

THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

APPEAL FROM SOUTH CAROLINA  
WORKERS' COMPENSATION COMMISSION

S.C.W.C.C. File No. 1020984

Case No. 2012207908

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OCT 31 2012

SOUTH CAROLINA COURT OF APPEALS

Ravenel Gaskins (deceased), Employee,.....Respondent,

v.

Johnny Gaskins Trim, Employer, and  
Accident Insurance Co., Carrier,.....Appellants.

APPELLANTS' AMENDED FINAL BRIEF

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## **STATEMENT OF ISSUES ON APPEAL**

1. Did the South Carolina Workers' Compensation Commission err as a matter of law (and deny the Appellants a substantial right pursuant to §42-15-80 of the South Carolina Code) in denying the Appellants' Motion to Compel the deceased Employee's body to be exhumed and an autopsy performed at the expense of the Appellants?
  
2. Is the Order of the South Carolina Workers' Compensation Commission immediately appealable pursuant to Regulation 67-712 and §42-17-60 of the South Carolina Code (1976, as amended) and South Carolina Code Ann. §1-23-380 (Supp. 2011), which permits an appeal from an Order if it is a final judgment?

## STATEMENT OF THE CASE

This matter is before the South Carolina Court of Appeals pursuant to the Appellants' Notice of Appeal filed on February 14, 2012 from the Decision & Order of the Workers' Compensation Commission's Appellate Panel (hereinafter referred to as "Full Commission") dated January 18, 2012 (R. pp. 35-36). Johnnie Gaskins, the surviving spouse of the above named deceased Employee, (hereinafter referred to as "Claimant"), by and through her attorney of record, R. Walter Hundley, Esquire, filed a Form 52, Employee's Request for Hearing, Death Case, on May 27, 2011 (R. p. 9). The Form 52 contends that the deceased Employee died on December 2, 2010 while performing services arising out of and in the course of his employment with Johnny Gaskins Trim (R. p. 9). In connection therewith, the Form 52 further contends that the Claimant is entitled to death benefits pursuant to the terms and provisions of the South Carolina Workers' Compensation Act (hereinafter referred to as "Act") (R. p. 9).

By way of a Form 53, Employer's Answer to Request for Hearing, Death Case, filed on June 22, 2011, the Appellants denied, *inter alia*, that the deceased Employee sustained a causally related and compensable injury as alleged (R. p. 10). Prior thereto, the Appellants filed a Motion to Compel on June 2, 2011, wherein they requested an Order of the Commission compelling the deceased Employee's body to be exhumed and an autopsy performed at the expense of the Appellants (R. pp. 11-12). In support thereof, the Appellants noted that one of the primary issues in dispute in connection with the matter at hand involves whether the deceased Employee's death arose out of and occurred in the course and scope of his employment (R. pp. 11-12). In this regard, the Appellants further set forth that an autopsy has the significant potential to reveal

information as to the cause of the deceased Employee's death (R. pp. 11-12). Furthermore, the Appellants noted their statutory right to require an autopsy pursuant to the terms and provisions of S.C. Code Ann. §42-15-80 (1976, as amended) (R. pp. 11-12).

By way of an Administrative Order dated July 1, 2011, the single Commissioner denied the aforementioned Motion of the Appellants, thereby ruling that the Appellants are not entitled to an exhumation and autopsy of the deceased Employee (R. pp. 1-2). Oral arguments were held before the Full Commission on October 25, 2011. Thereafter, by majority vote, the Full Commission affirmed the Order of the single Commissioner (R. pp. 3-8). The Appellants contend that the Decision & Order of the Full Commission dated January 18, 2012 is immediately appealable to this Honorable Court and, further, that the Decision & Order of the Full Commission is based on an error of law and denial of a substantial right.

#### **STANDARD OF REVIEW**

The standard of review in an appeal from a final decision of an administrative agency is governed by S.C. Code Ann. §1-23-380 (commonly known as the Administrative Procedures Act). *See Pringle v. Builders Transport, Inc.*, 298 S.C. 494, 381 S.E.2d 731 (1989); *See also Lark v. Bi Lo, Inc.*, 276 S.C. 130, 276 S.E.2d 304 (1981). The Appellate Court can reverse or modify a decision if the findings and conclusions of the agency are in violation of statutory provisions, affected by error of law, clearly erroneous in view of the reliable, probative and substantial evidence on the whole record, or arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion. *See Gray v. Club Group, Ltd.*, 339 S.C. 173, 528

S.E.2d 435 (Ct.App.2000); *See also* S.C. Code Ann. §1-23-380 (Supp. 2011). In considering an appeal from a Decision and Order of the Commission, the Court's role is of an appellate capacity and is limited to deciding whether the Commission's decision is supported by substantial evidence or is controlled by some error of law. *See* Rogers v. Kunja Knitting Mills Co., 312 S.C. 377, 440 S.E.2d 401, re-hearing denied (Ct. App. 1994). In an appeal from the Commission, the Court may reverse where the decision is affected by an error of law. *See* Gibson v. Spartanburg School Dist. No. 3, 338 S.C. 510, 526 S.E.2d 725 (Ct. App. 2000), citing S.C. Code Ann. § 1-23-380(a)(6) (1976, as amended).

### **ARGUMENT**

1. Did the South Carolina Workers' Compensation Commission err as a matter of law (and deny the Appellants a substantial right pursuant to §42-15-80 of the South Carolina Code) in denying the Appellants' Motion to Compel the deceased Employee's body to be exhumed and an autopsy performed at the expense of the Appellants?

By Decision & Order dated January 18, 2012, the Full Commission denied the aforementioned Motion of the Appellants, thereby ruling that the Appellants are not entitled to an exhumation and autopsy of the deceased Employee (R. pp. 3-8). In support of this ruling denying the Motion, the Full Commission noted that the coroner "already issued a report noting what he believes to be the cause of death, based on his personal investigation of the body and the medical evidence." (R. pp. 4). Additionally, the Full Commission noted that the terms and provisions of §42-15-80 do not indicate the Commission *shall* require an autopsy, thereby concluding that the statute provides discretion to the Commission only as it pertains to determining whether an autopsy is required in connection with a request for the payment of benefits in any case of death (R.

p. 4). In support thereof, the Full Commission further noted the following in citing the ruling of the Supreme Court of North Carolina in Cabe v. Parker-Graham-Sexton, Inc., 202 N.C. 176, 162 S.E. 223 (1932), which involved a claim for death benefits under the North Carolina Workers' Compensation Act: “[a] court will not, however, order a body to be disinterred unless there is a strong showing that it is necessary and the interest of justice requires it.” (R. p. 4). In relying on the aforementioned ruling of the Supreme Court of North Carolina, the Full Commission not only noted that the Act was modeled after the North Carolina Workers' Compensation Act, but further indicated that the ruling in Cabe is consistent with prior decisions of the Supreme Court of South Carolina indicating that “an order directing exhumation not to be made except upon the most serious considerations.” In re Percival’s Estate, 85 S.E. 247 (1915) (R. p. 4).

The terms and provisions of §42-15-80 specifically address the issue concerning an employer’s right to require an autopsy in any case of death. In this regard, §42-15-80(A) states in pertinent part “...The employer or the commission may require in any case of death an autopsy at the expense of the person requesting it.” While the Full Commission correctly concluded that the aforementioned statutory terms and provisions provide discretion to the Commission as it pertains to determining whether an autopsy is required in connection with a request for the payment of benefits in any case of death, the Appellants contend that the Full Commission erred as a matter of law with respect to its determination that the terms and provisions of §42-15-80 fail to provide that same discretion to an employer. In support of the aforementioned contention, the Appellants note that the conjunction “or” serves as the equivalent or substitutive character of two words or phrases. In view of the foregoing, the Appellants set forth that the true intent of

the statutory language set forth in §42-15-80 is to provide both an employer, in this case, the Appellants, and the Commission with the right and/or discretion to determine whether an autopsy is required in connection with a request for the payment of benefits in any case of death.

The Appellants further contend that any statutory construction of §42-15-80 to the contrary is baseless and without merit. In this regard, the Appellants set forth that any attempt to distinguish between the statutory right to an autopsy pursuant to §42-15-80 and the exhumation process necessary to conduct the same produces an absurd result. As in the matter at hand, when a claim for death benefits under the Act is filed subsequent to the burial of a deceased employee, an autopsy cannot be performed without the body being exhumed. As such, the Appellants contend that the exhumation is part and parcel of the autopsy itself.

Additionally, the terms and provisions of §42-15-80 make no reference whatsoever to an employer, in this case, the Appellants, or the Commission having any burden of proof in exercising their right and/or discretion to require an autopsy in any case of death. In this regard, to the extent that the 1915 ruling of the South Carolina Supreme Court in In re Percival's Estate remains good law in State of South Carolina, the Appellants set forth the aforementioned statutory provisions of the Act, enacted subsequent to the aforementioned ruling, control in the matter at hand. The Appellants further point out that the ruling of the South Carolina Supreme Court in In re Percival's Estate did not concern a workers' compensation claim in the State of South Carolina.

Regardless of whether an Employer or the Commission has any burden of proof in exercising their right and/or discretion to require an autopsy in any case of death

pursuant to the terms and provisions of §42-15-80 (1976, as amended), the Appellants point to the second page of the report of William B. Salisbury, Chief Deputy Coroner of Berkeley County, South Carolina, which was submitted into the evidentiary record by the attorney for the Claimant (R. pp. 19-20). In this regard, while Chief Deputy Coroner Salisbury classified the death of the deceased Employee as an accidental death with a cause of death being head injury due to a fall from a standing position, the Appellants point out that he failed to make any specific conclusions as to the reason the deceased Employee fell from a standing position (R. pp. 19-20). Chief Deputy Coroner Salisbury did indicate the following:

His wife stated that he had been having some problems recently that included losing his balance. He also had some cardiac issues that included a stint and hypertension (R. p. 20).

In view of the foregoing, the Appellants further set forth that the terms and provisions of S.C. Code Ann. §42-1-160 (1976, as amended) states the following in pertinent part:

Stress, mental injuries, heart attacks, strokes, embolisms, or aneurysms arising out of and in the course of employment unaccompanied by physical injury are not considered compensable if they result from any event or series of events which are incidental to normal Employer/Employee relations.

In this regard, given the statement of Chief Deputy Coroner Salisbury that the deceased Employee suffered from balance issues and some cardiac issues, including a stint and hypertension, the Appellants further contend that the requested exhumation and autopsy

are necessary and in the interest of justice given the request for death benefits under the Act by the Claimant (R. pp. 19-20).

2. Is the Order of the South Carolina Workers' Compensation Commission immediately appealable pursuant to Regulation 67-712 and §42-17-60 of the South Carolina Code (1976, as amended), and South Carolina Code Ann. §1-23-380 (Supp. 2011), which permits an appeal from an Order if it is a final judgment?

The Appellants contend that the Full Commission's Decision & Order dated January 18, 2012 is immediately appealable pursuant to Regulation 67-712 and §42-17-60 of the South Carolina Code (1976, as amended) which do not distinguish between a final or interlocutory Order. In addition, South Carolina Code Ann. §1-23-380 allows for an appeal of a final judgment if no further act is necessary prior to determining the rights of the Appellants. See Bone v. U.S. Food Service, Opinion No. 27153, Petition for Rehearing granted September 14, 2012 (The APA allows for judicial review only from final decisions; S.C.Code Ann. § 14-3-330(1), the general appealability statute that permits immediate appeal from an interlocutory order "involving the merits" is not applicable to agency appeals). In this instance, the Decision & Order issued by the Full Commission clearly and unequivocally denies the Appellants their statutory right to an autopsy under to §42-15-80 and makes a final determination on the Appellants rights with respect to those issues absent further appeal to this Court (R. pp. 3-8).

The Appellants respectfully assert that the Full Commission's Decision & Order is a final decision directly appealable to this Honorable Court pursuant to §1-23-380. As discussed by the Court in Bone, a decision is interlocutory if there is some further act which must be done by the court prior to a determination of the rights of the parties.

Bone at 3. In this case, there is no further act to be completed by the Full Commission as

the right of the Appellants to require an autopsy and the ability to defend the claim based on the cause of death has already been finalized by the Full Commission's January 18, 2012 Decision & Order.

The Full Commission's Order is not interlocutory as it is final on the cause of death which precludes the Appellants from investigating the actual cause of death and raising the defense that the deceased Employee's death was not casually related to an alleged injury by accident at work. The autopsy is the only means by which to investigate the cause of the deceased Employee's death. Without a determination as to the cause of the deceased's Employee's death, the Appellants cannot properly investigate and defend the element of whether the death arose out of the employment. Further, the question of fact as to the cause of the deceased Employee's death is also concluded by the Full Commission Decision & Order thus leaving no additional factual determination to be made by the Full Commission. *See* Bone at 3, citing Charlotte–Mecklenburg Hospital Authority v. South Carolina Department of Health and Environmental Control, 387 S.C. 265, 267, 692 S.E.2d 894, 895 (2010) (A judgment which determines the law but leaves open the questions of fact is not a final decision). As the Full Commission decision is a final judgment, it is immediately appealable pursuant to §1-23-380.

Furthermore, in the interest of judicial efficiency, the Appellants should be able to present all applicable defenses at the compensability hearing. Otherwise, a determination on compensability of the claim may be reached and it later determined that the Appellants were denied a statutory right; thus, requiring that the matter be remanded for a de novo hearing. Therefore, the Full Commission Decision & Order shall be deemed immediately

appealable due to the denial of a substantial right of the Appellants and the final judgment in violation of the statutory provision permitting the autopsy.

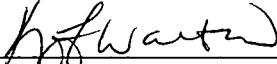
**CONCLUSION**

The Full Commission erred as a matter of law in denying the Appellants' Motion to Compel filed on June 2, 2011. In this regard, the Appellants respectfully request that this Honorable Court reverse the Decision & Order of the Full Commission dated January 18, 2012 in its entirety, thereby remanding this matter to the Full Commission for an Order granting the Motion and compelling the exhumation of the deceased Employee for purposes of an autopsy to be performed at the expense of the Appellants pursuant to the clear and unambiguous terms of §42-15-80.

RESPECTFULLY SUBMITTED:

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October 30, 2012

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OCT 31 2012

**SC COURT OF APPEALS**

**CERTIFICATE OF COUNSEL**

I certify that the Appellants' Amended Final Brief complies with Rule 211(b).



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Kathryn Fiehrer Walton, Esquire  
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October 30, 2012

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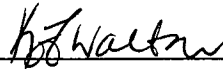
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Accident Insurance Co., Carrier,.....Appellants.

PROOF OF SERVICE

I certify that I have served Appellants' Amended Final Brief on all interested parties by depositing a copy of each in the United States Mail, postage prepaid, on October 30, 2012, addressed to the Respondent's attorney of record, R. Walter Hundley, Esquire, P.O. Box 31189, Charleston, SC 29117-1189.



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