

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM THE SOUTH CAROLINA WORKER'S COMPENSATION
COMMISSION

Appellate Panel

Appellate Case No. 2012-211870

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SC Court of Appeals

Richard A. Hartzell,

Employee.....Respondent

v.

Palmetto Collision, LLC, Employer,.....Appellant

and

the S.C. Uninsured Employers Fund.....Respondent

REPLY TO APPELLANT'S RETURN TO PETITION FOR REHEARING

Appellant's contention that *Bone v. U.S. Food Service*, 404 S.C. 67, 744 S.E.2d 552 (2013) is inapplicable here, is misplaced. Appellant argues that since the instant case did not involve an appeal from the circuit court, *Bone* is not controlling. Due to the 2006 amendment of S.C. Code Ann. § 1-23-380, the first appeal from the Worker's Compensation Commission is now to the Court of Appeals. Therefore, the same principles governing appeals to the circuit court under former procedure, now apply to appeals from the agency

to this court.

Bone makes clear that a denial of benefits is an appealable final judgment, but an order granting benefits, the extent of which is yet to be determined, is not. In *Bone*, the circuit court's remand order contemplated further action by the Commission to determine the claimant's "medical status and specific benefits to be awarded,..." and was "...not a final judgment disposing of the entirety of the action and leaving nothing further to be done but execution of the judgment." *Id.* at 744 S.E.2d 552, 559.

The Commission's order of March 26, 2012 is the procedural equivalent of the Circuit Court's remand in *Bone*, as it also contemplates the future determination of the issues of maximum medical improvement, the need for additional medical treatment, and award of other benefits "necessarily resulting from such evaluation and determination." R. at 18.

Respondent contends that, even if the Commission's order is "preliminary" or "intermediate", it is immediately reviewable under S.C. Code Ann. § 1-23-380(A), arguing that no future review could alleviate or remedy past medical issues or obligations to medical providers necessitated by the order. This issue was considered in *Bone* and determined adversely to the employer:

"Petitioners and the South Carolina Defense Trial Attorneys Association lastly argued it is 'unfair' and 'inequitable' to allow a claimant to receive benefits while the matter is pending on appeal, since there is no stay of an award applicable here... Petitioners, however, do not address the opposite result, *ie.*, what happens when a claimant is denied benefits and is made to wait during the pendency of appeals by their employer and the insurance carrier, when the ultimate determination is made that the claimant suffered a compensable injury for which medical care and benefits were wrongfully withheld? The claimant may receive interest after the fact, per S.C. Code Ann. § 42-17-60, but there is no provision for medical support during this time. Claimants and employers are treated the same depending on who

prevails before the commission. Moreover, there has been no definitive enforceable award entered in this case. That is the point being made here."

Id. at 561. (emphasis added)

Appellant's argument is squarely against the *Bone* precedent.

Finally, Appellant argues that this court properly applied the substantial evidence standard. On this issue, Respondent relies upon his argument in the Petition for Rehearing.

Conclusion

The Petition for Rehearing should be granted, the opinion withdrawn, and the appeal dismissed.

Respectfully Submitted,

November 6, 2013



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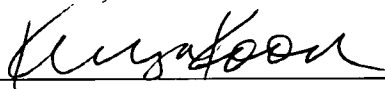
PROOF OF SERVICE

I certify that I have served Respondent Richard A. Hartzell's Reply to Appellant's Response to Petition for Rehearing on the Appellants by depositing a copy of same in the United States mail, postage prepaid, on November 6, 2013, addressed to their attorney of record, Kirsten Barr, Esq and to attorney for the S.C. Uninsured Employers Fund, Lisa Glover, Esq., as follows:

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November 6, 2013


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