

RECEIVED

Apr 03 2024

SC Court of Appeals

**State of South Carolina
Workers' Compensation Commission**

APPELLATE PANEL DECISION AND ORDER

COMMISSION PANEL: Commissioner Cynthia C. Dooley; Commissioner Aisha Taylor, Chair; and Commissioner R. Michael Campbell, II

SCWCC File No.: 1112328

Samuel Rose,
Claimant,

v.

JJS Trucking and
Chris Thompson Services (Statutory Employer),
Employer,

and

Bridgefield Casualty Insurance (Carrier for Statutory Employer) and
SC Uninsured Employers' Fund,
Carriers,
Defendants.

AFFIRMED

Hearing held in Richland, South Carolina, (telephonic)
on August 28, 2023

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

Appearances: Samuel Stephens, Esq. of Samuels Reynolds Law Firm,
appeared on behalf of Claimant/Respondent.

Kirsten Barr, Esq., of Trask & Howell, appeared on behalf of
Defendant/Appellant, Bridgefield Casualty Insurance Company.

Matthew J. Story, Esq., of Clawson & Staubes, LLC, appeared
on behalf of S.C. Uninsured Employers' Fund/Respondents.

Court Reporter: Amber Scarborough/Creel Court Reporting, Inc., 1230 Richland
Street, Columbia, SC, (803) 252-3445,
contact@creelreporting.com

Filed: March 8, 2024

I. STATEMENT OF THE CASE

This matter came before the Full Commission on the Chris Thompson Services' (hereinafter "Thompson") Form 30. Briefs were prepared and submitted, and oral argument was heard on August 28, 2023, and the Full Commission Panel reviewed the record. This review arises out of an order issued May 15, 2023, by the Single Commissioner.

II. SINGLE COMMISSIONER FINDINGS OF FACT AND CONCLUSIONS OF LAW

The Single Commissioner made the following Findings of Fact:

Based upon the stipulations, APA submissions, the Commission's file and arguments of counsel, the undersigned Commissioner makes the following findings of fact as required by S.C. Code Anno., § 42-17-40, 1976:

1. Order directives were sent to both parties on March 15, 2023.
2. This claim was heard before the undersigned Commissioner pursuant to notices timely and properly served on all parties.
3. The South Carolina Workers' Compensation Commission has jurisdiction of the parties and the subject matter of this claim and venue is proper in Dorchester County, State of South Carolina.
4. The Commission's file, except for any self-serving declarations and unstipulated medical reports, is made a part of the record.
5. That the parties agreed to rely on the Commission's file, prior APA Submissions including but not limited to the hearing transcript from 2012 in lieu of receiving testimony at this hearing.
6. In reviewing the facts and evidence presented, the undersigned relies on *Voss v. Ramco, Inc.*, 325 S.C. 560, 482 S.E.2d 582 (S.C. Ct. App. 1997), *Hardee v. McDowell*, 381 S.C.

445, 673 S.E.2d 813 (S.C. 2009), *Hopper v. Terry Hunt Const.*, 383 S.C. 310, (2009) and *Barton v. Higgs*, 381 S.C. 367 (S.C. 2009) for the applicable case law.

7. In reviewing the facts and evidence presented, the undersigned does not rely on *Alamazon v. SCUEF*, 2017-UP-124 (March 15, 2017), as it is unpublished and has no precedential value.
8. Thompson did not supply the certificate of insurance to the Worker's Compensation Commission "at the time a claim is filed by the injured employee" as required by S.C. Code Ann. § 42-1-415(b) but turned it over 3 months later (APA 71).
9. That the certificate of insurance provided is blank as to the description and location of operations and is therefore incomplete.
10. That the certificate of insurance provided does not note where coverage applies or to what job entity, and as no written contract existed, each transaction would be a new job requiring a certificate of insurance,
11. That the certificate provided only shows a binder and does not show policy number.
12. That all benefits due and owing to Claimant have not been paid to date, therefore Thompson's Petition to transfer liability is premature.
13. Even the updated Certificate of Insurance (APA 72 to 2023 hearing; Exhibit 2 to 2012 hearing) is incomplete.
14. All other orders in this case that are not inconsistent with this decision are incorporated herein by reference.

The Single Commissioner made the following Conclusions of Law:

Based upon the findings of fact set forth above, the undersigned Commissioner makes the following conclusions of law as required by S.C. Code Anno., § 42-17-40:

1. Thompson seeks to transfer liability to the UEF pursuant S.C. Code Ann. § 42-1- 415 and has failed to show entitlement to transfer liability based on the above findings of fact.
2. That *Voss v. Ramco, Inc.*, 325 S.C. 560, 482 S.E.2d 582 (S.C. Ct. App. 1997), *Hardee v. McDowell*, 381 S.C. 445, 673 S.E.2d 813 (S.C. 2009), *Hopper v. Terry Hunt Const.*, 383 S.C. 310, (2009) and *Barton v. Higgs*, 381 S.C. 367 (S.C. 2009) apply and require strict construction of [sic] C. Code Ann. § 42-1-415.
3. All other orders in this case that are not inconsistent with this decision are incorporated herein by reference.

III. ISSUES ON APPEAL

Thompson timely filed a Form 30 with the following grounds for appeal:

1. The Hearing Commissioner erred as a matter of law in "Finding of Fact" number 6, as this statement references no fact, appears to be a conclusion of law, and is otherwise impermissibly vague and without evidentiary support.
2. The Hearing Commissioner erred as a matter of law in "Finding of Fact" number 7, as this statement references no fact, appears to be a conclusion of law, and is otherwise impermissibly vague and without evidentiary support.
3. The Hearing Commissioner 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 the greater weight of the evidence, is impermissibly vague, and appears to be an arbitrary and capricious conclusion of law that is supported by neither the greater weight of the evidence or the applicable law.
4. The Hearing Commissioner erred in failing to find and conclude that the Petitioners 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 Hearing Commissioner 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 Hearing Commissioner erred in failing to find and conclude 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 Hearing Commissioner 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 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.
8. The Hearing Commissioner erred in failing to find and conclude that the Petitioners obtained a proper Certificate of Insurance at the time JJS was engaged to perform work as required by S.C. Code Ann. § 42-1-415 based upon the overwhelming and undisputed evidence in the record.
9. The Hearing Commissioner 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 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.
10. The Hearing Commissioner erred in failing to find and conclude that the Petitioners have already pay all benefits due and payable to the Claimant, including the statutory maximum of 500-weeks of compensation and the Petitioners 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 Hearing Commissioner erred in finding and concluding that the “updated” Certificate of Insurance is “incomplete,” as this finding of fact is neither relevant, nor 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.
12. The Hearing Commissioner erred in concluding that the Petitioners “failed to show entitlement to transfer liability,” as this conclusion is arbitrary, capricious, impermissibly vague, and otherwise contrary to the greater weight of the evidence and the applicable law.
13. The Hearing Commissioner erred in concluding 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 Hearing Commissioner erred in concluding 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 the Petitioners 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 Hearing Commissioner erred in concluding 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 Petitioners by overwhelming and undisputed evidence.
16. The Hearing Commissioner erred as a matter of law in concluding 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 this case 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 Commissioner McCaskill issued his Order dated August 23, 2012.
17. The Hearing Commissioner erred as a matter of law in ordering that Petitioners “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 Hearing Commissioner erred as a matter of law in failing to find and conclude that Travelers stipulates that it provided workers’ compensation coverage to JJS Trucking as documented on the Certificate of Insurance and stipulated by counsel for Travelers, and therefore, Petitioners reasonably relied upon the Certificate of Insurance.
19. The Hearing Commissioner 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.
20. The Hearing Commissioner 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 Petitioners’ constitutional and statutory rights of due process and equal protection under the law.
21. The Hearing Commissioner 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.

22. The Hearing Commissioner 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, to such facts, as required by the South Carolina Workers' Compensation Act and the Administrative Procedures Act.
23. The Hearing Commissioner 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.
24. The Hearing Commissioner 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, Dr. Poletti.
25. The Hearing Commissioner erred as a matter of law in failing to find and conclude that the Petitioners 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."
26. The Hearing Commissioner 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 Petitioners 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.
27. The Hearing Commissioner 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 Hearing Commissioner 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.

IV. DECISION OF THE APPELLATE PANEL

After reviewing the briefs submitted by the parties, oral arguments by Thompson and the SC Uninsured Employers Fund, and based upon the record in its entirety, this Appellate Panel makes the following findings:

FINDINGS OF FACT

1. That the South Carolina Worker’s Compensation Commission has jurisdiction over this matter.
2. That jurisdiction and venue are proper.
3. The above cited case was heard by the Single Commissioner on 02/14/23.
4. [The Single Commissioner’s] Order directives were sent to both parties on 3/15/23.
5. A Decision and Order was issued on 05/15/23.
6. Thompson filed a Form 30 (Notice of Appeal) on 05/26/23.
7. The Appellate Panel heard oral arguments on 08/28/23.
8. This claim was heard before the undersigned Commissioners pursuant to notices timely and properly served on all parties.
9. The South Carolina Workers’ Compensation Commission has jurisdiction of the parties and the subject matter of this claim and venue is proper in Dorchester County, State of South Carolina.
10. The Commission’s file, except for any self-serving declarations and unstipulated medical reports, is made a part of the record.
11. That the parties agreed to rely on the Commission’s file, prior APA Submissions including but not limited to the hearing transcript from 2012 in lieu of receiving testimony at this hearing.
12. In reviewing the facts and evidence presented, the undersigned relies on *Voss v. Ramco, Inc.*, 325 S.C. 560, 482 S.E.2d 582 (S.C. Ct. App. 1997), *Hardee v. McDowell*, 381 S.C. 445, 673

S.E.2d 813 (S.C. 2009), *Hopper v. Terry Hunt Const.*, 383 S.C. 310, (2009) and *Barton v. Higgs*, 381 S.C. 367 (S.C. 2009) for the applicable case law.

13. In reviewing the facts and evidence presented, the undersigned does not rely on *Almazon v. SCUEF*, 2017-UP-124 (March 15, 2017), as it is unpublished and has no precedential value.
14. Thompson did not supply the certificate of insurance to the Worker's Compensation Commission "at the time a claim is filed by the injured employee" as required by S.C. Code Ann. § 42-1-415(b) but turned it over later (APA 71).
15. That the certificate of insurance provided is blank as to the description of location/operations and is therefore incomplete and may not be used to transfer liability pursuant to S.C. Code Ann. § 42-1-415 and *Hopper v. Terry Hunt Const.*, 383 S.C. 310, (2009).
16. That the certificate of insurance provided does not note where coverage applies or to what job entity, and as no written contract existed, each transaction would be a new job requiring a certificate of insurance.
17. That the certificate provided only shows a binder and does not show policy number.
18. That all benefits due and owing to Claimant have not been paid to date, therefore Thompson's Petition to transfer liability is premature.
19. Even the updated Certificate of Insurance (APA 72 to 2023 hearing; Exhibit 2 to 2012 hearing) is incomplete.
20. All other orders in this case that are not inconsistent with this decision are incorporated herein by reference.
21. The Single Commissioner's Order of May 15, 2023, is affirmed in its entirety.

CONCLUSIONS OF LAW

The following sections of the South Carolina Code of Law give the appropriate definition of divisions of the South Carolina Workers' Compensation Act as applicable to this case:

1. South Carolina Code Section 42-9-30 governs schedule of period of disability and compensation.
2. South Carolina Code Section 42-17-50 governs review and rehearing by the Commission.

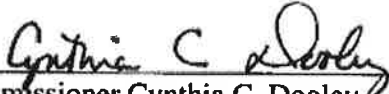
ORDER

For all the above and foregoing reasons, the Full Commission **AFFIRMS** the Decision and Order of The Single Commissioner.

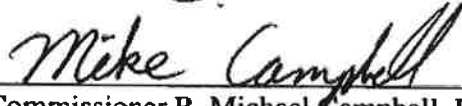
AND SO IT IS ORDERED.

_____ (date)
Columbia, SC

**SOUTH CAROLINA WORKERS'
COMPENSATION COMMISSION**

By: 
Commissioner Cynthia C. Dooley

By: 
Commissioner Aisha Taylor, Chair

By: 
Commissioner R. Michael Campbell, II

Order Served via email:

<p>Stephens B. Samuels Samuels Reynolds Law Firm stephen@samuelsreynolds.com</p>	<p>Matthew J. Story Clawson & Staubes, LLC mstory@clawsonandstaubes.com</p> <p>Kristen L. Barr Trask & Howell, LLC kbarr@trask-howell.com</p>
---	---

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 March 8, 2024