

APPELLATE PANEL
DECISION AND ORDER
OF THE
SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION
WCC FILE NO.: 0914243

Michael McCain,
Employee/Claimant,
Respondent

vs.

Tobie Parker d/b/a West Manning Auto and William Shepherd,
Employer(s),
Appellant/Respondent,

and

South Carolina Workers' Compensation Uninsured Employers' Fund,
Defendant,
Appellant.

Appellate Panel Review in Columbia, South Carolina set for March 19, 2013.

Appellate Panel Decision and Order filed 4-16, 2013.

APPEARANCES:

Claimant represented by J. Joseph Condon, Jr.,
Esquire of North Charleston, South Carolina.

South Carolina Workers' Compensation Uninsured
Employers' Fund represented by Timothy B. Killen,
Esquire of Willson Jones Carter & Baxley, P.A.,
Columbia, South Carolina.

Tobie Parker appeared *pro se*.

William Shepherd appeared *pro se*.

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SC Court of Appeals

STATEMENT OF THE CASE

This Workers' Compensation matter arises out of the claim for benefits filed by the Claimant/Respondent, MICHAEL MCCAIN (Claimant). In his Form 50, the Claimant alleged he suffered injuries arising out of and in the course of his employment with TOBIE PARKER d/b/a WEST MANNING AUTO (Parker) and/or WILLIAM SHEPHERD (Shepherd) on April 30, 2009.

The SOUTH CAROLINA WORKERS' COMPENSATION UNINSURED EMPLOYERS' FUND (Fund) denied the case. In addition to a general denial, the Fund's position was that the substantial evidence showed the business relationship between Parker and Shepherd -- which bore the trade name of "West Manning Auto" -- to be a partnership that regularly employed fewer than four (4) employees within South Carolina.

All pleadings and notices purportedly sent to both Shepherd and Parker were mailed to 1431 Georgia Pacific Highway, Alcolu, SC 29001. Both Shepherd and Parker failed to appear.

The matter was heard before Commissioner Andrea C. Roche on August 13, 2012. Commissioner Roche entered her Decision and Order on November 27, 2012.

FINDINGS OF FACT (SINGLE COMMISSIONER)

After hearing the testimony and after reviewing the evidence and Commission's file, the Single Commissioner found that:

1. The parties to this proceeding are subject to and bound by the terms and provisions of the South Carolina Workers' Compensation Act (the Act), as amended;
2. The Employer, TOBIE PARKER d/b/a WEST MANNING AUTO, was subject to the terms and provisions of the Act by regularly employing four (4) or more employees in South Carolina;
3. The Employer, WILLIAM SHEPHERD, is hereby dismissed from this case with prejudice, as WILLIAM SHEPHERD was not the Claimant's Employer at the time of the accident;

4. At all times relevant hereto, the Employer, TOBIE PARKER d/b/a WEST MANNING AUTO, failed to acquire necessary workers' compensation insurance coverage for its/his/her employees;
5. On April 30, 2009, the Claimant was an employee of Employer, TOBIE PARKER d/b/a WEST MANNING AUTO;
6. On April 30, 2009, the Claimant suffered an accident arising out of and in the course of his employment with Employer, TOBIE PARKER d/b/a WEST MANNING AUTO;
7. As a result of his work related accident, the Claimant suffered injuries to his left index finger;
8. The Claimant's average weekly wage is \$250.00 and his compensation rate is \$166.68;
9. The Claimant is not entitled to receive Temporary Total Disability benefits;
10. The Claimant is to receive causally-related medical treatments until he reaches maximum medical improvement and/or further Order of this Commission or by agreement of the Parties; and
11. The Claimant is to receive reimbursement for past causally-related medical treatment.

CONCLUSIONS OF LAW
(SINGLE COMMISSIONER)

As part of her Order, the Single Commissioner made the following Conclusions of Law:

1. That S.C. Code Ann. § 42-3-180 defines the authority of this Commission to determine all questions arising from the Workers' Compensation Act;
2. That S.C. Code Ann. § 42-1-160 is applicable in defining injury;
3. That S.C. Code Ann. § 42-1-160(F) is applicable in defining accident;
4. That S.C. Code Ann. § 42-1-160(G) is applicable in governing medical evidence;
5. That S.C. Code Ann. § 42-1-40 is applicable in defining Average Weekly Wage;
6. That S.C. Code Ann. § 42-1-100 is applicable in defining compensation;

7. That S.C. Code Ann. § 42-1-130 is applicable in defining Employee;
8. That S.C. Code Ann. § 42-1-140 is applicable in defining Employer;
9. That S.C. Code Ann. § 42-1-150 is applicable in defining employment;
10. That S.C. Code Ann. § 42-1-60 sets forth periods during which medical treatment should be provided;
11. That S.C. Code Ann. § 42-17-40 is applicable in governing the conduct of hearings and rendering of awards;
12. Under S.C. Code Ann. § 41-1-160, the Claimant sustained an injury to his left index finger, in an accident arising out of the course and scope of his employment on April 30, 2009;
13. Under S.C. Code Ann. § 42-1-130, the Employee/Claimant was a covered employee under the Act and, under § 42-1-140, the Employer was subject to the Act at the time in question;
14. Section 42-1-40 establishes the appropriate means of determining an injured employees average weekly wage and compensation rate and under § 42-1-40, the Claimant's average weekly wage is \$250.00 with a corresponding compensation rate of \$166.68 per week and, under § 42-9-20 determines the amount of partial disability;
15. Under § 42-15-20, proper notice was provided to the Employer;
16. On April 30, 2009, the Employer was operating without necessary workers' compensation insurance;
17. Under § 42-15-60, the Claimant is entitled to all medical care, treatment, therapy, consultations, diagnostic studies, rehabilitation, injections, hospitalizations, surgeries and prescription medications related to his injuries which tend to affect a cure provide relief and/or tends to lessen the extent of disability;
18. These benefits shall be provided by the Employer; however, if Employer is unable or unwilling to pay this award, then the S.C. Workers' Compensation Uninsured Employers' Fund shall be required to pay. Any payments made or benefit provided by the S.C. Workers' Compensation Uninsured Employers' Fund shall be made with all rights of indemnification or reimbursement as prescribed by statute. Nothing appearing in this Order, explicit or implicit, shall limit any claim the S.C. Workers' Compensation Uninsured Employers' Fund has against the Employer pursuant to S.C. Code Ann. § 42-7-200 or otherwise; and

19. Under § 42-15-60, the Claimant is entitled to reimbursement for all past causally-related medical expenses.

Within the statutory period, the Fund timely filed a Form 30 requesting review of the Hearing Commissioner's findings, including, the following:

1. The Hearing Commissioner erred in Finding of Fact One (1), in finding that all parties are subject to and bound by the terms and provisions of the South Carolina Workers' Compensation Act (the Act), as amended, the error being that such a failure is contrary to the greater weight and preponderance of the evidence and represent errors of law.
2. The Hearing Commissioner erred in Finding of Fact Two (2), in finding that the Employer, TOBIE PARKER d/b/a WEST MANNING AUTO, was subject to the terms and provisions of the Act by regularly employing four (4) or more employees in South Carolina, the error being that such a failure is contrary to the greater weight and preponderance of the evidence and represent errors of law.
3. The Hearing Commissioner erred in Finding of Fact Three (3), in finding that the Employer, WILLIAM SHEPHERD, is hereby dismissed from this case with prejudice, as WILLIAM SHEPHERD was not the Claimant's Employer at the time of the accident, the error being that such a failure is contrary to the greater weight and preponderance of the evidence and represent errors of law.
4. The Hearing Commissioner erred in Finding of Fact Four (4), in finding that at all times relevant hereto, the Employer, TOBIE PARKER d/b/a WEST MANNING AUTO, failed to acquire necessary workers' compensation insurance coverage for its/his/her employees, the error being that such a failure is contrary to the greater weight and preponderance of the evidence and represent errors of law.
5. The Hearing Commissioner erred in Finding of Fact Five (5), in finding that on April 30, 2009, the Claimant was an employee of Employer, TOBIE PARKER d/b/a WEST MANNING AUTO, the error being that such a failure is contrary to the greater weight and preponderance of the evidence and represent errors of law.
6. The Hearing Commissioner erred in Finding of Fact Six (6), in finding that on April 30, 2009, the Claimant suffered an accident arising out of and in the course of his employment with Employer, TOBIE PARKER d/b/a WEST MANNING AUTO, the error being that such a failure is contrary to the greater weight and preponderance of the evidence and represent errors of law.

7. The Hearing Commissioner erred in Finding of Fact Eight (8), in finding that the Claimant's average weekly wage is \$250.00 and his compensation rate is \$166.68, the error being that such a failure is contrary to the greater weight and preponderance of the evidence and represent errors of law.
8. The Hearing Commissioner erred in Finding of Fact Ten (10), in finding that the Claimant is to receive causally-related medical treatments until he reaches maximum medical improvement and/or further Order of this Commission or by agreement of the Parties, the error being that such a failure is contrary to the greater weight and preponderance of the evidence and represent errors of law.
9. The Hearing Commissioner erred in Finding of Fact Eleven (11), in finding that the Claimant is to receive reimbursement for past causally-related medical treatment, the error being that such a failure is contrary to the greater weight and preponderance of the evidence and represent errors of law.
10. The Hearing Commissioner erred in Conclusion of Law Twelve (12), in concluding that under S.C. Code Ann. § 41-1-160, the Claimant sustained an injury to his left index finger, in an accident arising out of the course and scope of his employment on April 30, 2009, the error being that such a failure is contrary to the greater weight and preponderance of the evidence and represent errors of law.
11. The Hearing Commissioner erred in Conclusion of Law Thirteen (13), in concluding that under S.C. Code Ann. § 42-1-130, the Employee/Claimant was a covered employee under the Act and, under § 42-1-140, the Employer was subject to the Act at the time in question, the error being that such a failure is contrary to the greater weight and preponderance of the evidence and represent errors of law.
12. The Hearing Commissioner erred in Conclusion of Law Fourteen (14), in concluding that Section 42-1-40 establishes the appropriate means of determining an injured employees average weekly wage and compensation rate and under § 42-1-40, the Claimant's average weekly wage is \$250.00 with a corresponding compensation rate of \$166.68 per week and, under § 42-9-20 determines the amount of partial disability, the error being that such a failure is contrary to the greater weight and preponderance of the evidence and represent errors of law.
13. The Hearing Commissioner erred in Conclusion of Law Sixteen (16), in concluding that on April 30, 2009, the Employer was operating without necessary workers' compensation insurance, the error being that such a failure is contrary to the greater weight and preponderance of the evidence and represent errors of law.

14. The Hearing Commissioner erred in Conclusion of Law Seventeen (17), in concluding that under § 42-15-60, the Claimant is entitled to all medical care, treatment, therapy, consultations, diagnostic studies, rehabilitation, injections, hospitalizations, surgeries and prescription medications related to his injuries which tend to affect a cure provide relief and/or tends to lessen the extent of disability, the error being that such a failure is contrary to the greater weight and preponderance of the evidence and represent errors of law.
15. The Hearing Commissioner erred in Conclusion of Law Nineteen (19), in concluding that Under § 42-15-60, the Claimant is entitled to reimbursement for all past causally-related medical expenses, the error being that such a failure is contrary to the greater weight and preponderance of the evidence and represent errors of law.

Parker filed a Form 59, dated January 4, 2013. In the Informal Brief, Mr. Parker wrote, "Mr. McCain has never worked here." He further wrote, "I have never need[ed] Workers' Comp. I have never had more than 3 workers in this shop." Form 59. He wrote that the Commissioner applied the wrong law because she "listened to one side of the story." Form 59. About the Claimant, Mr. Parker wrote, "I have never hired this man at all." Mr. Parker has asked that the Commission "[h]ear my side and my witnesses' side" of the story. Form 59.

DISCUSSION

All named parties to this action, including William Shepherd and Tobie Parker, appeared before the Appellate Panel on March 19, 2013. Prior to the start of the hearing, the Appellate Panel held a pre-hearing conference with all parties. The Panel informed both Mr. Parker and Mr. Shepherd of their right to counsel, and both gentlemen represented to the Panel that they wished to proceed without counsel.

During the pre-hearing conference, Mr. Shepherd indicated that no notice of the original hearing before the Single Commissioner was ever mailed to his address. Mr. Shepherd indicated that his address is 1052 Primrose Lane, Manning, South Carolina 29102.

A review of the file indicates that all pleadings, including but not limited to Claimant's Form 50 requesting a hearing and the Notice of Hearing before the Single Commissioner, were

mailed to Mr. Shepherd at 1431 Georgia Pacific Highway, Alcolu, South Carolina 29001. Mr. Parker indicated that this address (1431 Georgia Pacific Highway, Alcolu, South Carolina 29001) was his home address. Both Mr. Shepherd and Mr. Parker represented to the Panel that Mr. Shepherd did not live at Mr. Parker's residence in Alcolu.

South Carolina Code Reg. 67-211 allows service of Forms 50 to be made on parties by first class mail. However, to be effective, such service must be made by addressing the mailing to a party's address. Service on one party by mail is not effective when the mailing was sent to the address of a different party.

South Carolina Code Reg. 67-211 allows the Commission to serve Hearing Notices on parties by first class mail. However, to be effective, such service must be made by addressing the mailing to a party's address. Service on one party by mail is not effective when the mailing was sent to the address of a different party.

Pursuant to S.C. Code Ann. § 42-17-50, we, the Appellate Panel, have reviewed the Decision and Order of the Single Commissioner. The Order is silent as to whether proper notice was served upon all parties of interest.

After careful review, the Appellate Panel of the South Carolina Workers' Compensation Commission, by unanimous vote, have determined that the Hearing Commissioner's Order shall be **VACATED**. Further, William Shepherd's address for service shall be noted by the Commission and all parties as 1052 Primrose Lane, Manning, South Carolina 29102. Further, William Shepherd shall be served a copy of Claimant's Form 50 along with this executed Order. Further, this case shall be **REMANDED** to the jurisdictional Commissioner for a **HEARING DE NOVO**.

Again, the Panel wishes to note that both Mr. Shepherd and Mr. Parker were instructed of their right to counsel. The Panel instructed Mr. Shepherd and Mr. Parker that, outside of the

discretion of the jurisdictional Commissioner, this matter would not be postponed further to allow them to retain counsel.

ORDER

By unanimous vote, the Order of the Single Commissioner from which this appeal has been taken is hereby **VACATED**.

IT IS, THEREFORE, ORDERED that, until otherwise notified in writing by William Shepherd or his authorized representative, William Shepherd's address for service shall be noted by the Commission and all parties as 1052 Primrose Lane, Manning, SC 29102;

IT IS, THEREFORE, ORDERED that William Shepherd shall be served a copy of Claimant's Form 50 along with this executed Order;

IT IS ALSO ORDERED that this matter shall be **REMANDED** to the jurisdictional for a **HEARING DE NOVO**.

AND IT IS SO ORDERED!

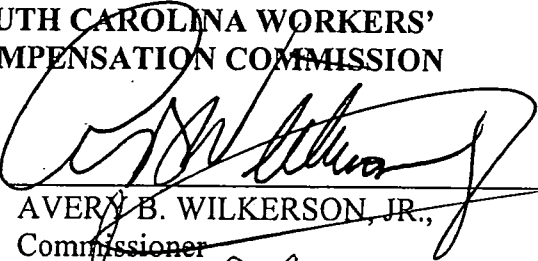
VACATED AND REMANDED:

SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION

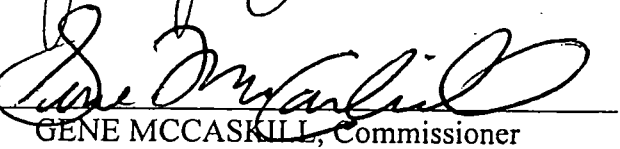
CERTIFICATE OF SERVICE

This is to certify that the undersigned has this date served this order in the above entitled action upon all parties to this cause by depositing a copy hereof, postage paid, in the United State mail addressed to the attorney or attorneys for said parties.

This 16 day of April, 2013
By Valerie D Deller
Administrative Assistant to the Commissioner

BY: 
AVERY B. WILKERSON, JR.,
Commissioner

BY: 
SUSAN S. BARDEN, Commissioner

BY: 
GENE MCCASKILL, Commissioner

Timothy B. Kellen
J. Joseph Condon Jr.
Tobie Parker - Reg & cert
William Shepherd - Reg & cert
West Manning Auto Reg & cert