

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM SOUTH CAROLINA
Workers' Compensation Commission

WCC File No. 1217409

Appellate Case no. 201-002279

Reginald Warner, Employee, Appellant,

v.

Gallman Personnel Services, Inc., Employer, and Zurich American Insurance Company, c/o
Gallagher Bassett Services, Inc., Carrier, Respondents.

RETURN TO RESPONDENTS' MOTION FOR COSTS

Stephen B. Samuels
Samuels Law Firm, LLC
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Attorney for Appellant

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Appellant, by and through his undersigned counsel, hereby files his return to Respondent's Motion for Costs.¹ As grounds for denying the Motion, Appellant would show that Respondent is not a prevailing party in this appeal, such that it is not entitled to costs on appeal.

ARGUMENT

As Appellant was the prevailing party in this appeal, the Court should deny Respondents' Motion for Costs and should tax costs against Respondents.

The applicable rule provides, "Unless otherwise ordered by the appellate court or agreed by the parties, costs shall be taxed against the appellant when the appeal is dismissed or judgment on appeal is affirmed. " Rule 222 (a), SCACR. Under this rule, the appellate court has discretionary authority as to whether costs shall be taxed against either party

The Rule allows costs to be awarded to the prevailing party. The South Carolina Supreme Court has defined a *prevailing party* as "one who successfully prosecutes an action or successfully defends against it, prevailing on the main issue, even though not to the extent of the original contention [and] is the one in whose favor the decision or verdict is rendered and judgment entered." Heath v. County of Aiken, 302 S.C. 178, 182-83, 394 S.E.2d 709, 711 (1990) (alteration in original) (*quoting* Buza v. Columbia Lumber Co., 395 P.2d 511, 514 (Alaska 1964)).

In the instant case, neither party prevailed. The Court never reached the merits, instead dismissing the appeal as interlocutory pursuant to 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."). Indeed, the Order dismissing the Appeal

¹Respondents filed the Motion "via hand delivery" with the Court on May 14, 2015. The Motion was served on Respondents on May 18, 2015 by the United States Postal Service. As such, the Return is due on May 28, 2015.

is itself an unappealable interlocutory order. The issues raised by Appellant are still preserved to be raised in a later appeal following the Commission's order on remand. Appellant could prevail on the merits (or not) in a later appeal, which would then be the appropriate time to assess costs and attorney's fees.

As the merits were never addressed, no issues have been addressed with finality. As such, the Motion for Taxing Costs and Attorney's Fees should be denied.

CONCLUSION

For the foregoing reasons, this Court should grant Appellant's Motion for Costs and deny the Respondents' Motion for Costs.

Respectfully submitted,



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Attorney for Appellant

Columbia, South Carolina
May 27, 2015

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM SOUTH CAROLINA
Workers' Compensation Commission

WCC File No. 1217409

Reginald Warner, Employee/Claimant, Appellant,

v.

Gallman Personnel Services, Inc. and Zurich American Insurance Company, c/o
Gallagher Bassett Services, Inc., Respondents.

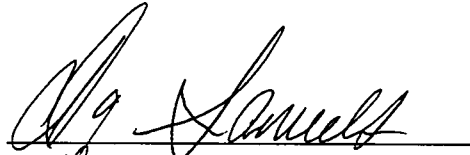
PROOF OF SERVICE

I certify that I, Angi R. Samuels, am a paralegal to Stephen B. Samuels and I have caused the **Appellant's Return to Respondents' Motion for Costs** to be served on the parties below, by placing a copy of the same in the United States mail, with sufficient postage affixed thereto and return address clearly marked on the date indicated below, addressed as follows:

C. Barrett Burley, Esquire
Attorney for Respondents
McAngus, Goudelock & Courie, LLC
Post Office Box 12519
Columbia, South Carolina 29211

The Honorable Amy Bracy
Judicial Director
S.C. Workers' Compensation Commission
Post Office Box 1715
Columbia, South Carolina 29202-1715

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A handwritten signature in black ink, appearing to read "Angi R. Samuels", is written over a horizontal line.

Angi R. Samuels
Samuels Law Firm, LLC
1320 Richland Street
Columbia, SC 29250
(803) 779-4000
Angi@samuelslawfirm.net

Columbia, South Carolina
May 27, 2015



STEPHEN B. SAMUELS
ATTORNEY AT LAW

May 27, 2015

The Honorable Jenny Abbott Kitchings
Clerk of the South Carolina Court of Appeals
1015 Sumter Street
Columbia, South Carolina 29201

RE: Reginald Warner v. Gallman Personnel Services, Inc., et. al.
Appellate Case No.: 2014-002279

Dear Ms. Kitchings:

Enclosed for filing are the original and seven (7) copies of the **Appellant's Return to Respondents' Motion for Costs and Proof of Service**, in the above case.

Please have your staff clock in the Appellant's Return to Respondents' Motion for Costs and Proof of Service and return a clocked copy in the enclosed self addressed stamped envelope.

Sincerely,

Angi Samuels
Paralegal for Stephen B. Samuels

SBS/ars
Enclosure(s) as stated

cc w/encl.: C. Barrett Burley, Esquire
Amy Bracy, SCWCC

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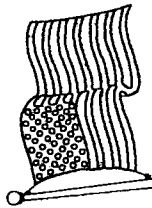
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WE WORK FOR THE PEOPLE WHO WORK.

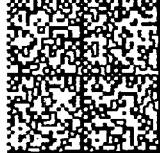
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