

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM SOUTH CAROLINA
Workers' Compensation Commission

Appellate Case No.: 2016-000497

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SC Court of Appeals

Samuel Rose, Claimant, Appellant,

v.

JJS Trucking, Uninsured Employer, and Chris Thompson Services,
Upstream Employer, and Bridgefield Casualty Ins. Co., Carrier for
Chris Thompson Services, and The State Accident Fund, Respondents.

INITIAL BRIEF OF APPELLANT

Stephen B. Samuels
SAMUELS LAW FIRM, LLC
1320 Richland Street
Columbia, SC 29201
(803) 779-4000
stephen@samuelslawfirm.net

Attorney for Appellant

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STATEMENT OF ISSUES ON APPEAL

1. Whether the Workers' Compensation Commission erred in holding Appellant Samuel Rose was barred from receiving workers' compensation benefits by violating § 42-1-560(b) when Rose entered a voluntary dismissal of his third-party claim rendering the civil suit a nullity and curing any violation of § 42-1-560 pursuant to Callahan v. Beaufort County School Dist., 375 S.C. 92, 651 S.E.2d 312 (2007).

2. Whether the Workers' Compensation Commission erred in refusing to admit the stipulation of dismissal into evidence, thus denying Rose due process of law pursuant to Callahan v. Beaufort County School Dist., 375 S.C. 92, 651 S.E.2d 312 (2007).

STATEMENT OF THE CASE

This workers' compensation appeal arises out of work-related injuries sustained by the Appellant, Samuel Rose, on August 10, 2011. Rose was a tractor-trailer driver. His truck was rear-ended by another motorist, Robbie Clark, while driving on I-26. Rose injured his head, knee, leg, back and neck in the accident. [May 23, 2012 order].

Past Procedural History:

Rose filed a claim for workers' compensation benefits. [Form 50, 12/6/11]. As his direct Employer, JJS Trucking, LLC, was uninsured, Rose sought benefits from the upstream statutory employer, Respondent Chris Thompson Services, LLC (hereafter "Chris Thompson Services"). Rose's Form 50 named JJS Trucking and Chris Thompson Services as Defendants in the claim.

On January 24, 2012, Chris Thompson Services and its insurance carrier, Bridgefield Casualty, filed a Form 51 denying the claim. [Form 51]. Chris Thompson Services also filed a Petition to Transfer Liability to the South Carolina Uninsured Employers' Fund (UEF). [Petition to Transfer Liability]. The UEF was added as a party.

On May 15, 2012, a hearing was held before Commission Gene McCaskill. Commissioner McCaskill issued a Decision and Order dated August 23, 2012, wherein he found:

1. Samuel Rose was an employee of JJS Trucking on August 10, 2011.
2. On August 10, 2011, Samuel Rose sustained an injury by accident to his head, knee, leg, back and neck arising out of and in the course of his employment with JJS Trucking.

5. As a result of his accident, Claimant is entitled to temporary total disability benefits beginning on August 10, 2011 and continuing until such time as he reaches maximum medical improvement.
6. As a result of his accident, Claimant is entitled to an evaluation to determine the extent of his injuries and is entitled to ongoing medical

treatment as prescribed by an authorized treating physician to be selected by the carrier.

8. On August 10, 2011, JJS Trucking was operating without proper insurance as required by the Workers' Compensation Act.
9. On August 10, 2011, JJS Trucking was operating as a subcontractor for Chris Thompson Services, LLC. Christ Thompson Services, LLC is an "upstream employer" pursuant to § 42-1-415.
10. Thompson Services, LLC is liable to pay Claimant all benefits to which he is entitled under the Act.

Commissioner McCaskill made the following Conclusion of Law:

7. Chris Thompson Services, LLC, asserted in its pleadings and at the Hearing that liability for this claim should be transferred to the South Carolina Uninsured Employer's Fund. § 42-1-415 only permits the higher tier contractor to petition the Commission to transfer responsibility for benefits to the UEF after it has paid all benefits due the Claimant under the Act. The evidence in the record indicates that Claimant has not received all benefits he is due under the Act from Chris Thompson Services, LLC, or its carrier. Therefore, the issue of transfer of responsibility to the UEF is not ripe for adjudication at this time.

Respondents timely filed a Form 30 (Notice of Appeal) to the Full Commission. [form 30]. On May 15, 2013, the Appellate Panel issued an Order summarily affirming Commissioner McCaskill's conclusion that the Petition for Transfer of Liability was "not ripe for adjudication."

Respondent Chris Thompson Services then appealed to this Court. The UEF appeared as Respondents in the initial appeal. After Final Briefs were filed, the Court directed the parties (Chris Thompson Services and the UEF) to file memoranda addressing whether Chris Thompson Services' Appeal should be dismissed under Bone v. U.S. Food Serv., 404 S.C. 67, 73-74, 744 S.E.2d 552, 556 (2013) ("An agency decision which does not decide the merits of a contested case is not a final agency decision subject to judicial review.").

The Court issued a published Opinion dismissing the appeal on February 27, 2015. Rose v. JJS Trucking, LLC, 768 S.E.2d 412, 411 S.C. 366 (Ct. App. 2015). The case was remitted to the Commission for further proceedings.

During the pendency of this first appeal, Chris Thompson Services paid temporary total disability benefits to Rose, but refused to provide medical treatment. See S. C. Code Ann. § 42-17-60 (2007)(“In case of an appeal from the decision of the commission on questions of law, the appeal does not operate as a supersedeas and, after that time, the employer is required to make weekly payments of compensation and to provide medical treatment ordered by the commission involved in the appeal or certification until the questions at issue have been fully determined in accordance with the provisions of this title.”).

Current Procedural History.

As the workers’ compensation case was pending, Robbie Clark filed a lawsuit against Rose in the Charleston County Court of Common Pleas on August 30, 2012. The lawsuit was styled Robbie Clark v. Samuel A. Rose, Case No. 2012-CP-10-2996. Clark was a driver for Chris Thompson Services. He was driving a truck following Rose on I-26, when he rear ended Rose’s truck causing Rose’s injuries. In his complaint, Clark alleged “due to Defendant’s [Rose] malfunctioning tail lights, Plaintiff struck the rear of Defendant’s tractor-trailer, thereby causing an collision and injuring Plaintiff.” [Complaint].

Rose, through his insurance defense counsel, filed an Answer denying liability. On January 2, 2013, Rose had filed an Amended Answer and Counterclaim adding a claim for personal injury due to Clark’s negligence. [Amended Answer] Rose did not, at that time nor within 30 days of the February 20, 2013 compulsory counterclaim, file a Form S2.

Respondents filed a Form 21 seeking to terminate Rose's compensation alleging that he had reached MMI and required no further treatment (Rose disputed this allegation). A hearing was held before Commissioner Aisha Taylor on September 23, 2013.

On November 12, 2013 – prior to Commissioner Taylor making a ruling on the merits – Respondents filed a Motion to Introduce Newly Discovered Evidence. The additional evidence consisted of pleadings in the civil lawsuit filed by Clark against Rose. The documents were a (1) Summons and Complaint filed May 7, 2012, and (1) an Amended Answer and Counterclaim filed February 20, 2013. [motion].

On November 21, 2013, Appellant Rose timely filed a Motion in Opposition to Introduce After Discovered Evidence. [motion in opposition].

On November 25, 2013, Respondent Chris Thompson Services filed a Return to Motion in Opposition to Introduce After Discovered Evidence. [return].

On December 20, 2013, Appellant Rose filed Claimant's Motion to Introduce newly Discovered Evidence. The evidence sought to be introduced was a Stipulation of Dismissal without prejudice filed December 5, 2013 in Robbie Clark v. Samuel A. Rose, Case No. 2012-CP-10-2996.

On January 3, 2014, Commissioner Taylor issued three Administrative Orders addressing the motions. The commissioner granted Respondents' Motion to Introduce Newly Discovered Evidence. [Order 1/3/14]. She also denied Claimant's Motion in opposition to Introduce After Discovered Evidence and denying Claimant's Motion to Introduce After Discovered Evidence. [Order 2 and 3 1/3/14].

On January 14, 2013, Appellant Rose filed a Form 30 appealing Commissioner Taylor's rulings on the motions. [Form 30 dated 1/14/14].

On January 21, 2014, the Full Commission issued an order dismissing the appeal as interlocutory. [FC order 1/21/14].

On February 10, 2014, Rose's separate third-party counsel filed a new Summons and Complaint in the Charleston County Court of Common Pleas. With the new Summons and Complaint, Rose filed and served a Form S2 dated February 11, 2014. [S&C with S2].

On September 2, 2014, Commissioner Taylor issued a Decision and Order. The single commissioner ruled that by failing to file a Form S2, the "Claimant has failed to satisfy the mandatory requirements of S.C. Code Ann. Sec. 42-1-560." She further ruled "Because the Claimant has not followed the mandatory requirements of S.C. Code Ann. Sec. 42-1-560, but has ignored them entirely, the Claimant has failed to preserve his right to proceed against the employer for additional benefits under the Workers' Compensation Act after the date he commenced the third-party action, February 20, 2013." As a result of these rulings, Commissioner Taylor held Respondents could terminate compensation as of the September 20, 2013 hearing and would have no further liability.

On September 11, 2014, Rose timely filed a Form 30 (Notice of Appeal) with the Commission. The Appellate Panel heard oral arguments on April 21, 2015.

On February 8, 2016, the Appellate Panel issued a Decision and Order affirming the single commissioner's Decision and Order.

This appeal followed.

STATEMENT OF THE FACTS

Appellant Samuel Rose was employed as a truck driver by JJS Trucking, LLC. JJS was a subcontractor for Chris Thompson Services, LLC.

On August 10, 2011, Rose was driving his 18-wheeler eastbound on I-26. Another 18-wheeler, driven by Robbie Clark, was traveling behind Rose's truck. Clark was employed by Chris Thompson Services. The truck Clark was driving was owned by Chris Thompson Services. [APA page 101].

Rose slowed down for a construction zone ahead. Clark then rearended Rose, pushing Rose's truck into the concrete median wall. [APA page 101].

Rose suffered serious injuries in the accident. His injuries included a traumatic brain injury with loss consciousness; lacerations to both shins; fractured medial femoral condyle (femur); and injuries to his back and neck. [APA pages Dr. Wildstein recommended surgery to his neck – specifically a one-level C5-6 ACDF. [APA page 96].

Rose filed a claim for workers' compensation benefits against his direct employer, JJS Trucking. JJS had allowed its workers' compensation insurance to lapse, so was operating as an uninsured employer in violation of the Workers' Compensation Act. Rose then proceeded against Chris Thompson Services (as his statutory employer) and the South Carolina Uninsured Employers' Fund (UEF).

The initial hearing was held before Commissioner Gene McCaskill. On August 23, 2012, Commissioner McCaskill ruled that Chris Thompson Services was the liable employer for Rose's claim. The commissioner ordered Chris Thompson Services to pay temporary compensation and to provide evaluation and treatment for Rose's injuries.

Chris Thompson Services appealed the order, seeking to have liability transferred to

the UEF on the grounds that the subcontractor and direct employer, JJS Trucking, had provided a fraudulent certificate of insurance. The appeal was dismissed an interlocutory.

While the appeal was pending, several events occurred. Robbie Clark filed a lawsuit against Rose in the Charleston County Court of Common Pleas on August 30, 2012. The lawsuit was styled Robbie Clark v. Samuel A. Rose, Case No. 2012-CP-10-2996. Clark was a driver for Chris Thompson Services. He was driving a truck following Rose on I-26, when he rear ended Rose's truck causing Rose's injuries. In his complaint, Clark alleged "due to Defendant's [Rose] malfunctioning tail lights, Plaintiff struck the rear of Defendant's tractor-trailer, thereby causing an collision and injuring Plaintiff." [Complaint].

Rose, through his insurance defense counsel, filed an Answer denying liability. On January 2, 2013, Rose filed an Amended Answer and Counterclaim adding a claim for personal injury due to Clark's negligence. Rose did not, at that time nor within 30 days of the February 20, 2013 compulsory counterclaim, file a Form S2.

In the meantime, Rose had been seen for his injuries by an orthopaedic surgeon, Dr. Michael Wildstein, on November 23, 2011 and December 14, 2011. [APA pages 93-96]. Dr. Wildstein recommended surgery to Rose's cervical spine.

Rose also obtained a second opinion from another orthopaedic surgeon. Dr. Steven Poletti, on July 15, 2013. Dr. Poletti agreed with Dr. Wildstein's recommendation for a surgical fusion. [Apa pages 99-100].

On August 23, 2012, the Single Commissioner ordered "Chris Thompson Services, LLC, through its carrier, Bridgefield Casualty Insurance Company, is liable for this claim and shall pay Claimant's medical treatment and temporary total disability benefits beginning August 10, 2011 and continuing through such time Claimant is able to return to work."

[Order page 11]. The Appellate Panel affirmed. Despite the Commission's Order. Respondents provided no medical treatment.

On March 20, 2013, Respondents arranged a medical evaluation with a physical medicine doctor (not a spine surgeon), Dr. Gregory Jones. Dr. Jones opined Rose required no additional medical treatment and had reached maximum medical improvement.

Relying on the report from Dr. Jones, Respondents filed a Form 21 seeking to terminate Rose's compensation alleging that he had reached MMI and required no further treatment (Rose disputed this allegation). A hearing was held before Commissioner Aisha Taylor on September 23, 2013 *solely on these issues*.

On November 12, 2013 – before Commissioner Taylor issued a ruling on the merits – Respondents filed their Motion to Introduce Newly Discovered Evidence. In their Motion, Respondents moved the Commission to reach the “conclusion that the Claimant failed to satisfy the mandatory requirements of S.C. Code Ann. § 42-1-560(b) and; therefore, he is not entitled to any additional workers' compensation benefits as a matter of law.” [Motion page 3].

In response, Rose entered into a “Stipulation of Dismissal without Prejudice” of the lawsuit on December 5, 2013. [stipulation]. Rose filed motions to oppose Respondents' motion and to introduce the stipulation of dismissal into the record. [motions].

Commissioner Taylor denied Rose's motions. She granted Respondents motion and then issued an order holding Respondents could terminate compensation as of the September 20, 2013 hearing and would have no further liability. The Order was based on the purported violation of § 42-1-560(b).

ARGUMENT

1. The Commission erred in barring Rose from further workers' compensation benefits because the voluntary dismissal without prejudice of the underlying lawsuit cured any procedural defect.

In general, workers' compensation benefits are the exclusive remedy for an employee who suffers injuries on the job. S.C. Code Ann. § 42-1-540 (2007). The exception is if the employee's injuries result from the negligence of a third-party unconnected to the liable employer. In that case, the employee may also proceed in tort against the negligent third-party.

Should the employee pursue a civil case against a third-party tortfeasor, he must comply with the requirements of § 42-1-560. The statute states "Notice of the commencement of the action shall be given within thirty days thereafter to the Workers' Compensation Commission, the employer and carrier upon a form prescribed by the Workers' Compensation Commission." S.C. Code Ann. § 42-1-560(b) (2007). The Commission requires the use of Form S-2. Callahan v. Beaufort County School Dist., 375 S.C. 92, 651 S.E.2d 312 (2007).

In the instant case, Rose did not commence the action. He was sued by an employee of Thompson Services, the liable statutory employer. Rose initially answered and then amended his Answer to include a counter-claim. The irony here is that Rose's counterclaim was effectively *void ab initio* as he had no third-part suit against his statutory employer or its employee. Furthermore, as its employee had sued and been sued, Thompson Services was on notice of the lawsuit from the very beginning.

Regardless of the lack of merit of the underlying suit, the fact remains that Rose did not file and serve a Form S-2 within 30 days of the counterclaim. In Callahan, the South

Carolina Supreme Court held a lack of prejudice to the employer's subrogation rights is immaterial. The court reasoned "Because workers' compensation statutes provide an exclusive compensatory system in derogation of common law rights, we strictly construe the requirements of § 42-1-560 and leave it to the legislature to amend and define its ambiguities. Here, the statute clearly requires timely notice to be given to all three entities employer, carrier, and Commission on the Form S-2. Id. (internal citation omitted).

Even though the court held filing of the S-2 was mandatory, the court also affirmed the circuit court's finding that Callahan's workers' compensation claim should not be dismissed. The court quite properly recognized that "civil procedure and appellate rules should not be written or interpreted to create a trap for the unwary lawyer or party." Elam v. S.C. Dept. of Transp., 361 S.C. 9, 602 S.E.2d 772 (2004). *Cf. Gamble v. State*, 298 S.C. 176, 379 S.E.2d 118 (1989) (stating rules applicable to post-conviction relief actions should not be construed in manner which operate as a trap for the unwary or deprive an applicant of the adjudication on the merits of his original petition); Rule 1, SCRPC (civil procedure rules "shall be construed to secure the just, speedy, and inexpensive determination of every action."

Callahan was allowed to proceed on the merits of her workers' compensation claim.

The court held:

In this case, Claimant voluntarily dismissed her third-party suit pursuant to Rule 41, FRCP. A voluntary dismissal leaves the situation as though no suit had ever been filed. 9 Charles Alan Wright & Arthur R. Miller, Federal Practice & Procedure 2d § 2367, at 321 (1995); Allen v. S. Ry. Co., 218 S.C. 291, 297-298, 62 S.E.2d 507, 511 (1950). Following this rule, the third-party suit originally filed in January 2003 became a nullity, and § 42-1-560 is not applicable. As a result, there is no violation of § 42-1-560 when the third-party suit is treated as never being filed.

Callahan v. Beaufort County School Dist., 375 S.C. 92, 651 S.E.2d 312 (2007).

The facts in Callahan are identical to the instant case. Here, Rose entered into a voluntary dismissal of the underlying lawsuit. Upon doing so, the third-party suit became a nullity. By following the procedure set forth in Callahan, Rose cured the procedural defect and eliminated any violation of § 42-1-560.

The Commission erred in failing to apply Callahan. This was a straightforward error of law which should be reversed by this Court. As he dismissed the third-party suit, Rose is entitled to proceed on the merits of his workers' compensation claim. The decision below should be reversed and remanded to the Appellate Panel with instructions to proceed on the merits of the underlying workers' compensation claim.

2. The Single Commissioner and Appellate Panel committed an error of law in granting the Respondents' Motion to Introduce Newly Discovered Evidence (Claimant's Answer and Counterclaim) and denying Appellant's Motion to Introduce Newly Discovered (Voluntary Dismissal of the lawsuit).

In admitting Respondents' new evidence and denying Rose the opportunity to rebut the new evidence (or even to be heard), the Commission committed an error of law, thus depriving Rose of due process. The Court can correct this error either by reversing the Commission's evidentiary ruling or by taking judicial notice of the fact Rose entered a stipulation of dismissal of the third-party lawsuit.

The hearing was set on a Form 21 filed by Chris Thompson Services. The issue raised on the pleadings was a "request to stop or terminate payment of temporary total disability benefits and determine whether he claimant is entitled to an award of permanency pursuant to statements of maximum medical improvement." [Tr. Page 4, lines 16-21]. At no point during that hearing did Respondents raise an issue over election of remedies. The issue tried was a straightforward dispute over whether Rose had reached MMI with no need

for further treatment (per Dr. Jones) or required surgery (per Drs. Wildstein and Poletti).

On November 12, 2013, Chris Thompson Services filed the Motion to Introduce Newly Discovered Evidence. Rose responded by dismissing the underlying tort suit and filing his own Motion to introduce newly discovered evidence.

Respondents' motion had *nothing* to do with the issues tried at the Form 21 hearing. The motion sought to dismiss Rose's workers' compensation claim via collateral attack. Collateral attack is generally disfavored. "Where subject matter jurisdiction depends upon a factual finding, a judicial decree determining such a fact does or does not exist cannot be challenged on collateral attack." McCreery v. Covenant Presbyterian Church, 303 S.C. 271, 400 S.E.2d 130 (1990)(where "the factual issue of liability under the Act is finally adjudicated [it] cannot be retried on collateral attack.").

The fundamental requirement of due process is the opportunity to be heard at a meaningful time and in a meaningful manner. See Roper Hosp. v. Clemons, 326 S.C. 534, 484 S.E.2d 598 (Ct. App.1997). A party is entitled to notice of the issues to be tried so that he can present evidence and legal arguments on the issues. Had Respondents raised the election of remedies issue in their Form 21, then it would have been properly before the Commission. See Frederick v. Wellman, Inc., 385 S.C. 8, 682 S.E.2d 516 (Ct. App. 2009)(allowing employer to raise lack of subject matter jurisdiction as grounds to terminate benefits by voiding employment relationship due to fraud in the employment application).

Here though, Respondents introduced the issue via a motion to submit after-discovered evidence. While the courts have approved the general concept of raising an election of remedies issue before the Commission via a motion, addressing the issue via a motion without an opportunity to respond violated Appellant's due process rights. Appellant

had no notice that the issue would be raised until the motion was filed. Even more concerning – because the issue was raised on a motion – is the fact Appellant had no opportunity to respond to the evidence presented by Respondents. His only recourse was to dismiss the lawsuit and file his own motion to introduce the proof of the dismissal. Callahan v. Beaufort County School Dist., 375 S.C. 92, 651 S.E.2d 312 (2007)(upon voluntary dismissal, a third-party suit becomes “a nullity, and § 42-1-560 is not applicable.”). However, because the Commission denied his motion to admit the stipulation of dismissal, he was denied the ability to present the critical evidence that would have solved the problem.

When a party introduces new evidence on a new issue, the commission or court must determine whether the opposing party is prejudiced by the new evidence. “If the Commission undertakes to receive additional evidence, due process requires that counsel should be alerted beforehand so that they may be prepared to participate in the proceedings.” Green v. Raybestos-Manhattan, Inc., 250 S.C. 58, 156 S.E.2d 318, 320 (1967). “In considering potential prejudice, the court should consider whether the opposing party has had the opportunity to prepare for the issue now being formally raised.” Armstrong v. Collins, 366 S.C. 204, 621 S.E.2d 368 (2005), *citing* Soil & Material Eng’rs, Inc. v. Folly Assoc., 293 S.C. 498, 501, 361 S.E.2d 779, 781 (Ct. App.1987); *see also* Pool v. Pool, 329 S.C. 324, 328, 494 S.E.2d 820, 823 (1998)(citing Folly Assoc. for the premise that the prejudice contemplated by Rule 15, SCRPC, is the lack of opportunity to refute any new evidence connected with the amended complaint).

As to the specific motion itself, the Single Commissioner summarily denied Rose’s Motion to Introduce Newly Discovered Evidence. She ruled “The evidence sought to be introduced (the Voluntary Dismissal) does not fit the meaning of ‘newly discovered

evidence' under Regulation 67-707 of the South Carolina Code as it did not exist at the time of the hearing before the undersigned on August 5, 2013." [Order 3].

The Single Commissioner's rationale for denying Rose's motion is inapplicable to this case. *After discovered evidence* is used to show that the result of a trial was erroneous because critical factual evidence (unknown to the aggrieved party) was not presented to the trier of fact. The after-discovered evidence must be presented *after* judgment is rendered. Additionally, the new evidence must go to the merits of the case – not a collateral issue. For example, assume the single commissioner ruled on the merits that Rose was entitled to surgery per Dr. Widestein or Dr. Poletti. If, after judgment were rendered, Respondents learned of an intervening accident sufficient to break the chain of causation between the examinations by Dr. Jones and Dr. Poletti, they could introduce such evidence under regulation 67-707.

In the case *sub judice*, while the parties inartfully captioned their motions as seeking to introduce after-discovered evidence, the motions substantively were motions to reopen the record. As such, the single commissioner and Appellate Panel were required to consider the prejudice inherent in admitting Respondents' evidence while denying Appellant's rebuttal evidence. See Green v. Raybestos-Manhattan, Inc., 250 S.C. 58, 156 S.E.2d 318, 320 (1967) ("If the Commission undertakes to receive additional evidence, due process requires that counsel should be alerted beforehand so that they may be prepared to participate in the proceedings."). Cf. Fore v. Griffco of Wampee, Inc., 409 S.C. 360, 762 S.E.2d 37 (Ct. App. 2014) (error of commission to refuse to hear testimony of rebuttal witness when claimant promptly amended her pre-hearing brief to respond to new evidence presented by employer). As the Commission's refusal to admit the stipulation of dismissal into the record prevented

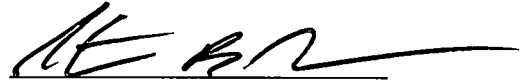
Rose from curing the § 42-1-560 violation as expressly permitted by Callahan, the prejudice to Rose is manifest.

Furthermore, the Commission did not have to admit the stipulation of dismissal for this Court to apply Callahan. The parties agree on both key points: (1) Rose did not timely file a Form S-2; and (2) Rose entered a stipulation of dismissal upon being alerted to the violation of § 42-1-560. It is well established that “an appellate court can take judicial notice of something that was not before the trial court if it is indisputable.” Wise v. Wise, 394 S.C. 591, 716 S.E.2d 117 (Ct. App. 2011).

Therefore, the Court should hold the Commission erred in refusing to allow Rose to respond to the additional evidence submitted by Respondents. The Court should take judicial notice that Rose filed a stipulation of dismissal, thus curing the violation and allowing his workers’ compensation case to proceed on the merits. The decision below should be reversed and remanded to the Appellate Panel with instructions to proceed on the merits of the underlying workers’ compensation claim.

CONCLUSION

For the foregoing reasons, the Decision and Order of the Appellate Panel should be reversed. The Appellant's claim for workers' compensation benefits should be reinstated. The case should be remanded for a decision on the merits of the issues raised in the September 23, 2013, Form 21 hearing.



Stephen B. Samuels
SAMUELS LAW FIRM, LLC
1320 Richland Street
Columbia, SC 29250
(803) 779-4000
stephen@samuelslawfirm.net

Attorney for Appellant

Columbia, South Carolina
May 31, 2016