

# SOUTH CAROLINA Workers' Comp LAW BLOG



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Toll Free: 888.648.0526

[www.collinsandlacy.com](http://www.collinsandlacy.com)

## Clarification of Workers' Compensation Appeals

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**Rebecca Halberg, Associate**  
Direct Line: 803.255.0456  
[rhalberg@collinsandlacy.com](mailto:rhalberg@collinsandlacy.com)

### Practice Areas:

- Workers' Compensation

Two opinions issued last week address workers' compensation appeal procedures. These decisions should clarify questions regarding interlocutory orders and post-order motions. Following is a brief analysis of each opinion:

#### 1- Interlocutory Orders are not appealable in WC claims:

In *Bone v. U.S. Food Service & Indemnity Insurance Company of North America*, the Court of Appeals determined interlocutory orders are not appealable in workers' compensation claims. In *Bone*, Claimant alleged she sustained an injury to her back in June 2007. The single commissioner determined her claim was not compensable. The Appellate Panel affirmed the decision in full. Claimant appealed to the Circuit Court, who reversed and remanded the matter to the SCWCC for further proceedings based on its determination Claimant sustained a compensable injury. Employer and Carrier appealed to the Court of Appeals; however, the Court of Appeals dismissed the appeal on the grounds the Circuit Court Order was interlocutory and did not dispose of the case with finality. Employer and Carrier then filed a Writ of Certiorari to the Supreme Court. The Supreme Court affirmed the Court of Appeal's decision based on the following analysis:

The Administrative Procedures Act (APA) governs administrative agency matters and controls provisions that conflict with its terms. Section 1-23-390 of the APA states: "An aggrieved party may obtain a review of a final judgment of the Circuit Court or 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."

The court reviewed the definition of "final judgment" within prior case law. In *Charlotte-Mecklenburg Hospital Authority*, 387 S.C. 265, 692 S.E.2d 894 (2010), the Court states a final judgment "must dispose of the whole subject matter of the action or terminate the action, leaving nothing to be done but to enforce what has already been determined." Based on this definition, the court determined the Circuit Court order reversing the Appellate Panel and remanding the matter to the SCWCC for further proceedings was interlocutory, meaning an interim or temporary order.

The Supreme Court ultimately held the general appealability statute allowing interlocutory appeals in certain instances (§14-3-330) does not apply in workers' compensation claims because the APA specifically addresses administrative appeals in §1-23-390. Because Employer and Carrier's appeal to the Court of Appeals was an appeal of an interlocutory order and not a final judgment, the appeal was dismissed.

In *Rhame v. Charleston County School District*, the Court of Appeals dismissed Claimant's appeal from the Full Commission as untimely. The single commissioner initially found Claimant sustained a compensable injury. In an Order dated August 6, 2010, the Appellate Panel reversed the single commissioner's decision and denied Claimant's case on the grounds he failed to file his claim within the two year statute of limitations. Claimant filed a Petition for Rehearing with the Appellate Panel on September 8, 2010. Employer opposed the petition, and on September 20, 2010, the Appellate Panel dismissed the petition. Claimant filed a Notice of Appeal with the Court of Appeals, on October 21, 2010, which was 75 days after the Appellate Panel order.

Claimant asserted he is entitled to file a Petition for Rehearing with the Appellate Panel because §1-23-380 of the APA provides a party with 30 days to file a notice of appeal from the date of the final decision or "if a rehearing is requested, within 30 days after the decision is rendered." The Workers' Compensation Act is silent regarding Petitions for Rehearing; however, §42-17-60 provides the procedure for appealing Appellate Panel decisions. Pursuant to §42-17-60, a party has 30 days after an Appellate Panel award to file a Notice of Appeal with the Court of Appeals. It is well established in case law that SCRCR Rule 59(e) Motions to Alter or Amend a Judgment do not apply to matters before the Commission. The court ultimately determined petitions for rehearing to the Appellate Panel, like Rule 59(e) motions, are improper. As such, Claimant's time to file an appeal with the Court of Appeals was not tolled when the motion for rehearing was filed. Claimant's claim was therefore dismissed as he did not comply with the Act's 30 day time limit to file a Notice of Intent to Appeal with the Court of Appeals.

### **About Rebecca Halberg**

Rebecca Kirkland Halberg is a shareholder practicing in workers' compensation. She regularly appears before the South Carolina Workers' Compensation Commission. As a member of the Board of Directors for Kids' Chance South Carolina, Rebecca continually gives back to families of workers who were injured or killed on the job. During law school, Rebecca served as a law clerk for Collins & Lacy. She joined the firm as an associate after being admitted to the South Carolina Bar in 2006.

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