate panel, exclusive of the original hearing commissioner, reviews an order on appeal from a single commissioner. *Matute v. Palmetto Health Baptist*, 391 S.C. 291, 705 S.E.2d 472, fn. 1 (2011); See S.C. Code Ann. § 42-3-20 (Supp. 2009).

Section 1-23-380 of the Act limits appeals to those from a “final decision” of the commission. *Rose v. JJS Trucking, LLC*, 411 S.C. 366, 768 S.E.2d 412 (Ct. App. 2015). An order of the commission is not a final decision unless it resolves the entire action. *Id.* See *Price v. Peachtree Elec. Servs., Inc.*, 405 S.C. 455, 457, 748 S.E.2d 229, 230 (2013) (“An agency decision that does not decide the merits of a contested case is not a final agency decision subject to judicial review.”) In *Rose*, the Court of Appeals reviewed a workers’ compensation case and held that “the Commission also determined Rose (Claimant) had not reached maximum medical improvement, and thus did not rule on his claim for permanent disability.” As such, the Court ruled that because Commission’s order leaves the merits of Rose’s claim for permanent disability unresolved, “*the order is not a final decision and not immediately appealable.*” (*Rose*, at 369) (emphasis added).

In his Decision and Order of January 5, 2018, Com. Campbell held Claimant was not at maximum medical improvement (MMI). (R. pp. 12-13). Further, he held “a determination of permanency is premature at this time.” (R. pp. 12-13). Thus, because the Commission’s order leaves the merits of Claimant/Respondent’s claim for permanent disability unresolved, it is not a final decision and thus not immediately appealable. Therefore, Petitioners’ request for judicial review should be denied.

**II. The Court of Appeals properly denied Petitioners’ Petition for Rehearing to Reinstate Petitioners’ appeal to the Workers Compensation Commission and its decision did not amount to a deprivation of Petitioners substantial due process rights.**

Pursuant to § 42-17-50, a party seeking review of a decision of a Single Commissioner may have the decision reviewed by the Commission if an application for review is made to the Commission within fourteen days from the date when notice of the decision is given. S.C. Code Ann. § 42-17-50. Reg. 67-701 further elaborates by stating, in part:

Either party may request Commission review of the Hearing Commissioner's decision by filing the original and eight copies of a Form 30, Request for Commission Review within fourteen days of the day the Commissioner's order is reviewed. The fourteen day period is jurisdictional. The Commission will not accept for filing a Form 30 that is not postmarked or delivered to the Commission by the fourteenth day from the date of receipt of the Hearing Commissioner's order.

Reg. 67-701.

Petitioners attempted to appeal the single Commissioner's decision to the Full Commission in accordance with § 42-17-50. (R. pp. 20-24). However, they failed to follow the procedure prescribed by law for perfecting their appeal and the appeal was administratively dismissed in accordance with S.C. Code Regs. 67-705-(H)(3). (R. App. p. 3). Following a Motion to Reinstate the Appeal, the Commission issued an order dismissing his appeal. (R. p. 16). Petitioners' filed an Amended Motion to Reinstate, which again the Commission dismissed. (R. p. 17).

If an appellant fails to file a brief within ten days of receipt of the Form 31, the Judicial Department may review the case from the review hearing docket by issuing an administrative order dismissing the appeal. S.C. Code Regs. 67-705(H)(3). An appeal administratively dismissed by the Judicial Department may be reinstated for good cause upon motion to the Commission. S.C. Code. Regs. 67-705(H)(4).

In the present case, the Commission on February 16, 2018, issued a Form 31 Briefing Schedule and Notice of Appellate Hearings. (R. p. 25). Petitioners' brief was due to be filed on March 18, 2018. (R. p. 25).

On March 26, 2018, the Commission sent Petitioners' a letter stating the appeal had been administratively dismissed because the Petitioners' brief was not timely filed pursuant to Regs. 67-705(H)(3). (R. App. p. 2). Pursuant to Regs. 67-705(H)(4), Petitioners' moved on March 27,

2018, to reinstate the appeal (R. p. 44). Petitioners apologized for the delay and admitted Petitioners did not calendar the deadline correctly.

Respondent submits that Petitioners' have not shown good cause to reinstate the appeal to the Full Commission. Solely because an attorney candidly admits they were wrong does not amount to good cause. That should be evident, as the Commission failed to excuse the "calendar error" as good cause. *See* (Administrative Order dated April 16, 2018 (R. p. 16) and Administrative Order dated May 21, 2018 (R. p. 17)).

Petitioners' assert without evidence that the Commission acted in an arbitrary, capricious manner and abused its discretion. These are conclusory statements and Petitioners do not cite any facts or law to support them. Unsupported conclusory statements are not grounds for rehearing. *Glasscock, Inc. v. U.S. Fid. & Guar. Co.*, 348 S.C. 76, 81, 557 S.E.2d 689, 691 (Ct. App. 2001) ("South Carolina law clearly states that short, conclusory statements made without supporting authority are deemed abandoned on appeal and therefore not presented for review.").

Petitioners' assert their acknowledged failure to follow the Commission's regulations governing appellate procedure should be forgiven because it did not prejudice anyone. There is no evidence to support Petitioners' allegation that no one was prejudiced by their tardiness. Regardless, the Commission's regulations governing appellate procedure do not require that a party be prejudiced for an appeal to be dismissed. *See* S.C. Code Ann. Regs. 67-705(B) ("The appellant *shall* file the brief and proof of service on the opposing party with the Commission's Judicial Department ... on or before the date on the Form 31.") (emphasis added); ("Under rules of statutory interpretation, use of words such as "shall" ... indicates the legislature's intent to enact a mandatory requirement.") *Collins v. Doe*, 352 S.C. 462, 470, 574 S.E.2d 739, 743 (2002); *See also* S.C. Code Ann. Regs. 67-705(H)(4).

Petitioners' assert the Commission's decision violated their statutory due process rights; however, this statement cannot stand as true. In fact, Petitioners' were afforded due process and they were the ones who failed to follow the proper administrative procedures. Had Petitioners' honored the due date clearly printed on the Form 31, their appeal would not have been dismissed. S.C. Code Ann. Regs. 67-705 was enacted and amended in accordance with the Administrative Procedures Act and S.C. Code Ann. § 42-3-30. "Regulations authorized by the legislature have the force of law." *Goodman v. City of Columbia*, 318 S.C. 488, 490, 458 S.E.2d 531, 532 (1995). Petitioners' do not assert that the Commission failed to follow the procedure set out in its regulations; rather Petitioners' acknowledge the Commission strictly followed the procedure set forth in its regulations. Simply put, they are merely unhappy with the result as applied to them. Petitioners' candidly admit they failed to file their brief in the timeframe required by Reg. 67-705(B). The Commission's dismissal of their appeal was consistent with Reg. 67-705(H)(3). The Commission's denial of Petitioners' Motion to Reinstate and Amended Motion to Reinstate was within its discretion under Reg. 67-705(H)(4). The Commission's finding the Petitioners' failure to properly calendar its due dates is not "good cause" to reinstate an appeal was within the discretion of the Commission.

Further, Petitioner's assert the Commission did not exercise its discretion and somehow erred by only considering the writing pleadings and not allowing Petitioners' to appear at a hearing or present oral arguments. (Pet. p. 11). There is no error. Reg. 67-705(H)(4) expressly provides that a Motion to Reinstate an Appeal will be heard without oral arguments or appearance of the party. S.C. Code Ann. Regs. 67-705(H)(4)(b) ("The motion will be heard by the Full Commission without oral argument or appearance of the party."). Therefore, it was not an abuse of discretion for the Commission to make no findings of fact in its denial of the motion to reinstate. There is

no evidence that the Commission abused its discretion in denying the Motion to Reinstate. Likewise, Reg. 67-215(G)(1) does not guarantee an appearance and oral arguments on a Motion to Reconsider. Therefore, there is no evidence the Commission abused its discretion in denying the Motion to Reconsider. Further, Reg. 67-705(H) explicitly lays out the consequence if a brief is not filed on time. Petitioners' were put on notice of the remedy for failure to timely file their brief – administrative dismissal was appropriate, and Petitioners' failed to show good cause as to why the Commission should have their appeal reinstated.

**III. Petitioners' have failed to show good cause for Reinstatement of their Appeal to the Full Commission, and Petitioner's Writ of Certiorari should be Denied.**

As elaborated above, Petitioners' argument that they have shown good cause to reinstate their appeal to the Workers' Compensation Commission is without merit and cannot stand. Respondent would also like to point out a recent Court of Appeals Opinion from August 12, 2020. While not precedent, Respondent respectfully submits that this Court should look to this Opinion as persuasive authority as the reasoning in said opinion is directly on point with regards to a "calendar issue" not amounting to good cause. In *Morris v. BB&T Corp, IN RE: Proffitt v. SCWCC*, Op. No. 2020-UP-235 (S.C. Ct. App. Filed Aug. 12, 2020), attorney David Proffitt appealed the Workers' Compensation Commission's (the Commission's) denial of his motion to reinstate his appeal, which administratively dismissed for failure to perfect his appeal and timely file. In that case, the Court of Appeals held the Commission did not abuse its discretion in determining Proffitt failed to establish good cause for the reinstatement of his appeal. Specifically, the Court held:

*The evidence in the record shows Proffitt's only justification for reinstating his appeal is that he made an honest mistake in calendaring the deadline for this appellate brief – which the Commission provided in Form 31. We find this is insufficient to establish good cause for reinstatement.*


(emphasis added). *See Matute v. Palmetto Health Baptist*, 391 S.C. 291, 294, 705 S.E. 2d 472, 474 (Ct. App. 2001) (“When reviewing an appeal from the Workers’ Compensation Commission, this court may not weigh the evidence or substitute its judgment for that of the appellate panel as to the weight of evidence on questions of fact.”).

Petitioners’ have failed to show good cause for reinstatement of their appeal to the Workers’ Compensation Commission, and Respondent respectfully requests this Court deny Petitioners’ Writ of Certiorari and Amended Petition of Writ of Certiorari in its entirety.

### CONCLUSION

For the reasons set forth above, Respondent respectfully requests an Order denying the Petition for Writ of Certiorari and the Amended Petition of Writ of Certiorari.

October 5<sup>th</sup>, 2020  
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[dgibson@dgibsonlaw.com](mailto:dgibson@dgibsonlaw.com)  
Attorney for Respondent

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Oct 05 2020

SC Court of Appeals

THE STATE OF SOUTH CAROLINA  
In the Supreme Court

APPEAL FROM THE SOUTH CAOLINA COURT OF APPEALS  
James E. Lockemy, Chief Judge of the Court of Appeals  
John D. Geathers, Court of Appeals Judge  
Blake A. Hewitt, Court of Appeals Judge

Veronica Rodriguez, Employee ..... Respondent,


V.

Peggy Evers, Employer, and NorGuard Insurance Company, Carrier .....Appellants.

PROOF OF SERVICE

I certify that I have served the Respondent’s Return to Appellants’ Amended Petition for Writ of Certiorari on Peggy Evers, Employer, and NorGuard Insurance Company, Carrier, by depositing a copy of it in the United States Mail, postage prepaid, on October 5th 2020, addressed to their attorneys, George D. Gallagher, Post Office Box 11669, Columbia, South Carolina, 29211 and Kevin D. Maroney, Post Office Box 11803, Columbia, South Carolina, 29201 and via electronic mail at [ggallagher@speed-seta.com](mailto:ggallagher@speed-seta.com) and [kmaroney@rogerslewis.com](mailto:kmaroney@rogerslewis.com).

October 5th 2020

  
\_\_\_\_\_  
Don C. Gibson  
Gibson Law Firm, LLC  
S.C. Bar No. 2466  
P.O. Box 60669  
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SC Court of Appeals

GIBSON LAW FIRM, LLC

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October 5, 2020

Via Email: [suptfilings@sccourts.org](mailto:suptfilings@sccourts.org)

The Honorable Daniel E. Shearouse  
Clerk, Supreme Court of South Carolina  
P.O. Box 11330  
Columbia, SC 29211

**Re:** Client/Respondent: Veronica Rodriguez Texacahua  
Date of Injury: December 5, 2016  
Employer/Appellant: Peggy Evers, Cleaner Concepts/NorGuard Ins. Co.  
WCC File No.: 1619767  
Claim No.: PEWC734403-001  
Appellate Case No.: 2020-001194

Dear Mr. Shearouse:

Please find enclosed Respondent's Return to Appellants' Amended Petition for Writ of Certiorari for filing in the above-referenced matter.

By copy of this letter to counsel of record for Appellants, George D. Gallagher and Kevin D. Maroney, and the Honorable Jenny Abbot Kitchings, I am serving them with a copy of this Return.

With kindest regards, I remain,

Sincerely yours,

  
Don C. Gibson

DCG/emd

Enclosures: as stated

cc: George D. Gallagher, Esquire (w/ enclosure)  
Kevin Desmond Maroney, Esquire (w/ enclosure)  
The Honorable Jenny Abbot Kitchings (w/ enclosure)  
The Honorable Amy Bracy (w/ enclosure)