

2003

# Glenda W. Giles v. Utah Labor Commission : Unknown

Utah Court of Appeals

Follow this and additional works at: [https://digitalcommons.law.byu.edu/byu\\_ca2](https://digitalcommons.law.byu.edu/byu_ca2)



Part of the [Law Commons](#)

Original Brief Submitted to the Utah Court of Appeals; digitized by the Howard W. Hunter Law Library, J. Reuben Clark Law School, Brigham Young University, Provo, Utah; machine-generated OCR, may contain errors.

Alan Hennebold; attorneys for defendants.

Glenda W. Giles; pro se.

---

## Recommended Citation

Legal Brief, *Giles v. Utah Labor Commission*, No. 20030577 (Utah Court of Appeals, 2003).  
[https://digitalcommons.law.byu.edu/byu\\_ca2/4460](https://digitalcommons.law.byu.edu/byu_ca2/4460)

This Legal Brief is brought to you for free and open access by BYU Law Digital Commons. It has been accepted for inclusion in Utah Court of Appeals Briefs by an authorized administrator of BYU Law Digital Commons. Policies regarding these Utah briefs are available at [http://digitalcommons.law.byu.edu/utah\\_court\\_briefs/policies.html](http://digitalcommons.law.byu.edu/utah_court_briefs/policies.html). Please contact the Repository Manager at [hunterlawlibrary@byu.edu](mailto:hunterlawlibrary@byu.edu) with questions or feedback.

UTAH APPEALS  
DEC 13 2004

P.O. Box 354  
Eureka, MT 59917

10 December 2004

Clerk of the Utah Court of Appeals  
Scott M. Matheson Courthouse  
P.O. Box 140230  
Salt Lake City, UT 84114-0230

Re: Glenda W. Giles v. Utah Labor Commission, et al  
Case No.: 20030577-CA

Dear Clerk of the Court:

Please accept this letter as a response and an objection to WCF's newly cited supplemental authority of *Acosta v. Salt Lake Regional Medical Center*, 2004 UT App 411, filed in letter form on 30 November 2004. In *Acosta*, the main issue was the "claim preclusion" branch of "*res judicata*" applied by the Utah Labor Commission (Commission). This Court should take notice of the fact that none of the Commission's Orders in the present case addressed "*res judicata*" or "claim preclusion". Without arguing the merits of *Acosta* or its application to this case, this response and objection is based on two threshold points. First, WCF did not timely present "*res judicata*" or "claim preclusion" as defenses before the Commission. Second, WCF did not present as issues or specifically brief "*res judicata*" or "claim preclusion" (the basis of the *Acosta* decision) before this Court. Consequently Giles has had no opportunity to reply to such issues or to brief her arguments in opposition thereto. The following numbered paragraphs detail these two threshold points.

1. In her principle Brief on Pages 47-48, Giles argued that none of the Respondent parties addressed the defenses of "*res judicata*" or estoppel (issue or "claim preclusion") in their Answers, and that such defenses were not raised until **after** her plenary Motion for Review was filed. Giles noted that this was in direct violation of Commission Rule R602-2-1(D) (2001) cited in relevant part on Page 48 of her principle Brief. Neither WCF, nor any other Respondent party, disputed these arguments in their Briefs. Accordingly, neither WCF nor any other Respondent party has denied that these defenses were untimely or submitted any reason in their Briefs for this Court to consider these untimely defenses.

2. WCF's Brief does not contain as issues, nor does it specifically address in argument, either "*res judicata*" or "claim preclusion". WCF admits that "the issue of *res judicata* in

worker's compensation proceedings" was merely "**alluded to** in Point I, pages 15-19 of their brief". (Emphasis added). But, WCF chose to present its own issues in its Brief, rather than to respond to the issues presented by Giles in her Brief. WCF was thereby allowed to list any issues it so desired. However, WCF's issues did not include "*res judicata*" or "claim preclusion". And, even if WCF's arguments "alluded to" "*res judicata*" or "claim preclusion", those arguments do not relate to either of WCF's stated issues in its Brief. Utah Rules of Appellate Procedure (URAP) Rule 24(a)(9) concerning briefs requires in part:

"The argument shall contain the contentions and reasons of the appellant with respect to the issues presented, . . . with citations to the authorities, statutes, and parts of the record relied on."

There is no provision in URAP Rule 24 concerning briefs that allows arguments to issues which are merely "alluded to" in a brief. The issues must be clearly presented, and the argument must relate to the issues. But, WCF's argument in Point I on pages 15-19 of its Brief is devoid of a single reference to "*res judicata*" or "claim preclusion", and does not contain any supporting authority for "*res judicata*" or "claim preclusion". In fact, those terms do not appear anywhere in WCF's Brief. Neither does WCF's argument clearly establish the elements required to support a defense of "*res judicata*" or "claim preclusion" as those elements relate to the issues of "*res judicata*" or "claim preclusion". This Court does not generally consider issues which have not been specifically briefed.

Furthermore, because WCF did not specifically brief "*res judicata*" or "claim preclusion", either as an issue or in argument in its Brief, Giles was not allowed to respond to those issues or arguments in her Reply Brief. Giles could not reply to an argument that merely "alluded to" issues not even presented. Therefore, allowing WCF to rely on the *Acosta* decision when WCF did not brief the issues of "*res judicata*" or "claim preclusion" is prejudicial, and denies Giles her constitutional right to due process.

Because WCF has not met these threshold requirements, Giles respectfully requests this Court to strike and/or disregard WCF's cited supplemental authority of *Acosta*. Should this Court decide to consider the application of *Acosta* to the present case, Giles respectfully requests that this Court allow her to fully brief her opposition to such application.

As a procedural side matter, WCF has not complied with URAP Rule 30(f) governing citation of an unpublished decision. Specifically URAP Rule 30(f) requires in relevant part:

"Unpublished decisions may also be cited, so long as all parties and the court are supplied with accurate copies at the time all such decisions are first cited."

*Acosta* is an unpublished decision, but WCF did not supply an accurate copy to Giles. And, WCF's letter has no notation of enclosures to this Court, or the other parties in this case. It is not possible for WCF to comply with this Rule after the fact, because the accurate copies must be supplied "**at the time all such decisions are first cited**". Accordingly, this Court should disregard WCF's unpublished supplemental authority. By Rule, Giles only has 7 days to respond to WCF's new citation, and that time should not have to be wasted searching

for a copy of the unpublished decision. For this Court to disregard this requirement of its Rules would reward WCF for its noncompliance that substantially prejudiced Giles.

Sincerely,



Glenda W. Giles  
(406)253-8521

Document FAXED to the Clerk of the Utah Court of Appeals on 10 December 2004

cc: Alan L. Hennebold, General Counsel, Utah Labor Commission  
Floyd W. Holm, P.O. Box 57929, Salt Lake City, Utah 84157  
Sheryl Hayashi, Employers' Reinsurance Fund  
Michael E. Dyer, 257 East 200 South, Suite 800, Salt Lake City, Utah 84111  
Mark R. Sumsion, P.O. Box 2465, Salt Lake City, Utah 84110  
Theodore E. Kanell, 136 East South Temple, Suite 1700, Salt Lake City, Utah 84111

**NOTE:** This document was prepared with assistance from my son.