

FLORIDA DEPARTMENT OF
CORRECTIONS,

Appellant,

v.

JASON SCHWARZ, STEVEN
HOPKINS, SCOTT STEWART,
CHARLES KRAUS, DAVID
WARRILOW, and PUBLIC
EMPLOYEES RELATIONS
COMMISSION,

Appellees.

IN THE DISTRICT COURT OF APPEAL
FIRST DISTRICT, STATE OF FLORIDA

NOT FINAL UNTIL TIME EXPIRES TO
FILE MOTION FOR REHEARING AND
DISPOSITION THEREOF IF FILED

CASE NO. 1D11-3287

Opinion filed June 13, 2012.

An appeal from an order of the Public Employees Relations Commission.

Jennifer Parker, General Counsel, Rana Wallace, Assistant General Counsel, and
Todd E. Studley, Assistant General Counsel, Tallahassee, for Appellant.

Benjamin H. Yormak of Yormak Employment & Disability Law Group, Bonita
Springs, for Appellee Jason Schwarz; Rhea P. Grossman of Rhea P. Grossman,
P.A., Fort Lauderdale and James C. Casey, Law Offices of Slesnick & Casey, LLP,
Coral Gables, for Appellees Steven Hopkins, Scott Stewart, Charles Kraus &
David Warrilow; Suzanne M. Choppin, Staff Attorney for Appellee Public
Employees Relations Commission.

PER CURIAM.

Upon consideration of appellant's response to the Court's order of July 5,

2011, and the Court's order of August 5, 2011, the appeal is dismissed for lack of jurisdiction. An order that determines entitlement to back pay but leaves open the amount due is interlocutory in nature. See Mathis v. Fla. Dep't of Corr., 726 So. 2d 389, 391 n.2 (Fla. 1st DCA 1999). See also SSA Sec. Inc. v. Pierre, 44 So. 3d 1272, 1273 (Fla. 1st DCA 2010) (holding order of the Florida Commission on Human Relations which determined liability in favor of appellee and ordered appellant to remit back pay, but reserved jurisdiction over the amount of back pay to be awarded, was not appealable final agency action, rejecting the argument that the formula provided in the order for calculating the amount of back pay rendered the issue similar to a calculation of prejudgment interest); Lazy Days' RV Ctr., Inc. v. Shepley, 929 So. 2d 639, 639-40 (Fla. 1st DCA 2006) (dismissing for lack of jurisdiction, with citation to Mathis); Dep't of Corr. v. Saulter, 751 So. 2d 163 (Fla. 1st DCA 2000) (dismissing for lack of jurisdiction, with citation to Mathis); Hill v. Div. of Ret., 687 So. 2d 1376, 1377 (Fla. 1st DCA 1997) ("[An administrative order's] finality depends on whether it has brought the administrative adjudicative process to a close."). Cf. Baron v. Provencial, 908 So. 2d 526, 527 (Fla. 4th DCA 2005) (holding that a trial court order which only "gave the parties some big picture guidance concerning the expenses the seller was entitled to recover and asked the parties to work out the details" was non-final because "judgments that leave an element of damages to be determined later are

not final orders”); Abifaraj v. Fla. Birth-Related Neurological Injury Comp. Ass’n, 844 So. 2d 751, 752-53 (Fla. 1st DCA 2003) (concluding an administrative order which determined the appellant’s claim was compensable under the Florida Birth-Related Neurological Injury Compensation Plan, ordered the payment of previously incurred expenses, and accorded a lump sum award of \$100,000, but which did not make findings as to the amount of the previously incurred expenses which the appellee was ordered to pay, was not an appealable final order because actual expenses which arose from the compensable injury were not an ancillary or collateral issue like attorney’s fees and costs); Fla. Leisure Acquisition Corp. v. Fla. Comm’n on Human Relations, 639 So. 2d 1028, 1028-29 (Fla. 5th DCA 1994) (rejecting argument that, when liability and damages aspects of the case were bifurcated pursuant to stipulation of the parties, Florida Leisure would be deprived of an adequate remedy if appellate review were delayed until after entry of a final order determining all issues). But see State, Dep’t of Corr. v. Smith, 980 So. 2d 606 (Fla. 1st DCA 2008).

BENTON, C.J., DAVIS, and MARSTILLER, JJ., CONCUR.