

RECEIVED

Oct 02 2025

SC Court of Appeals

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

APPELLATE PANEL DECISION AND ORDER

COMMISSION PANEL: The Honorable Cynthia C. Dooley; The Honorable Michael Campbell; and The Honorable Gabe Coggiola.

SCWCC File No.: 2024350

LenJarius Holmes, Deceased, et al.,

Claimants,

v.

Lawson Trucking, LLC,

Employer,

and

Berkshire Hathaway Direct Insurance,

Carrier,

Defendants.

AFFIRMED

Hearing held in Richland County, South Carolina,
on July 14, 2025

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

Appearances: Tyler Bathrick, Esq., appeared on behalf of Claimants/1st
Appellants.

George D. Gallagher, Esq. and M. Stephen Stublely, Esq.,
appeared on behalf of Defendants/2nd Appellants.

Court Reporter: Amber Scarborough, 1230 Richland St, Columbia, SC 29201,
803-252-3445, contact@creelreporting.com.

Filed:

August 29, 2025

I. STATEMENT OF THE CASE

Single Commissioner

On December 16, 2020, LenJarius Holmes was operating a tractor trailer owned by Lawson Trucking, LLC, with a dump trailer loaded with sand during the course and scope of his employment with Lawson Trucking, LLC, when Mr. Holmes was involved in an unwitnessed single vehicle accident that ultimately resulted in his death. Mr. Holmes' antemortem blood tested positive for 9.1 nanograms per milliliter of the psychoactive ingredient of marijuana. During a post-accident search of the truck cab, Employer discovered a partially smoked cigar allegedly containing marijuana and Mr. Holmes' book bag that contained another cigar (allegedly containing marijuana), synthetic urine, and spray to eliminate odor. The cigars were destroyed before they could be tested for marijuana.

A hearing was held before a Single Commissioner on November 29, 2023, to determine issues set forth on Claimants' Form 50. At the call of the hearing, Claimants sought a finding of compensability and benefits under the South Carolina Workers' Compensation Act. Specifically, payment of medical expenses and compensation for the death of LenJarius Holmes. Claimants maintained Defendants waived their intoxication defense when they failed to file a Form 53 in a timely manner. Claimants also maintained that Defendants could not meet their burden of proof regarding whether Mr. Holmes was intoxicated and, if intoxicated, whether said intoxication was the proximate cause of his accident. Claimants relied on the medical/expert opinions of Sabrina Gast, Erin Presnell, Jolene Bierly and Matthew Lee.

Defendants relied on Section 42-9-260 of the South Carolina Code and denied the claim alleging Mr. Holmes' accident and death were occasioned by Mr. Holmes intoxication on marijuana. Defendants maintained that Mr. Holmes was intoxicated and that Mr. Holmes' intoxication was a contributing factor to the accident. Defendants relied on the expert medical opinions of Dr. Timothy Osbon and Dr. Ira Gordon Early. Regarding whether intoxication was the cause of the accident,

Defendants maintained, "There is nothing that says that this [intoxication] has to be the sole cause, the exclusive cause, or that the intoxication - - or that the accident would not have happened but for the intoxication. There is no law that says that." (HT p. 21, lines 11-16). Defense counsel went on to state, "I will have to admit that I cannot meet a but-for standard. I cannot prove - - and my experts did even attempt to opine that this accident would not have occurred but - for his intoxication, but they did opine that this was clearly a cause." (HT p. 22, lines 5-10). Defendants went on to maintain that the definition of proximate cause in the workers compensation setting is different than the definition of proximate cause in negligence/tort.

Defendants maintained the standard in the workers compensation setting is contributing proximate cause, not the proximate cause.

The Single Commissioner determined:

[C]laimant is entitled to benefits per Section 42-9-290 of the South Carolina Code. Specifically, five hundred weeks of compensation and burial expenses not exceeding twelve thousand dollars. Additionally, per Section 42-15-60, Defendants are responsible for causally related medical treatment provided by Piedmont Medical Center and Piedmont EMS.

(Single Commissioner's Decision and Order filed on January 17, 2025, p. 93).

Appellate Panel

This matter is now before the South Carolina Workers' Compensation Commission's Appellate Panel pursuant to issues raised on cross-appeal by the parties. Within the statutory period, Claimants/1st Appellants and Defendants/2nd Appellants each filed a Form 30, Request for Commission Review. Accordingly, the parties presented for oral arguments before the Appellate Panel on July 14, 2025.

II. SINGLE COMMISSIONER FINDINGS OF FACT AND CONCLUSIONS OF LAW

FINDINGS OF FACT

1. On December 16, 2020, LenJarius Holmes (Decedent) died as a result of injuries sustained in a motor vehicle accident (MVA) occurring in the course of and within the scope of his employment with Lawson Trucking, LLC.
2. The parties stipulate that Decedent's accident occurred during the course and scope of his employment with Lawson Trucking, LLC. (Hr. Tr. p 26: 19-24).
3. Decedent's parents, Vanessa Holmes and Jesse Gladney (Claimants), brought this claim. Claimants seek payment of all causally related medical bills, a dependency determination and death benefits.
4. On February 6, 2022, Claimants' counsel filed with the Commission a Form 52, Claimants' Notice of Claim and/or Request for Hearing, Death Case. As a result of accidental injury and death. Claimants sought compensation pursuant to S.C. Code Ann. § 42-9-290.
5. Claimants' counsel served a copy of the Form 52 on the carrier of record, Berkshire Hathaway Direct Insurance Company (Carrier). Claimants' counsel did not serve Defense counsel with a copy of the form as they were not yet noted in e-Case as attorneys of record.
6. On February 15, 2022, Defendants filed with the Commission a Form 12A, First Report of Injury or Illness.
7. On February 15, 2022, the Commission noticed Claimants and advised that their filed Form 52 was deficient due to improper service to Defendants, pursuant to S.C. Code Ann. Regs. 67-210 and 211.
8. On March 9, 2022, Defendants added Defense counsel to e-Case.
9. On March 14, 2022, Claimants' counsel refiled with the Commission the Form 52 to correct errors in their service of process to Carrier.

10. On March 21, 2022, the Commission noticed Claimants' counsel and Defense counsel that information was missing from the file that would assist the Commission with evaluating the issues of this claim.
11. On April 20, 2022, e-Case reflected that the Form 53 had not been received to date by the Commission.
12. On April 20, 2022, the Commission noticed the parties of mandated mediation.
13. On March 21, 2023, Defense counsel inquired in an email to the Commission (and copied Claimants' counsel) about the about the manner in which Claimants' counsel served their Form 52 on Defendants. (Claimants' APA 7 p. 188).
14. On March 24, 2023, Defense counsel filed a Form 53, Employer's Answer to Request for Hearing, Death Case. Defendants filed this form nearly one year past the filing deadline.
15. Defendants seek to raise an affirmative defense, pursuant to S.C. Code Ann. § 42-9-60, by alleging Decedent was intoxicated at the time of his injury and death on December 16, 2020.
16. Claimants' counsel asserts that Defendants' Form 53 was not timely filed with the Commission. Accordingly, Claimants maintain Defendants waived their right to raise affirmative defenses. In the present matter, the affirmative defense of intoxication.
17. Defense counsel asserts that Carrier did not forward the Form 52 to their attention. Defense counsel further asserts, Claimants' counsel knew, or should have known, that Defendants had retained counsel but Claimants still failed to serve pleadings on Defense counsel. Defendants assert the timeframe with which their Form 53 was filed did not prejudice Claimants because Claimants have had ample time to respond and/or rebut Defendants asserted defenses.
18. Claimants' assert the Form 52 was served on the appropriate party on record at that time, pursuant to S.C. Code Ann. Regs. 67-210. Potential prejudice to Claimants is not the issue at bar;

rather, it is the time allotted for filing pleadings under the Act.

19. The evidence in the record indicates Defense counsel noticed Claimants' counsel of their representation on December 23, 2021. (Defendants' Exh. 13 p. 257). Defense counsel contacted Claimants' counsel on four occasions seeking a status update on the pending workers' compensation matter, prior to Claimants filing their claim. (Defendants' Exh. 13 p. 258-259). Claimants' counsel admitted during the hearing to receiving correspondence from Defense counsel before filing the claim. (Hr. Tr. p. 8: 13-15).

20. The evidence in the record further indicates Carrier failed to notify Defense counsel of Claimants' filed claim. Defense counsel became attorney of record in e-Case in the period following Claimants' initial filing. The Commission requested additional information for this claim's file from the legal counsel for both parties. The parties were later noticed through e-Case that the Commission had no record of receiving Defendants' Form 53. Following Defendants continued failure to respond to Claimants' Form 52, the Commission initiated the mediation process. The parties concluded their mediation nearly one year later. It wasn't until then that Defense counsel inquired about the manner in which Claimants' counsel served their Form 52 on Defendants.

21. I find that Defense counsel initially made a good faith effort to communicate with Claimants' counsel about the status of the pending workers' compensation claim. Despite Defense counsel's efforts and another unfortunate event, they were not initially noticed of Claimants' service of process. However, Defense counsel knew (or should have known) a claim had been filed and a response likely due when they were sent a letter from the Commission on March 21, 2022, about the claim; or when e-Case reflected on April 20, 2022, that the Form 53 had not been received by the Commission; or when (on that same day) the Commission initiated the mediation process between the parties. Nevertheless, Defendants did not attempt to protect their rights for nearly a year.

22. One cannot sit on their rights, with full access to the facts of a matter, without taking timely steps under the law to protect their interests.

23. Accordingly, I find Defendants Form 53 to be untimely filed.

24. I further find that because Defendants Form 53 was not timely filed, they have waived their right to raise affirmative defenses (including the intoxication defense under 42-9-60) to this claim.

25. However, even if I were to find that Defendants timely filed their Form 53 and had not waived their right to raise affirmative defenses to this claim, then I would further find:

26. The parties stipulate that Decedent was a habitual user of marijuana. (Hr. Tr. p. 72: 11-16).

27. Decedent's antemortem toxicology report found 9.1 ng/ml of delta-9 Tetrahydrocannabinol (THC); 74 ng/ml of delta-9 carboxy THC 74; and 3 ng/ml of 11-hydroxy delta-9 in his blood.

28. Decedent was stopped at a police checkpoint in October 2020, two months prior to his fatal accident. The checkpoint officer smelled the odor of marijuana emanating from the cab of Decedent's semi-trailer truck while speaking with him. Decedent admitted to smoking marijuana earlier in the day. The officer proceeded to search Decedent's person and vehicle and subsequently found two "blunts," one unsmoked and the other half-smoked. Decedent was arrested for possession of marijuana. The officer allowed Decedent to call his boss and company owner, Matthew Lawson, to pick up the truck. (Claimants' APA 11 p. 260).

29. During the hearing, Mr. Lawson testified he did not know or inquire into the reason for Decedent's arrest, even though this event required Decedent to stop working and leave costly company property on the side of the road unmanned. Mr. Lawson asserts he later learned (though he did not specify how or when) Decedent was in possession of marijuana at the time of his arrest.

30. Mr. Lawson testified that after Decedent called him to retrieve the truck from the checkpoint, it took him around an hour to get to the site. He further testified that he was familiar with the odor of

marijuana and did not smell it upon entering the cab of Decedent's truck.

31. Mr. Lawson testified that after Decedent's arrest, he allowed him to return to work without any further query or drug testing because he was a "good employee". After the arrest, Mr. Lawson continued to let Mr. Holmes drive his truck and felt that Mr. Holmes (behind the wheel of a truck) was not a danger to the public. Mr. Lawson admits he should have informed the appropriate governing authority about the drug-related violation of Decedent's commercial driver's license.

32. Mr. Lawson testified he arrived on scene about 40 minutes after the accident occurred. He testified that it was a misty day and the ground was wet. He observed one hundred yards of tire tracks down the side of the roadway ending at a driveway/culvert near the cab of the truck. He further testified he was an [unstated distance] from the vehicle when he observed that one of the doors was "still open". He maintains he did not smell the odor of marijuana at that time. He testified that while still on scene, the salvage company asked him to go to the tow yard to inventory the wrecked truck. He asserts it took him 20-25 minutes to get from the accident scene to the tow yard. The record does not indicate how long Mr. Lawson was at the accident scene before leaving for the tow yard.

33. Mr. Lawson testified that he assessed the cab of the wrecked truck at the tow yard and smelled an odor of marijuana. He further testified he observed what appeared to be a burned "joint" or "blunt" on the floor. Mr. Lawson testified that 80% of the cigar/joint was remaining. The record does not indicate whether Mr. Lawson's observations occurred from inside or outside of the cab. Mr. Lawson also found blunt spray, U-Pass and an unlit blunt/cigar in Mr. Lawson's backpack. Mr. Lawson threw out the burned joint/cigar and unburned joint/cigar before they could be tested.

34. The evidence in the record indicates one partially burned "blunt" or [cigar] was found in or around the vehicle following both the arrest and accident. Mr. Lawson testified he did not smell marijuana in the cab in the hour following the arrest; an arrest promulgated by the odor of marijuana

coming from the cab. He further testified that he did smell marijuana coming from the truck over an hour after the accident; a truck that in the interim had been (largely) left open to the elements and towed to another location.

35. I find Mr. Lawson's testimony lacks credibility. When faced with the scrutiny of possibly allowing a "habitual" marijuana user to continue operating his semi-tractor trailers, Mr. Lawson maintains he did not smell marijuana in the cab following Decedent's arrest or even inquire why his employee was taken into police custody during working hours. Presently, where questions still abound as to the cause of the tragic event, including whether Mr. Lawson's own truck played a role (i.e. a deflated tire), he asserts he did indeed smell marijuana coming from the cab when he visited the tow yard following the accident.

36. Additionally, Mr. Lawson testified that based on pre-trip and post trips the truck involved in the accident was operating appropriately. However, during his deposition Mr. Lawson testified he did not have pre-trip inspections. He then testified that he assumed pre-trips were being performed.

37. Mr. Lawson agreed that the accident could have been caused by an animal entering the roadway, another vehicle swerving into Mr. Holme's lane of travel, distraction from a cellular phone, a blown tire, excessive speed, and/or Mr. Holmes reaching for something in the cab of the truck. Mr. Lawson agreed that he did not know why the accident occurred.

38. Post-accident highway patrol reports note a deflated right outer rear tire.

39. Dr. Osbon, an expert witness for Defendants, testified that Decedent was acutely intoxicated with marijuana when the MVA occurred. Dr. Osbon stated he relied on his education, training, experience in emergency medicine, and the National Highway Transportation Safety Administration's (NHTSA's) [2017] report to formulate his opinion that the 9.1 nanograms per milliliter of delta-9 THC present in Decedent's blood post-accident was sufficient for an "emergency medical physician" to find

him impaired. Dr. Osbon opined that marijuana intoxication was a major contributing factor and proximate cause of the accident. (Claimants' APA 13).

40. Dr. Osbon is a friend of Defense Counsel Stephen Stuble by virtue of marriage to Stephen Stuble's first cousin. (Deposition of Dr. Osbon p. 125, lines 12-25; p. 126, lines 1-2).

41. Dr. Osbon testified that he was not testifying as an expert in the fields of accident reconstruction, human factors, and/or toxicology. (Deposition of Dr. Osbon p. 26, lines 9-18).

42. Dr. Osbon admitted during his testimony that he had not previously served as an expert witness to specifically opine on the effects of marijuana and driving, or how marijuana affects driving. Dr. Osbon further admitted he did not "know the specifics" of how Decedent's accident occurred and could not exclude other "lane departure" factors such as an animal in the roadway or cell phone distraction. Dr. Osbon admitted to not knowing why Decedent left the roadway. (Claimants' APA 13).

43. Dr. Osbon did not know Mr. Holme's tolerance for marijuana. (Claimant's APA 13).

44. Dr. Osbon did not follow up to determine if Mr. Holmes' vehicle was functioning properly. He testified that knowing if the vehicle was functioning properly was not important for what he was asked to do by Defendants. He indicated that know whether the vehicle was functioning correctly would be informative but would not change his opinions. (Claimant's APA 13).

45. In his medical report, Dr. Osbon referenced NHTSA's 2017 report to Congress and quoted, in part: "THC has been shown to bind with receptors in the brain (and to a lesser extent in other parts of the body) and it is likely that this process underlies some of the psychoactive (behavioral and cognitive) effects of marijuana use". (Defendants' APA 10 p. 232).

46. Dr. Osbon concluded his report by opining: "The critical abilities necessary for safe driving required a clear sensorium and full, unimpaired cognitive abilities. More likely than not, [Decedent's] acute marijuana intoxication was a major contributor to the MVC". (Defendants' APA 10 p. 232).

47. Dr. Osbon defined intoxication as compromised ability to react in the same way you would at your neurological baseline in the absence of any illicit substance, to coordinate movements, to make decisions, to recall things in terms of memory to make decisions, and any execution of something that requires a motor skill to include things like driving or reacting to the conditions for driving. (Claimants' APA 13).

48. Dr. Gordon Early, an expert witness for Defendants, testified that Decedent was intoxicated at the time of the accident based on the half-life of 9-delta THC measured against the metabolic levels for that drug found in Decedent's system antemortem. Despite his conclusion, Dr. Early stopped short of opining that Decedent's alleged intoxication was the proximate cause of the accident. (Claimants' APA 14).

49. Dr. Early testified he relied on Decedent's toxicology report and [existing] medical literature to formulate his opinion. (Claimants' APA 14).

50. Dr. Early testified over the course of his 30-year career in occupational medicine and medical toxicology that he has perhaps observed ten people whom he believed were intoxicated with marijuana. He further testified he has not done any scientific research regarding the effects of marijuana on the human system. Dr. Early testified he has not performed any studies regarding the effects of marijuana on the human system. He testified his medical practice does not regularly involve the effects of marijuana on the human system. (Claimants' APA 14).

51. Dr. Early admitted during his testimony that he had not previously been qualified as an expert witness "with regard to the effects of marijuana on the human system". (Claimants' APA 14).

52. Dr. Early is not an accident reconstruction and he did not testify as an accident reconstructionist. (Claimants' APA 14).

53. Dr. Early initially defined intoxication as when a toxin has exerted an effect upon a human

that has deterred their performance ability. (Deposition of Dr. Early p. 11, lines 10-17). Later, Dr. Early reviewed the legal definition of marijuana in the workers' compensation setting and testified that the workers' compensation definition comported with his understanding of intoxication in the medical sense. (Deposition of Dr. Early p. 80, lines 4-17).

54. Dr. Early testified that Mr. Holmes was intoxicated at the time of the accident. He used the half-life of marijuana in the blood to determine when Mr. Holmes used marijuana and how much marijuana was in his system at the time of the accident. However, Dr. Early could not provide a scientific/mathematical formula for this calculation. (Claimants' APA 14).

55. Dr. Early admitted other factors could affect an individual's level of marijuana intoxication, such as: chronic usage, weight, drug potency and the amount of the drug ingested. Dr. Early did not know Mr. Holmes tolerance to marijuana. He testified that tolerant individuals have less impairment and tend to metabolize marijuana more slowly. He also testified chronic users release marijuana from storage sites in their body and that such releases could affect serum levels. (Claimants' APA 14).

56. Dr. Early further admitted that aside from Decedent's weight, he did not know the potency, frequency or amount of Decedent's marijuana intake. He testified that potency and amount ingested both matter when determining intoxication. (Claimants' APA 14).

57. In his medical report, Dr. Early opined to a reasonable degree of medical certainty, Decedent was intoxicated at the time of the accident. He referenced the National Institute of Drug Abuse's (NIDA's) report on studies that discuss marijuana and its metabolites effect on a person's judgment. Specifically, studies that support a finding that marijuana use results in impaired skills required for safe driving. (Defendants' APA 11 p. 235).

58. Dr. Early concluded his report by opining intoxication was more likely than not a cause of Decedent's accident. He further acknowledged that other (non-intoxication factors) could have

contributed to the accident. He did not have enough evidence to opine that marijuana intoxication was the proximate cause of the accident. (Defendants' APA 11 p. 235).

59. Dr. Sabrina Gast, the presiding coroner, opined that Decedent died from cerebral disruption due to a motor vehicle accident. (Claimants' APA p. 72). She further opined to a reasonable degree of medical certainty that Decedent died as a "result of cerebral disruption due to blunt head trauma sustained in the December 16, 2020" accident. (Claimants' APA 2 p. 72).

60. Dr. S. Erin Presnell, the presiding forensic pathologist, performed Decedent's autopsy. She opined to a reasonable degree of medical certainty that "[Decedent] died as the result of cerebral disruption due to blunt head trauma sustained in the December 16, 2020 accident". She found that she "is not able to predict the antemortem effect of a THC concentration of 9.1 ng/ml on the Decedent's mind or body at the time of the crash". (Claimants' APA 3 p. 88).

61. Dr. Jolene Bierly, an independent forensic toxicologist, stated she performed a "comprehensive toxicological analysis of antemortem blood referenced in S. Erin Presnell's 'Final Autopsy Report' of [Decedent]". (Claimants' APA p. 113).

62. Dr. Bierly opined: "[T]o determine if Decedent was intoxicated (impaired in his faculties to the extent that he was incapable of carrying on his accustomed work without danger to himself) on the date of his December 16, 2020 accident, [she] would need to know how often and how much THC [Decedent] regularly used prior to said accident in order to determine how tolerant [Decedent] was to the effects of THC. Observations of signs and symptoms of marijuana use and/or marijuana impairment around the time of the accident would also be beneficial". (Claimants' APA 4 p. 113).

63. Dr. Bierly further opined that "without knowing [Decedent's] tolerance levels with regards to THC, I cannot opine, more likely than not, that [Decedent] was intoxicated (impaired in his faculties to the extent that he was incapable of carrying on his accustomed work without danger to himself) on

December 16, 2020, the date of his accident". (Claimants' APA 4 p. 114).

64. Dr. Matthew Lee, an expert retained by Claimants, stated his "professional experience as a physician, pharmacist, pharmacologist and toxicologist [make him] qualified to opine on the pharmacology and pharmacodynamics of the active ingredient in marijuana, tetrahydrocannabinol and its metabolites". (Claimants' APA 5 p. 122).

65. Dr. Lee stated he formulated his conclusions after reviewing: Decedent's autopsy, coroner's and toxicology reports; in addition to Dr. Bierly's, Dr. Gast's and Dr. Presnell's questionnaires. (Claimants' APA 5 p. 122).

66. Accordingly, Dr. Lee opined: "Intoxication from THC cannot be made from blood levels alone, behavioral observations would also be necessary to make a determination of intoxication". (Claimants' APA 5 p. 122).

67. Dr. Lee concluded his report by stating: "Based on the information available, no determination of intoxication can be made for [Decedent] on December 16, 2020." (Claimants' APA 5 p. 123).

68. The NHTSA, in its report referenced *supra*, made the following statements of note regarding marijuana-impaired skills:

- i. "Less is known about [the impairing effects of marijuana use on driving-related skills] due in part to the typical differences in research methods, tasks, subjects and dosing that are used." (Claimants' APA 6 p. 144).
- ii. "While fewer studies have examined the relationship between THC blood levels and degree of impairment, in those studies that have been conducted, the consistent finding is that the level of THC in the blood and the degree of impairment do not appear to be closely related." (Claimants' APA 6 p. 145).
- iii. Blood Testing - Blood testing is considered the "gold standard" for testing the presence of drugs in impaired driving cases. However, . . . currently there is limited ability to relate the amount of a drug or metabolite in blood to the presence and amount of impairment." (Claimants' APA 6 p. 148).
- iv. In response to the findings of other organizations that "marijuana has been shown to affect a number of driving-related skills," including NIDA, the

NHTSA noted: "[T]his type of research typically does not involve measurement of blood THC levels; rather, subject's performance between non-dosed trials (placebo condition) and dosed trials (when administered marijuana) are compared. As a result of differences in how subjects conduct the smoking regime (inhalation rate, depth of inhalation, and time between inhalation and exhalation), fairly wide differences in blood THC levels are likely between subjects." (Claimants' APA 6 p. 149).

- v. Congress requested an assessment of methodologies and technologies for measuring driver impairment resulting from the use of marijuana, including the use of marijuana in combination with alcohol Deficits in performance can arise from a variety of causes that include alcohol, marijuana and other drug use, distraction, drowsiness, emotional states (fear, excitement, anger), and other factors." (Claimants' APA 6 p. 150)
- vi. "Traditionally, measurement of marijuana use by drivers has involved testing biological specimens for the presence of THC (typically blood samples. . .). These toxicological tests confirm presence of THC but they do not indicate driver impairment or necessarily indicate recent marijuana use (when the THC levels are low)." (Claimants' APA 6 p. 152).

69. The evidence in the record indicates confirming marijuana intoxication while driving is not as straightforward as determining alcohol intoxication. Specifically, it is an amalgamation of factors that lead one to find a person is intoxicated with marijuana. Dr. Osbon largely based his impairment finding on the results of Decedent's blood test but failed to recognize other significant variables that could have impacted his conclusion, such as: frequency of use (i.e. tolerance), amount of intake and potency.

70. Dr. Early acknowledged other (non-intoxication factors) could have contributed to Decedent's accident and that by exploring said factors, one could "most accurately answer the adverse effects [of marijuana intoxication] on judgment, coordination and/or situational awareness". Nevertheless, he still largely based his impairment finding on the results of Decedent's blood test.

71. I find the opinions of Dr. Osbon and Dr. Early are based on speculation and conjecture and are therefore afforded less weight.

72. In accordance with current modalities for measuring driver impairment from the use of

marijuana, Dr. Presnell, Dr. Bierly and Dr. Lee all recognized that the results of Decedent's blood test was not enough information to determine whether intoxication was the cause of Decedent's accident on December 16, 2020. Accordingly, I afford their opinions greater weight.

73. I find the substantial weight of the evidence indicates Decedent's alleged marijuana intoxication was not the proximate cause of the accident on December 16, 2020.

74. I further find that the greater weight of the evidence does not establish a causal link between Decedent's alleged intoxication and the accident on December 16, 2020.

75. Therefore, I find:

i. Defendants Form 53 to be untimely filed.

ii. As Defendants Form 53 was not timely filed, they have waived their right to raise affirmative defenses to this claim.

iii. Based on a preponderance of the evidence, Decedent's work-related injuries and resulting death are compensable under the Act.

iv. Claimants are entitled to all causally related medical expenses.

76. All other issues are held in abeyance.

CONCLUSIONS OF LAW

Accordingly, as provided by §42-17-40, it is the determination and finding of this Commissioner:

1. Pursuant to §42-1-130 and §42-1-140, at the time of the accident, Lenjarius Holmes and Defendant-Employer Lawson Trucking, LLC, were covered parties under the provisions of the South Carolina Workers' Compensation Act.

2. Pursuant to §42-1-160, Lenjarius Holmes sustained an injury by accident during the course and scope of his employment with Lawson Trucking, LLC that ultimately resulted in his death.

3. Regulation 67-603(B)(l) of the South Carolina Code provides that an Employer file a Form 53 and proof of service with the Commission's Judicial Department within thirty days of service of the Form 52. Regulation 67-603(C) states, "Failure to file a Form 51 or Form 53 within the period in Section B(l) shall be deemed a general denial of liability for the benefits claimed and the employer and its representative by the failure to respond within the period in section B(l) shall forfeit each special and affirmative defense allowed by the Act including the defenses available in Section 42-9-60, 42-15-20, 42-15-40, and 42-17-90 of the Act." Pursuant to Regulation 67-603 Defendants failed to file their Form 53 as required by law and have forfeited each special and affirmative defense including the defenses available in Section 42-9-60 of the South Carolina Code.

4. Section 42-9-60 of the South Carolina Act is entitled "Injury or death occasioned by intoxication" It states, "No compensation shall be payable if the injury or death was occasioned by the intoxication of the employer or by the willful intention of the employee to injure or kill himself or another. In the even that any person claims that the provisions of this section are applicable in any case, the burden of proof shall be upon such person."

5. The Court of Appeals has defined intoxication as "a condition that results from the use of a stimulant, which renders an employee impaired in his or her faculties to the extent that the employee is incapable of carrying on the accustomed work without danger to the employee." (See Jones v. Harold Arnold's Sentry Buick Pontiac, 376 S.C 375, 656 S.E.2d 772 (Ct. App. 2008).

6. Our Supreme Court has interpreted Section 42-9-260 of the South Carolina Code as barring compensation when the employee's intoxication is the proximate cause of the injury. (See Baggot v. Southern Music, 330 S.C. 1, 496 S.E.2d 852 (1998) and Kinsey v. Champion American Service Center, 268 S.C. 177, 232 S.E.2d 720 (1977)).

7. Pursuant to Section 42-9-60 of the South Carolina Code and relevant workers' compensation case law on intoxication Defendants have been unable to meet their burden of proving that LenJarius Holmes was intoxicated and that said intoxication was the proximate cause of his accident.
8. Under §42-15-20 proper notice of the injury was given.
9. Under §42-15-40 the claim was filed in a timely manner.
10. Under §42-15-60 Claimants are entitled reimbursement/payment of causally related medical expenses following the accident.
11. Section 42-9-290 of the South Carolina Code addresses the amount and types of compensation for death of an employee due to accident. A preponderance of the evidence indicates Claimants are entitled to benefits under 42-9-290 of the South Carolina Code.

III. ISSUES ON APPEAL

Claimants/1st Appellants

1. Did the Single Commissioner err in allowing Dr(s) Osbon and Early to testify regarding Mr. Holmes' alleged marijuana intoxication?
2. Did the Single Commissioner err in allowing Dr(s) Osbon and Early to testify regarding the effects of marijuana on the human system when they have no expertise in said field?
3. Did the Single Commissioner err in allowing Dr. Early to support his opinion with hearsay testimony?
4. Did the Single Commissioner err in permitting pages 276-286 end page 296 of Defendants APA/Brief when said pages are hearsay and outside the field of expertise of trooper KC Warlick?

Defendants/2nd Appellants

1. Did the Hearing Commissioner err as a matter of law in finding that Defendants waived their

affirmative intoxication defense under S.C. Code Section 42-9-60?

2. Did the Hearing Commissioner err in all predicate findings of fact upon which he based this erroneous legal conclusion?
3. Did the Hearing Commissioner err as a matter of fact and law in failing to find that Claimants were not surprised or prejudiced by Defendants purported untimely filing of its Form 53, particularly when Claimants exercised their right to cross-examine all defense experts and procured their own expert evidence to counter Defendants' affirmative intoxication defense?
4. Did the Hearing Commissioner apply an erroneous legal standard to the affirmative defense waiver issue when WCC R. 67- 610 provides that leave shall be "freely given" to assert new claims and defenses when justice so requires and no party is prejudiced?
5. Did the Hearing Commissioner err in finding that Defendants failed to act diligently to protect their rights when such finding is unsupported by the Record and Claimants knew, or should have known, that Defendants were represented by counsel and yet failed to serve or even send a courtesy copy of their Form 52 Request for Hearing to defense counsel?
6. Did the Hearing Commissioner err as matter of law by failing to find that Defendants' affirmative intoxication defense was properly preserved and asserted?
7. Did the Hearing Commissioner err as a matter of law by failing to set forth the legal causation standard he intended to apply to the merits of the intoxication defense despite his specific request that counsel for the parties brief that issue?
8. To the extent the Hearing Commissioner applied any discernible legal causation standard to the merits of the intoxication defense, was that standard erroneous?
9. Did the Hearing Commissioner err as a matter of fact and law in finding that Defendants failed to satisfy their burden of proving that Claimants were barred from entitlement death benefits due to

Decedent's intoxication on marijuana at the time of his accident pursuant to S.C. Code Section 42-9-60?

10. Did the Hearing Commissioner err in finding that Mr. Lawson's testimony regarding his observations at the accident scene "lacks credibility," when such testimony is corroborated by other undisputed objective evidence in the record, including, but not limited to, the S.C. Highway Patrol's accident report?
11. Did the Hearing Commissioner err in failing to find that Decedent was intoxicated on marijuana at the time of his accident, contrary to the overwhelming weight of lay and expert evidence in the Record, including but not limited to, the undisputed post-mortem toxicology reports and expert medical opinions?
12. Did the Hearing Commissioner err by impugning the credibility of defense expert Dr. Tim Osbon and by failing to grasp the limited scope and relevancy of his opinions?
13. Is the Hearing Commissioner's finding of fact #48, stating in part, "Dr. Early stopped short of opining that Decedent's alleged intoxication was the proximate cause of the accident," a misunderstanding of Dr. Early's actual testimony and opinion?
14. Is the Hearing Commissioner's finding of fact #48, stating in part, "Dr. Early stopped short of opining that Decedent's alleged intoxication was the proximate cause of the accident," based on an erroneous legal understanding of the term "proximate cause?"
15. Did the Hearing Commissioner err in finding of fact # 71 that "the opinions of Dr. Osbon and Dr. Early are based on speculation and conjecture," when such finding is based on an erroneous legal standard, misrepresent the actual opinions and testimonies of those doctors, and is otherwise contrary to the greater weight of the medical evidence as a whole?
16. Did the Hearing Commissioner err in finding of fact # 72 to the extent he finds or implies that the

"current modalities for measuring driver impairment from the use of marijuana" is a scientifically settled matter, when it is in fact most decidedly not?

17. Did the Hearing Commissioner err in failing to find that Defendants met their burden of proving a) that Decedent was intoxicated on marijuana at the time of his accident and b) that such intoxication was the "proximate cause" of the Decedent's accident and ensuing death, when the preponderance of the expert medical evidence in the Record as a whole mandates otherwise?

IV. DECISION OF THE APPELLATE PANEL

The 1st Appellants are hereinafter referred to as "Claimants." The 2nd Appellants are hereinafter referred to as "Defendants".

Pursuant to S.C. Code Ann. §42-17-50, we, the Appellate Panel, have reviewed the Decision and Order of the Single Commissioner and weighed the evidence as presented at the hearing. We have also considered all issues raised in the respective Appellant and Respondent briefs of the parties, as well as those issues raised at the Full Commission Review Hearing.

After careful review, the Appellate Panel of the South Carolina Workers' Compensation Commission, by unanimous vote, does hereby **AFFIRM** the Decision and Order of the Single Commissioner filed on January 17, 2025.

Below are set out the Findings of Fact and Conclusions of Law of the Appellate Panel as to this claim.

FINDINGS OF FACT

We affirm the above-stated findings of the Single Commissioner as to this claim.

CONCLUSIONS OF LAW

Pursuant to S.C. Code Ann. §42-17-50, we affirm the above-stated conclusions of the Single Commissioner as to this claim.

ORDER


THEREFORE IT IS HEREBY ORDERED that the Decision and Order of the Single Commissioner filed in the above-captioned matter on January 17, 2025, is fully **AFFIRMED**.

ACCORDINGLY:

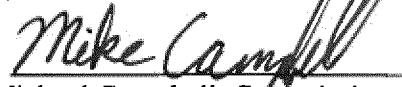
IT IS FURTHER ORDERED that Claimants are entitled to benefits per Section 42-9-290 of the South Carolina Code. Specifically, five hundred weeks of compensation and burial expenses not exceeding twelve thousand dollars. Additionally, per Section 42-15-60, Defendants are responsible for causally related medical treatment provided by Piedmont Medical Center and Piedmont EMS.

AND SO IT IS ORDERED.


_____ (date)
Columbia, SC



Cynthia C. Dooley, Commissioner



Michael Campbell, Commissioner



Gabe Coggiola, Commissioner

Order Served via email:

<p>Tyler Bathrick Stewart Law Offices, LLC tyler@stewartlawoffices.net</p>	<p>M. Stephen Stublely George D. Gallagher Speed, Seta, Martin, Trivett & Stublely, LLC ssublely@speed-seta.com ggallagher@speed-seta.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 August 29, 2025