

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM THE WORKERS COMPENSATION COMMISSION

APPELLATE CASE NO. 2016-000509
WCC FILE NO. 1212974

SUSIE HENLEY, EMPLOYEE,

V.

OTIS SPUNKMEYER, EMPLOYER, and TRUMBULL
INSURANCE COMPANY c/o THE HARTFORD, CARRIER, RESPONDENTS.

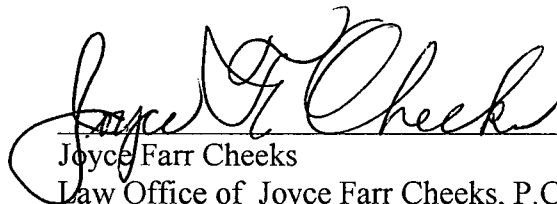
EX PARTE:

DAVID HENLEY.....APPELLANT,

AND

JEANNETTE PADGETT, JOEL PADGETT,
AND MAURICE PADGETT.....RESPONDENTS.

REPLY BRIEF OF APPELLANT



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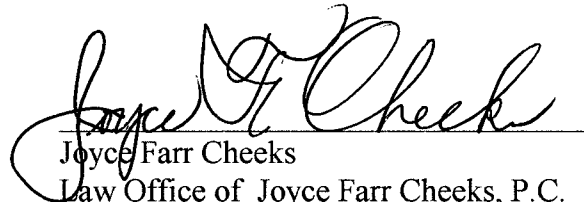
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STATEMENT OF ISSUES ON REPLY

DID THE FULL COMMISSION ERR BY FAILING TO MAKE APPROPRIATE, SUFFICIENTLY DEFINITE AND DETAILED FINDINGS REGARDING APPELLANT'S RELIANCE ON DECEDENT FOR SUPPORT AND MAINTENANCE TO ENABLE THIS COURT TO DETERMINE WHETHER THE EVIDENCE SUPPORTS THE FINDINGS?

ARGUMENTS IN REPLY

Without restating each issue or making redundant arguments which have been thoroughly set forth in his opening brief, which he incorporates by reference herein, Appellant David Henley offers the following additional points of clarification and rebuttal to the arguments raised by Respondents' Initial Brief.

I. If this Court affirms the Full Commission's conclusion that Appellant is not decedent's surviving spouse, it must remand this case to the Workers Compensation Commission to make sufficiently definite and detailed findings regarding Appellant's dependence upon decedent at the time of her death.

The Commission specifically found the testimony of George Williams, decedent's first husband, was void of any credibility and he was not dependent upon the Claimant/decedent for support. (R. p. 39-40, Order, p.19-20.) The Commission then enumerated the following specific reasons for its finding that Appellant "is not entitled to benefits in this matter":

- (1) decedent was aware of an impediment to marriage;
- (2) the impediment to marriage was never removed; and,
- (3) even if they were married in good faith, Appellant and decedent were living apart for no justifiable reason.

(Order, p.20.) These reasons apply to the Commission's determination that Appellant is not decedent's surviving spouse. They fail to address Appellant's argument that he was dependent upon the decedent at the time of her death even if the Commission determined he was not decedent's surviving spouse.

The order then specifically addressed whether the decedent's grandchildren and children were dependent upon the decedent at the time of her death. The Commission found that decedent's grandchildren "were not dependent upon the [decedent] at the time of her death. While both were the beneficiaries of [decedent's] generosity, it never rose to the level of dependency." (R. p. 40, Order, p.20.)

The Commission further found that decedent's children "were not dependent upon the [decedent] at the time of her death. We find that "dependent" connotes someone who relies upon another for support and is not able to exist or sustain oneself without the power or aid of someone else (see *Black's Dictionary*). It is abundantly clear that each of these individuals relied upon the support of their mother; however, it is equally clear that each of them are able to exist or sustain themselves without the assistance of their mother. The fact that each felt no compunction about their reliance upon their mother in no way translates that reliance into dependency." (R.p.40.) Thereafter, the Commission concluded that "decedent left no dependents in this matter. (R. p. 40, Order, p. 20)

The Commission completely omitted Appellant from its discussions and analyses of the issue of decedent's dependents. Respondents even concede in their brief that the Commission failed to articulate specific, detailed reasons why Appellant did not qualify as Claimant's dependent stating that "...the Appellate Panel articulated the reasoning as to why [decedent's children] and grandchildren did not qualify as dependents **but did not specifically articulate why [Appellant] did not qualify.**" (Resp. Brf., p. 10.) (Emphasis added).

Notwithstanding their concession, Respondents argue that the order was "specific and definite enough..." (Resp. Brf. p.9). According to Respondents, the mere statement that "decedent left no dependents in this matter" is specific and definite enough to infer its applicability to and

inclusion of Appellant. Respondent's erroneously argue that this Court can review the record to see whether substantial evidence exists which could support including Appellant in the Commission's finding that decedent left no dependents "...so remand is not necessary or appropriate." (Resp. Br. p.9.). However, even if this Court could reach such a conclusion from the record, which Appellant emphatically denies, "the issue here is not whether such conclusion could be reached as an issue of fact, but rather, was such conclusion reached as required by law." *Frame v. Resort Services, Inc.*, 357 S.C. 520, 531, 593 S.E.2d 491, ___ (Ct. App. 2004). (Emphasis added.) It is undisputed that no such conclusion was reached in this case.

The South Carolina Supreme Court has held the Commission is required to make findings of fact which are "sufficiently definite and detailed to enable the appellate court to properly determine whether the findings of fact are supported by the evidence and whether the law has been properly applied to those findings." *Airco, Inc. v. Hollington*, 269 S.C. 152, 160, 236 S.E.2d 804, 808; *Nettles v. Spartanburg Sch. Dist. 7*, 341 S.C. 580, 590, 535 S.E.2d 146, 151 (Ct. App. 2000) (holding the Appellate Panel has a statutory duty to make a finding of fact for all "essential factual issues"). Here, the mere statement by the Appellate Panel that "decedent left no dependents" is not sufficiently definite and detailed and not a satisfactory showing that the Appellate Panel found Appellant did not rely on decedent for the reasonable necessities of life. "When an administrative agency acts without first making the proper factual findings required by law, the proper procedure is to remand the case and allow the agency the opportunity to make those findings." *Frame*, 357 S.C. 520, 531 S.E.2d 491, (S.C. App., 2004)

Accordingly, this Court must remand the case to the Workers' Compensation Commission to make appropriate, sufficiently definite and detailed findings on the issue of whether Appellant

looked to decedent either wholly or partially for support and maintenance to enable this Court to properly determine whether the evidence supports the findings.

II. Respondents erroneously rely on *Adams v. Texfi Industries*, 330 S.C. 305, 498 S.E. 2d 885 (Ct. App. 1998) to support their argument that Appellant was not wholly or partially dependent upon decedent at the time of her death.

Respondents next argue that “[s]ubstantial evidence supports the Commission’s specific finding that [Appellant] was not wholly or partially dependent upon [decedent] at the time of her death.” (Resp. Br., p.8.). Respondents cite *Adams v. Texfi Industries*, 330 S.C. 305, 498 S.E. 2d 885 (Ct. App. 1998) (*Adams III*) to support their argument, stating that the Court of Appeals “overturned the Appellate Panel’s finding of dependency because the only evidence that the decedent paid [medical insurance, braces, household utilities, groceries, car expenses, payment of indebtedness on the family home, clothing, summer camp, and other usual family support] for the step-child was the step-child’s mother’s self-serving testimony. Also, the court stated “we are unconvinced that payments for braces, summer camp, and car expenses, even if made would constitute ‘reasonable necessities of life.’” *Id.*

Respondents contend that the facts in the instant case are similar to the facts and reasoning in *Adams III*. Respondents erroneously rely on the Court of Appeals decision, however, because the Supreme Court granted a writ of certiorari to review the Court of Appeals' decision in *Adams v. Texfi Industries*, 330 S.C. 305, 498 S.E.2d 885 (Ct.App.1998) (*Adams III*). In *Adams v. Texfi Industries*, 341 S.C. 401, 535 S.E.2d 124 (S.C., 2000) (*Adams IV*), the Supreme Court reversed the Court of Appeals’ decision and reinstated the full commission’s decision finding petitioner was wholly dependent upon the deceased and therefore entitled to receive worker's compensation benefits. The Supreme Court held the Court of Appeals applied an erroneous standard in reaching its decision and “...reiterate[d] that the dependency standard to be used in a workers' compensation

case is that announced in *Adams v. Texfi Industries II*. The Supreme Court further held that the “[full] commission, applying the standard announced in *Adams II*, determined that petitioner relied on the deceased for the reasonable necessities of life and was sufficiently dependent. Its decision was based on the following factual findings supported by the record: the deceased employee provided medical insurance coverage, braces, household utilities, groceries, car expenses, clothing, summer camp, and made payments on the indebtedness on the family home. Evidence in the record also indicates that on their joint tax return, the deceased employee and his wife claimed petitioner as a dependent.” *Adams IV*, 341 S.C. 401, 404, 535 S.E.2d 124, ___ (S.C., 2000). See also *Adams v. Texfi Industries*, 320 S.C. 213, 464 S.E.2d 109 (S.C., 1995) (*Adams II*).

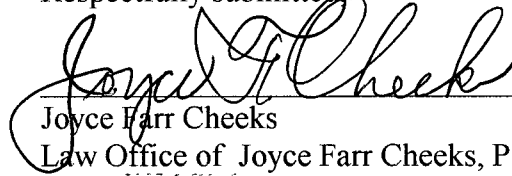
As argued in Appellant’s Brief, the factors relied upon by the Supreme Court in *Adams IV* clearly support Appellant’s argument that he was wholly or partially dependent upon Claimant at the time of her death.

CONCLUSION

If this Court affirms the Full Commission’s conclusion that Appellant is not decedent’s surviving spouse, it must remand this case to the Workers Compensation Commission to make sufficiently definite and detailed findings regarding Appellant’s dependence upon decedent at the time of her death. If the Court declines to remand the case, however, it should reverse the Commission’s decision and find that the substantial evidence proves that Appellant relied on the decedent either wholly or partially for the reasonable necessities of life in accord with *Adams IV*.

February 6, 2017

Respectfully submitted,

A handwritten signature in cursive script that reads "Joyce Farr Cheeks". The signature is written in black ink and is positioned above a horizontal line.

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