

DECISION AND ORDER OF THE  
SOUTH CAROLINA WORKERS' COMPENSATION  
COMMISSION APPELLATE PANEL  
SCWCC FILE NO. 0816090

Jacob Tisdale, )  
 )  
 Deceased Claimant, )  
 )  
 vs. )  
 )  
 Williamsburg County )  
 Department of Special Needs, )  
 )  
 Employer, )  
 )  
 and )  
 )  
 State Accident Fund, )  
 )  
 Carrier, )  
 )  
 Defendants. )

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MAY 11 2017

SC Court of Appeals

**HEARING:**

Held in Columbia, South Carolina on January 14, 2017.

**APPEARANCES:**

The Claimant appeared, represented by Kimberly V. Barr of Law Offices of Ronnie A. Sabb, LLC of Kingstree.

The Defendants, Williamsburg County DSN, Employer and State Accident Fund, Carrier, were represented by George D. Gallagher of Speed, Seta, Martin, Trivett & Stublely, LLC of Columbia.

**PURPOSE:**

To determine issues set forth on Defendants Form 30 Request for Full Commission Review and Rehearing

**DECISION AND ORDER BY:**

Appellate Panel: Commissioners Barden, Campbell, and Wilkerson

**FILED:**

April 7, 2017

## STATEMENT OF THE CASE

Jacob Tisdale ("Deceased"), who was employed by the Williamsburg County Department of Special Needs ("Department") as a residential facility manager, died on October 17, 2008 as the result of a single vehicle accident on October 16, 2008, while travelling west on U.S. Highway 52I just outside Greeleyville, S.C. At the time in question, it is undisputed that Deceased was driving a van owned by the Department and provided for him to carry out his employment duties. It is likewise undisputed that at the time in question the Department has no record or knowledge of any business-related task that would have required Deceased to be travelling toward Greeleyville S.C. Deceased's surviving spouse, Ms. Edna Tisdale ("Spouse"), initially filed a claim for death benefits under S.C. Code § 42-9-290 in 2009. Relying on the "unexplained death presumption," Spouse alleges Deceased's accident and subsequent death arose out of and during his employment for the Department.

Defendants deny compensability under the Act for Deceased's accident and death. Specifically, they contend the "unexplained death presumption" still requires proof that Deceased was killed at a time and place where his employment reasonably required him to be on that occasion. To that extent, Defendants submit that the unexplained death presumption merely applies to the "arising out of" prong of the compensability test—the burden is still on the dependent, surviving beneficiaries to establish that the accident leading to the death occurred "during the course of employment." Since that burden cannot be met, Defendants contend death benefits under the Act must be denied. Moreover, Defendants argue the "unexplained death presumption" is rebuttable. Specifically, even if Spouse can establish the *possibility* that Deceased's job duties *in general* may have required him to be in the area where his accident occurred, the Department can successfully rebut that presumption with evidence that the

Department had no business in that area on the *specific date in question* to which Deceased would have been required to tend.

Defendants finally submit that the claim should be barred by the equitable doctrine of laches, given the unreasonable delay and resulting prejudice stemming from bringing a claim for death benefits to a Hearing nearly eight (8) years after the accident/death. Regarding the prejudice prong, Defendants initially argued that potential subrogation rights may have been destroyed by the delay. They also argued that a witness with potential knowledge of the circumstances surrounding Deceased's trip, his direct supervisor, moved out of state at some point during the four-year window this case was not being prosecuted. As such, the supervisor was essentially "unavailable" as a witness once the claim was refiled.

By Order dated July 21, 2016, the Hearing Commissioner found, *inter alia*, that Deceased's motor vehicle accident and resulting death occurred during the course and scope of his employment for the Department. The Commissioner dismissed Defendants' laches defense, finding that the substantial delay in bringing this claim for adjudication was not unreasonable because such delay was the result of continuances and requests for protections initiated by both parties. The Commissioner also found that Defendants were not prejudiced by the delay regardless.

Defendants appealed to the Full Commission on substantially the same grounds raised below. First, Defendants argue that the Commissioner's award of death benefits should be reversed on the merits and/or their laches affirmative defense. Defendants also assert that submission of documentary evidence by the parties to complete the Record after the Commissioner issued her ruling violates due process of law required by the S.C. Administrative Procedures Act, § 1-23-310 *et seq.* and the South Carolina and United States Constitutions.

Defendants therefore submit, in the alternative, that the Commissioner's Order be vacated and the case be remanded for a new Hearing *de novo*.

### EVIDENCE OF THE CASE

The Commission's eCase Case Status system, which is part of the "Commission's File" made part of the Record, confirms this case was initially scheduled for a Hearing on May 22, 2009 but was postponed for reasons not reflected in the Commission's files. The eCase system confirms that Defendants filed a Form 19 confirming denial of the claim on December 16, 2010, and the Commission "closed" the file on January 15, 2011. Thereafter, the claim was "reopened" four years later upon the re-filing of a Form 52 Request for Hearing dated January 5, 2015. This matter was finally reset for a hearing on January 14, 2016 after a failed mandatory Mediation. Nothing in the eCase status report or Commission's files indicates this claim was not timely prosecuted due to mutual requests for protection by counsel due to their legislative duties. No action was taken by Spouse to prosecute her claim for death benefits--requests for hearing or WCC filings--after it was closed by the Commission on January 15, 2011, until a Form 52 was refiled on January 5, 2015.

This Hearing was held before the Single Commissioner on January 16, 2016. Ms. Clara Faye Dozier, Executive Director of the Williamsburg County Department, testified at the Hearing that Deceased's direct supervisor, Karen Hudson, "may know more" about the circumstances surrounding the accident. (Hr. Tr. p. 37 l. 16). However, Ms. Dozier confirmed that Ms. Hudson has been out of the state "for a while." More specifically, Ms. Hudson moved away from South Carolina before the time the claim was reopened by the Commission. (Hr. Tr. p. 63 ll. 8-24).

The Commissioner issued her ruling, findings, and instructions for preparation of her Order to the parties on April 8, 2016. The Order was executed and served on July 21, 2016. Defendants timely filed their Appeal on July 27, 2017. It is only thereafter that the documentary evidence per the APA was submitted to complete the Record by both parties on August 2, 2016. The parties submitted their respective APA submissions to the Commissioner for her reference at the Hearing, but the paper submissions were returned to counsel for the parties following testimony.

### **STANDARD OF REVIEW**

It is undisputed that the Full Commission Appellate Panel is the ultimate finder of fact in workers' compensation matters. DeBruhl v. Kershaw County Sherriff's Dept., 303 S.C. 20, 397 S.E.2d 782 (Ct. App. 1990). Upon a petition for review of a Hearing Commissioner's award/order, the Full Commission shall weigh the evidence presented at the Hearing and, if good grounds be shown, make its own findings of fact and reach its own conclusions of law consistent or inconsistent with those of the Single Commissioner. Pack. V. State Dept. of Transportation, 381, SC 526, 673 S.E.2d 461 (Ct. App. 2009).

### **FINDINGS OF FACT AND CONCLUSIONS OF LAW**

Based on the preponderance of the evidence in the Record and review/analysis of applicable law governing the issues presented, the undersigned Appellate Panel hereby makes the following findings of fact and conclusions of law:

- 1) Laches is an equitable doctrine defined as "neglect for an unreasonable and unexplained length of time, under circumstances affording opportunity for diligence, to do what in law should have been done." Hallums v. Hallums, 296 S.C. 195, 198, 371 S.E.2d 525, 527 (1988). In order to establish laches as a defense, a defendant must show that the

complaining party unreasonably delayed its assertion of a right, resulting in prejudice to the defendant. Kelley v. Kelley, 368 S.C. 602, 606, 629 S.E.2d 388, 391 (Ct. App.2006).

- 2) In this case, it is undisputed that Spouse failed to prosecute her claim for death benefits for four (4) years after the claim was closed via filing of a Form 19 in January 2011. No reasonable explanation for this delay has been posited.
- 3) The Hearing Commissioner's findings that the delay stemmed from mutual requests from the parties' counsel for protection due to their mutual legislative duties and/or to complete discovery are simply not supported by the Record, namely the Commission's eCase Status system.
- 4) The normal statute of limitations period in a workers' compensation matter is two years from the date of accident or death per S.C. Code § 42-15-40. Although Defendants are not asserting a statute of limitations defense, since the claim was timely "filed" within the meaning of the Commission's regulations in 2009, the protections afforded by the limitation period are still nevertheless instructive when assessing the reasonableness of a delay alleged in a laches defense. If a two-year failure to file a claim is a complete bar, then a four-year delay in pursuing a claim further is *per se* unreasonable without a reasonable explanation to the contrary.
- 5) Spouse's unreasonable delay in pursuing this claim further resulted in actual prejudice to the Defendants. Specifically, a witness with knowledge of the accident, Deceased's direct supervisor, became unavailable during the interim this claim was not being prosecuted. A non-party witness residing out of state is not subject to subpoena in South Carolina proceedings, and is therefore essentially unavailable to participate in discovery or testify at a Hearing. This prejudice is underscored by the investigation notes' (Claimant's

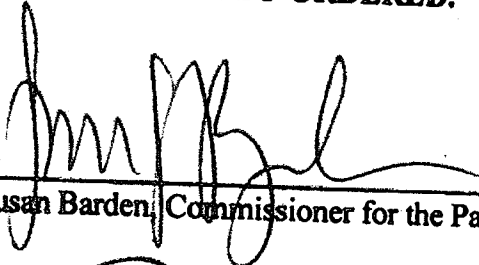
Exhibit # 9 and APA p.27) reference to Ms. Dozier stating that "Karen Hudson may know more." Karen Hudson also stated to the investigator, "there is no reason to doubt that he was on the job," a statement which has been rendered virtually unchallengeable due to her unavailability as a witness.

- 6) For these reasons, the Panel finds that Defendants have successfully established all elements of laches barring Spouse's claim for death benefits. The Panel need not address Defendants' remaining issues, since determination of the laches issue is dispositive of their Appeal. See Futch v. McAlister Towing of Georgetown, 335 S.C. 598, 518 S.E.2d 591 (SC 1999).

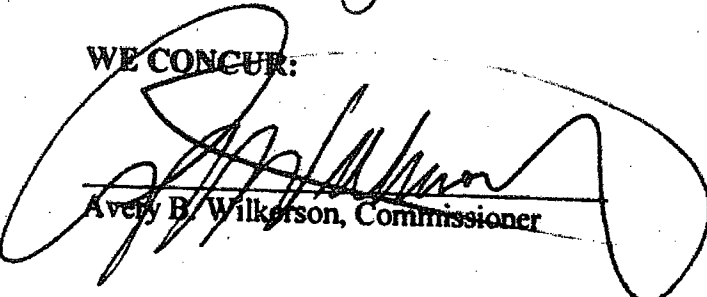
### CONCLUSION AND ORDER

For the aforementioned reasons, the Hearing Commissioner's Order dated July 21, 2016 is hereby **REVERSED** and Spouse's claim for benefits secondary to Deceased's death on October 17, 2008 is hereby **DENIED**.

**AND IT IS SO ORDERED.**

  
\_\_\_\_\_  
Susan Barden, Commissioner for the Panel

**WE CONCUR:**

  
\_\_\_\_\_  
Avery B. Wilkerson, Commissioner

  
\_\_\_\_\_  
Mike Campbell, Commissioner

**CERTIFICATE OF SERVICE**

This is to certify that the undersigned has on this date served a copy of this order in the above entitled action upon all parties to this case by sending an electronic copy hereof by electronic mail addressed to the attorneys for said parties; or if there is an unrepresented party(ies), by depositing a copy hereof, postage paid in the United States mail, first class, addressed to the unrepresented party(ies) and to the attorney(s) for the represented party(ies).

***By Eugenia Hollmon on April 7, 2017***