

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM HORRY COUNTY
Court of Common Pleas

Larry B. Hyman, Jr., Circuit Court Judge

Case No. 2009-CP-22-3298
(Appeal Tracking No.:2011200507)

David G. Becker.....Appellant

v.

Steve Frazier, d/b/a Sunrise Construction,
Frazier Properties of Myrtle Beach, Steve's
Housing Center and the South Carolina Uninsured Employer's
Fund.....Respondent

INITIAL BRIEF OF RESPONDENT

RECEIVED

JUN 14 2012

SC Court of Appeals

Lisa C. Glover
South Carolina Second Injury Fund
100 Executive Center Drive, Ste. 101
Columbia, South Carolina 29210
(803) 798-2722 x 124
Attorney for Respondent

TABLE OF CONTENTS

Table of Authorities.....3

Statement of Issues on Appeal.....4

Statement of the Case.....4

Standard of Review.....5

Argument

1. THE COURT DID NOT ERR IN FINDING THE RESPONDENTS DID NOT REGULARY EMPLOY FOUR OR MORE PERSONS.

Conclusion.....7

TABLE OF AUTHORITIES

Cases:

Grant v. South Carolina Coastal Council, 319 S.C. 348, 461 S.E.2d 388 (S.C. 1995)5

Hargrove v. Titan Textile Co., 360 S.C. 276, 599 S.E.2d 604 (Ct. App. 2004) 5

Pearson v. JPS Converter & Indus. Corp., 327 S.C. 393, 489 S.E.2d 219 (S.C. App. 1997)
..... 5

Nolan v. National Sales Co., 294 S.C. 371, 364 S.E.2d 752 (1988).....6

Statutes

S.C. Code Ann. § 42-1-360(2) 6

STATEMENT OF ISSUES ON APPEAL

1. DID THE CIRCUIT COURT ERR IN FINDING THE RESPONDENT/EMPLOYERS DID NOT EMPLOY FOUR OR MORE PERSONS THEREBY SUBJECTING RESPONDENT/EMPLOYERS TO THE WORKERS' COMPENSATION ACT?

STATEMENT OF THE CASE

On July 17, 2006 Claimant fell from a wooden scaffold while working as an employee of James Chapman. This was a renovation project. Steven Frazier, d/b/a Sunrise Construction, d/b/a Frazier Properties of Myrtle Beach and d/b/a Steve's Housing Center hired James Chapman. The home was a rental property owned by Steve Frazier.

The Single Commissioner found that the Claimant was the direct employee of James Chapman when he was injured. The Commissioner further found that James Chapman was hired by Steve Frazier to renovate a home that he owned as rental property. Additionally, the Single Commissioner found that renovating homes was a necessary part of Steve Frazier's rental business.

The Single Commissioner further found that James Chapman did not have four or more employees regularly employed in South Carolina. The Single Commissioner made the same finding of fact in regards to Steve Frazier. The Single Commissioner also found that even assuming the Claimant was a statutory employee of defendant, Steve Frazier, Frazier still did not have four or more employees regularly employed in South Carolina. The Single Commissioner found that Steve Frazier is not a statutory employer subject to the South Carolina Workers' Compensation Act. The Single Commissioner found that the

Claimant did not suffer an injury by accident arising out of the course and scope of his employment on July 17, 2006 and that his claim is not compensable.

The Claimant filed an appeal contending that defendant Steve Frazier was his statutory employer on July 17, 2006 when he suffered a work related injury and that Steve Frazier was responsible for providing workers' compensation benefits.

Steve Frazier contends he was not subject to the South Carolina Workers' Compensation Act because he did not regularly employ four or more persons. The South Carolina Uninsured Employers' Fund contends the direct employer, James Chapman, was not subject to the South Carolina Workers' Compensation Act because he did not regularly employ four or more persons.

STANDARD OF REVIEW

The standard of review for decisions of the South Carolina Workers' Compensation Commission is established in the South Carolina Administrative Procedures Act. Hargrove v. Titan Textile Co., 360 S.C. 276, 599 S.E.2d 604 (Ct. App. 2004). A reviewing court must not disturb the Workers' Compensation Commission's findings if those findings are supported by substantial evidence in the record. Pearson v. JPS Converter & Indus. Corp., 327 S.C. 393, 489 S.E.2d 219 (S.C. App. 1997). The fact that reasonable minds may differ or that there is the possibility of drawing inconsistent conclusions does not prevent an agency's findings from being supported by substantial evidence. Grant v. South Carolina Coastal Council, 319 S.C. 348, 461 S.E. 2d 388 (S.C. 1995).

The question of whether an employer is subject to the South Carolina Workers' Compensation Act is jurisdictional and therefore one of law. An employer must regularly employ four or more persons in the State of South Carolina in order to be subject to the South Carolina Workers' Compensation Act. See Nolan v. National Sales Co., 294 S.C. 371, 364 S.E.2d 752 (1988). This court may review the record on appeal and render a decision regarding the jurisdictional question on its own view of the evidence.

ARGUMENT

1. **THE COURT DID NOT ERR IN FINDING THE RESPONDENTS DID NOT REGULARLY EMPLOY FOUR OR MORE PERSONS.**

Section 42-1-360(2) of the South Carolina Workers' Compensation exempts "any person who has regularly employed in service less than four employees in the same business within the State..." The record in this case demonstrates that both James Chapman and Steve Frazier had less than four employees during the relevant time period. Therefore they are not subject to the South Carolina Workers' Compensation Act. Since the employers are not subject to the South Carolina Workers' Compensation Act the Claimant is not entitled to any benefits.

CONCLUSION

For reasons cited herein, the South Carolina Workers' Compensation Uninsured Employers' Fund requests that this Honorable Court affirm the decision below as supported by substantial evidence in the record and deny Appellant's request for benefits.

Respectfully Submitted

By: *Lisa C. Glover*

Lisa C. Glover
Deputy General Counsel
South Carolina Second Injury Fund
100 Executive Center Drive Suite 101
Columbia, South Carolina 29210
(803) 798-2722 extension 124

Columbia, South Carolina
June 14, 2012