

DECISION AND ORDER
OF THE
SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION
WCC FILE NO: 1116698

GUS A. KING,

Claimant,

vs.

PIERSIDE BOATWORKS,

Employer,

and

PMA INSURANCE GROUP,

Carrier.

Defendants.

ORDER

RECEIVED
JUL 11 2018
SC Court of Appeals

STATEMENT OF THE CASE

This matter is before the undersigned Commissioner upon the Renewed Motion to Intervene by the Estate of Gus King ("Estate") filed on or about November 7, 2017 ("Motion"). In its Motion, the Estate seeks to intervene in the above-captioned matter to assert its alleged contractual rights to a mediation agreement reached during a prior mediation in this case. This matter was decided by the undersigned based on the pleadings. As set forth below, it is the determination of the Commission that the Estate has no standing to assert any rights in this workers' compensation case. As such, the Estate's Motion is **DENIED**.

PROCEDURAL BACKGROUND

The underlying case involves an admitted injury to the claimant, Gus King ("Claimant"), that occurred on November 18, 2011. Pursuant to an Award and Order issued May 20, 2014,

Claimant was found to be permanently and totally disabled as a result of his injuries and entitled to lifetime future causally-related medical care and treatment. See May 20, 2014 Order, Finding of Fact No. 12. Claimant was awarded a lump sum award of his permanent and total disability benefits and a Form 19, *Status Report and Compensation Receipt*, was filed on September 10, 2014, showing that Defendants had paid Claimant all indemnity benefits to which he was entitled and the claim was closed. Defendants, thereafter, continued to provide King with the causally-related medical care to which he was entitled. A mediation between Claimant and Defendants was held on June 2, 2016, for the purpose of resolution and settling out Claimant's future medical treatment. At the conclusion of the mediation, the parties signed an Agreement Following Mediation Conference ("Mediation Agreement") memorializing the general terms of the negotiated settlement. One week later, on or about June 9, 2016, Claimant was killed in an unrelated motor vehicle accident. No Agreement and Final Release (clincher) was ever entered into or approved by the Commission.

On or about July 11, 2017, counsel for Claimant filed a Form 50, *Employee's Request for Hearing*, seeking to enforce the terms of the Mediation Agreement. On October 12, 2017, the Estate filed a Motion to Intervene, Postpone, and for an Order Requiring Mediation. This motion was denied on October 26, 2017 on the grounds that an estate is not a party to a workers' compensation action.¹ This instant Motion was filed on November 7, 2017. In the Motion, the Estate asserts that the Mediation Agreement is an enforceable contract and any rights to enforce such agreement passed to the Estate upon the death of Claimant. As such, the Estate argues that

¹ Following this denial, the Estate filed a Form 30, *Request for Commission Review*, of the order denying the October 12, 2017 motion. The Form 30 was dismissed as interlocutory by administrative order of the Commission on December 11, 2017.

it is a proper party to this case and its Motion should be granted to allow it to participate in any hearing on this matter.

Based on the pleadings and review of the record as a whole, I, the undersigned Commissioner, make the following findings of fact and conclusions of law:

FINDINGS OF FACT

1. The instant Motion is brought in the name of the Estate of the Claimant.
2. The Estate seeks to intervene in this pending workers' compensation case to assert the enforceability of the Mediation Agreement and to seek a determination that it has an interest in that agreement.
3. In Estate of Covington by Montgomery v. AT&T Nassau Metals Corp., 304 S.C. 436, 405 S.E.2d 393 (1991), the South Carolina Supreme Court set forth what happens under the Act when a claimant dies, without dependents, from a nonwork-related injury. Pursuant to S.C. Code Ann. §42-9-280, "[w]hen an employee receives or is entitled to compensation ... and dies from any other cause than the injury for which he was entitled to compensation, payment of the unpaid balance of *compensation shall be made to his next of kin dependent upon him for support*, in lieu of the compensation the employee would have been entitled to had he lived." (emphasis in original). The Supreme Court held that the decedent's claim abated at her death and the mother of the deceased claimant, as personal representative for the estate of the decedent, had no claim for benefits under the Act. In doing so, the Court expressly rejected the Estate's claim that it had some right to recovery under S.C. Code Ann. §15-5-90 (survival statute). The Court held that the workers' compensation act is the exclusive remedy for workers, is a derogation of common law rights, and "the right of any claimant thereto is dependent upon the terms and conditions of the statute." Covington, 304 S.C. at 439, 405 S.E.2d at 394.

4. In Hudson ex rel. Hudson v. Lancaster Convalescent Ctr., 407 S.C. 112, 754 S.E.2d 486 (2014), the Supreme Court upheld a settlement agreement that was approved by the Commission in which a deceased claimant's lump sum disability award was allocated between dependent grandsons and the estate of the decedent. In that case, the Supreme Court held that settlement agreement approved by the Commission was proper under S.C. Code § 42-9-390 and that the litigants were free to structure their settlement agreement in any manner that did not contravene public policy or the law. The Court rejected the arguments of the Employer and Guarantee Association that the decedent's claim had abated at her death because these parties had voluntarily dismissed an appeal on this issue and abandoned that argument. As such, the right of the putative beneficiaries was the law of the case.

5. In Baker Hosp. v. Firemans Fund Ins. Co., 314 S.C. 98, 441 S.E.2d 822 (1994), the Supreme Court made it clear that only a party with an interest under the Act may seek redress before the Commission. In that case, a hospital provided medical services to an individual injured at work based on a telephone verification of benefits with the employer's carrier. That carrier later denied coverage and the hospital brought a claim against the carrier in circuit court. The carrier sought to have claim dismissed under the exclusivity provisions of the Act. The trial court granted the motion and the Supreme Court reversed that order. In doing so, the court stated, "it is clear that Hospital is a party with no standing to seek redress before the Workers' Compensation Commission." Baker, 314 S.C. at 101, 441 S.E.2d at 823; see also Roper Hosp. v. Clemons, 326 S.C. 534, 538, 484 S.E.2d 598, 600 (Ct. App. 1997) ("The lack of an express statutory grant of standing to health care providers clearly supports the finding that Appellant is without standing before the Commission.")

6. Pursuant to these authorities, any rights to benefits arising out of Claimant's workers' compensation claim are derived from the provisions of the South Carolina Workers Compensation Act, S.C. Code § 49-9-10, *et. seq.* (the "Act"). The Act proscribes the benefits a workers compensation claimant, and in the case of an unrelated death – his *next of kin dependent upon him for support*, is entitled to.

7. The rights of an estate of a decedent are governed by the S.C. Probate Code, S.C. Code § 62-1-100 *et. seq.* ("Probate Code"). See e.g., S.C. Code § 62-1-302(a). ("To the full extent permitted by the Constitution . . . the probate court has exclusive original jurisdiction over all subject matter related to: (1) estates of decedents, including the contest of wills, construction of wills, determination of property in which the estate of a decedent or a protected person has an interest . . .")

8. I find that the Act differs greatly from the Probate Code such that different beneficiaries can result as a result of intestacy (where dependency is irrelevant) under the Probate Code *vis a vis* the Act (where dependency is the statutorily determinative factor). As another example, workers' compensation benefits are protected/shielded from debts owed to creditors. See e.g., S.C. Code § 42-9-360. As yet another, if a will was to be followed (as to beneficiaries) in a workers' compensation case, an injured worker could effectively deny his surviving spouse the right to claim an elective share even where there was no pre-nuptial agreement. The point of this finding is that the Act and the Probate Code are mutually exclusive.

9. This is a § 42-9-280 case where the beneficiaries are the "next of kin dependent upon him for support." This is a statutory directive—not a contract issue.

10. The Estate has no standing to assert any claim in this workers compensation case. As I find that there is no standing, I therefore do not reach the issue of whether the Mediation Agreement is binding.

11. The Motion of the Estate to intervene in this case is DENIED.

CONCLUSIONS OF LAW

1. This order is made without a hearing pursuant to the Commission's authority under S.C. Code Reg. § 67-215.

2. The Estate seeks to intervene in this pending workers compensation claim to assert alleged contractual rights of the Estate to a settlement agreement negotiated by Claimant prior to his death.

3. The rights of a claimant who dies from a nonwork-related injury are governed by S.C. Code § 42-9-280 and the provisions of the Act are the exclusive remedy for benefits related work injuries in S.C. The S.C. Probate Code, S.C. Code § 62-1-100 *et. seq.* and the S.C. Survivors Statute, S.C. Code § 15-5-90 have no bearing on the application of the provisions of the S.C. Workers Compensation Act.

4. S.C. Code § 42-9-280 provides that "*compensation shall be made to his next of kin dependent upon him for support.*" An estate of a deceased claimant has no rights to claim benefits under S.C. Code § 42-9-280. See also Estate of Covington by Montgomery v. AT&T Nassau Metals Corp., 304 S.C. 436, 405 S.E.2d 393 (1991); Baker Hosp. v. Firemans Fund Ins. Co., 314 S.C. 98, 441 S.E.2d 822 (1994); Roper Hosp. v. Clemons, 326 S.C. 534, 484 S.E.2d 598 (Ct. App. 1997); cf. Hudson ex rel. Hudson v. Lancaster Convalescent Ctr., 407 S.C. 112, 754 S.E.2d 486 (2014).

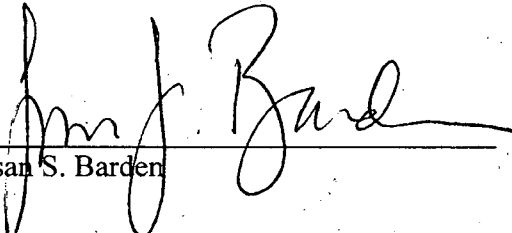
5. The Estate has no standing to assert any claim in this workers compensation case so it has no interest justifying intervention.

ORDER

For the foregoing reasons, I find that the Estate has no standing to assert any claim in this workers compensation case and, therefore, I order that the Estate's Renewed Motion to Intervene is hereby DENIED.

AND IT IS SO ORDERED.

SOUTH CAROLINA WORKERS'



Susan S. Barden

This the 13th day of February, 2018.

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 Barbara Skarbek on February 13, 2018