

**Summary of SC92541, *United States Department of Veterans Affairs v. Karla O. Boresi*,  
Chief Administrative Law Judge**

Appeal from the St. Louis city circuit court, Judge Mark H. Neill  
Argued and submitted Oct. 30, 2012; opinion issued April 30, 2013

**Attorneys:** The VA was represented by Paul Petraborg, Richard G. Callahan and Nicholas P. Llewellyn of the U.S. attorney's office in St. Louis, (314) 845-5050; and the administrative law judge was represented by Solicitor General James R. Layton of the attorney general's office in Jefferson City, (573) 751-3321.

*This summary is not part of the opinion of the Court. It has been prepared by the communications counsel for the convenience of the reader. It neither has been reviewed nor approved by the Supreme Court and should not be quoted or cited.*

**Overview:** The United States Department of Veterans Affairs appeals the circuit court's denial of its petition for a writ (order) of mandamus to compel an administrative law judge to allow the VA to intervene in a workers' compensation proceeding involving a veteran who was treated at a VA medical facility. In a decision written by Judge Patricia Breckenridge and joined by three judges, the Supreme Court of Missouri reversed the circuit court's judgment and entered its judgment making the writ permanent. Because the lower court denied the writ petition by order and judgment, an appeal is available. Federal law, which in this case controls the conflicting state law, compels the VA's intervention. Given the workers' compensation law's minimal pleading requirements, the VA's pleadings are sufficient for it to proceed.

Judge Zel M. Fischer wrote an opinion concurring in result. Although he believes the VA has a clear and unequivocal right to intervene, he would not allow a summons to be a substitute for a preliminary order in any future case in which a writ is sought.

**Facts:** Mark Hollis, a veteran, sought workers' compensation benefits, alleging a work injury for which he received treatment at a United States Department of Veterans Affairs medical facility. It is undisputed that Hollis' employer did not authorize this care. The VA moved to intervene in the workers' compensation proceeding pursuant to federal law. The state administrative law judge overruled the motion, determining she lacked authority to permit intervention. The VA sought a writ of mandamus from the circuit court, which issued a summons to the administrative law judge. Ultimately, the court denied the VA's writ petition. The VA appeals.

**REVERSED; WRIT MADE PERMANENT.**

**Court en banc holds:** (1) Appellate review is available in this case because the lower court issued a summons – the functional equivalent of a preliminary order – then denied the permanent writ. This practice fails to acknowledge the nature of the remedy and is not authorized by Supreme Court rules. The parties, who have litigated the matter fully, were not at fault for this deviation and should not be required to initiate a new writ proceeding due to the circuit court's failure to follow the procedure in the applicable rules. The standard of review is abuse of discretion.

(2) Although chapter 287, RSMo, and its applicable regulations – which govern workers’ compensation in Missouri – do not provide for third parties to intervene, federal law clearly and unequivocally authorizes the VA to intervene in Hollis’ workers’ compensation proceeding. The VA sought to intervene in the case pursuant to 38 U.S.C. section 1729 (2006), which gives the VA the right to obtain payment for the cost of medical care it furnishes. This federal law applies specifically to a non-service disability “incurred incident to the veteran’s employment and ... covered under a workers’ compensation law or plan that provides for payment for the cost of health care and services provided to the veteran by reason of the disability” and expressly allows the VA to enforce its rights to receive payment by “intervene[ing] ... in any action or proceeding brought by the veteran ... against a third party.” The action here is within the purview of the federal law because Hollis – a veteran – brought a workers’ compensation claim against a third party – his employer – for compensation following an injury that resulted in a non-service disability. The lack of a state-legislated procedure for intervention does not bar the VA’s intervention because the federal statute and the United States Constitution’s supremacy clause provides the authority necessary for the VA to intervene. *See, e.g., United States v. New Jersey, Violent Crimes Compensation Board*, 831 F.2d 458 (3d Cir. 1987).

(3) The VA’s motion was pleaded sufficiently. This Court cannot read into the law pleading requirements that are not there. State workers’ compensation law has minimal requirements for pleadings, requiring only a statement of where the accident occurred and whether a claim against the second injury fund will be asserted. In proceedings regarding the VA’s claim after its intervention, it either will be able to show that it is entitled to recover or it will not, and the administrative law judge can adjudicate its claim accordingly.

**Opinion concurring in result by Judge Fischer:** The author disagrees that the proper standard of review is abuse of discretion but concurs in the result of this case because the VA has a clear and unequivocal right to intervene. Further, he would not allow a summons to be a substitute for a preliminary order in any future writ case because a summons is not authorized by Rule 94 and does not serve all the purposes of a preliminary order. The purpose of requiring a preliminary order at the outset of a writ proceeding is to require some judicial evaluation of the claim to determine if the respondent should be required to answer the allegations. If a preliminary order is not issued pursuant to the rules governing writ petitions based on the allegations in the petition, then the remedy is to file an original writ petition in a higher court in accordance with Rule 84.