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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

Appellate Case No. 2024-000533

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

Samuel Rose,

Claimant,

v.

JJS Trucking and Chris Thompson Services (Statutory Employer),

and

Bridgefield Casualty Insurance Co. (Carrier for Statutory Employer) and
South Carolina Uninsured Employers' Fund, Carriers,

Defendants,

of which Chris Thompson Services and Bridgefield Casualty Insurance are the

Appellants

and South Carolina Uninsured Employers' Fund is the

Respondent,

Appellants' Initial Reply Brief

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Statement of Issues on Appeal in Reply

- I. Did the Appellate Panel err as a matter of law in failing to make any ruling of law regarding the application of S.C. Code Ann. § 42-1-415?
- II. Did the Appellate Panel err as a matter of law in failing to make any finding of fact or ruling of law regarding the application of S.C. Code Reg. 67-415?
- III. Did the Appellate Panel err as a matter of law in failing to make any finding of fact or ruling of law regarding the statements of Travelers' agent confirming the veracity of the Certificate of Insurance?

Arguments in Reply

- I. **The Appellate Panel made no ruling of law regarding S.C. Code Ann. § 42-1-415 and did not conclude that the contract between Chris Thompson Services and JJS Trucking “precluded’ a transfer of liability.**

The Uninsured Employer's Fund claims that the Appellants are “precluded from transferring liability to the UEF” because the “Appellants have failed to prove a single long-term relationship with JJS.” (Respondent's Brief p. 16). The Appellate Panel made no finding of fact or ruling of law with respect to the nature or duration of the contract between JJS Trucking and Chris Thompson Services¹ and made no ruling of law as to how this relationship might preclude a transfer of liability under S.C. Code

¹ The Appellate Panel issued only the following conclusory finding: “as no written contract existed, each transaction would be a new job requiring a certificate of insurance.”

Ann. § 42-1-415.² In fact, the Appellate Panel’s conclusions of law do not mention § 42-1-415 whatsoever, much less apply any fact to this statute. Respectfully, the Appellate Panel’s failure to make detailed findings of fact and conclusions of law, standing alone, commands reversal of the Appellate Panel’s March 8, 2024, Decision and Order and the UEF’s contract arguments are without merit.

S.C. Code Ann. § 1-23-350 requires that “[a] final decision shall include findings of fact and conclusions of law, separately stated ... the decision shall include a ruling upon each proposed finding). Additionally, S.C. Code Ann. § 42-17-40 requires that the Commission file an “award, together with a statement of the findings of fact, rulings of law, and other matters pertinent to the questions at issue.” Considering these statutory requirements, our Supreme Court has held that “[b]y simply repeating the statute’s language, with little else” the “decision failed to comply” with § 1–23–350, mandating reversal. Grant v. Grant Textiles, 372 S.C. 196, 203, 641 S.E.2d 869, 872–73 (2007). *See also* Able Communications, Inc. v. South Carolina Pub. Serv. Comm’n, 290 S.C. 409, 411, 351 S.E.2d 151, 152 (1986), (vacating the commission’s order with remand because it is “impossible for an appellate court to review the order for error” when “the reasons underlying the decision are left to speculation”). Here, the Appellate Panel failed to even repeat the statute’s language, as there is no mention of S.C. Code Ann. § 42-1-415 in the March 8, 2024, conclusions of law.

In addition, the UEF’s arguments³ regarding the evidence as to the nature and duration of the relationship between Thompson and JJS are without merit, as there is

² The Appellate Panel issue only two rulings of law: “1. South Carolina Code Section 42-9-30 governs [sic] schedule of period of disability and compensation” and “2. South Carolina Code Section 42-17-50 governs review and rehearing by Commission.”

³ The UEF claims, without authority, that “payment by the load indicates that each load is a separate agreement.” (Respondent’s Brief, p.16). By this logic, every employee paid by the hour under an oral contract of hire is only employed for one hour at a time. Such

ample evidence, including testimony elicited by the UEF's own attorneys, regarding JJS Trucking's contract with Chris Thompson Services to haul woodchips from the Kapstone lumber mill in Summerville to the Kapstone paper mill on Virginia Avenue in North Charleston. Cedric Smalls, the owner of JJS Trucking, offered the following testimony:

“Q. And JJS Trucking, you guys subcontract work for Chris Thompson Services, is that correct?

A. Correct.

Q. And how long have you had a relationship to work with Chris Thompson Services?

A. For over three plus years.

Q. And what is that relationship?

A. I'm a subcontractor. He – I pull loads for him. He provides a trailer, and I provide the insurance coverage to him, and he pays me by the ton to carry each load.

Q. And where do these loads go to, and where do the loads come from?

A. They come from a lumber mill in Summerville, and then they go to a paper mill in Charleston, and the lumber mill is off of Highway 76 and they go to Virginia Avenue.

Q. And that is your exclusive contract with him?

A. Yes.

Q. You don't haul anything else anywhere other than this route from Summerville to the paper mill, is that right?

an argument is untenable. *See e.g., McGehee v. S.C. Power Co.*, 187 S.C. 79, 196 S.E. 538, 541 (1938) (recognizing the legality of a parol employment contract of indefinite duration).

A. Correct.

Q. Now what was your arrangement with Chris Thompson Services, your business arrangement?

A. My arrangement was to – and we only had a verbal agreement, but any arrangement was to haul loads, and I was to receive compensation for each load that I carried, and I would turn in my sheets at the end of the week, and then the following week he would relinquish a check for what I did the previous week.

Q. When you hired Samuel Rose, his job was to haul woodchips from Summerville to the Capstone [sic] Plant, is that correct?

A. Correct.

Q. Were you running trucks for anybody other than –

A. No. No ma'am.

Q. – what you did for Chris Thompson?

A. Exactly. That was everything for me.”

(Smalls 11/14/11 Depo. p.5, l.15–p.6., l. 9, p.8, ll.18-25; p.17, l.23–p.18, l.1; p.20, ll.20–23). Even upon questioning from the attorney for the UEF, Mr. Smalls specifically testified as to the existence of a single contractual agreement lasting more than three years:

“Q. Did the terms of your agreement with Chris Thompson ever change at any time during the course of your relationship?

A. No.

Q. How long was your agreement with Chris Thompson supposed to last?

A. We never – we never discussed a time frame for how long it was supposed to last.

Q. How long did it actually last?

A. I'm going to say about three and a half years.

Q. And nothing changed since three and a half years before the contract terminated, as far as the terms of the contract are concerned, is that correct?

A. Yes sir, that is what I am saying.”

(Smalls 11/14/11 Depo. p.29, ll.14–17; p.35, l.11–16; p.35, l.24–p.36, l.2). In addition, Mr. Smalls testified that JJS Trucking kept its trucks at the Kapstone lumber mill in Summerville. (Smalls 11/14/11 Depo. p.25, ll.1–7). Clearly, the testimony of Mr. Smalls, the owner of JJS Trucking, does not support the UEF's new argument. Instead, this testimony makes clear that Chris Thompson Services engaged JJS Trucking for a “single, long-term relationship,” not individual jobs separated by place or time.

Chris Thompson also gave testimony regarding the nature and duration of his relationship with JJS Trucking. Specifically, Mr. Thompson testified that he engaged JJS Trucking to “[a]id in hauling woodchips from Summerville Sawmill at SC-78 to North Charleston paper mill.” (Hrg. T. 5/15/12 p. 48, ll. 21-24). Counsel for the UEF asked Mr. Thompson,

“Q. And how long did JJS Trucking perform services for you?

A. Best I can recall from 2008 until approximately September/October 2011.”

(Hrg. T. 5/15/12 p.58, ll.9). Again, the UEF failed to elicit any testimony that the contractual relationship between JJS Trucking and Chris Thompson Services was anything other than a “single, long-term relationship.”

Because the record is clear that JJS Trucking was actually hired to perform one job for Chris Thompson Services in 2008 – hauling loads from lumber mill in Summerville to a paper mill in North Charleston -- and JJS did this work consistently without any change in the terms of their agreement for the next three years (until Rose was injured and it was discovered that JJS Trucking’s workers’ compensation insurance had lapsed) (APA p, 96, pp.16–17, p.40, ll.14–17), there was “only one contract and one point of hire.” Therefore, Chris Thompson Services did not have a continuing duty to check the validity of JJS Trucking’s insurance status every day for every load as the UEF now argues. *See South Carolina Uninsured Employer’s Fund v. House*, 360 S.C. 468, 602 S.E.2d 81 (Ct. App. 2004); *Hardee v. McDowell*, 381 S.C. 445, 453, 673 S.E.2d 813, 817 (2009).

The Appellants respectfully contend that the Court of Appeals should reverse the Commission’s finding of fact number 16 as a matter of law and based upon undisputed evidence that documentation of insurance was collected by Chris Thompson Services at the time JJS Trucking was engaged to perform work in accordance with S.C. Code Ann. § 42-1-415. In the alternative, the Appellants request that the Court of Appeals reverse the Appellate Panel’s impermissibly vague Decision & Order under S.C. Code Ann. § 1-23-350, S.C. Code Ann. § 42-17-40, and *Grant v. Grant Textiles*, 372 S.C. 196, 203, 641 S.E.2d 869, 872–73 (2007).

II. The Appellate Panel made no ruling of law regarding Regulation 67-415 and did not conclude that it is either inapplicable or inconsistent with S.C. Code Ann. § 42-1-415.

The Workers’ Compensation Commission promulgated S.C. Code Reg. 67-415 to define the requirements for “acceptable as documentation of insurance” consistent with

the statutory authority under S.C. Code Ann. § 42-1-415(B), which specifically reserves this determination to the Commission.⁴ In 2010, the Commission amended Reg. 67-415 in response to the Supreme Court's 2009 decision in Hopper v. Terry Hunt Construction, 336 S.C. 310, 680 S.E.2d 1, wherein the courts sought to redefine the requirements for documenting insurance when the employer is located out of state. With the 2010 amendments, the Commission clarified that there are different requirements for documenting insurance depending upon whether the employer is located in South Carolina or out-of-state. Because it is undisputed that JJS Trucking is a South Carolina employer, it is not subject to the additional requirements imposed by the amended regulation (or the *Hopper* court) for out-of-state employers.

However, the Appellate Panel made no finding of fact as to the specific, enumerated requirements of Reg. 67-415 and made no rulings of law with regard to either Reg. 67-415 or § 42-1-415. This failure commands reversal. Grant v. Grant Textiles, 372 S.C. 196, 203, 641 S.E.2d 869, 872-73 (2007) (reversing the Appellate Panel "for its issuance of a conclusory order"). In addition, each of the enumerated requirements of Reg. 67-415 have been met by the Appellants with undisputed evidence, which includes the ACORD Form Certificate of Insurance dated October 18, 2010 (indicating a valid South Carolina address for JJS Trucking) that is dated, signed, and issued by an authorized representative of Travelers Insurance.

The UEF inexplicably argues that S.C. Code Reg. 67-415 is not controlling because "it alters the document requirement of S.C. Code Ann. § 42-1-415 as interpreted in Hopper."⁵ Respectfully, the § 42-1-415 empowers the Commission to

⁴ S.C. Code Ann. § 42-1-415(B) state, in pertinent part, that a higher tier contractor must collect "documentation of insurance ... on a standard form *acceptable to the commission*." (emphasis added).

⁵ Neither S.C. Code Ann. § 42-1-415, nor Regulation 67-415 require documentation of a policy number or documentation of a description of operations as the UEF insists. The

determine what is acceptable documentation of insurance. Within this authority, the Commission enumerated the requirements for acceptable documentation by promulgating Reg. 67-415, and the Commission properly amended these requirements in response to the Hopper decision. By enumerating the requirements for proper documentation of insurance, Reg. 67-415 does not run afoul of § 42-1-415, because that statute makes no attempt to define what documentation might be “acceptable” to the Commission. Glover by Cauthen v. Suitt Const. Co., 318 S.C. 465, 468, 458 S.E.2d 535, 537 (1995) (holding that the Workers’ Compensation Commission is empowered to promulgate regulations necessary to implement the workers' compensation laws). Accordingly, Reg. 67-415 should be accorded the full force and effect of law. Gadson v. Mikasa Corp., 368 S.C. 214, 227, 628 S.E.2d 262, 269 (Ct. App. 2006) (holding that regulations authorized by the legislature have the force of law); *see also* S.C. Code Ann. § 1–23–10(4) (2005) (defining “Regulation” as “each agency statement of general public applicability that implements or prescribes law or policy or practice requirements of any agency. Policy or guidance issued by an agency other than in a regulation does not have the force or effect of law”).

In addition, by enumerating specific requirements – that the Certificate of Insurance show “a valid South Carolina address for the insured” and that it be “dated, signed and issued by an authorized representative of the insurance carrier for the insured” -- Regulation 67-415 created a negative implication that precludes any presumption of additional requirements for proper documentation, as the UEF urges. *See City of Rock Hill v. Harris*, 391 S.C. 149, 154, 705 S.E.2d 53, 55 (2011) (holding that “when determining the effect of statutory language, the canon of construction *expressio unius est exclusio alterius* or *inclusio unius exclusio alterius* holds that to

legislature, by virtue of the plain language of § 42-1-415, and the Commission, pursuant to Regulation 67-415, only requires documentation of *insurance*. Here, the JJS Trucking documented *insurance* consistent with the statute and regulation.

express or include one thing implies the exclusion of another, or the alternative”). Contrary to the UEF’s arguments, it is not within the authority of the courts to amend the law, or to imply additional requirements not expressly enumerated by Reg. 67-415, or to supplement the mandates of § 42-1-415. City of Camden v. Brassell, 326 S.C. 556, 561, 486 S.E.2d 492, 495 (Ct.App.1997) (explaining that “[w]here the language of the statute is clear and explicit, the court cannot rewrite the statute and inject matters into it which are not in the legislature's language”).

Therefore, to the extent that the Appellate Panel’s decision requires a “description and location of operations,” or some notation of “where coverage applies or to what job entity,” based on the Supreme Court’s 2009 decision in Hopper v. Terry Hunt Construction, 336 S.C. 310, 680 S.E.2d 1, any such reliance on Hopper is misplaced. Not only is Hopper factually distinguishable from the case *sub judice*, but the holding of Hopper has since been limited by the proper promulgation of amendments to S.C. Code Reg. 67-415 in 2010, which have the full force and effect of law.

The requirements of S.C. Code Reg. 67-415 alone are controlling as to the proper documentation of insurance for a South Carolina employer like JJS Trucking. Because these requirements were met by the Appellants with undisputed evidence, the Court of Appeals should conclude that the Appellants satisfied Reg. 67-415 as a matter of law. In the alternative, because the Appellate Panel otherwise failed to even make any ruling of law with respect to the application of Reg. 67-415, the March 8, 2024, Decision and Order should be reversed and vacated by the Court of Appeals. Clearly, the Workers’ Compensation Commission cannot determine whether insurance was properly documented without making detailed findings of fact and conclusions of law under Reg. 67-415, and by failing to do so, it is now “impossible for an appellate court to review the order for error.” Able Communications, Inc. v. South Carolina Pub. Serv. Comm'n, 290 S.C. 409, 411, 351 S.E.2d 151, 152 (1986).

III. The Appellate Panel made no finding of fact or ruling of law regarding the statements of Travelers' agent confirming the veracity of the Certificate of Insurance.

According to the UEF, “statements made by Greg Hudson, as an agent of Travelers Insurance, is not enough to support the veracity of the certificate of insurance.” This is a curious argument, not only because the Workers’ Compensation Commission fails to even mention Mr. Hudson⁶, but because the Certificate of Insurance itself properly documented a valid policy of insurance. The plain language of the Certificate of Insurance confirms the existence of a workers’ compensation policy⁷

⁶ Again, if the Court does not reverse the Appellate Panel as a matter of law based upon undisputed evidence, the March 8, 2024, Decision Order should be reversed and vacated because the Appellate Panel failed to make detailed findings of fact or conclusions of law with regard to the requirements of S.C. Code Ann. § 42-1-415, S.C. Code Reg. 67-415, or case law that has previously required investigation of a Certificate of Insurance under certain circumstances. It is “impossible for an appellate court to review the order for error” when “the reasons underlying the decision are left to speculation.” Able Communications, Inc. v. South Carolina Pub. Serv. Comm'n, 290 S.C. 409, 411, 351 S.E.2d 151, 152 (1986).

⁷ The Certificate of Insurance (APA p.8) states on its face in bold lettering that

“THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED...

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEROF, THE ISSUING INSURER WILL ENDEAVOR TO MAIL 10 DAYS WRITTEN NOTICE TO THE CERTIFICATE HOLDER NAMED TO THE LEFT ...”
(emphasis added).

issued by Travelers Insurance to JJS Trucking, and both Travelers⁸ and the Workers' Compensation Commission⁹ admit that a valid policy of workers' compensation insurance was actually issued by Travelers Insurance to JJS Trucking for a one-year policy period beginning on October 8, 2010, as stated on the Certificate of Insurance.

In addition, it is undisputed that Chris Thompson Services voluntarily undertook further inquiries into the veracity of the Certificate of Insurance and its declarations regarding the workers' compensation coverage afforded JJS Trucking by Travelers Insurance by speaking directly to Greg Hudson, a customer service representative at the Swamp Fox Agency, the authorized agent of Travelers Insurance and producer of the workers' compensation policy issued to JJS Trucking. According to the testimony of Chris Thompson, Greg Hudson told him.

“everything is good to go, you're covered ... he told me that Cedric¹⁰ was good to go. Those were his exact words, good to go.” (Transcript of 5/15/2012 Hrg. p.52, l.9 – p.53, l.1).¹¹

⁸ The attorney for Travelers Insurance, F. Reid Warder, Jr., stipulated that

“...at the time that the policy was created and inbound [sic] initially and a deposit was made, it was fully in effect and it was a valid policy.” (Transcript of 5/15/2012 Hearing, p.11, l.25—p.12, l.4).

⁹ Garry Smith, Director of the Workers' Compensation Commission's Coverage and Compliance Division informed the parties that the policy period was “10/9/10 to 01/04/11” and that the Travelers policy issued to JJS Trucking on October 8, 2010, “was cancelled on 2/5/2011” (approximately four months after the Certificate of Insurance was issued to Chris Thompson Services) based upon NCCI records. (*See* letter to Jos. B. Fisher dated October 28, 2011; APA p. 66).

¹⁰ Cedric Smalls is the owner of JJS Trucking.

¹¹ The UEF did not dispute this testimony or present any evidence to the contrary.

Having confirmed the existence of coverage, Thompson's knowledge of an actual policy number (or any other information the UEF now suggests is mandatory, such as a description of operations) would serve no purpose because the Certificate of Insurance actually documented a valid policy of insurance as stated on the Certificate itself. There is no evidence (or finding by the Commission) that Mr. Hudson was not credible, and the record is clear that Mr. Hudson was authorized to write insurance on behalf of Travelers. (Transcript of 5/15/2012 Hearing, p.11, l.25—p.12, l.4).

Therefore, it was entirely reasonable for Chris Thompson Services to rely, not only on the face of the Certificate of Insurance as properly documenting workers' compensation insurance with Travelers, but also upon his conversations with the agent for Travelers, Mr. Hudson, confirming the existence of the documented coverage, because the documented coverage actually existed and was in full force and effect, as confirmed by the producer, the carrier, NCCI, and the South Carolina Workers' Compensation Commission at the time the Certificate was issued. *See contra, Barton v. Higgs*, 381 S.C. 367, 371, 674 S.E.2d 145, 147 (2009) (explaining that an upstream contractor should have investigated the absence of the signature on a Certificate of Insurance whereupon he would have determined that there was no valid policy). Respectfully, the UEF's statements to the contrary are without merit.

Conclusion

The Appellants, Chris Thompson Services and Bridgefield Casualty Insurance, respectfully request that the Court of Appeals reverse the March 8, 2024, Order of the Workers' Compensation Commission on the basis that the Appellate Panel's findings of fact and implied conclusions of law are not supported by the greater weight of the evidence or the applicable law, they are impermissibly vague, and they are otherwise affected by an unwarranted abuse of discretion. The Appellants respectfully contend that they have satisfied all requirements of S.C. Code Ann. § 42-1-415 and S.C. Code

Reg. 67-415 with undisputed evidence and therefore, the Commission should be reversed as a matter of law. In the alternative, the Appellants request that the Court vacate and remand the March 8, 2024, Decision and Order with instructions that the Workers' Compensation Commission comply with the mandates of S.C. Code Ann. § 1-23-380 by making detailed findings of fact and conclusions of law with respect to the requirements of S.C. Code Reg. 67-415 and S.C. Code Ann. § 42-1-415.

Respectfully submitted,



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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

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

Samuel Rose,

Claimant,

v.

JJS Trucking and Chris Thompson Services (Statutory Employer)

and

Bridgefield Casualty Insurance Co. (Carrier for Statutory Employer) and
South Carolina Uninsured Employers' Fund, Carriers

Defendants,

of which Chris Thompson Services and Bridgefield Casualty Insurance are the

Appellants

and South Carolina Uninsured Employers' Fund is the

Respondent,

PROOF OF SERVICE

The undersigned hereby certifies that a copy of the Appellants' Initial Reply Brief, filed on behalf of Chris Thompson Services and Bridgefield Casualty Insurance Company, was served on Samuel Rose and the South Carolina Uninsured Employers Fund by emailing a copy of the same on the 2nd day of October, 2024 addressed to the parties as follows:

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October 2, 2024


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WORKERS' COMPENSATION DEFENSE

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SC Court of Appeals

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October 2, 2024

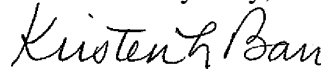
Via Email-ctappfilings@sccourts.org
The Honorable Jenny Abbott Kitchings
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Re: Samuel A. Rose v. JJS Trucking, LLC/SCUEF and
Chris Thompson Services, LLC/Bridgefield Casualty Insurance Company
Appellate Case No.: 2024-000533
W.C.C. File No.: 1112328
Carrier File No.: 0196-943450
Date of Accident: August 10, 2011

Dear Ms. Kitchings:

Enclosed, please find the Appellants' Initial Reply Brief, as well as our proof of service upon all parties in interest. Please let me know if additional copies are required.

Yours very truly,



Kirsten L. Barr

KLB/mbm/les

Enc.

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