

State of South Carolina
Workers' Compensation Commission

APPELLATE PANEL DECISION AND ORDER

COMMISSION PANEL: The Honorable Melody L. James, The Honorable Cynthia C. Dooley,
and The Honorable Gene McCaskill

SCWCC File No.: 1824334

Daniel Hayden,
Claimant,

v.

Riverside Transport, Inc.,
Employer,

and

First Liberty Insurance Corporation,
Carrier,
Defendants.

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Sep 11 2023

SC Court of Appeals

AFFIRMED IN PART, REVERSED IN PART

Hearing held in Richland County, South Carolina,
on April 17, 2023

Per notice timely and properly served upon all Parties of Interest.

Appearances: Frank A. Barton, of Frank A. Barton Attorney at Law, P.A.,
appeared on behalf of Claimant/Appellant.

D. Alan Westerlund, Jr., of Willson Jones Carter & Baxley,
P.A., appeared on behalf of Defendants/Respondents.

Court Reporter: Jamie Leigh Barrs, Creel Court Reporting, 1230 Richland
St., Columbia, SC 29201, 803-252-3445

Filed: August 16, 2023, 2023

I. STATEMENT OF THE CASE

The parties were heard by Commissioner Aisha Taylor on January 5, 2023 in Columbia, South Carolina to determine issues as set forth on the Claimant's Form 50. Specifically, the Claimant sought a determination of his entitlement to permanency to his back. The Defendants argued that, per his employment contract, the Claimant was provided workers' compensation benefits through an Arkansas workers' compensation claim, and that he is not entitled to any further benefits in South Carolina. The Defendants also argued that the Claimant did not satisfy the requirements of S.C. Code § 42-15-10, as he was not hired, injured, or employed in South Carolina. Further, the Defendants denied that the Claimant established a claim with the South Carolina Workers' Compensation Commission within two years after the August 20, 2018 incident. The Defendants also contended that the Claimant had a pre-existing back condition and did not meet his burden to prove an aggravation of a pre-existing condition under S.C. Code § 42-9-35. Finally, the Defendants contended the Claimant suffered an intervening accident which breaks the chain of causation and relieves the Defendants of further responsibility. If the claim were found compensable, the Defendants requested a credit for all benefits paid through the Arkansas workers' compensation claim.

II. SINGLE COMMISSIONER FINDINGS OF FACT AND CONCLUSIONS OF LAW

On January 25, 2023, Commissioner Taylor issued the following Decision and Order:

FINDINGS OF FACT

1. The Commission file becomes part of the record with the exception of self-serving declarations and unstipulated medical reports.
2. The Claimant signed a Position Statement upon his hire on June 24, 2014 on which he agreed that he understood that he "was hired in the State of Arkansas, and that should I sustain an on the job injury that has been deemed compensable, that I will be covered under the State of

Arkansas. This applies should I reside in a different state or if the accident occurs in a different state.”
(Defendants’ Exhibit D, p. 66)

3. Following the August 20, 2018 incident, the Claimant received 13 weeks of temporary total disability benefits and 31.43 weeks of permanency through an Arkansas workers’ compensation claim. (Defendants’ Exhibit B, p. 59) The Claimant was also provided medical expenses through an Arkansas workers’ compensation claim. (Defendants’ Exhibit B, p. 59)

4. The Claimant failed to meet his burden regarding entitlement to benefits pursuant to the South Carolina Workers’ Compensation Act. The Claimant injured his back on August 20, 2018, while working in Colorado. He was working for Riverside Transport, Inc., a business domiciled and operating in Arkansas. Per the terms of his employment contract with the employer, the Claimant was provided benefits pursuant to an Arkansas workers’ compensation claim. (Defendants’ Exhibit D, p. 66). He received medical treatment, temporary total disability benefits, and permanent partial disability benefits – all through his Arkansas claim. (Defendants’ Exhibit B, p. 59). The Claimant has failed to satisfy the requirements of S.C. Code Ann. § 42-15-10, as he was not hired, injured, or employed in South Carolina.

5. Notwithstanding the finding above, the Claimant’s request for benefits in South Carolina is barred by the statute of limitations, as the Claimant’s injury occurred on August 20, 2018, and he did not file a claim with the South Carolina Workers’ Compensation Commission until filing a Form 50 on March 25, 2021, which was received by the South Carolina Workers’ Compensation Commission on March 29, 2021, alleging an injury to the spine related to an August 20, 2018 date of injury.

6. There is insufficient evidence regarding an aggravation of a pre-existing condition as the Claimant did not request benefits pursuant to that status and there is not enough medical evidence regarding the Claimant’s 2016 back injury. Additionally, the Claimant was able to return to work

following his 2016 back injury. (Hrng. Tr., p. 34).

7. There is insufficient medical evidence in the record to find the Claimant sustained a superseding and intervening accident in October of 2021.

8. All claims for benefits are denied.

I. CONCLUSIONS OF LAW

Accordingly, as provided in § 42-17-40, S.C. Code Ann. (1976), as amended, it is the determination of this Commission that:

1. Under S.C. Code Ann. § 42-15-10, the Claimant failed to satisfy the statutory requirements as he was not hired, injured, or employed in South Carolina.

2. Under S.C. Code Ann. § 42-15-40, the Claimant failed to timely file the claim within two years after the date of accident.

3. Under S.C. Code Ann. § 42-15-60, the Defendants are not responsible for, and the Claimant is not entitled to, any past or future medical benefits.

II. ORDER

IT IS HEREBY ORDERED that the Claimant failed to meet his burden of proving entitlement to any benefits under the South Carolina Workers' Compensation Act;

IT IS FURTHER ORDERED that the Claimant failed to meet the statutory requirements of S.C. Code Ann. § 42-15-10;

IT IS FURTHER ORDERED that the Claimant failed to file a claim with the South Carolina Workers' Compensation Commission within two years of the August 20, 2018 date of accident as required by S.C. Code Ann. § 42-15-40;

IT IS FURTHER ORDERED that all claims for benefits are denied;

IT IS FURTHER ORDERED that no hearing costs are assessed in this instance.

IT IS SO ORDERED.

III. ISSUES ON APPEAL

Within the statutory period, the Claimant filed a Form 30 Application for Review in the case setting forth his reasons, copies of which were furnished to all parties prior to oral argument before the Appellate Panel on March 13, 2023. Such, together with all documentary evidence, has been delivered by oral argument to the individual members of the Appellate Panel and has since been under study and consideration.

In his Form 30 Application for Review, the Claimant questioned whether the Single Commissioner erred in determining the Claimant did not file his workers' compensation claim within two years of the date of accident and was therefore barred; whether the Single Commissioner erred in concluding the Claimant was not entitled to pursue a workers' compensation claim in South Carolina; whether the Single Commissioner erred in concluding that the Claimant was not entitled to benefits for loss of use of the spine; and whether the Single Commissioner erred in admitting into evidence Defendants' Exhibit B.

At the Appellate Hearing, during oral argument, the Claimant argued that he filed a claim with the South Carolina Workers' Compensation Commission within two years of the date of accident. He further argued that his employment was located in South Carolina and, pursuant to Holman v. Bulldog Trucking Company, he is entitled to pursue a claim in South Carolina. He argued that he is entitled to an award for permanency to the back based on the August 7, 2019 report from Dr. Donald Johnson, who assigned 13% whole person impairment/17% lumbar spine impairment. Finally, he argued that the Single Commissioner erred in admitting Defendants' Exhibit B, as they were hearsay and there was not a foundation laid to prove their authenticity or accuracy.

The Defendants argued that the Single Commissioner correctly ruled that the claim was

barred due to the Statute of Limitations, as a Form 50 alleging an August 20, 2018 date of accident was not filed with the South Carolina Workers' Compensation within two years of the date of accident. They further argued that the Single Commissioner correctly ruled that the Claimant was not hired, injured, or employed in South Carolina. The Defendants argued that, had the Claimant met his burden to prove entitlement to file a claim in South Carolina, he received proper benefits through an Arkansas workers' compensation claim and is not entitled to any further benefits. They sought a credit for any benefits paid in Arkansas should the Commission award the Claimant permanency to the back. Finally, the Defendants argued that the Single Commissioner was within her authority to admit Defendants' Exhibit B into evidence, as its contents were relevant, material, and not unduly repetitious.

The Form 30 is contained within the Commission file.

The Appellate Panel hereby AFFIRMS IN PART AND REVERES IN PART the Single Commissioner's Decision and Order and enters the following Findings of Fact, Conclusions of Law, and Order as its own.

IV. DECISION OF THE APPELLATE PANEL

FINDINGS OF FACT

1. The Commission file becomes part of the record with the exception of self-serving declarations and unstipulated medical reports.

2. The Claimant signed a Position Statement upon his hire on June 24, 2014 on which he agreed that he understood that he "was hired in the State of Arkansas, and that should I sustain an on the job injury that has been deemed compensable, that I will be covered under the State of Arkansas. This applies should I reside in a different state or if the accident occurs in a different state." (Defendants' Exhibit D, p. 66)

3. Following the August 20, 2018 incident, the Claimant received 13 weeks of

temporary total disability benefits, was assigned a 7% whole person impairment rating related to his back, and received 31.43 weeks of permanency through an Arkansas workers' compensation claim. (Defendants' Exhibit B, p. 59-61) The Claimant was also provided medical expenses through an Arkansas workers' compensation claim. (Defendants' Exhibit B, p. 59)

4. Defendants' Exhibit B was properly admitted into evidence by the Single Commissioner. The South Carolina Workers' Compensation Commission is an "agency" within the meaning of S.C. Code Ann. § 1-23-310, and thus is subject to the Administrative Procedures Act. As stated in S.C. Code Ann. § 1-23-330, "[i]rrelevant, immaterial or unduly repetitious evidence shall be excluded. Except in proceedings before the Industrial Commission the rules of evidence as applied in civil cases in the court of common pleas shall be followed." The Single Commissioner was within her authority when she determined that the documents included in Exhibit B are relevant and admissible.

5. The Claimant satisfied the requirements of S.C. Code Ann. § 42-15-10, as his employment is located in South Carolina and Claimant lived in South Carolina, where his truck was located. The greater weight of the evidence shows that he originated trips out of Lexington, SC and his pay was based on mileage from his residential location in South Carolina. This finding is based, in part, on Holman v. Bulldog Trucking Co., 311 S.C. 341, 482 S.E.2d 889 (S.C. Ct. App. 1993).

6. The Claimant is not time-barred from filing a claim in South Carolina under S.C. Code Ann. § 42-14-50. The Commission file reflects a Form 50 Notice of Claim filed on February 12, 2020.

7. There is insufficient evidence regarding an aggravation of a pre-existing condition as the Claimant did not request benefits pursuant to that status and there is not enough medical evidence regarding the Claimant's 2016 back injury. Additionally, the Claimant was able to return to work following his 2016 back injury. (Hrng. Tr., p. 34).

8. There is insufficient medical evidence in the record to find the Claimant sustained a superseding and intervening accident in October of 2021.

10. All claims for benefits are denied.

III. CONCLUSIONS OF LAW

Accordingly, as provided in § 42-17-40, S.C. Code Ann. (1976), as amended, it is the determination of this Commission that:

1. Under S.C. Code Ann. § 42-15-10, the Claimant satisfied the statutory requirements related to being employed in South Carolina. His assent to the terms of the June 24, 2014 Position Statement does not disturb this conclusion. *See* S.C. Code Ann. § 42-1-620 (1962, as amended) (“No agreement by an employee to waive his rights to compensation under this title shall be valid.”).

2. Under S.C. Code Ann. § 42-15-40, the Claimant timely filed the claim within two years after the date of accident.

3. Under S.C. Code Ann. § 42-15-60, the Defendants are not responsible for, and the Claimant is not entitled to, any past or future medical benefits.

IV. ORDER

IT IS HEREBY ORDERED that the Claimant is not entitled to an award for permanency to the spine under the South Carolina Workers’ Compensation Act;

IT IS FURTHER ORDERED that all claims for benefits are denied;

IT IS FURTHER ORDERED that no hearing costs are assessed in this instance.

AND SO IT IS ORDERED.

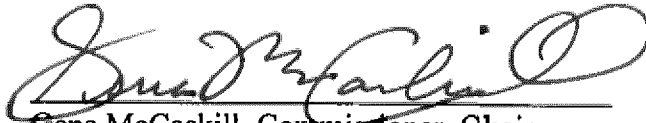
Columbia, SC (date)



Melody L. James, Commissioner



Cynthia C. Dooley, Commissioner



Gene McCaskill, Commissioner, Chair

Order Served via email:

<p>D. Alan Westerlund, Jr. Wilson Jones Carter & Baxley 4922 O'Hear Avenue Ste. 301 North Charleston, SC 29405 dawesterlund@wjcbllaw.com</p>	<p>Frank Anthony Barton Attorney at Law P.O. Box 2637 Lexington, SC 29071 barton@hotmail.com</p>
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CERTIFICATE OF SERVICE

This is to certify that the undersigned has on this date served a copy of this order in the above entitled action upon all parties to this case by sending an electronic copy hereof by electronic mail addressed to the attorneys for said parties; or if there is an unrepresented party(ies), by depositing a copy hereof, postage paid in the United States mail, first class, addressed to the unrepresented party(ies) and to the attorney(s) for the represented party(ies).

By Eugenia Hollmon on August 16, 2023