THE STATE OF SOUTH CAROLINA
In The Supreme Court

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APPEAL FROM RICHLAND COUNTY
APPELLATE PANEL, WORKERS' COMPENSATION COMMISSION



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Opinion No. 27516 (S.C. Sup. Ct. filed Aug. 8, 2012)

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Ricky Rhame, . . . . . Petitioner,

v.

Charleston County School District, . . . . . Respondent.

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**RETURN**

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This return is filed pursuant to this Court's request.

**A. The commission's power to decide petitions for rehearing does not prejudice anyone or cause problems for anybody.**

The School District claims that if the commission acts like every other normal tribunal and has the power to entertain and decide petitions for rehearing, this will cause prejudice to litigants like the School District and will result in undue problems for the Bar and the public.

*First*, the timing of this argument makes it hard to take the argument at face value. The parties have been briefing this issue for over 4 years, yet this is the first time the School District has claimed that if the commission follows the common course with respect to rehearing, disaster will ensue. Every other tribunal is able to handle rehearing with ease. The commission should be no different.

*Second*, this argument misses the critical component of the question presented. This appeal was dismissed as untimely, but the rules of timeliness are controlled by a specific statute—section 1-23-380—which controls over all others. What the commission *did* with Mr. Rhame's petition for rehearing does not matter. The commission could deny the petition without even reading it. The thing that matters under the statute is *when* the commission took action. Section 1-23-380 says that Mr. Rhame's deadline to appeal did not run until 30 days after the decision on rehearing was rendered. That ought to be the end of it.

### B. The party who is resorting to a "forced" construction of the APA is the School District, not Mr. Rhame.

The School District calls the Court's construction of section 1-23-380 "forced," but the School District never explains how the word "rehearing," which the law commonly associates with the losing party having a chance to ask a tribunal to reconsider its decision, would have any meaning under the reading of the statute that the School District proposes. Section 1-23-380 speaks of "rehearing" coming *after* an agency's final decision, and we know that in workers' compensation cases, the "final" decision is made by the commission itself, which generally acts through an appellate panel of three commissioners.

The end result of the School District's view is that people like Mr. Rhame—people who win before the hearing commissioner but who lose at the appellate panel—do not get the chance to participate in what this Court has called "part and parcel of a party's 'single bite at the apple[.]'" *Elam v. South Carolina Dep't of Transp.*, 361 S.C. 9, 21, 602 S.E.2d 772, 778 (2004). The commission also has no chance to fix any obvious errors in its decisions. Under the School District's view, these principles lose.

### C. Most of the School District's arguments are re-treads from the briefing, and it should say something that the School District makes no effort to distinguish the two decisions from this Court that are directly on point.

The first six (6) pages of the School District's argument repeat the same arguments from its respondent's brief. Those arguments are now bolstered with references to the dissent.

The School District never mentions this Court's decision in *McCummings v. South Carolina Department of Corrections*. As this Court is aware, *McCummings* held that "in the absence of an agency rule specifying a time limit, parties have thirty days after a final agency decision to petition the agency for rehearing or appeal the decision[.]" 319 S.C. 440, 441, 462 S.E.2d 271, 272 (1995).

The School District never mentions *In re Crawford*, which this Court cited in *Rhame*. Four (4) members of this Court voted in *Crawford* to hold that until a party files an appeal, the commission can exercise all powers that are "incident to [its] jurisdiction," including rehearing decisions. 205 S.C. 72, 93-94, 30 S.E.2d 841, 849-50 (1944).

A holding against Mr. Rhame requires a lucid basis for distinguishing or limiting these cases, yet the School District never argued against these precedents in its brief or asked the Court to argue against them at oral argument.

### D. Even assuming that *Lark v. Bi-Lo* could be read as narrowly as the School District proposes, the School District still loses because other authorities recognize the APA's supremacy in areas of administrative law.

The School District says that *Lark v. Bi-Lo* should be read as establishing nothing more than the fact that section 1-23-380 is controlling on the standard of appellate review.

Even if this was right—and it is not—the School District would still lose. *Lark* only *involved* the standard of review, but the case says that the APA purports to provide " the rules for judicial review as well as "uniform procedures before State Boards and Commissions." 276 S.C. 130, 132, 276 S.E.2d 304, 305 (1981). But let us assume that this language was not there. What does the School District do with the General Assembly's 2006 announcement that the APA is supposed to provide uniform procedures for contested cases and that if "a provision of this act conflicts with an existing statute of regulation, the provisions of this act are controlling"? 2006 Act No. 387, § 53. If the APA contemplates rehearing but the workers' compensation statutes or regulations disallow that chance, the APA controls. That seems to be the only sensible reading of this language.

### E. The Commission's rule on motions is a rule of processing. Nobody except the commission is going to decide the things that "involve the merits" in a workers' compensation case.

The commission's regulation on motions is a "format" rule, not an "exclusionary" rule. Regulation 67-215 opens by saying that "a party can file a motion when a form is not applicable," and when that clause is paired with the clause instructing that the commission will not hear motions that involve the merits, the implication is that for issues that *do* involve the merits, the commission wants parties to file a form, not a motion.

A contrary decision make no sense because the issues that "involve the merits" are the central issues in every case. These are the most important things that the commission decides. The commission just wants parties to file a form instead of a motion.

The commission can conduct its business as it sees fit. But the regulation does not say that petitions for rehearing are not allowed. If it did, it would conflict with the APA.

## CONCLUSION

It seems ironic that the School District is asking this Court to rehear this case while the School District would deny Mr. Rhame any opportunity to ask the commission to reconsider its decision after ruling against him. This appeal has been heard by the Court of Appeals, there had to be rehearing at the Court of Appeals, Mr. Rhame had to seek certiorari, and there was full briefing and an argument after this Court granted certiorari. The School District's petition is allowed even though the appellate court system has lived with case for years, yet the School District would deny Mr. Rhame any chance to ask the appellate panel—the fact finders—to give his case a second look while the case is still in its infancy. The decision to reverse is correct.

Respectfully submitted,

May 8, 2015

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THE STATE OF SOUTH CAROLINA
In The Supreme Court



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APPEAL FROM RICHLAND COUNTY
APPELLATE PANEL, WORKERS' COMPENSATION COMMISSION

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Opinion No. 27516 (S.C. Sup. Ct. filed Apr. 22, 2015)

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Ricky Rhame, . . . . . Petitioner,

v.

Charleston County School District, . . . . . Respondent.

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**PROOF OF SERVICE**

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

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May 8, 2015
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BNTD
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ATTORNEYS AT LAW

May 8, 2015

**VIA HAND DELIVERY**

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



RE: Ricky Rhame v. Charleston County School District
Case Tracking No.: 2012-213148

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: Kenneth W. Harrell, Esquire
Patrick L. Jennings, Esquire
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