

State of South Carolina  
WORKERS' COMPENSATION COMMISSION  
APPELLATE PANEL DECISION AND ORDER  
Commissioners Taylor, Campbell, & Beck (Chair)

**RECEIVED**  
DEC 18 2023  
SC Court of Appeals

SCWCC FILE NO. 2203275

AMY PEREZ,  
CLAIMANT,  
v.  
AMAN MEDICAL TRANSPORT, LLC,  
EMPLOYER  
And  
SC UNINSURED EMPLOYERS FUND  
CARRIER,  
DEFENDANTS

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AFFIRMED WITH AMENDMENTS

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Held in Columbia, South Carolina  
on April 17, 2023.

Per notice timely and properly served upon all Parties

Claimant represented by Andrew D. Smith, Esquire, Of  
Charleston, South Carolina.

Defendants/Employer, Aman Medical Transport, LLC failed to  
appear.

South Carolina Uninsured Employers Fund represented by  
Samuel T. Brunson, Esquire of Florence, South Carolina.

Court Reporter: Amber Scarborough – 803-252-3445

Filed: December 7, 2023

## I. STATEMENT OF THE CASE

This matter arises out of an accident which occurred on January 21, 2022, in Darlington, County, South Carolina. On that day, the Claimant, Amy Perez, was driving an ambulance owned by Aman Medical Transport, LLC when a vehicle driven by Celica Elizabeth Martin crossed the center line and struck the vehicle driven by Claimant head-on. As a result of that collision, the Claimant suffered injuries including substantial injuries to her right leg and ankle.

On March 24, 2022, the Claimant filed a Form 50 with the South Carolina Workers' Compensation Commission. That form named Aman Medical Transport, LLC as Employer, and the South Carolina Uninsured Employers' Fund as Carrier. According to Commission records, the claim was established on April 4, 2022, and assigned Workers' Compensation File Number 2203275. The South Carolina Uninsured Employers' Fund established their File Numbered 2022-0699 on March 31, 2022. The Uninsured Fund filed a Form 51 on April 8, 2022, basically a General Denial. In addition, the Fund raised all affirmative defenses in this case.

The Claimant alleged that she was an employee of Aman Medical Transport on and before January 21, 2022. On that date, she sustained a severe injury to her right lower extremity including her right foot and ankle, and has also developed problems with her Lumbar Spine. The Claimant contended that Aman Medical Transport regularly employs four more employees and was thus subject to the Workers' Compensation Act. She was claiming Temporary Total Disability Benefits from the date of her accident and continuing. She sought her past medical care to be paid and also requested to see an additional specialist for her right lower extremity and a physician to evaluate her lower back pain.

The Claimant contended that she was working two jobs at the time of her accident. She contended a total average weekly wage on both jobs of Six Hundred Twenty-Four and 36/100 (\$624.36) Dollars per week with a compensation rate of Four Hundred Sixteen and 26/100 (\$416.26) Dollars applicable.

No Representative of Aman Medical Transport, LLC appeared at the Hearing. Attorney Samuel T. Brunson, who appeared on behalf of the Uninsured Employers' Fund stated that he was assigned the claim on May 3, 2022. At that time, he wrote Shannon Bennett, the Registered Agent for Aman Medical Transport, LLC, a letter requesting contact. He did not hear from Ms. Bennett. In late June, the Commission issued a Hearing Notice setting this matter for a Hearing during the third week of August. At that time, Mr. Brunson again wrote Ms. Bennett and forwarded a Subpoena requesting wage records for the Claimant and a list of her other workers. Again, Ms. Bennett did not respond.

Mr. Brunson stated that about a week before the first scheduled Hearing, the Commission was emailed by a lady named Tonya Lloyd who claimed to be a consultant with Aman Medical Transport. Ms. Lloyd explained that the owners of the company, Shannon Bennett and Rhonda Watts had a medical emergency and needed the case postponed. The Workers' Compensation Commission postponed the matter at that time and reset the case for October 6, 2022. Mr. Brunson explained that he forwarded a letter and Subpoena to Tonya Lloyd on September 1, 2022, again requesting wage and employment records. When he received no response, he emailed Ms. Lloyd requesting contact. On September 26, 2022, approximately ten days before the scheduled Hearing, Mr. Brunson talked with Tonya Lloyd who informed him that the matter needed to be postponed further. Shortly after that, Rhonda Watts requested postponement by

emailing the Workers' Compensation Commission. It was sent to the wrong office at the Commission but eventually was forwarded to the Undersigned Commissioner's Administrative Assistant. The Attorney for the Claimant, Mr. Smith, objected to further postponing this case so no action was taken on the Motion.

Mr. Brunson stated that he had emailed and texted Tonya Lloyd and Rhonda Watts regarding their appearance at the Hearing today. He had received no response. Following Pre-Trial, he walked around the Hearing location and could find no one appearing on behalf of Aman Medical Transport, LLC. However, because Rhonda Watts requested postponement, it is clear she had Notice of the Hearing. During Pretrial, the Uninsured Fund informed the Commissioner that a General Denial had been filed on behalf of the UEF. The Employer, Aman Medical Transport did not file a Form 51 with the Commission. Pursuant to Commission Rules, their failure to file is treated as a General Denial. The Uninsured Fund stated that the Commission needed to decide if the Commission had jurisdiction, and if so, if the Claimant sustained a Compensable Injury by Accident. If so, the Commission needed to determine what benefits were due and in what amount. The Uninsured Fund requested that the issue of average weekly wage be made without prejudice as wage records had been requested from the Employer on numerous occasions but were not provided.

During the testimony in this case, the Claimant was asked by her Attorney how she had been supporting herself during the pendency of her Workers' Compensation claim. The Claimant testified that she received child support from her ex-husband, used her savings, and stated that she had recently received Settlement Money from her third-party claim. At that time, a Motion

was made to have documents regarding the third-party claim produced and provided to the Commission to allow a determination whether an Election of Remedies had been made.

This issue had previously been raised in the Claimant's deposition which was taken on August 8, 2022. That deposition is a part of the record in this case. During the deposition, conducted on 8/11/2023, the Attorney for the Claimant stated that the claim against the third- party had not been settled and that no Election of Remedy had been made. Upon Motion by Mr. Brunson, the Attorney for the Claimant, Andrew Smith, stipulated to provide the Settlement Documents and the record was held open for their receipt.

## **II. SINGLE COMMISSIONER FINDINGS OF FACT AND CONCLUSIONS OF LAW**

On January 30, 2023, the hearing Commissioner issued a Decision and Order with the following Findings of Fact and Conclusions of Law:

### Findings of Fact

1. The Claimant, Amy Perez was involved in a motor vehicle accident on January 21, 2022 and injured her right lower extremity.
2. The Claimant seeks a determination that she was employed by Aman Medical Transport, LLC on and before January 21, 2022 and that she made Ten and no/100 (\$10.00) Dollars per hour and worked thirty to forty hours per week. She also alleged that Aman had over four employees on the date of the accident. The Claimant also claims that she had a second job with Dollar General where she earned Nine and 25/100 (\$9.25) Dollars per hour and worked twenty-five to thirty

hours per week. She alleges a combined average weekly wage of Six Hundred and Twenty- Four and 36/100 (\$624.36) Dollars and a compensation rate of Four Hundred Sixteen and 26/100 (\$416.26) Dollars. The Claimant seeks Temporary Total Benefits from the date of the accident and continuing, additional medical treatment and the payment of past and future medical treatment until she reaches Maximum Medical Improvement. The Claimant also alleges an injury to her back on the date of the accident.

3. Aman Medical Transport was timely served with Notice of the Previous Hearing which was scheduled for August 23, 2022. The Company requested a postponement at that time due to illness which was granted.

4. Another Notice of Hearing was timely served upon Aman Medical Transport for the Hearing of October 6, 2022. Several days before that Hearing, Aman again asked for Postponement of the Hearing due to illness. The claimant's Attorney objected to that postponement as the claim had been previously postponed and the Claimant had not received benefits or medical treatment since her accident. The Commission planned to rule on the request for postponement at the hearing. However, Representatives for Aman Medical Transport failed to appear.

5. Aman Medical Transport did not appear for the properly scheduled and Noticed Hearing and the Hearing Proceeded as scheduled.

6. The Uninsured Employers' Fund was present at the scheduled Hearing. The Uninsured Fund tried to reach Aman Medical Transport on numerous occasions. The UEF also requested employment documents including wage records and never received any response to those

requests. The Uninsured Fund requested that any determination of an average weekly wage and compensation rate be made without prejudice in the event that payroll records later became available.

7. Following her automobile accident on January 21, 2022, the Claimant received medical treatment at Mcleod Regional Medical Center in Florence, South Carolina.

8. The Claimant was evaluated at Mcleod Regional Medical Center on January 21, 2022 where she was diagnosed with a Fibula Fracture, dislocated right ankle, and laceration of her leg. She complained of pain in the left calf, right ankle, and low back. The right lower extremity was splinted (Claimant's APA pages 1-103).

9. On January 22, 2022, the Claimant underwent closed reduction and external fixation of the right comminuted intra articular distal tibia pilon fracture with associated distal fibular shaft fracture and complete syndesmotic disruption which was completed by Dr. Sparkman. The Claimant remained in the hospital from January 21, 2022, until January 28, 2022. (Claimant's APA, page 23).

10. The Claimant was evaluated by John Ulmer, P.A. on February 15, 2022, and internal fixation was scheduled for February 21, 2022. (Claimant's APA pages 104-107).

11. The Claimant underwent internal fixation of the right tibia by Dr. Sparkman on February 21, 2022. (Claimant's APA pages 108-125).

12. During the Claimant's testimony, in response to questioning by her Attorney, she admitted that she received settlement money from her third-party claim.

13. At that time, a Motion was made to have the documents regarding the third-party claim produced to determine whether an Election of Remedies had been made. The Claimant's Attorney consented to that Motion.

14. The Settlement document show that monies from the third-party settlement were disbursed to the Claimant on August 16, 2022 and included in those monies were liability insurance payments from the adverse driver's insurance coverage.

15. The documents also include an Agreement and a Covenant not to Execute signed by the Claimant as to the third-party tort-feasor, Celica Elizabeth Martin. That document effectively ends all claims against the third-party in this case.

16. The third-party settlement in this case was made without notification to or consent of the Defendants. In addition, the settlement was made without notification to and without the approval of the Workers' Compensation Commission. For that reason, the Claimant has elected her remedy in this case. In making that election, the Claimant has waived any rights to benefits she may have under the South Carolina Workers' Compensation Law.

## Conclusions of Law

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During the pendency of her Workers' Compensation claim, the Claimant negotiated and settled her third-party claim. Neither the Commission nor the Defendants were notified of this Settlement.

The facts in this case are identical to those in Fisher V. South Carolina Department of Mental Health, 291 S.E. 2nd 200 (1982). In Fisher the Claimant sought benefits under the South Carolina Workers' Compensation Act after making a compromised settlement with a third-party tort-feasor without the consent of the Employer and/or Carrier. The South Carolina Supreme Court, in Fisher, agreed with the Single Commissioner, Full Commission, and Circuit Court that the Claimant had elected a remedy against the third-party without complying with Section 42-1-560 and, having done so, had no further remedy under the South Carolina Workers' Compensation Act. Pursuant to Section 42-1-560 and Fisher, the Claimant is barred from further recovery under the Act.

### III. ISSUES ON APPEAL

1. Did the Single Commissioner err in failing to find that Aman Medical Transport, LLC, was subject to the SC Workers' Compensation Act?
2. Did the Single Commissioner err in failing to find the Claimant was an employee of Aman Medical Transport, LLC and not an independent contractor?
3. Did the Single Commissioner err in failing to find the Claimant is entitled to TTD from the date of the accident and continuing?

4. Did the Single commissioner err in failing to find the Claimant has an applicable average weekly wage, from dual employment, at the rate of Six Hundred Twenty-Four and 36/100 (\$624.36) Dollars per week resulting in an applicable compensation rate of Four Hundred Sixteen and 26/100 (\$416.26) Dollars applicable?
5. Did the Single Commissioner err in failing to find the claimant is entitled to additional medical care and treatment for her right lower extremity and spine?
6. Did the single Commissioner err in finding that the Claimant's third-party settlement was made without notification to or consent of the Defendants, so the Claimant has waived any rights to benefits under the Workers' Compensation Act and that the third-party settlement was required to be approved by the Commission?

#### **IV. DECISION OF THE APPELLATE PANEL**

After review of the issues on appeal the **APPELLATE PANEL** hereby issues the following **FINDINGS**

**OF FACT and CONCLUSIONS OF LAW:**

**APPELLATE PANEL FINDINGS OF FACT:**

1. The Claimant, Amy Perez was involved in a motor vehicle accident on January 21, 2022 and injured her right lower extremity.
2. Following her automobile accident on January 21, 2022, the Claimant received medical treatment at Mcleod Regional Medical Center in Florence, South Carolina.
3. The Claimant was evaluated at Mcleod Regional Medical Center on January 21, 2022 where she was diagnosed with a Fibula Fracture, dislocated right ankle, and laceration of her leg. She complained of pain in the left calf, right ankle, and low back. The right lower

extremity was splinted (Claimant's APA pages 1-103).

4. On January 22, 2022, the Claimant underwent closed reduction and external fixation of the right comminuted intra articular distal tibia pilon fracture with associated distal fibular shaft fracture and complete syndesmotic disruption which was completed by Dr. Sparkman. The Claimant remained in the hospital from January 21, 2022, until January 28, 2022. (Claimant's APA, page 23).
5. The Claimant was evaluated by John Ulmer, P.A. on February 15, 2022, and internal fixation was scheduled for February 21, 2022. (Claimant's APA pages 104-107).
6. The Claimant underwent internal fixation of the right tibia by Dr. Sparkman on February 21, 2022. (Claimant's APA pages 108-125).
7. The Claimant seeks a determination that she was employed by Aman Medical Transport, LLC on and before January 21, 2022 and that she made Ten and no/100 (\$10.00) Dollars per hour and worked thirty to forty hours per week. She also alleged that Aman had over four employees on the date of the accident. The Claimant also claims that she had a second job with Dollar General where she earned Nine and 25/100 (\$9.25) Dollars per hour and worked twenty-five to thirty hours per week. She alleges a combined average weekly wage of Six Hundred and Twenty- Four and 36/100 (\$624.36) Dollars and a compensation rate of Four Hundred Sixteen and 26/100. (\$416.26) Dollars. The Claimant seeks Temporary Total Benefits from the date of the accident and continuing, additional medical treatment and the payment of past and future medical treatment until she reaches Maximum Medical Improvement. The Claimant also alleges an injury to her back

on the date of the accident.

8. Aman Medical Transport was timely served with Notice of the Previous Hearing which was scheduled for August 23, 2022. The Company requested a postponement at that time due to illness which was granted.
9. Another Notice of Hearing was timely served upon Aman Medical Transport for the Hearing of October 6, 2022. Several days before that Hearing, Aman again asked for Postponement of the Hearing due to illness. The Claimant's Attorney objected to that postponement as the claim had been previously postponed and the Claimant had not received benefits or medical treatment since her accident. The Commission planned to rule on the request for postponement at the hearing. However, Representatives for Aman Medical Transport failed to appear.
10. Aman Medical Transport did not appear for the properly scheduled and Noticed Hearing and the Hearing Proceeded as scheduled.
11. The Uninsured Employers' Fund was present at the scheduled Hearing. The Uninsured Fund tried to reach Aman Medical Transport on numerous occasions. The UEF also requested employment documents including wage records and never received any response to those requests. The Uninsured Fund requested that any determination of an average weekly wage and compensation rate be made without prejudice if payroll records later became available.
12. We find Claimant was an employee of Aman Medical Transport, LLC at the time of her work accident on January 21, 2022. This finding is based on the greater weight of the

evidence in the record including the uncontradicted testimony of the Claimant.

13. We find Claimant has an average weekly wage of \$624.36, which yields a compensation rate of \$416.26. This finding is based on the greater weight of the evidence including Claimant's testimony, which was credible and uncontradicted, as well as the payroll and wage information from Claimant's dual employment with Dollar General Corp.
14. We find the Defendant Employer, Aman Medical Transport, LLC, regularly employed four or more employees during the period in which Claimant was involved in the motor vehicle accident. As such, the Employer is subject to the Workers' compensation Act. This finding is based on the greater weight of the evidence as a whole including the Claimant's testimony which was uncontradicted.
15. During the Claimant's testimony, in response to questioning by her Attorney, she admitted that she received settlement money from her third-party claim.
16. At that time, a Motion was made to have the documents regarding the third-party claim produced to determine whether an Election of Remedies had been made. The Claimant's Attorney consented to that Motion.
17. The Settlement document show that monies from the third-party settlement were disbursed to the Claimant on August 16, 2022 and included in those monies were liability insurance payments from the adverse driver's insurance coverage.
18. The documents also include an Agreement and a Covenant not to Execute signed by the Claimant as to the third-party tort-feasor, Celica Elizabeth Martin. That document effectively ends all claims against the third-party in this case.
19. The third-party settlement in this case was made without notification to or consent of the Defendants. In addition, the settlement was made without notification to and without the

approval of the Workers' Compensation Commission. For that reason, the Claimant has elected her remedy in this case. In making that election, the Claimant has waived any rights to benefits she may have under the South Carolina Workers' Compensation Law.

**APPELLATE PANEL CONCLUSIONS OF LAW:**

1. Claimant was an employee of Aman Medical Transport, LLC as defined in S.C. Code Ann Section 42-1-130.
2. Aman Medical Transport, LLC regularly employed four or more employees and was subject to the South Carolina Workers' Compensation Act per S.C. Code Ann. Section 42-1-150.
3. Claimant has an average weekly wage of \$624.36 and a compensation rate of \$416.26 per S.C. Code Ann. Section 42-1-40.
4. During the pendency of her Workers' Compensation claim, the Claimant negotiated and settled her third-party claim. Neither the Commission nor the Defendants were notified of this Settlement. The facts in this case are identical to those in Fisher V. South Carolina Department of Mental Health, 291 S.E. 2nd 200 (1982). In Fisher the Claimant sought benefits under the South Carolina Workers' Compensation Act after making a compromised settlement with a third-party tort-feasor without the consent of the Employer and/or Carrier. The South Carolina Supreme Court, in Fisher, agreed with the Single Commissioner, Full Commission, and Circuit Court that the Claimant had elected a remedy against the third-party without complying with Section 42-1-560 and, having done so, had no further remedy under the South Carolina Workers' Compensation Act. Pursuant to Section 42-1-560 and Fisher, the Claimant is barred from further recovery under the Act.


**ORDER**


The Decision and Order of the Single Commissioner is AFFIRMED AND AMENDED as set forth in the preceding Appellate Panel Findings of fact and Conclusions of Law. The third-party settlement in this case was made without notification to or consent of the Defendants. In addition, the Settlement was made without notification to and without approval of the Workers' Compensation Commission. For that reason, the Claimant has elected her remedy in this case. In making that election, the Claimant has waived any rights to benefits she may have under the South Carolina Workers' Compensation Law.

**IT IS HEREBY ORDERED**, that because of the above election, the claim is hereby denied and dismissed.

**AND IT IS SO ORDERED.**

  
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Commissioner Aisha Taylor

  
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Commissioner T. Scott Beck

  
\_\_\_\_\_  
Commissioner R. Michael Campbell, II

**Order Served via email:**

<p>Andrew D. Smith Anastopoulos Law Firm <a href="mailto:Andrew.smith@akimlawfirm.com">Andrew.smith@akimlawfirm.com</a></p>	<p>Samuel T. Brunson Brunson Law Firm <a href="mailto:Bublax@earthlink.net">Bublax@earthlink.net</a></p> <p>Lisa C. Glover SUEF <a href="mailto:lglover@saf.sc.gov">lglover@saf.sc.gov</a></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 December 7, 2023***