IN THE STATE OF SOUTH CAROLINA

In the Court of Appeals

APPEAL FROM MARION COUNTY
Court of Common Pleas

Thomas Russo, Circuit Court Judge

Case No. 2010-CP-33-1048

Betty Joe Floyd as Personal Representative of the Estate of Scottie Wayne Floyd and as dependent mother beneficiary of Scottie W. Floyd, deceased employee.....Appellant,

v.

Ken Baker Used Cars, Employer, and Legion Insurance Company in liquidation c/o South Carolina Property & Casualty Insurance Guaranty Association and AmGuard Insurance Company, Carriers,.....Respondents.

FINAL BRIEF OF RESPONDENTS KEN BAKER USED CARS AND AMGUARD INSURANCE COMPANY

Edwin P. Martin, Jr.
Hedrick Gardner Kincheloe & Garofalo, LLP
Post Office Box 11267
Columbia, South Carolina 29504
(803) 727-1202
Attorney for Respondents Ken Baker Used Cars and AmGuard Insurance Company

IN THE STATE OF SOUTH CAROLINA

In the Court of Appeals

APPEAL FROM MARION COUNTY
Court of Common Pleas

Thomas Russo, Circuit Court Judge

Case No. 2010-CP-33-1048

Betty Joe Floyd as Personal Representative of the Estate of Scottie Wayne Floyd and as dependent mother beneficiary of Scottie W. Floyd, deceased employee.....Appellant,

v.

Ken Baker Used Cars, Employer, and Legion Insurance Company in liquidation c/o South Carolina Property & Casualty Insurance Guaranty Association and AmGuard Insurance Company, Carriers,.....Respondents.

FINAL BRIEF OF RESPONDENTS KEN BAKER USED CARS AND AMGUARD INSURANCE COMPANY

Edwin P. Martin, Jr.
Hedrick Gardner Kincheloe & Garofalo, LLP
Post Office Box 11267
Columbia, South Carolina 29504
(803) 727-1202
Attorney for Respondents Ken Baker Used Cars and AmGuard Insurance Company

TABLE OF CONTENTS

TABLE OF AUTHORITIES

CASES

STATUTES

STATEMENT OF ISSUE ON APPEAL

Did the deceased claimant sustain a compensable injury by accident arising out of and in the course of his employment with Ken Baker Used Cars on September 5, 2008 when he stopped taking his anti-seizure medication?

STATEMENT OF THE CASE

A hearing was held before Commissioner Bryan Lyndon on September 1, 2009. The deceased claimant, Scottie Floyd, sustained a compensable injury on September 13, 2001 to his brain, head, nose and psyche while employed at Ken Baker Used Cars. The claimant subsequently died on September 5, 2008 as a result of seizures resulting from his brain injury.

The deceased claimant's mother, Betty Joe Floyd, filed for a hearing on the September 13, 2001 claim as well as alleged a subsequent work injury occurring on September 5, 2008, the date of Mr. Floyd's death. (R. pp. 123-124) On March 1, 2010, Commissioner Lyndon issued an order finding that the claimant's personal representative, Betty Joe Floyd, was not entitled to any benefits under the South Carolina Workers' Compensation Act. Commissioner Lyndon further ordered that there was no new date of accident after September 13, 2001 or any other period while AmGuard was the carrier for Ken Baker Used Cars and that AmGuard Insurance has no liability and should be dismissed from the case. (R. p. 39) Ms. Floyd subsequently appealed the order of Commissioner Lyndon to the Full Commission. (R. p. 119)

A Full Commission appeal was argued on June 22, 2010. On December 3, 2010, the Full Commission issued an order affirming the order of Commissioner Lyndon. (R. p. 23) Ms. Floyd subsequently filed an appeal to the Court of Common Pleas for Marion County on December 29, 2010. Oral arguments were held before Judge Thomas Russo on September 8, 2011. On January 4, 2012, Judge Russo issued an order affirming the order of the Commission in full. (R. p. 5)

STATEMENT OF THE FACTS

The facts of this case, although tragic, are largely uncontested. On September 13, 2001, Scottie Floyd sustained an admitted compensable accident resulting in injuries to his brain, head, nose, and psyche when a control arm being removed under tension struck the Mr. Floyd's head. Mr. Floyd was diagnosed with decreased attenuation in the right frontal lobe and a fracture of the left frontoethmoidal complex. Mr. Floyd's medical treatment for his injuries included, inter alia, clinical diagnostic procedures, psychological evaluation, neuropsychological testing, and conservative/pharmaceutical care under the direction of Dr. Healy, a neurologist, for headaches, psychological and mood disorders, and emotional outrages consistent with brain injury. Although early diagnostic testing showed no evidence of epileptic form activity, Dr. Healy indicated he was aware of the likelihood that Mr. Floyd would develop a seizure disorder due to the location and severity of his injuries, and the Mr. Floyd's early pharmaceutical regimen included anti-convulsants (Topomax) as a prophylaxis against headaches. (R. pp. 1152, 1160)

Mr. Floyd began experiencing seizure activity due to his head injury by at least March of 2003. As a result, Dr. Healy modified his pharmaceutical regimen to include additional anti-convulsants. (R. p. 1160) Mr. Floyd was almost immediately noncompliant with his medications. In April of 2003, Dr. Healy noted the Mr. Floyd had "stopped all of his medication" and was becoming increasingly aggressive.(R. p. 1163) Dr. Healy continued to monitor and modify Mr. Floyd's medications, including anti-convulsants, as he deemed necessary.

On April 9, 2004, Mr. Floyd was hospitalized following multiple seizures secondary to noncompliance with his anti-seizure medications (R. pp. 1246-1254). He spent almost two weeks in the hospital and was diagnosed with acute renal failure as well as compression fractures

at multiple levels of the thoracic spine. (Id.) Mr. Floyd's compression fractures were caused by the severity of his seizures which in turn resulted from his brain injury. (R. pp. 553-554) Dr. Healy testified in deposition that he spoke with Mr. Floyd following the April 9, 2004 hospitalization and that Mr. Floyd was aware that noncompliance with his anti-seizure medications could have serious health repercussions, including Mr. Floyd's death. (R. pp. 431-432)

Mr. Floyd received in-patient care at a supported living program in Texas from July 27, 2004 through June 1, 2006. Thereafter, he was allowed to return to South Carolina to live with his mother. The parties agreed to a $400.00 per week allowance to be paid to the Mr. Floyd's mother in exchange for her serving as his caregiver. Dr. Healy resumed treatment of the Mr. Floyd upon his return. Anti-convulsants continued to be a part of the Mr. Floyd's prescribed pharmaceutical regimen.

On September 5, 2008, Mr. Floyd died from "complications of a seizure disorder that resulted from a cavitary lesion of the right front cerebrum due to remote blunt head trauma." (R. p. 1439). According to the autopsy and toxicology reports, there were no traces of anti-convulsant medications in Mr. Floyd's blood, and no pills in the gastrointestinal tract lumen. However, the deceased claimant's mother, testified that she observed the decedent take the anti-convulsant medications shortly before his death (R. pp. 537-538).

The seizure resulting in Mr. Floyd's death was precipitated by his noncompliance with his anti-convulsant medications, as illustrated by the results of the postmortem toxicology screen. (R. p. 1441) Dr. Healy, Mr. Floyd's treating neurologist, also opined the Mr. Floyd suffered from a seizure disorder that required him to take anti-convulsant medications. (R. p. 441) Mr. Floyd died from a major motor seizure which was precipitated by his failure to take his anti-convulsant medications. (R. p. 429)

STANDARD OF REVIEW

A reviewing court will not overturn a decision by the Workers' Compensation Commissioner unless the determination is unsupported by substantial evidence or is affected by an error of law. Dukes v. Rural Metro Corp., 356 S.C. 107, 109, 587 S.E.2d 687, 688 (2003). "Substantial evidence is evidence which, considering the record as a whole, would allow reasonable minds to reach the conclusion that the administrative agency reached to justify its action." Howell v. Pac. Columbia Mills, 291 S.C. 469, 471, 354 S.E.2d 384, 385 (1987). The question of whether an employee sustained an injury by accident within the meaning of the South Carolina Workers' Compensation Act is a question of law. Havird v. Columbia YMCA, 308 S.C. 397, 399, 418 S.E.2d 329, 330 (Ct. App. 1992); Stokes v. First Nat'l Bank, 298 S.C. 13, 377 S.E.2d 922 (Ct. App. 1988), aff'd 306 S.C. 46, 410 S.E.2d 248 (1991).

ARGUMENTS

In the claimant's brief, the claimant addresses seven (7) issues on appeal. The Circuit Court was correct in finding that the claimant did not sustain a compensable injury by accident arising out of and in the course of his employment with Ken Baker Used Cars on September 5, 2008. The only issues on appeal that apply to the claim against Ken Baker Used Cars and AmGuard are issues one (1), two (2) and three (3) argued in their brief. This brief only addresses those specific issues.

The Circuit Court found that the deceased claimant developed a seizure disorder as a result of the September 13, 2001 work injury to the brain, and that the claimant was prescribed medication to control the seizure disorder. The Circuit Court further found that Mr. Floyd died of complications from the seizure disorder and that the fatal seizure was a direct result of his original injury on September 13, 2001. The Circuit Court also found that the deceased claimant was not an employee of Ken Baker Used Cars on September 5, 2008, and had not been so

employed for several years prior to September 5, 2008. Therefore, the Circuit Court found that the deceased claimant did not sustain a new injury by accident on September 5, 2008.

In the appeal, Ms. Floyd contends that the deceased claimant sustained a compensable injury by accident which occurred on September 5, 2008, the day the deceased claimant died. She contends that the deceased claimant's ceasing to take his anti-seizure medication for the brain injury rose to the level of an injury by accident arising out of and in the course of employment. Defendants Ken Baker Used Cars and AmGuard Insurance Company contend that the reliable, probative, and substantial evidence in the record fully supports the Circuit Court's finding that the deceased claimant did not sustain a compensable injury by accident on September 5, 2008. Furthermore, the Circuit Court was correct as a matter of law in finding that the deceased claimant did not sustain a compensable injury on September 5, 2008.

A. The deceased claimant did not sustain a compensable work accident on September 5, 2008.

The South Carolina Court of Appeals has found occasion to hold that when an employer authorizes an employee to seek medical attention for a prior work injury and the employee sustains additional injuries while fulfilling their obligation to submit to medical treatment, such additional injuries are causally related to the employment to be compensable. See Shuler v. Gregory Electric, 366 S.C. 435, 622 S.E.2d 569 (2005). Shuler involved an employee's fatal automobile accident while returning home from a medical visit. Id. In reaching its holding, the Shuler Court distinguished Ms. Shuler from the claimant in Douglas v. Spartan Mills, Startex Div., 245 S.C. 265, 140 S.E.2d 175(1965)(holding that injuries sustained when the claimant got in an accident in his own car on the way to a workers compensation hearing was not compensable). The Shuler court found that the "going and coming" rule did not act to bar recovery because Ms. Shuler's fatal injuries occurred while she was fulfilling her duty under

workers' compensation law to submit to medical treatment for a previous compensable injury, and her injuries therefore arose out of and were sustained in the course of her employment. Id.

The holding in Shuler is not applicable in the instant case. First, unlike the claimant in Shuler, no employer-employee relationship existed between Mr. Floyd and Ken Baker at the time of Mr. Floyd's death. The deceased claimant last worked for the employer in 2001. Mr. Floyd never worked for Ken Baker Used Cars during the coverage period of AmGuard. Furthermore, unlike the claimant in Shuler, Mr. Floyd was not "fulfilling his obligations under workers' compensation" at the time of this death. To the contrary, Mr. Floyd's fatal seizure was precipitated by his *failure* to take his prescribed anti-seizure medication. It follows that Mr. Floyd cannot be said to have been doing anything to further the interest of the employer or "fulfill his duty under workers' compensation" at the time of his death to bring him within the scope of his employment with Ken Baker Used Cars. If anything, Mr. Floyd's failure to take his anti-seizure medication would have been to the detriment of the employer.

In citing to Shuler, the claimant seems to be arguing that Mr. Floyd was fulfilling his duty to submit to treatment at the time of his death, and thus was in the course and scope of his employment when he died from a seizure. Under this argument, the claimant would be in the course and scope of his employment every time he took his anti-seizure medication. This argument makes no sense and is illogical. Furthermore, the substantial evidence in the record establishes the claimant was not taking his seizure medication at the time of his death, and thus was not fulfilling any duty to submit to treatment, and thus would not have been within the course and scope of his employment at the time of his death.

Our Courts have found that the natural consequences flowing from a compensable injury, absent an intervening cause, are compensable. Mullinax v. Winn-Dixie Stores, Inc., 318 S.C. 431, 458 S.E.2d 76 (Ct. App. 1995). The death of Mr. Floyd was a natural consequence of

the brain injury suffered as a result of the work injury and not a new accident. Mr. Floyd sustained a severe brain injury which eventually led to a seizure disorder. As a result of the seizure disorder, Mr. Floyd was required to take anti-convulsive medications. The autopsy report and death certificate tells the whole story of this case. Mr. Floyd died from complications of a seizure disorder due to a cavitary lesion of the brain due to remote head trauma. His death was a natural consequence of a severe brain injury which occurred on September 13, 2001. Also, illustrative of this position is Commissioner Bass' order of December 12, 2007. In Finding of Fact Number 5, Commissioner Bass found that on April 9, 2004, Mr. Floyd suffered compression fracture injuries to his spine primarily due to seizure activity prompted by his brain injury. (R. p. 77) Importantly, Commissioner Bass did not find that Mr. Floyd sustained a separate or new injury by accident as a result of the April 10, 2004 seizure episode, but that the fractures were caused by seizures, which were related to the brain injury.

Furthermore, the medical evidence further establishes that the claimant's death was a natural consequence of his brain injury. Dr. Joanne McGee, a neuropsychologist at ResCare Premier, stated that the claimant's non-compliance with his medication would be due to problems with judgment and impulsivity. (R. p. 1334) Dr. Sasha Federer, the claimant's treating psychologist, also testified in his deposition that the claimant had problems with compliance with his medication. Dr. Federer testified that the claimant's non-compliance was due to the work injury. (R. p. 474)

The April 9, 2004 and September 5, 2008 seizure episodes were virtually indistinguishable. On both occasions, Mr. Floyd stopped taking his anti-seizure medications, which led to seizures, which resulted in serious bodily damage in 2004, and to Mr. Floyd's death in 2008. Both of these instances were a natural consequence of the September 13, 2001 work injury to Mr. Floyd's brain, and neither event rises to the level of a new injury by accident.

Mr. Floyd knew he had to take anti-seizure medications so as to avoid seizures, and he failed to do so. As a result, he died from a seizure which was caused by his brain injury sustained on September 13, 2001. Whether or not Mr. Floyd intentionally stopped taking his anti-convulsant medication is immaterial to the ultimate issue of whether his fatal seizure was a direct result of his original injury, which has been clearly established. The deceased claimant's death was clearly the natural consequence of the severe brain injury that he sustained in 2001. Because Mr. Floyd did not sustain an injury by accident occurring during the coverage of AmGuard, defendants Ken Baker Used Cars, LLC and AmGuard respectfully request that the order of the Circuit Court be affirmed in total.

B. The claim for September 5, 2008 should be barred by the doctrine of *res judicata.*

Ken Baker Used Cars and AmGuard contend that the claimant should be estopped from asserting a "new" date of accident, September 5, 2008, in association with the 2004 compression fractures on the ground of *res judicata.* The deceased claimant previously alleged that his 2004 spinal injury resulted from seizures due to the 2001 brain injury. Commissioner Bass, in an unappealed order, found that the claimant's spinal injuries were related to and caused by seizures relating to the September 13, 2001 head injury. (R. p. 77) The 2004 seizure was a result of the claimant failing to take his anti-seizure medications, and the seizure activity was prompted by his brain injury.

The claimant is now arguing that the deceased claimant's death on September 5, 2008 resulting from seizure activity from the brain injury constitutes an injury by accident. For the same reasons Commissioner Bass found the deceased claimant's 2004 spinal fractures were from a seizure disorder resulting from the 2001 accident, the claimant's 2008 death should also be found to be related to the 2001 injury by accident. The deceased claimant's disorder was

conclusively deemed by a prior Commission order to have been caused as a result of the deceased claimant's brain injury in 2001. Therefore, the claimant should be estopped from asserting a new date of accident of September 5, 2008 which resulted from seizure activity caused by the brain injury which occurred in 2001.

C. The deceased claimant was not an employee of Ken Baker as of September 5, 2008.

The Circuit Court found that the claimant was not an employee of Ken Baker Used Cares on September 5, 2008 and had not been employed for several years prior to September 5, 2008. Thus, the claimant could not have sustained a compensable injury during the coverage of AmGuard.

There is no evidence that the claimant was working for Ken Baker Used Cars on September 5, 2008 when he died. Furthermore, there is no evidence that the claimant was engaged in any activity which would bring him within the course and scope of employment with Ken Baker Used Cars on September 5, 2008. Accordingly, the reliable, probative and substantial evidence supports the Circuit Court's findings that the deceased claimant was not an employee of Ken Baker Used Cars on September 5, 2008, and thus could not have sustained a compensable injury by accident during AmGuard's coverage.

D. The deceased claimant's death on September 5, 2008 was not an unlooked for or untoward event rising to the level of an accident.

Ken Baker Used Cars and AmGuard also contend the deceased claimant's death was not compensable under Havird v. Columbia YMCA, 308 S.C. 397, 418 S.E.2d 329 (1992) and Capers v. Flautt, 305 S.C. 254, 407 S.E.2d 660 (1991). The claimant's seizure and resulting death were not an unlooked for or an untoward event.

The deceased claimant began to have seizures at least by March of 2003. The claimant was prescribed anti-convulsants, and the claimant was almost immediately non-compliant. In April, 2003, the claimant stopped all his medications and became increasingly aggressive.

The deceased claimant had an episode in 2004 where he experienced a violent seizure which resulted in thoracic spine fractures. This violent seizure was caused by the claimant's failure to take his anti-seizure medications. The claimant was advised by his treating neurologist, Dr. Healy, and his treating psychiatrist, Dr. Federer, of the ramifications of not taking the anti-seizure medications. The claimant was aware that if he stopped taking the anti-seizure medications that it could lead to a massive seizure and possibly death. For whatever reason, the claimant stopped taking his anti-seizure medications resulting in a massive seizure and his death. Because of the claimant's knowledge of the ramifications of stopping his anti-seizure medications, there was no injury by accident on September 8, 2008 as there was no unlooked for or untoward event.

E. The deceased claimant's death was not a result of a suicide.

The deceased claimant argues that the claimant's death was an accident and resulted from him not taking his anti-seizure medications. Neither defendant has contended that the deceased claimant committed suicide, and this would have been an affirmative defense of the defendants.

Section 42-9-60 provides that no compensation shall be payable if a death was caused by the willful intention of the claimant to kill himself. The burden of proving this defense is on the defendants. Neither defendant in this matter has alleged the suicide defense nor is there substantial evidence in the record that the claimant committed suicide. If it was determined the claimant committed suicide, then no benefits would be payable to anyone.

The deceased claimant contends that there is irrefutable evidence that the claimant's death was an accident resulting from his failure to take his medication. The deceased claimant

notes that Dr. Healy commented that Mr. Floyd was aware of the consequences that would result from failure to take the seizure medication. However, though Dr. Healy noted that he believed Mr. Floyd was aware of the various consequences of not taking the seizure medication as prescribed, Dr. Healy specifically stated, "I'm not sure he knew that it could kill him." (R. pp. 431-432). Dr. Healy said he could only assume that Mr. Floyd knew how hazardous failure to take the medication could be because of the effects of the previous instance when Mr. Floyd stopped taking the medication. This is precisely the definition of "speculation." Dr. Healy stated that he could not specifically attest to whether or not Mr. Floyd was fully aware of the possibility that failure to take the seizure medication could, or would, cause death. (R. p. 431) Dr. Healy further testified that he did not have enough information to render an opinion within a reasonable degree of medical certainty as to whether or not the deceased claimant's death was accidental. (R. p. 433)

Dr. Alexander Federer, Mr. Floyd's psychologist, also was unable to testify whether Mr. Floyd knew that stopping the medications could cause death. Dr. Federer stated in his deposition that Mr. Floyd knew that if he stopped taking the medication there was "a possibility that he may have a massive seizure." (R. p. 483). Dr. Federer said that Mr. Floyd might stop taking the medication if he didn't feel that it was helping or if he felt despondent, but Dr. Federer could not say with certainly whether Mr. Floyd would consider not taking the medication as a means to kill himself. (R. p 483) Dr. Federer offered the opinion that Mr. Floyd would have used a weapon to commit suicide should he have chosen to do so because Mr. Floyd had a particular fascination with weapons. (R. p. 484). Dr. Federer explained that he based this opinion on Mr. Floyd's description of numerous violent fantasies which always included some form of weapon. (R. p. 484-485) Dr. Federer testified that he truly did not know if Mr. Floyd's discontinuing his

medication would have been an attempt to commit suicide or just a rebellion against the use of medication. (R. p. 485)

Betty Jo Floyd testified that she monitored the medications of Mr. Floyd. (R. p. 394) She testified that Mr. Floyd did not stop taking his anti-seizure medications prior to Mr. Floyd's death. (R. p. 393) Ms. Floyd testified that she saw Mr. Floyd take the anti-seizure medications shortly before his death. (R. p. 393)

There is no conclusive evidence to show that Mr. Floyd had any intention of taking his life, or that he even had knowledge that death was a possible consequence of failure to take his medications. Every statement made on the subject has been put in terms of assumptions and speculations. Findings of fact made by the Commission must be based on reliable, substantial, and probative evidence, not mere speculation or supposition. The opinions offered on this issue are not enough for the Circuit Court to make a finding that Mr. Floyd committed suicide in this case.

In the alternative, should the evidence prove convincing that Mr. Floyd volitionally stopped taking his anti-seizure medication as a means of committing suicide, his actions were related and directly attributable to the initial injury and cannot be regarded as a "new" accident under the law. The evidence in the record shows that, as a result of the initial head injury, because of the location of the trauma, Mr. Floyd suffered from psychological and mood disorders. These disorders included emotional outrages, the lack of impulse control, and the inability to cope with his situation and his pain. These psychological disorders, which are directly attributable to the initial head injury, are the only factors that would have even arguably led to Mr. Floyd's attempt on his own life.

Further, even if deceased claimant can somehow convince the Commission that Mr. Floyd knowingly and willfully failed to take his medications, and did so knowing that failure to

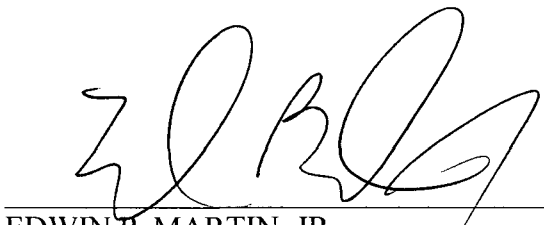
take his medications would cause serious massive seizures, the claim still fails, particularly as against AmGuard. A "suicide" sufficient to break the chain of causation within the meaning of the applicable case, statutory, and regulatory law, would require a finding that Mr. Floyd's death resulted from some mechanism other than his original injury. By way of example, had Mr. Floyd died from a self inflicted gunshot wound, then the causal connection to the original injury might arguably have been broken. That, however, is not the case here. Mr. Floyd's death was caused by a seizure, which was in turn caused by and flowed naturally from the original injury, a brain injury. Because Mr. Floyd's seizure disorder was unquestionably caused by the original injury; it simply defies rational thinking and dissolves into circular logic to assert that a seizure would not "flow naturally" from the same injury that caused the seizure disorder. Because the evidence in the record does not establish a break in the chain of causation as relates to the original injury, defendants AmGuard and Ken Baker Auto Sales request that this Court affirm the Circuit Court's finding that there was no evidence in the record to support a finding that the claimant committed suicide.

CONCLUSION

The reliable, probative and substantial evidence in the record clearly supports the Circuit Court's finding that the deceased claimant did not sustain an injury by accident on September 5, 2008. The deceased claimant was required to take medication for seizures related to his brain injury, and the claimant did not take his medications. The cause of the claimant's death was seizure disorder related to a brain injury, and thus his death was a natural consequence of the work injury which occurred on September 13, 2001. Furthermore, the deceased claimant knew if he stopped taking his anti-seizure medications that he would suffer seizures. Thus, the seizure that took his life was not an unlooked for or untoward event under Capers and Havird. Defendants Ken Baker Used Cars and AmGuard respectfully request that this Court affirm the

Circuit Court's finding that the claimant did not sustain a new injury by accident on September 5, 2008.

Furthermore, the reliable, probative and substantial evidence in the record clearly does not support any finding the deceased claimant sustained that the claimant committed suicide. Any finding regarding suicide would be pure speculation. The reliable, probative and substantial evidence in the record clearly supports a finding that the claimant's fatal seizure was a direct result of the claimant's original injury on September 13, 2001 and there was no new injury by accident on September 5, 2008. The defendants Ken Baker Used Cars and AmGuard Insurance Company request that this Court affirm the order of the Circuit Court in its entirety.



EDWIN P. MARTIN, JR.
Hedrick, Gardner, Kincheloe & Garofalo, L.L.P.
P.O. Box 11267
Columbia, SC 29211
(803) 727-1200
Attorneys for the Defendant Ken Baker Used Cars
and AmGuard Insurance Company

Dated: October 5, 2012

IN THE STATE OF SOUTH CAROLINA

In the Court of Appeals

APPEAL FROM MARION COUNTY
Court of Common Pleas

Thomas Russo, Circuit Court Judge

Case No. 2010-CP-33-1048

Betty Joe Floyd as Personal Representative of the Estate of Scottie Wayne Floyd and as dependent mother beneficiary of Scottie W. Floyd, deceased employee.....Appellant,

v.

Ken Baker Used Cars, Employer, and Legion Insurance Company in liquidation c/o South Carolina Property & Casualty Insurance Guaranty Association and AmGuard Insurance Company, Carriers,.....Respondents.

CERTIFICATE OF COUNSEL

The undersigned certifies that the **Final Brief of Respondents Ken Baker Used Cars and Amguard Insurance Company** complies with Rule 211(b).

November 5, 2012

Edwin P. Martin, Jr.
Hedrick Gardner Kincheloe & Garofalo, LLP
Post Office Box 11267
Columbia, South Carolina 29504
(803) 727-1202
Attorney for Respondents Ken Baker Used Cars and AmGuard Insurance Company

IN THE STATE OF SOUTH CAROLINA

In the Court of Appeals

APPEAL FROM MARION COUNTY
Court of Common Pleas

Thomas Russo, Circuit Court Judge

Case No. 2010-CP-33-1048

Betty Joe Floyd as Personal Representative of the Estate of Scottie Wayne Floyd and as dependent mother beneficiary of Scottie W. Floyd, deceased employee.....Appellant,

v.

Ken Baker Used Cars, Employer, and Legion Insurance Company in liquidation c/o South Carolina Property & Casualty Insurance Guaranty Association and AmGuard Insurance Company, Carriers,.....Respondents.

CERTIFICATE OF COUNSEL

October 5, 2012

Edwin P. Martin, Jr.
Hedrick Gardner Kincheloe & Garofalo, LLP
Post Office Box 11267
Columbia, South Carolina 29504
(803) 727-1202
Attorney for Respondents Ken Baker Used Cars and AmGuard Insurance Company

THE STATE OF SOUTH CAROLINA

In the Court of Appeals

APPEAL FROM MARION COUNTY
Court of Common Pleas

Thomas Russo, Circuit Court Judge

Case No. 2010-CP-33-1048

Betty Joe Floyd as Personal Representative of the Estate of Scottie Wayne Floyd and as dependent mother beneficiary of Scottie W. Floyd, deceased employee.....Appellant,

v.

Ken Baker Used Cars, Employer, and Legion Insurance Company in liquidation c/o South Carolina Property & Casualty Insurance Guaranty Association and AmGuard Insurance Company, Carriers,.....Respondents.

PROOF OF SERVICE

I certify that I have served the **Final Brief of Respondents Ken Baker Used Cars and AmGuard Insurance Company** and **Designation of Matter to Be Included in the Record on Appeal** on Appellant, Betty Joe Floyd, and on Ken Baker Used Cars and its carrier, Legion Insurance Company in liquidation c/o South Carolina Property & Casualty Insurance Guaranty Association by depositing a copy of it in the United States Mail, postage prepaid, on October 5, 2012, addressed to their attorneys of record respectively, Steve Wukela, Jr., Wukela Law Firm, Post Office Box 13057, Florence, SC, 29504 and Mark D. Cauthen and Peter P. Leventis, McKay Cauthen Settana and Stubley, P.A. Post Office Box 7217, Columbia, SC 29202.

October 5, 2012

Edwin P. Martin, Jr.
Hedrick Gardner Kincheloe & Garofalo, LLP
P.O. Box 11267
Columbia, SC 29211
(803) 727-1200
Attorney for the Respondent Ken Baker Used Cars and AmGuard Insurance Company