

THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

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APPEAL FROM LEXINGTON COUNTY  
Court of Common Pleas

R. Knox McMahon, Circuit Court Judge

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Case No.: 2012-CP-32-02093  
2012-CP-32-02111  
Appellate Case No. 2014-001258

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**RECEIVED**  
MAY 02 2016  
SC Court of Appeals

Ricky Kneece.....Respondent.

v.

Kneece Farms and Legion Insurance Co. in liquidation through the S.C. Property and  
Casualty Insurance Guaranty  
Association.....Appellants.

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**APPELLANTS' RETURN TO  
PETITION FOR REHEARING**

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Appellants in the above-referenced action submit the following Return to Respondent's Petition for Rehearing. Appellants contend that the Petition should be denied and the Court's Order dated April 7, 2016 vacating the Circuit Court Order and remanding this matter back to the Commission for further proceedings be upheld. Appellants submit that the Court properly found that the Commission's Order from which appeal to the Circuit Court was made was not a "final decision" within the meaning of S.C. Code Ann. § 1-23-380 *et seq* and therefore not immediately appealable to the courts under the Administrative Procedures Act ("APA"). The Court also properly found that Respondents would not be deprived of an "adequate remedy" by immediate judicial review of the

Commission's interlocutory Order.

**I. THE COMMISSION'S ORDER IS INTERLOCUTORY AND NOT IMMEDIATELY APPEALABLE TO THE COURTS**

As an initial matter, Appellant's point out that Respondent's Petition misconstrues the issue presented. Specifically, Respondents argue that the Circuit Court Order reversing the Commission and entering its own findings was immediately appealable. Appellants would probably not dispute that contention if the Circuit Court Order could withstand further jurisdictional scrutiny. However, this Court found *ex meru motu* that the interlocutory order at issue here is the Commission Order, NOT the Circuit Court's Order. Since the Circuit Court had no jurisdiction over the matter, its Order was vacated. Therefore, the finality of the Circuit Court Order is irrelevant to this discussion of whether the Commission's Order was immediately appealable.

It is now well-settled black letter law that an administrative order not resolving **all** issues and/or disposing of the **entire** action and leaving only execution of judgement is not a "final agency decision" subject to judicial review under the APA. *Bone v. U.S. Food Services*, 404 S.C. 67, 744 S.E.2d 552 (SC2013); *See also Charlotte-Mecklenburg Hospital Authority v. S.C. Dept. of Health & Environmental Control*, 387 S.C. 265, 692 S.E.2d 894 (SC 2010). It is also elementary that appeals from the Commission are governed by the APA. *Lark v. Bi-Lo*, 276 S.C 130, 276 S.E.2d 304 (1981). In this case, the Commission reversed the Hearing Commissioner's finding that Respondent was entitled to lifetime compensation benefits for total disability with physical brain damage, and remanded the case back to a Hearing Commissioner for a determination of his entitlement to permanent partial disability benefits. Because the issue of Respondents entitlement to permanent disability benefits remains to be determined, the Commission's remand Order is not a "final decision" appealable to the Circuit Court. *See also Price v. Peachtree Electrical Services, Inc.*, 405

S.C. 455, 748 S.E.2d 455 (SC 2013).

For these reasons, the Court correctly found the Commission's remand Order for determination of permanent partial disability benefits was not a final order subject to judicial review, and properly vacated the Circuit Court Order.

## **II. RESPONDENTS ARGUMENTS FOR EXCEPTIONS TO THE APA'S REQUIREMENTS FOR APPEALABILITY HAVE ALREADY BEEN REJECTED BY THE SUPREME COURT**

Arguing for immediate appealability of the Commission Order even if it is not a "final" decision, Respondent states in his Petition, "it seems clear that the General Assembly intended the appellate courts to have jurisdiction over intermediate agency decisions under the same circumstances that appellate courts have jurisdiction to review intermediate orders issued by the circuit courts." In lengthy fashion, the Court in *Bone supra* thoroughly rejects the premise that exceptions to finality of an administrative order justifying immediate judicial review under the general appealability statute (S.C. Code Ann. § 14-3-330) have any application in administrative/agency matters. The Court correctly notes the policy considerations against such a conflated appellate scheme between the APA and § 14-3-330, not the least of which would be undue delays and waste of judicial resources of disposing of interlocutory appeals.

Further, Respondent's citation to *Canteen v. McLeod Reginal Medical Center*, 384 S.C. 617, 682 S.E.2d 504 (Ct. App. 2009) as authority for the proposition that general appealability concepts and principles still nevertheless apply to the APA's appellate scheme is improper because that case was specifically overruled by *Charlotte-Mecklenburg supra*. Respondent's attempts to distinguish its precedential value to the present case are simply invalid. Simply put- the APA governs appeal from the Workers Compensation Commission, not the general appealability statute, and the only

exception to the finality requirement is when review of the final agency decision would not provide an adequate remedy. See *Bone supra*.

### III. RESPONDENTS HAVE NOT BEEN DEPRIVED OF AN “ADEQUATE REMEDY” BY THIS COURT VACATING THE CIRCUIT COURT ORDER

Respondent argues that, even if the Commission’s Order was interlocutory, this Court’s decision not to review the Circuit Court Order reversing it deprives him of an “adequate remedy” because additional litigation before the Commission on remand resulting therefrom will cause him hardship in the form of delaying payment for lost compensation and provision of medical benefits. Respondent urges this Court to proceed with review on the merits of the Circuit Court’s Order. However, Respondent again conflates review of the Commission Order with review of the Circuit Court Order. Specifically, S.C. Code Ann. § 1-23-380 provides, in pertinent part, “[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.” (emphasis added). Clearly, S.C. Code Ann. § 1-23-380 only applies to judicial review of final agency orders, including those from the Commission, except in cases where waiting for a final decision fails to provide an “adequate remedy.”

Here, Respondent is not being deprived of an adequate remedy. He is instead asking this Court to create a remedy that does not exist- circumventing application of § 1-23-380 and proceeding straight to review of the Circuit Court Order pursuant to § 1-23-390, which governs the appeal of administrative/agency matters from the Circuit Court to the appellate courts. This is untenable because, for reasons expounded upon earlier, the Circuit Court lacked jurisdiction to address the Commission’s Order in the first place. That Order should be considered void *ab initio* with no legal validity or effect and therefore not subject to review. Respondent still has an adequate remedy to the

Commission's denial of his lifetime compensation benefits claim via another appeal to the Circuit Court after the Commission enters a final order on his entitlement to permanent partial disability benefits.

Respondent next suggests that alleged hardships resulting from this Court's remand to the Commission are tantamount to depriving him of an "adequate remedy." These arguments are similar to considerations thoroughly rejected by the Supreme Court in *Bone supra*. When confronted with the inequitable dilemma of an Employer/Carrier having to pay compensation and medical benefits during the pendency on an appeal to the courts where compensability is disputed, the Court stated, "[c]laimants and employers are treated the same depending on who prevails before the Commission." *Id.* Any unintended consequences of delaying review of a final decision from the Commission in this case do not deprive Respondent of an adequate remedy.

For these reasons, no exceptions to the APA regarding appealability of the Commission's interlocutory Order apply to this case.

### **CONCLUSION**

For all the aforementioned reasons, Appellants submit the Court properly found that the Circuit Court had no jurisdiction to review the Commission's Order. As such, Appellants pray that Respondents Petition for Rehearing be DENIED and this Court's Order remanding this case back to the Commission be enforced forthwith.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Mark D. Cauthen", with a long horizontal flourish extending to the right.

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May 2, 2016

THE STATE OF SOUTH CAROLINA  
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APPEAL FROM LEXINGTON COUNTY  
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Case No.: 2012-CP-32-02093  
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Ricky Kneece,.....Respondent.

v.

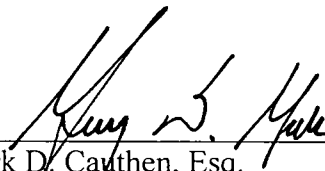
Kneece Farms and Legion Insurance Co. in liquidation through the S.C.  
Property and Casualty Insurance Guaranty  
Association.....Appellants.

**PROOF OF SERVICE**

I certify that I have served the **Return to the Petition for Rehearing** on the attorney of record for **Ricky Kneece** by hand delivery, on **May 2, 2016**, addressed as follows:

Scott Elliott, Esquire  
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Attorney for the Respondent

May 2, 2016

  
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May 2, 2016

**Via Hand Delivery**

The Honorable Jenny Abbott Kitchings  
Clerk, South Carolina Court of Appeals  
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Columbia, SC 29201

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MAY 02 2016  
SC Court of Appeals

***Re: Ricky Kneece v. Kneece Farms***

*WCC File No: 5920867 Claim No.: L16755*

*Our File No.: 5400-0032 Ct. of Appeals Tracking No.:2014-001258*

Dear Ms. Kitchings:

Enclosed for filing please find an original and seven (7) copies of the Return to the Petition for Rehearing in the above-referenced matter. Please return one clocked copy of the Proof of Service to our courier.

Please accept my highest regards.

Very truly yours,



Mark D. Cauthen

MDC/hrv  
Enclosure  
cc: Scott Elliot, Esquire