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SC Court of Appeals

THE STATE OF SOUTH CAROLINA

In the Court of Appeals

APPEAL FROM THE WORKERS' COMPENSATION COMMISSION

The Honorable Aisha Taylor, Commissioner

S.C. W.C.C. File No. 1112328

Samuel Rose,

Employee,

v.

JJS Trucking, Uninsured Employer; and
Chris Thompson Services, Upstream Employer; and
Bridgefield Casualty Insurance Co. and
South Carolina Uninsured Employers' Fund, Carriers;

of which the South Carolina Uninsured Employers'
Fund is the

Respondent,

and

Chris Thompson Services, Upstream Employer, and
Bridgefield Casualty Insurance Co. are the

Appellants.

NOTICE OF APPEAL

Chris Thompsons Services and Bridgefield Casualty Insurance Company appeal the decision of the South Carolina Workers' Compensation Commission dated March 8, 2024. The Appellants received a copy of the decision on March 8, 2024.

Pursuant to S.C. Code Ann. § 42-17-60, the grounds for appeal and the alleged errors of law are as follows:

1. The Commission erred as a matter of law in “Finding of Fact” number 12, as this statement references no fact, appears to be a conclusion of law, and is otherwise impermissibly vague and without evidentiary support.
2. The Commission erred as a matter of law in “Finding of Fact” number 13, as this statement references no fact, appears to be a conclusion of law, and is otherwise impermissibly vague and without evidentiary support.
3. The Commission erred in finding and concluding that “Thompson did not supply the certificate of insurance to the Workers’ Compensation Commission ... as required by S.C. Code Ann. § 42-1-415(b)” [sic], as this finding of fact is not supported by substantial evidence, is impermissibly vague, and appears to be an arbitrary and capricious conclusion of law that is supported by neither by substantial evidence or the applicable law.
4. The Commission erred in failing to find and conclude that the Appellants timely provided a Certificate of Insurance to the Commission in accordance with S.C. Code Ann. § 42-1-415(B) and that said Certificate was part of the Commission’s file prior to any hearing in this claim.
5. The Commission erred in finding and concluding that the Certificate of Insurance is “incomplete,” as this finding of fact is not supported by the greater weight of the evidence, is impermissibly vague, and appears to be an arbitrary and capricious conclusion of law that is neither supported by the greater weight of the evidence or the applicable law.

6. The Commission erred in failing to make any detailed findings or conclusions with regard to the fact that the Certificate of Insurance is complete and meets all of the requirements of S.C. Code Ann. § 42-1-415 and S.C. Code Reg. 67-415.
7. The Commission erred in finding and concluding that “as no written contract existed, each transaction would be a new job requiring a certificate of insurance,” as this finding of fact is not supported by substantial evidence, is impermissibly vague, and appears to be an arbitrary and capricious conclusion of law that is neither supported by substantial evidence or the applicable law.
8. The Commission erred in failing to find and conclude that the Appellants obtained a proper Certificate of Insurance at the time JJS Trucking was engaged to perform work as required by S.C. Code Ann. § 42-1-415 and S.C. Code Reg. 67-415 based upon the undisputed evidence in the record.
9. The Commission erred in finding and concluding that “all benefits due and owing to Claimant have not been paid to date, therefore Thompson’s Petition to transfer liability is premature,” as this finding of fact is not supported by substantial evidence, is impermissibly vague, and appears to be an arbitrary and capricious conclusion of law that is neither supported by substantial evidence or the applicable law.
10. The Commission erred in failing to find and conclude that the Appellants have already pay all benefits due and payable to the Claimant, including the statutory maximum of 500-weeks of compensation and Appellants are entitled “to transfer responsibility for continuing compensation and benefits to the Uninsured Employers Fund” in accordance with the plain language of S.C. Code Ann. § 42-1-415(A).
11. The Commission erred in finding and concluding that the “updated” Certificate of Insurance is “incomplete,” as this finding of fact is neither relevant, nor supported by

substantial evidence, is impermissibly vague, and appears to be an arbitrary and capricious conclusion of law that is neither supported by substantial evidence or the applicable law.

12. The Commission erred in affirming the Hearing Commissioner's summary conclusion that the Appellants "failed to show entitlement to transfer liability," as this conclusion is arbitrary, capricious, impermissibly vague, and otherwise contrary to the substantial evidence in the record and the applicable law.
13. The Commission erred in affirming the Hearing Commissioner's conclusion that case law requires "strict construction of C. Code Ann. § 42-1-415" [sic], as this conclusion is as this conclusion is arbitrary, capricious, impermissibly vague, and fails to apply any legal principle to the facts of this case.
14. The Commission erred in affirming the Hearing Commissioner's conclusion that Hardee v. McDowell, Hopper v. Terry Hunt Const., or Barton v. Higgs, "apply" in this case as this conclusion is arbitrary, capricious, impermissibly vague, and otherwise fails to apply any legal principle to the facts of this case, including the undisputed fact that Chris Thompson Services collected documentation of insurance from JJS trucking at the time JJS Trucking was engaged to perform work; the undisputed fact that said documentation of insurance met all requirements of S.C. Code. Ann. § 42-1-415 and the current version of S.C. Code Reg. 67-415; the undisputed fact that JJS Trucking was a South Carolina Employer, with a South Carolina address, and documented South Carolina insurance; the undisputed fact that the documentation of insurance was signed by an authorized representative; and the undisputed fact that further investigation of the documentation of insurance was undertaken by Chris Thompson Services and revealed that JJS Trucking had a valid policy of insurance as documented and as stipulated by Travelers.

15. The Commission erred in affirming the Hearing Commissioner's conclusion that Hardee v. McDowell, Hopper v. Terry Hunt Const., or Barton v. Higgs, "apply" in this case regarding what is acceptable to the Commission as documentation of insurance, the error being that these cases pre-date the applicable regulation, S.C. Code Reg. 67-415, the requirements of which have been met by the Appellants by overwhelming and undisputed evidence.
16. The Commission erred in affirming the Hearing Commissioner's erroneous conclusion that Voss v. Ramco, Inc, 325 S.C. 560, 482 S.E.2d 582 (Ct. App 1997) applies to this case or requires strict construction of S.C. Code Ann. § 42-1-415, at Voss does not even mention S.C. Code Ann. § 42-1-415 and is otherwise wholly inapplicable because the fact that the Claimant was an "Employee" of JJS Trucking pursuant to S.C. Code Ann. § 42-1-130 and the fact that the South Carolina Workers' Compensation Commission has jurisdiction over this claim have been the established law of the case since Hearing Commissioner McCaskill issued his Order dated August 23, 2012.
17. The Commission erred in affirming the Hearing Commissioner's order that Appellants "has not entitlement to transfer liability" [sic], as this order is arbitrary, capricious, impermissibly vague, and fails to apply any legal principle to the facts of this case.
18. The Commission erred as a matter of law by concluding that "Section 42-9-30 governs schedule of period of period of disability and compensation" [sic] and "Section 42-17-50 governs review and rehearing by the Commission," as neither of these code sections are germane to the factual and legal issues presented by the Appellants on review and as the Commission otherwise wholly failed to address those issues or elucidate the basis upon which the decision of the Hearing Commissioner was summarily affirmed without discussion and without any relevant conclusions of law by the Appellate Panel.

19. The Commission erred as a matter of law in failing to find and conclude that Travelers stipulated that it provided workers' compensation coverage to JJS Trucking as documented on the Certificate of Insurance and stipulated by counsel for Travelers, and; therefore, the Appellants reasonably relied upon the Certificate of Insurance.
20. The Commission erred as a matter of law in failing to find and conclude that the Certificate of Insurance is dated and signed by David Hayes of the Swamp Fox Agency as an authorized representative of Travelers as required by S.C. Code Reg. 67-415 and as stipulated by Travelers.
21. The Commission erred as a matter of law by arbitrarily and capriciously adding to the stated requirements of S.C. Code Ann. § 42-1-415 and S.C. Code Reg. 67-415 in contravention of the Appellants' constitutional and statutory rights of due process and equal protection under the law.
22. The Commission erred as a matter of law in failing to find and conclude that neither JJS Trucking, nor any other person or entity gave Chris Thompson Services any notice of the policy cancellation and that; therefore, Chris Thompson Services reasonably relied upon the Certificate of Insurance dated October 18, 2010, and reasonably believed that JJS Trucking had workers' compensation insurance coverage at the time of Samuel Rose's accident because the accident occurred within the certified policy period.
23. The Commission erred as a matter of in failing to make specific, detailed findings of fact on any material issues and in failing to apply the applicable law, including S.C. Code Reg. 67-415 and S.C. Code Reg. 67-415, to such facts, as required by the South Carolina Workers' Compensation Act and the Administrative Procedures Act.

24. The Commission erred as a matter of law in failing to find and conclude that Chris Thompson Services and its own carrier, Bridgefield Casualty, promptly and timely provided the Workers' Compensation Commission and the Uninsured Employers' Fund with the Certificate of Insurance dated October 18, 2010, and notified by the Commission and the UEF of their intent to seek a transfer liability to the UEF in accordance with S.C. Code Ann. § 42-1-415.
25. The Commission erred as a matter of law in failing to find and conclude that Chris Thompson Services and Bridgefield Casualty have paid all benefits due to the Claimant in accordance with the prior orders of the Commission, including 500 weeks of compensation and all causally-related medical care and treatment recommend by the physician appointed by the Commission.
26. The Commission erred as a matter of law in failing to find and conclude that the Appellants took additional steps to ensure that a policy was issued to JJS Trucking (and covered the work JJS Trucking was engaged to perform) after coverage was bound and certified on October 18, 2010, based on the admission by Travelers that it actually issued a policy of insurance to JJS Trucking as stated in the October 18, 2010, Certificate of Insurance, and based on testimony of Chris Thompson that after receiving said Certificate from the Swamp Fox Agency, he telephoned the Swamp Fox Agency to verify coverage for JJS Trucking and "spoke with Greg Hudson ... he said everything is good to go, you're covered ... Cedric [of JJS Trucking] was good to go."
27. The Commission erred as a matter of law in failing to conclude that, pursuant to S.C. Code Ann. § 42-1-415(A), "upon the submission of documentation to the commission that a ... subcontractor has represented himself to a higher tier subcontractor ... as having workers' compensation insurance at the time the ... subcontractor was engaged to perform

work, the higher tier subcontractor ... must be relieved of any and all liability under this title ... The higher tier subcontractor ... may petition the commission to transfer responsibility for **continuing** compensation and benefits to the Uninsured Employer's Fund," and in failing to conclude that the Appellants properly submitted such documentation, specifically an ACORD Form 25, Certificate of Insurance dated October 18, 2010, and; therefore, must be relieved of responsibility for any continuing medical benefits in this claim.

28. The Commission erred as a matter of law in failing to conclude that, pursuant to S.C. Code Ann. § 42-1-415(B), "[t]o qualify for reimbursement under this section, the higher tier subcontractor ... must collect documentation of insurance as provided in subsection (A) on a standard form acceptable to the commission" and Regulation 67-415(A) further provides that "[f]or purposes of Section 42-1-415 ... the following is acceptable as documentation of insurance ... the ACORD Form 25-S, Certificate of Insurance ... provided the Certificate of Insurance indicates a valid South Carolina address for the insured, is dated, signed and issued by an authorized representative of the insurance carrier for the insured." The Commission further erred in failing to conclude that the ACORD Form 25 Certificate of Insurance dated October 18, 2010, meets all of the requirements of § 42-1-415 and Reg. 67-415(A)(2) because it indicates a valid South Carolina address for the insured ("137-A Gordon Street, Charleston SC 29403"), the form is dated ("10/18/10"), and it is signed and issued by David W. Hayes of the Swamp Fox Agency, which Travelers admits was their authorized agent.

Respectfully submitted,

Kirsten Leslie Barr

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April 3, 2024

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THE STATE OF SOUTH CAROLINA

In the Court of Appeals

APPEAL FROM THE WORKERS' COMPENSATION COMMISSION

The Honorable Aisha Taylor, Commissioner

S.C. W.C.C. File No. 1112328

Samuel Rose,

Employee,

v.

JJS Trucking, Uninsured Employer; and
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Bridgefield Casualty Insurance Co. and
South Carolina Uninsured Employers' Fund, Carriers;

of which the South Carolina Uninsured Employers'
Fund is the

Respondent,

and

Chris Thompson Services, Upstream Employer, and
Bridgefield Casualty Insurance Co. are the

Appellants.

PROOF OF SERVICE

The undersigned hereby certifies that a copy of the Notice of Appeal of the Appellants, Chris Thompson Services and Bridgefield Casualty Insurance Company, was served on Samuel Rose, the South Carolina Uninsured Employers Fund, and the South Carolina Workers' Compensation Commission by emailing and depositing a copy of the same in the United States

Mail, first class postage prepaid, on the 3rd day of April 2024 addressed to the parties of record as follows:

Matthew J. Story, Esq.
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Ms. Amy Bracy
Judicial Director
S. C. Workers' Compensation Commission
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Columbia, SC 29202-1715
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April 3, 2024

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SC Court of Appeals

TRASK
HOWELL
WORKERS' COMPENSATION DEFENSE

Reply to
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April 3, 2024

Via Email-ctappfilings@sccourts.org/Regular Mail

The Honorable Jenny Abbott Kitchings
Clerk, South Carolina Court of Appeals
P. O. Box 11629
Columbia, SC 29211

Re: Samuel A. Rose v. JJS Trucking, LLC/SCUEF and
Chris Thompson Services, LLC/Bridgefield Casualty Insurance Company
W.C.C. File No.: 1112328
Carrier File No.: 0196-943450
Date of Accident: August 10, 2011

Dear Ms. Kitchings:

Enclosed for filing, please find a Notice of Appeal in the above-referenced case. Also enclosed are the following:

1. Proof of Service of the Notice of Appeal on the Respondents
2. A copy of the Order that is being challenged on appeal
3. Filing fee in the amount of \$250.00

Thank you for your time and attention to this matter. Should you have any questions or concerns, please do not hesitate to contact me.

Yours very truly,

Kirsten L. Barr
Kirsten L. Barr

KLB/mbm/les
Enc.

cc: Tracy Hayes, Summit Holdings (w/enc.) (email only-claim faxes)
Chris Thompson, Chris Thompson Services, LLC (w/enc.)
Mike Jalovec, Summit Holdings (w/enc.) (email only)
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