

THE STATE OF SOUTH CAROLINA  
In The Supreme Court

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APPEAL FROM SOUTH CAROLINA  
Workers' Compensation Commission

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Opinion No. 2022-UP-081  
(S.C. Ct. App. Filed February 23, 2022)

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Gena Cain-Davis, Claimant, ..... Respondent,

v.

SC Department of Corrections, Employer,  
and State Accident Fund, Carrier, ..... Petitioners.

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**RETURN TO PETITION FOR WRIT OF CERTIORARI**

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## **COUNTER STATEMENT OF QUESTIONS PRESENTED**

1. Did the Court of Appeals correctly accept appellate jurisdiction when the Appellate Panel's Decision and Order made findings of fact and conclusions of law that effectively dismissed Respondent's case with prejudice, thus constituting a final judgment?
2. Did the Court of Appeals correctly hold that the Appellate Panel erred in reversing an interlocutory order of the Single Commissioner granting a continuance, such order being unappealable as a matter of law?
3. Did the Court of Appeals correctly hold that the Single Commissioner's Interim Order was properly rendered because a commissioner, like a trial judge, "has jurisdiction to hear a matter and the matter having been heard before him, he entertains jurisdiction until his decision is rendered?"
4. Did the Court of Appeals correctly remand the when "[t]he the issue of penalties remains pending at the commission."?

## STATEMENT OF THE CASE

This appeal arises from a work related accident suffered by the Respondent, Gena Cain-Davis, on July 14, 2016 at the Broad River Correctional Institute where she worked as a correctional officer for the Employer, South Carolina Department of Corrections (SCDC). The issues on appeal concern procedural aspects of withdrawal of a Form 50 and dismissal of a Form 21.

A hearing on a Form 50 filed by Respondent and a Form 21 filed by Petitioners was set before Commissioner Mike Campbell on October 24, 2017. Each had already filed its Form 58 (Prehearing Brief) and Notice of APA Submissions. Respondent sought additional medical treatment and reinstatement of her temporary compensation with a mandatory 25% penalty. Petitioners sought to ratify their suspension of temporary compensation due to allegations of refusal of medical treatment..

Respondent moved for the Form 21 to be dismissed because Petitioners were not current on temporary total disability payments and had illegally suspended compensation.

The parties appeared before Commissioner Campbell on October 24, 2017 and made arguments off the record in a pretrial conference. During the conference, Commissioner Campbell indicated he would dismiss the Form 21. Respondent also requested leave to withdraw her Form 50 to obtain additional proof of her need for medical treatment. Commissioner Campbell issued an Administrative Order on November 14, 2017. The order stated: “after a pre-hearing conference, the Claimant was allowed to withdraw the Form 50 without prejudice.” [A.P. 3].

Petitioners timely filed a Form 30 (Notice of Appeal) on November 20, 2017. Oral argument was held on February 20, 2018. [A.P. 111-138]. The Appellate Panel issued its Decision and Order on March 5, 2019, in which it affirmed in part and reversed in part. [A.P. 6-20]. The Appellate Panel

held “After the second Form 50 was withdrawn and the Form 21 hearing was cancelled, the Hearing Commissioner was divested of jurisdiction and authority to entertain or adjudicate further arguments regarding this claim.” [A.P. 19, Conclusion of Law 6]. The Panel also found as a fact that “Claimant’s counsel admits in oral argument before the undersigned Commissioners that there was no discussion about whether the Form 50 withdrawal was with or without prejudice. [A.P. 18, Finding of Fact 5].

Cain-Davis timely appealed to the Court of Appeals. The court issued an unpublished opinion vacating the Appellate Panel’s findings and conclusions on withdrawal of the Form 50, thus reinstating Commissioner Campbell’s administrative order holding “Claimant was allowed to withdraw the Form 50 without prejudice.” [A.P. 245].

### **ARGUMENT**

The entire thrust of Petitioners’ argument – indeed their entire defense of this case – has been reliance on technicalities, rather than dealing directly with the merits of their obligation to care for their injured employees. Two essential principles overshadow the issues raised in this appeal. The first is that it is not the place of the courts (nor litigants) “to play a ‘gotcha’ game with attorneys by showcasing their alleged mistakes, at the expense of their clients.” Atlantic Coast Builders & Contractors, LLC v. Lewis, 398 S.C. 323, 730 S.E.2d 282 (2012)(Toal, C.J., dissenting)(“This practice ignores the fact that behind every party name on a caption is a life-blood litigant or criminal defendant that depends on the court system to protect their economic and liberty interests.”); see, also In re Nov. 4, 2008 Bluffton Election, 686 S.E.2d 683, 385 S.C. 632 (2009)(“we are guided by the principle that courts should not interpret procedural rules to create a trap for unwary lawyers.”); McCall v. Ikon, 611 S.E.2d 315, 363 S.C. 646 (2005)(“A suit at law is not a children's game, but a

serious effort on the part of adult human beings to administer justice . . .”).

The second is that our State has a strong preference for deciding cases on the merits, rather than on procedural technicalities. Lewis v. Congress of Racial Equality and/or C. O. R. E., Inc., 274 S.E.2d 287, 275 S.C. 556 (1981). Cf. Capital City Ins. Co. v. Bp Staff, Inc., 674 S.E.2d 524, 382 S.C. 92 (Ct. App. 2009)(considering whether “circuit court abused its discretion in ordering dismissal of the case over some less drastic remedy, such as a continuance or stay . . .”). These sentiments are particularly relevant where, as here, the technicalities are not real and cause no impediment to this claim’s viability.

In this case, the Petitioners successfully appealed an Administrative Order from a hearing commissioner who granted Respondent’s request to withdraw a Form 50 without prejudice so as to obtain additional proof. Every party has the right to rely on the pronouncements of a hearing commissioner or trial judge as to whether a continuance will be granted. It is improper and prejudicial for *any* appellate body – whether this Court or the Appellate Panel – to disregard the hearing commissioner’s inherent authority to manage his docket. See Trotter v. Trane Coil Facility, 393 S.C. 637, 645, 714 S.E.2d 289, 293 (2011)(“The granting or refusal of a request for a continuance rests in the sound discretion of the hearing commissioner, whose ruling will not be disturbed unless a clear abuse of discretion is shown.”).

As to whether this case presents special and important reasons for review by the Court, none of the considerations set forth in the Appellate Court Rules apply. There are, perhaps, novel questions of law in that the Full Commission reversed the granting of a continuance, thus venturing into a procedural no-man’s land never before traveled. However, as the Court of Appeals correctly reversed this decision in an unreported decision, there is no need for this Court to hear the case.

**1. The Court of Appeals had appellate jurisdiction because the Appellate Panel's Decision and Order was a "final order" affecting a substantial right [In Reply to Petitioners' Argument at pages 7-9].**

Petitioners ask this Court to vacate the opinion of the Court of Appeals and reinstate the Appellate Panel's Order. Petitioners do not make this argument out of a desire to promote the integrity of our judicial system; rather they seek to have Cain-Davis's entire case dismissed on a procedural technicality. Make no mistake. If the Appellate Panel's findings on withdrawal of the Form 50 are restored, Petitioners fully intend to argue those findings are the law of the case and move for dismissal with prejudice.

Although Petitioners kept silent when the request to withdraw the Form 50 was made, their tactics were openly revealed in an email to Commissioner Campbell and Cain-Davis's attorney in an email sent 17 days later. Counsel wrote:

Furthermore, your Form 50 was withdrawn WITH PREJUDICE, as this is the second time you have withdrawn your Form 50. There is no order by Commissioner Campbell, nor consent by my clients, that would allow you to withdraw your Form 50 a second time – at the hearing no less –without prejudice attaching. [A. P. 79 (emphasis in original)].

From that point forward, Petitioners continued to urge dismissal with prejudice. In their appeal to the Appellate Panel, Petitioners "request that the Appellate Panel conclude that Claimant's withdrawal of her second Form 50 on October 24, 2017 acted as a voluntary dismissal with prejudice." [A P. 74]. In their Brief to the Court of Appeals, Petitioners argued "when Davis announced she was withdrawing her second Form 50 on October 24, 2017, this was tantamount to a voluntary dismissal with prejudice." [A.P. 207].

If Petitioners did not believe the Appellate Panel's Order effectively dismissed the case, they would not have sought review from this Court. As they plainly intend to persist in this argument –

notwithstanding their misleading characterization of the event – the panel’s Order leaves Cain-Davis without an adequate remedy other than immediate appeal. Cf. Russell v. Wal-Mart Stores, Inc., 426 S.C. 281, 290-291, 826, S.E.2d 863 (2019)(“We find the commission’s unreasonable delay in making a final decision leaves Russell without an adequate remedy on appeal under section 1-23-380. Therefore, we find the appellate panel’s remand order is immediately appealable.”).

Following the initial pronouncement in Bone<sup>1</sup> limiting appealability of the Commission’s orders, the Court has attempted to elucidate clear standards in a series of cases highlighting the prejudice engendered by multiple arbitrary procedural rulings from the Commission. See, e.g., Russell v. Wal-Mart Stores, Inc., 426 S.C. 281, 290, 826 S.E.2d 863 (2019)(“the commission’s unreasonable delay in making a final decision leaves Russell without an adequate remedy on appeal under section 1-23-380.”); Hilton v. Flakeboard America Limited, 418 S.C. 245, 791 S.E.2d 719 (2016)(“Under these unique circumstances where the Commission has ordered the relitigation of the entire dispute without regard to the matters raised by the appealing party, we find that requiring Hilton to wait until the final agency decision to appeal would not provide him an adequate remedy.”)

In the instant case, the Appellate Panel made three significant errors: (1) allowing Petitioners to appeal the Single Commissioner’s interlocutory order allowing the Form 50 to be dismissed without prejudice; (2) holding the Single Commissioner lacked jurisdiction to issue an Order; and (3) making findings of fact, rather than reviewing for an abuse of discretion, which could allow Petitioner to have the case dismissed with prejudice. The Court of Appeals vacated all findings related to the withdrawal of the Form 50 “[b]ecause the single commissioner’s decision to allow

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<sup>1</sup>Bone v. U.S. Food Serv., 404 S.C. 67, 744 S.E.2d 552 (2013)(“order remanding the matter to the Commission for further proceedings does not constitute a final judgment as required by section 1–23–390 and, therefore, is not immediately appealable.”).

Davis to withdraw her Form 50 hearing request without prejudice was not immediately appealable . . . .” [A.p. 246].

The Full Commission’s finding that the Single Commissioner lacked jurisdiction to grant the request for withdrawal without prejudice is effectively a final order. If a subsequent single commissioner agrees with Petitioners’ argument or its anticipated corollary (res judicata or law of the case based on Finding of Fact 5), then the case will be dismissed with prejudice. As dismissal is the ultimate sanction, it should not be imposed so cavalierly. See McComas v. Ross, 626 S.E.2d 902, 368 S.C. 59 (Ct.App. 2006)(“In those cases where our supreme court has affirmed dismissal of actions based on a failure to prosecute, the dismissals were imposed to maintain the orderly disposition of cases in the face of repeated warnings to the offending party or multiple opportunities to proceed with trial, and only then upon a finding of unreasonable neglect.”).

The post Bone cases show that significant procedural errors by the Commission must be subject to immediate appeal, lest the procedural errors frustrate the underlying purpose of swift and sure justice. Here the problem is more acute, for the Appellate Panel’s decision does not merely delay the proceedings; it could result in dismissal of the entire case. The Court of Appeals recognized that requiring Cain-Davis to wait until the final agency decision to appeal would not provide her with an adequate remedy.<sup>2</sup> See S.C. Code Ann. § 1-23-380 (2007)(A preliminary, procedural, or intermediate agency action or ruling is immediately reviewable if review of the final agency decision would not provide an adequate remedy.”).

Therefore the Court should deny the Petition for Writ of Certiorari.

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<sup>2</sup>The court noted “Neither Davis nor [SCDC] have been well-served by the fact that this claim has been stuck in appellate jousting rather than litigated on the merits in front of the commission.” [A.p. 245-246].

**2. The Court of Appeals correctly held an administrative order from a hearing commissioner granting a continuance or dismissing a pleading without prejudice is not directly appealable as a matter of law [In Reply to Petitioner’s Argument at pages 10-14].**

An administrative order allowing a claimant to withdraw a Form 50 without prejudice is not immediately appealable – not to the Appellate Panel nor to a higher court. The Court of Appeals correctly held the Hearing Commissioner’s order was not appealable and vacated the Full Commission’s order. The court reasoned:

The appellate panel commonly reviews intermediate orders that decide important issues in a contested workers’ compensation case. It does so even though other parts of the case remain in active litigation or are not ripe for decision. This is not one of those orders. The single commissioner’s order allowing Davis to withdraw the Form 50 without prejudice and returning the claim to the commission’s general files is analogous to an order granting a continuance or denying a motion to dismiss. An order granting a continuance or denying a motion to dismiss is generally not immediately appealable. [A.P. 245].

There is nothing novel in this holding. It is based on firmly established law. See, e.g., Levi v. N. Anderson Cnty. EMS, 409 S.C. 374, 385, 762 S.E.2d 44, 50 (Ct.App. 2014)(single commissioner’s order denying an employer’s motion to dismiss not immediately appealable); Walker v. Springs Industries, Inc., 298 S.C. 249, 379 S.E.2d 729, (Ct.App. 1989)(single commissioner’s order allowing a claimant to withdraw her hearing request without dismissing her underlying claim and returning the claim to the commission’s files was interlocutory because it constituted an indefinite continuance of the case); Temples v. Ramsey, 285 S.C. 600, 330 S.E.2d, 558 (Ct. App.1985)(“it is well-established that orders granting or denying motions for a continuance or a mistrial are not directly appealable.”).

Petitioners argue that the Court of Appeals “failed to elucidate any ‘compelling reason’” for reversing the Full Commission’s decision to address – and ultimately reverse – the Hearing

Commissioner's order. They argue the court should have given the Commission deference as it was interpreting its own enabling statute and regulations.

While it is true that the appellate courts give some level of deference to an agency's construction of its own regulations, this deference does not extend to abandoning the duty to correct errors of law. Furthermore, the Full Commission did not interpret either § 42-17-50 or regulation 67-701. It simply reversed the administrative order without addressing the propriety of hearing an appeal of an interlocutory order.

Petitioners further argue that their appeal raised "important issues." The granting of a continuance is far removed from an important issue. It is the very archetype of an interlocutory order as it causes no prejudice to either party, excludes no evidence, and does not touch the merits of the case in any way, shape or form. The sole affect is to postpone a trial. This is why our courts uniformly hold such an order is not immediately appealable.

The Court of Appeals correctly vacated the Appellate Panel's order as it was not immediately appealable as a matter of black letter law. The Petition should be denied.

**3. The Hearing Commissioner retained Jurisdiction over the case at the time he issued the Administrative Order [in response to Petitioner's argument at pages 14-21].**

Petitioners combine two arguments: (1) whether the Hearing Commissioner had been divested of jurisdiction when he issued his administrative order; and (2) whether the Full Commission's findings and conclusions are supported by substantial evidence and the applicable law. [Petition, page 14].

**A. The Hearing Commissioner retained jurisdiction until he issued an order.**

The Appellate Panel held: "The hearing was cancelled by the Hearing Commissioner on

Otober [sic] 24, 2017 prior to going on the record, after which time the Hearing Commissioner's authority and jurisdiction to adjudicate this claim ended." [A.P. 19, Finding of Fact 7]. This was error, for a hearing commissioner, like a trial judge, "has jurisdiction to hear a matter and the matter having been heard before him, he entertains jurisdiction until his decision is rendered." First Carolinas Joint Stock Land Bank of Columbia v. Knotts, 191 S.C. 384, 410, 1 S.E.2d 797, 808 (1939). Cf. First Union Nat'l Bank of S.C. v. Hitman, Inc., 308 S.C. 421, 422, 418 S.E.2d 545, 545 (1992) ("[A] judge is not bound by [a] prior oral ruling and may issue a written order which is in conflict with the oral ruling.").

It is axiomatic that a trial court retains jurisdiction over a pending matter unless and until it is divested of jurisdiction by operation of law, such as removal to another tribunal or a timely appeal to a higher body (which could be an appellate court or the Appellate Panel). This rule applies to the Workers' Compensation Commission with equal force as it does to circuit court. Once a case is assigned to a commissioner, the commissioner retains jurisdiction until a final order is issued disposing of the matters raised in the pleadings.<sup>3</sup>

Petitioners argue that allowing Cain-Davis to withdraw her Form 50 without prejudice is not equivalent to granting a continuance because "[w]hen a Hearing Commissioner grants a continuance

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<sup>3</sup>Petitioners write "Workers' Compensation Hearing Commissioner cannot simply issue orders because a litigant e-mails them with a plaintive request, as Davis did her." [Petition, page 18]. This is a false statement. Commissioner Campbell's assistant inquired about a proposed order on November 2, 2017. [A. P. 7]. Cain-Davis's counsel emailed the proposed order to Petitioners' counsel on November 7, 2017. Petitioners' counsel responded by sending her own (unsolicited) proposed order directly to the commissioner's assistant on November 9, 2017. Later that same day, Cain-Davis sent the proposed order requested by Commissioner Campbell. This then led to the e-mail exchanges where Commissioner Campbell ultimately stated: "Mr. Samuels asked in the pre-hearing conference to be allowed to withdraw his Form 50 without prejudice, and with it being within his discretion to do so, allowed Mr. Samuels to do that." [A.P. 76-84, 101-108].

it necessarily means that a proper motion has been filed . . .” [Petition, page 15]. Not only do Petitioners overlook the case law on this issue, they also misapprehend the authority of a hearing commissioner to manage his docket. A hearing commissioner has plenary authority to entertain pretrial motions, including granting or denying continuances. See Trotter v. Trane Coil Facility, 393 S.C. 637, 714 S.E.2d 289 (2011)(“The granting or refusal of a request for a continuance rests in the sound discretion of the hearing commissioner, whose ruling will not be disturbed unless a clear abuse of discretion is shown.”).

Petitioners’ counsel knew exactly what she were doing at the hearing. At no time did counsel object to Commissioner Campbell’s action, point out that a Form 50 had previously been withdrawn or otherwise put Cain-Davis on notice that she would seek to have the case dismissed. She had the ability to object and request that Cain-Davis try her case on the existing evidence, yet chose to remain silent with the obvious intent of profiting later when Cain-Davis filed a new Form 50. “If one remains silent where in conscience he ought to speak, equity will debar him from speaking when in conscience he ought to remain silent.” Smith v. Williams, 141 S.C. 265, 282, 139 S.E. 625, 630 (1927). “It is a general rule of law, as well as of good morals and fair dealing, that if a party is silent when he should speak, or supine when he should act, he will not afterwards be permitted to either speak when he should be silent, or to act when he failed to do so at the first proper and opportune moment. ‘Silence always implies consent,’ says another cardinal maxim of the law.” King v. Ligon, 180 S.C. 224, 185 S.E. 305 (1936). Petitioners’ attempt to gain a strategic advantage was properly denied by the Hearing Commissioner.

The Appellate Panel simply got it wrong in concluding the Hearing Commissioner had been divested of jurisdiction when he issued the Administrative Order addressing the issues before him

on the pleadings. The Petition should be denied.

B. The Appellate Panel’s findings and conclusions are incorrect and were properly vacated.

Petitioners also argue that the “Substantial evidence supports the Appellate Panel’s finding ‘that there was no discussion about whether the Form 50 withdrawal was with or without prejudice’ . . .” [Petition, page 15]. This argument misstates the inquiry. As the Court of Appeals explained, “There is also no dispute that Davis then withdrew her hearing request and *did so for the purpose of obtaining additional evidence supporting her claim for further medical evaluation and treatment.* [A.P. 244 (emphasis added)].

Petitioners now seek to create a factual dispute where none exists. They base this argument on their own mischaracterization of the underlying events. They – as did the Appellate Panel – completely overlook (or deliberately ignore) Commissioner Campbell’s statement that: “Mr. Samuels asked in the pre-hearing conference to be allowed to withdraw his Form 50 without prejudice, and with it being within his discretion to do so, allowed Mr. Samuels to do that.” [A.P. 107]. And they overlook the undisputed fact that the request was made for the specific purpose of obtaining additional medical evidence. See Brown v. LaFrance Indus., 286 S.C. 319, 333 S.E.2d 348 (Ct.App.1985) (when the claimant in a workers’ compensation case inadvertently omits proof of causation, the case should be reopened and an opportunity should be afforded the claimant to supply such proof in the interest of justice).

Instead, Petitioners focus on the (literally correct) response by Cain-Davis’s counsel to follow-up questions from the Appellate Panel as to whether there was a “discussion between either you and Commissioner Campbell or Ms. Barr and Commissioner Campbell about whether it was

with or without prejudice?” Counsel responded truthfully “There was not, your Honor.” This was after Counsel had previously explained that the discussion did not include a *literal* discussion about whether it was with or without prejudice (using those specific terms) – because it was apparent from the context that the purpose was to obtain additional proof, ergo the request to withdraw the Form 50 was necessarily without prejudice. [R.P. 127, line 10 - 129, line 14]. The Appellate Panel’s attempt to wring some sort of concession from counsel on the verbiage has the appearance of setting a procedural trap. See In re Nov. 4, 2008 Bluffton Election, 686 S.E.2d 683, 385 S.C. 632 (2009)(“we are guided by the principle that courts should not interpret procedural rules to create a trap for unwary lawyers.”); Cf. Trowell v. S.C. Dept. of Public Safety, 681 S.E.2d 893, 384 S.C. 232 (Ct. App. 2009)(“The agency’s decision here arbitrarily created a trap for the unwary petitioner.”).

There is no ground for this Court to review whether the Appellate Panel’s findings were supported by the evidence. The Appellate Panel had no jurisdiction to make any findings. To the extent it did, those findings are inherently arbitrary and capricious. An appellate body cannot reject the statements of a trial judge or hearing commissioner on the reasoning behind granting a continuance. The Petition should be denied.

**4. The Court of Appeals properly remanded the case [in response to Petitioner’s argument at pages 22-23].**

Petitioners object to the Court of Appeals remanding the case “for proceedings consistent with this opinion.” [Petition, page 22, A.P. 246]. Given that there are unresolved issues pending before the Commission,<sup>4</sup> a general remand makes sense.

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<sup>4</sup>In her brief, Cain-Davis stated she had filed a Form 15 seeking reinstatement of her temporary total disability compensation (TTD). She also stated she intends to file a Form 50 seeking a hearing regarding her medical treatment. Petitioner needs to file a Form 21 to stop compensation, although the statute will require them to certify that they have paid the arrearage

Respondent has some concerns about the Order denying the Petition for Rehearing. The court states “nothing prevents [Petitioners] from asserting at a future hearing that the single commissioner’s decision was in error or that the claimant’s Form 50 was withdrawn for the sole purpose of delay.” [A.P. 247]. This is potentially error and prejudicial to Cain-Davis, as it implies that a second commissioner could overrule Commissioner Campbell. A subsequent commissioner cannot ignore or overrule an order of a previous commissioner. See Cook v. Taylor, 272 S.C. 536, 538, 252 S.E.2d 923, 924 (1979)(finding when one circuit court judge vacates an order of reference by another circuit judge this amounts to a review of the order of another circuit judge and the second judge does not have the power to set aside the order of another judge); Enoree Baptist Church v. Fletcher, 287 S.C. 602, 603, 340 S.E.2d 546, 547 (1986)(finding a circuit court judge cannot deny the use of an amended complaint in light of an order of another circuit court judge that permitted use of the amended complaint). Commissioner Campbell’s administrative order precludes any such second bite of the apple. His pronouncement that the Form 50 was withdrawn without prejudice must be the end of this issue.

It may be, given that the court did not address the merits of Commissioner Campbell’s administrative order, that Petitioners are not procedurally barred from raising and even appealing the administrative order in conjunction with an appeal of a final order on the merits. The court may simply be clarifying that Petitioners retain the right to appeal even though an appeal has no merit.

An order *denying* a continuance may be reversed on appeal because the denial may result in prejudice, as when a party is precluded from presenting testimony or other evidence. See, e.g., Department of Social Svcs. v. Laura D., 386 S.C. 382, 688 S.E.2d 130 (Ct.App. 2009)(“The effect  

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and brought the payments current. S.C. Code Ann. § 42-9-260(G)(2007).

of the family court’s refusal to grant Mother’s motion for a continuance denied Mother [who was incarcerated], a necessary and proper party, meaningful access to this State’s courts.”). Conversely, an order *granting* a continuance is not merely immediately unappealable; it cannot be reversed under *any* but the most unusual circumstance.<sup>5</sup>

In the workers’ compensation context, an order granting a continuance cannot be reversed on appeal because it affects no fundamental right of any party thus there is no prejudice. There is simply nothing to appeal.

A tribunal necessarily exercises wide discretion in managing a case, and decisions denying

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<sup>5</sup>A review of published cases revealed a single case where our appellate courts addressed the *granting* of a continuance: In the Matter of the Care and Treatment of Miller, 393 S.C. 248, 713 S.E.2d 253 (2011). Miller appealed an order committing him to the custody of the Department of Mental Health under the Sexually Violent Predator Act (SVPA). He argued the circuit court denied his motion to dismiss because the SVP trial was not held within the sixty-day statutory limit and a continuance had not been granted. This Court denied his appeal and affirmed the order of the circuit court, finding “Miller was not substantially prejudiced by the State’s delay as any delay was created by the circuit court’s failure to expeditiously reul on Miller’s motion to dismiss and schedule the civil commitment trial.” Id.

Miller’s case is fundamentally different than a workers’ compensation case (or a conventional civil case between private parties). Miller had a genuine liberty interest at stake for he remained incarcerated for over a year with no criminal charges pending while awaiting a SVP trial that should have been held within sixty-days. This Court recognized the important issues at play finding “the SVPA’s procedures were promulgated to prevent inmates from being arbitrarily incarcerated beyond their release dates.” Id. To prevent a repeat of Miller’s dilemma, the Court set forth a detailed procedure to be applied in future cases.

The review of the granting of a continuance arose as a collateral issue associated with Miller’s motion to dismiss. Miller is a rare case because he remained incarcerated pending a trial. In the workers’ compensation arena, there is no such liberty interest and no prejudice to an employer from the granting of a continuance. At most, a continuance results in delaying benefits to the injured worker – perhaps prejudicial to the employee but certainly not to the employer. Cf. Rose v. JJS Trucking, LLC, 411 S.C. 366, 369, 768 S.E.2d 412, 413 (Ct. App. 2015) (finding an interlocutory order not immediately appealable under the “adequate remedy” provision when the only prejudice was “to delay the payment of money” between insurance providers).

a request for a continuance are ‘rarely’ overturned. M & M Group, Inc. v. Holmes, 379 S.C. 468, 475, 666 S.E.2d 262, 265 (Ct.App.2008). “Every reasonable presumption in favor of a proper exercise of the trial court’s discretion will be made.” 17 C.J.S. Continuances § 5 (2011). “The granting or refusal of a motion for continuance is within the discretion of the trial judge and his disposition of such a motion will not be reversed on appeal unless it is shown that there was an abuse of discretion to the prejudice of appellant . . . Review of them shows that reversals of refusal of continuance are about as rare as the proverbial hens’ teeth.” State v. Lytchfield, 230 S.C. 405, 409, 95 S.E.2d 857, 859 (1957). Reversals of orders *granting* continuances are, so far as Respondents research indicates, simply nonexistent.

The Court of Appeals correctly observed, “There is also no dispute that Davis then withdrew her hearing request and did so for the purpose of obtaining additional evidence supporting her claim for further medical evaluation and treatment.” [A.P. 244]. This fact shows Commissioner Campbell did not abuse his discretion in allowing Cain-Davis to withdraw her Form 50 without prejudice. It further prevents a subsequent challenge as obtaining additional evidence is fundamentally good cause and not for the purpose of delay. . . See Brown v. LaFrance Indus., 286 S.C. 319, 333 S.E.2d 348 (Ct.App.1985) (when the claimant in a workers’ compensation case inadvertently omits proof of causation, the case should be reopened and an opportunity should be afforded the claimant to supply such proof in the interest of justice).

Should the Court grant the Petition for Writ of Certiorari, Respondent requests that the Court address the issue created by the Order denying Rehearing. The Court should clarify that Commissioner Campbell did not abuse his discretion as he had good cause to allow Cain-Davis to withdraw her Form 50 without prejudice.

**CONCLUSION**

For the foregoing reasons, the Petition for Writ of Certiorari should be denied.



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