

THE STATE OF SOUTH CAROLINA
In The Supreme Court

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AUG 17 2012

APPEAL FROM LEXINGTON COUNTY
Court of Common Pleas

S.C. Supreme Court

G. Thomas Cooper, Jr., Circuit Court Judge

Case No. 2008-CP-32-2876

Cathy C. Bone, Respondent,

v.

U.S. Food Service and
Indemnity Insurance Company
of North America, Petitioners.

RETURN TO PETITION FOR REHEARING

This return is filed pursuant to Rule 240(e), SCACR:

I.

The petition for rehearing posits that the decision of the *Bone* majority will result in a waste of judicial resources.

Cathy Bone moved to dismiss this appeal nearly three years ago. If the tasks left to be accomplished on remand were truly ministerial, the remand proceedings would not have taken long. The petitioners could then have appealed, and the parties would be arguing the merits and not appealability. Instead the petitioners fought, even contesting Ms. Bone's suggestion of Rule 204 certification to this Court.

The statutory approach to immediate appealability does not waste judicial resources, it conserves them. The right to immediate appeal is limited to either (a) the administrative agency's final judgment or (b) an intermediate decision for which review after the final judgment will not provide an adequate remedy. The right to appeal a circuit court's order in an administrative case is limited to an order with a final judgment, with a possible exception for an interlocutory order for which review after the final judgment will be inadequate. This system is designed — but not guaranteed — to minimize cases with multiple appeals.

II.

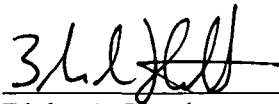
The petition overlooks that the right to immediate appeal is not strictly limited to a final judgment. A party may also immediately appeal an intermediate decision for which review after the final judgment will not provide an adequate remedy. See S.C. Code Ann. § 1-23-380 (Supp. 2011). The petition raises hypothetical scenarios questioning the point at which a workers' compensation case ever becomes "final" and suggests that the Court's approach to the law will be impractical and unworkable.

Some of hypotheticals present fair questions. To consider one example, consider an order of temporary total disability payments and medical treatment. Despite a judgment for particular benefits, the case will remain active at the commission until the claimant reaches the point of maximum medical improvement. At that point, the commission will make a final award for the injury's permanent effects.

It is possible to argue both sides for the immediate appealability of such an order. Such an order could be accurately characterized as a "final judgment" because it resolves all

of the issues in the parties' series of pleadings and has an actual "judgment" to enforce. On the other hand, the traditional formulation of the "final judgment" rule describes a party reaching "the end of the road," and in this hypothetical, the claimant clearly has further down the road to travel. Such an order could also qualify as an intermediate order for which review after the final judgment would be inadequate; maximum medical improvement might remain years away, and asking the employer to fund years of medical care without any opportunity for review might be unfair. Those questions may be interesting, but they were not presented in this case. The petitioners argued that the court of appeals was wrong to dismiss this case because an order remanding a case for further proceedings is a "final judgment." This Court correctly held that it is not.

Respectfully submitted,



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August 17, 2012

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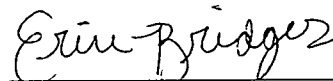
U.S. Food Service and Indemnity
Insurance Company of North America, Petitioners.

PROOF OF SERVICE

The undersigned hereby certifies that on the date indicated below she served counsel for the Petitioners with a copy of the *Return to Petition for Rehearing* by mailing a copy of the same by United States Mail with first class postage prepaid to the following address:

Michael E. Chase, Esquire
Carmelo B. Sammataro, Esquire
Tuner, Padget, Graham & Laney, P.A.
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August 17, 2012
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S.C. Supreme Court

VIA HAND DELIVERY

Honorable Daniel E. Shearouse
Clerk of Court
Supreme Court of South Carolina
Post Office Box 11330
Columbia, South Carolina 29211

RE: Bone v. U.S. Food Service
Case Tracking No.: 2010-171946

Dear Mr. Shearouse:

Please find enclosed for filing the original and seven (7) copies of the *Return to Petition for Rehearing* in this case. I have also enclosed a proof of service of this document upon counsel of record. Please return the additional filed copy to me via our courier.

Thank you for your assistance with this matter. If you need any additional information, please do not hesitate to contact me.

Sincerely,

Erin Bridges
Paralegal to Blake A. Hewitt
BLUESTEIN, NICHOLS, THOMPSON &
DELGADO, LLC

/emb

Enclosures

cc: William L. Smith, II, Esquire
Carmelo B. ("Sam") Sammataro, Esquire