



willson jones
carter & baxley

attorneys at law

greenville | charleston | columbia
charlotte | myrtle beach | raleigh | atlanta

J. South Lewis, II
Direct (864) 527-3284
Fax (864) 235-6015
jslewis@wjcbllaw.com

325 Rocky Slope Road, Suite 201
Greenville, SC 29607
www.wjcbllaw.com

December 7, 2021

The Honorable Patricia A. Howard
The South Carolina Supreme Court
P.O. Box 11330
Columbia, SC 29211

Re: Provins vs. Spirit Construction Services, Inc.
Case Tracking No.: 2021-000429
WCC File No.: 1200349 DOI: 1/24/2012
Carrier: Insurance Company of the State of PA - Claim No.: 003186-000589-wc-01
WJCB File No.: 0090.01335

Dear Ms. Howard:

I represent the Respondents Spirit Construction Services, Inc. and Insurance Company of the State of PA in the above-referenced appellate case. Petitioner filed a Petition for Writ of Certiorari with the South Carolina Supreme Court on April 27, 2021 requesting review of the Court of Appeals' decision in Provins v. Spirit Construction Services, 433 S.C. 17, 855 S.E.2d 318 (Ct. App. 2021). The Petition for Writ of Certiorari is currently pending the Court's consideration. Petitioner recently filed a letter, dated November 2, 2021, regarding Supplemental Citations pursuant to Rule 208(b)(7), SCACR. This letter is in response to Petitioner's Supplement Citations letter.

First, Respondents would contend that Petitioner's Supplement Citations letter is not proper. Rule 208(b)(7) provides in part that:

When pertinent and significant authorities come to the attention of a party ***after his initial brief(s) has been served and filed***, the party shall promptly advise the clerk of the appellate court, by letter, with a copy to all counsel, setting forth the citations. There shall be a reference either to the page of the brief or to an issue to which the citations pertain, **but the letter shall, *without argument*, state the reasons for the supplemental citations.**

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Rule 208(b)(7), SCACR (emphasis added). As noted above, the Petition of Writ of Certiorari is still pending the Court's consideration. Thus, Rule 208, which governs Initial Briefs, is not applicable at this time. Furthermore, *assuming arguendo* that Petitioner's Supplemental Citations letter is properly filed for this Court's consideration, Rule 208(b)(7) states that the letter shall be "without argument." However, Petitioner's 15-page letter is replete with arguments as to why Petitioner believes the South Carolina Workers' Compensation Commission ("the Commission") erred in denying her claim for benefits.

Regarding the supplemental citations, Petitioner's counsel cites five primary cases in his letter:

1. SEPTA v. Workers' Comp. Appeal Bd. (Hansell), No. 464 C.D. 2020, (Pa. Commw. Ct. dated May 24, 2021);
2. In re Pelmac Indus., 2019-0605 (N.H. dated October 13, 2021);
3. Orzech v. Giacoo Oil Co., No. AC 43941 (Conn. App. Ct. dated October 19, 2021);
4. Saratogo Cnty. Sewer Dist. v. Workers' Comp. Bd. (In re Meager), 185 A.D. 3d 1343, 128 N.Y.S.3d 316 (N.Y. App. Div. 2020); and
5. Gordon v. Schweiker, 725 F.2d 231 (4th Cir. 1984).

None of these decisions are binding on this Court. The first four cases are decisions in workers' compensation claims from appellate courts in four other states -- Pennsylvania, New Hampshire, Connecticut, and New York, respectively. Plus, all four of these cases deal with the issue as to whether death benefits may be awarded to a claimant who commits "suicide." While Respondents do not want to argue the merits of the Petition in this letter, Respondents would point out that Petitioner did not specifically argue before the Commission or Court of Appeals that Deceased Employee committed "suicide" as a result of his work injury. Respondents also adamantly dispute Petitioner's counsel's bizarre assertion in his Supplemental Citations letter that "[i]ronically, it was Respondents' intentional withholding of Temporary Total Disability benefits and medical care which eventually killed Decedent." (See 11/2/2021 letter, p. 13). There is no evidence to support this assertion. Per his Death Certificate, Decedent's manner of death was listed as "Natural," and his immediate cause of death was noted to be "acute respirator failure" and "septic shock." (R. p. 685).

The fifth case in Petitioner's letter, Gordon v. Schweiker, is an opinion from the Fourth Circuit Court of Appeals regarding an appeal deriving from the Secretary of Health and Human Service's decision to deny an application for social security disability and Supplement Security Income benefits. Gordon is not applicable to a claim for benefits under the South Carolina Workers' Compensation Act. See Hargrove v. Carolina Orthopaedic Surgery Assocs. PA, 389 S.C. 119, 697 S.E.2d 641 (S.C. App. 2010) ("procedures regarding retirement and social security benefits cannot be used as a basis for a deciding a workers' compensation claim."). Despite this, Petitioner asserts Gordon "bolsters Petitioner's argument that his alcoholism should not be considered an intervening cause because it has [sic] been existing prior to the work-related injury." (11/2/2021 letter, p. 14). However, the issue is not whether Decedent's alcoholism preexisted his work-related injury or whether it was an intervening cause. Rather, the issue is

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whether Decedent's death, which occurred over two years after his work accident, was causally related to his work-related injury.

Under the South Carolina Workers' Compensation Act, the death must be proximately caused by an accident that arose out of the employment; and the burden is on the claimant to establish such fact. Lorick v. South Carolina Elec. & Gas Co., 245 S.C. 513, 141 S.E.2d 662 (1965). A claimant who has a preexisting condition may receive benefits for a subsequent work-related disability if he establishes by a preponderance of the evidence that the subsequent injury aggravated the preexisting condition. See S.C. Code Ann. §42-9-35. In workers' compensation cases, the Commission is the ultimate finder of fact. Hunter v. Patrick Const. Co., 289 S.C. 46, 47, 344 S.E.2d 613, 614 (1986); Ross v. American Red Cross, 298 S.C. 490, 492, 381 S.E.2d 728, 730 (1989). The final determination of witness credibility and the weight to be accorded evidence is reserved to the Appellate Panel. Shealy v. Aiken County, 341 S.C. 448, 535 S.E.2d 438 (2000).

Based on the foregoing, Respondents contend the supplemental citations provided by Petitioner's counsel are not pertinent to this case. Respondents maintain Petitioner has stated no grounds upon which this Court should grant a writ of certiorari, and accordingly, the Petition should be denied.

With kindest regards,

WILLSON JONES CARTER & BAXLEY, P.A.



J. South Lewis, II

JSL/zms

cc: Donald L. Smith, Esq.

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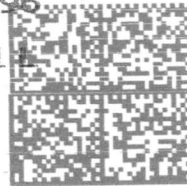
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TLB
Willson, Jones, Carter & Baxley
325 Rocky Slope Rd Suite 201
Greenville, SC 29607

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