IN THE STATE OF SOUTH CAROLINA

In the Court of Appeals

APPEAL FROM MARION COUNTY
Court of Common Pleas

Thomas Russo, Circuit Court Judge

Case No. 2010-CP-33-1048

Betty Joe Floyd as Personal Representative of the Estate of Scottie Wayne Floyd and as dependent mother beneficiary of Scottie W. Floyd, deceased employee.....Appellant,

v.

Ken Baker Used Cars, Employer, and Legion Insurance Company in liquidation c/o South Carolina Property & Casualty Insurance Guaranty Association and AmGuard Insurance Company, Carriers,.....Respondents.

RETURN TO APPELLANT'S PETITION FOR REHEARING

July 12, 2013

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ARGUMENT

The court was correct in finding that the decedent's death was a proximate result of the September 13, 2001 accident.

The appellant argues that this Court erred in failing to find that the claimant's death on September 5, 2008 was a result of an independent accident arising out of and in the course of employment. The appellant further asserts that the undisputed evidence established that the claimant's death was a result of his accidental termination of his anti-seizure medication.

In reviewing this case, the Court is bound by the substantial evidence standard. "Substantial evidence is not a mere scintilla of evidence, nor the evidence reviewed blindly from one side of the case, but is evidence which, considering the record as a whole, would allow reasonable minds to reach the conclusion the administrative agency reached in order to justify its action." Liberty Mut. Ins. Co. v. S.C. Second Injury Fund, 363 S.C. 612, 611 S.E.2d 297 (Ct. App. 2005). "The possibility of drawing two inconsistent conclusions for the evidence does not prevent an administrative agency's findings from being supported by substantial evidence." Id at 620, 611 S.E.2d at 301.

The undisputed facts in this case reveal four (4) important points which the Court relied upon in affirming the order of the lower court. The decedent sustained a brain injury on September 13, 2001 which resulted in the development of a seizure disorder. Furthermore, the decedent was required to take anti-seizure medications to prevent him from having seizures. Lastly, the decedent died from complications as a result of the seizure disorder caused by the brain injury because he stopped taking his anti-seizure medications. The only logical conclusion from this evidence is that the decedent's death was a direct result of his work injury which occurred on September 13, 2001 when he sustained a brain injury, and not a separate accident.

The appellant argues that whether or not an event is compensable is a question of law to be reviewed *de novo* by the court. Shuler v. Gregory, 366 S.C. 435, 622 S.E.2d 569 (Ct. App. 2005). Regardless of whether or not this is a substantial evidence case or a question or law, the only logical conclusion from the evidence is that the decedent's death was a natural result of the work injury of September 13, 2001.

The appellant also argues that this claim should have been found compensable under Shuler v. Gregory, 366 S. C. 435, 622 S.E.2d 659 (Ct. App. 2005). The appellant asserts that the decedent was performing duties for the employer required under the Act when he stopped taking his anti-seizure medications. The reliable, probative and substantial evidence in the record clearly establishes that the decedent was not performing any duty for the employer which was required under the Act at the time of his death. In fact, the decedent was acting contrary to any duty he had under the Act to take his medications as was required by his treating physicians to prevent his seizures. Thus, there was no independent accident which occurred on September 5, 2008 when the decedent died.

CONCLUSION

This Court was correct in affirming the order of the lower court. There is substantial evidence in the record to support the findings of the lower court in that the decedent did not sustain an independent injury by accident on September 5, 2008. Furthermore, there is substantial evidence in the record to establish that the claimant was not performing any duty placing him in the course and scope of his employment at the time of his death on September 5, 2008. Accordingly, this Court was correct in denying that the decedent sustained a subsequent injury by accident on September 5, 2008.

Based upon the foregoing, this respondent respectfully requests that the appellant's Petition for Rehearing be denied.

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July 12, 2013

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PROOF OF SERVICE

I certify that I have served the **Return to Appellant's Petition for Rehearing** on the Appellant, Betty Joe Floyd as Personal Representative of the Estate of Scottie Wayne Floyd and as dependent mother beneficiary of Scottie W. Floyd, deceased employee, and the carrier, Legion Insurance Company in liquidation c/o South Carolina Property & Casualty Insurance Guaranty Association by depositing a copy of it in the United States Mail, postage prepaid, on July 12, 2013 addressed to their attorneys of record respectively Steve Wukela, Jr., Wukela Law Firm,, Post Office Box 13057, Florence, South Carolina, 29504 and Mark D. Cauthen and Peter P. Leventis, McKay, Cauthen, Settana & Stubley, P.A., Post Office Box 7217, Columbia, South Carolina 29202.

July 12, 2013

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ATTORNEYS AT LAW
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July 12, 2013

The Honorable Jenny Abbott Kitchings
South Carolina Court of Appeals
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Reply To:
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RE: *Betty Floyd v. Ken Baker Used Cars*
Civil Action No: 2012209586
Claim No: KEWC904415-001
Our File No: 00215L.00070

Dear Ms. Kitchings:

Please find enclosed the original and six copies of the Return to Appellant's Petition for Rehearing in the above-referenced matter. I would appreciate your filing the original and returning a clocked copy to me via courier.

By copy of this letter, I am herewith serving a copy of the enclosed on counsel for all parties.

Sincerely yours

Edwin P. Martin, Jr.

EPM/kay
Enclosure
cc: Steve Wukela, Jr.
Mark D. Cauthen
Peter P. Leventis