

State of South Carolina
Workers' Compensation Commission

APPELLATE PANEL DECISION AND ORDER

COMMISSION PANEL: The Honorable T. Scott Beck, The Honorable Cynthia C. Dooley,
The Honorable Melody L. James

SCWCC File No.: 2319710

Eulalia Sebastian,

Claimant,

v.

Hot Rod's Upholstery, LLC,

Employer,

and

The South Carolina Uninsured Employers' Fund,

Carrier,

Defendants.

RECEIVED

Feb 09 2026

SC Court of Appeals

REVERSED

Hybrid hearing held virtually and in Richland County, South Carolina,
on October 13, 2025

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

Appearances: Jonathan Hendrix appeared on behalf of
Claimant/Appellant.

Clarke McCants, IV appeared on behalf of the Employer/
Respondent.

Lauren Daniels appeared on behalf of the
SCUEF/Respondent.

Court Reporter: Amber Scarborough, Creel Court Reporting, Inc.
1230 Richland Street, Columbia, SC 29201

Filed: _____

I. STATEMENT OF THE CASE

Claimant contends that she sustained injuries to her right knee and right ankle on December 1, 2023, as a result of an accident arising out of and in the course of her alleged employment relationship with the named employer, Hot Rod's Upholstery, LLC (hereinafter, "alleged Employer"). She sought a determination from the single commissioner that she was regularly employed by the Employer on the date of the alleged work-injury, and therefore, she asserts that she is entitled to benefits under the Act. She requested a finding of compensability, an award of temporary total disability (TTD) benefits, payment for causally-related medical expenses, and an order for additional medical treatment.

The Employer maintains that it was not subject to the Act on the date of the Claimant's alleged injury, in that the Employer did not regularly employ more than three individuals. In a similar vein, if the Employer is found to have been subject to the Act on the date of the alleged injury, both the Employer and the South Carolina Uninsured Employers' Fund (hereinafter, "UEF") deny that the Claimant is entitled to receive compensation and other benefits under the Act. Specifically, they each contend that the Claimant was not an employee of the Employer at the time of the alleged incident which forms the basis for this case, and instead assert that she was an independent contractor.

On August 30, 2024, a hearing was held before the single commissioner, and on March 5, 2025, the single commissioner issued an order in which they found that (1) Claimant was an independent contractor and not an employee, (2) even if Claimant was an employee, there was no evidence in the record establishing that the Employer employed more than three individuals on a

regular basis, making them subject to the Act, and (3) Claimant was not entitled to receive compensation under the Act.

On March 14, 2025, Claimant filed an appeal, claiming that (1) Hot Rod's Upholstery was subject to the Act at the time of the accident, (2) Claimant had met her burden of proving that at the time of the accident, she was an employee of Hot Rod's Upholstery and not an independent contractor, and (3) Claimant provided sufficient evidence that she was unable to return to work because of her injuries and should therefore receive TTD benefits and medical treatment.

A hearing was held before the appellate panel on October 13, 2025. We reverse the decision of the single commissioner.

II. SINGLE COMMISSIONER FINDINGS OF FACT AND CONCLUSIONS OF LAW

The verbatim findings of fact and conclusions of law in the appealed order of the single commissioner are as follows:

Single Commissioner Findings of Fact

1. The purpose of the hearing was to determine the issues set forth in the Hearing Notice and Forms 50 and 51, and any other matters which may have timely come before the undersigned Commissioner.
2. The Notice of the Hearing was timely and properly served upon all parties of interest.
3. Venue for this matter is proper in Richland County, South Carolina.
4. The Claimant seeks an award of temporary total compensation from the date of injury and continuing, until the date of MMI or until otherwise ordered by the Commission. However, the Claimant provided no evidence purporting to show that any medical provider has deemed her unable to work, or that she has temporary work restrictions.

5. No award under the Act is authorized unless the employer-employee relationship existed at the time of the alleged injury for claim is being made. *Alewine v. Tobin Quarries*, 206 S.C. 103, 33 S.E.2d 81 (1945).
6. Pursuant to S.C. Code Ann. Section 42-1-130 and *Meyer v. Piggly Wiggly No. 24, Inc.*, 338 S.C. 471, 527 S.E.2d 761 (2000), coverage under the Act depends on the existence of an employment relationship. An independent contractor, on the other hand, is not covered by the Act.
7. A Claimant has the burden of proving the facts essential to their right to compensation and benefits, and an award may not be based upon conjecture or speculation. *Shealy v. Algernon Blair, Inc.*, 250 S.C. 106, 156 S.E.2d 646 (1967).
8. To determine whether a worker is an employee covered by the Act, or instead an independent contractor not covered by the Act, we must apply the four-prong test found in *Shatto v. McLeod Regional Medical Center*, 406 S.C. 470, 753 S.E.2d 416 (2013).
9. The first determination concerns the employer's right to control the Claimant in the performance of her work. In this case, the Claimant introduced purported timesheets created at the time she was working for the Employer. However, the timesheets introduced were vague and did not relate to whether and to what extent the Employer controlled the hours the Claimant worked. Claimant has introduced no other documents, communications, or evidence to illustrate her relationship with Hot Rod's Upholstery.
10. Additionally, the timecards and checks did not show, one way or another, whether they pertained to the work the Claimant performed for the Employer. Therefore, the Claimant has failed to introduce substantial evidence from which I can find that the Employer exerted any control over the Claimant.

11. As to the second element, which addresses the furnishing of equipment, the Claimant testified that she brought her own drill to work for the Employer. However, there is no other evidence before me concerning this element; therefore, this prong weighs in favor of the Employer.
12. As to the third element—the method by which a person is paid—the Employer introduced the Claimant’s W9s for 2022 and 2023. While not dispositive by itself, this method of payment weighs against an employee-employer relationship. *Paschal v. Price*, 380 S.C. 419, 670 S.E.2d 374 (2008) (overruled in part by *Wilkinson v. Palmetto State Transportation Company*, 382 S.C. 295, 676 S.E.2d 700 (2009)). The Claimant, however, testified that she was paid hourly, which tends to show an employee-employer relationship exists.
13. However, given the evidence of sporadic payments, I find that the Claimant has not met her burden to show that she was paid in a manner that indicates her status as an employee. Therefore, the third element favors the Claimant’s status as an independent contractor.
14. As to the fourth and final element of the *Shatto* test, which addresses the right to fire, the Claimant introduced no evidence of the same.
15. Weighing all four elements together in the evenhanded manner prescribed by *Wilkinson v. Palmetto State Transportation Company*, 382 S.C. 295, 676 S.E.2d 700 (2009), and applying the law to the present case, I find that the Claimant has not met her burden of showing that an employee-employer relationship existed at the time of her accident; therefore, the Claimant is not covered by the South Carolina Workers’ Compensation Act for the injuries alleged here and is not entitled to benefits under the Act.

16. I find that the Claimant was not an employee of the alleged Employer and instead was an independent contractor.
17. Even if the Claimant is deemed to be an employee of the alleged Employer, there is no evidence in the record for this matter establishing that the alleged Employer regularly employed more than three individuals, and therefore, was subject to the Act at the time of the alleged incident.
18. The evidence regarding the proper average weekly wage and compensation rate is conflicting. Given the fact that I have determined that the Claimant was not an employee of the alleged Employer at the time of the alleged accident in this case, I do not make a determination as to the Claimant's average weekly wage and compensation rate.

Single Commissioner Conclusions of Law

1. Pursuant to S.C. Code Ann. § 42-1-130, and other applicable law and regulations, the Claimant was not an employee of Hot Rod's Upholstery, LLC, and instead was an independent contractor.
2. Pursuant to S.C. Code Ann. § 42-1-360, even if the Claimant is deemed to be an employee of the alleged Employer, there is no evidence in the record for this matter establishing that the alleged Employer employed more than three individuals on a regular basis establishing the Commission's jurisdiction for this matter.
3. As a result, the Claimant is not entitled to receive compensation and other benefits pursuant to the terms and provisions of the Act.

III. ISSUES ON APPEAL

1. Did the single commissioner err by finding that Hot Rod's Upholstery was not subject to the Act at the time of the accident?
2. Did the single commissioner err by finding that Claimant had not met her burden of proving that she was an employee of Hot Rod's Upholstery at the time of the accident, as opposed to an independent contractor?
3. Did the single commissioner err by finding that Claimant provided no evidence purporting to show (1) that any medical provider had deemed her unable to work, or (2) that Claimant had temporary work restrictions?

IV. DECISION OF THE APPELLATE PANEL

Appellate Panel's Findings of Fact

1. Notice of each hearing was timely and properly served upon all parties of interest.
2. Venue for this matter was proper in Richland County, South Carolina.
3. Claimant's uncontradicted testimony was that, on December 1, 2023, she had started work finishing a car seat at her Employer's place of business on Sunset Boulevard in Lexington when she received a call on her cell phone from another supervisor of hers, Walter Revelo. Mr. Revelo told Claimant that the "Boss" (the owner of the business) needed her to come help him (Walter) at another location. Her boss, Rodney George, then personally transported claimant to the other jobsite, an event center, to help Walter. Claimant was injured while working at the event center when she fell off of a ladder while replacing curtains on a porch. (Transcript p. 10, 15)
4. On February 21, 2024, an investigator in the Commission's Compliance Division sent a letter to Hod Rod's Upholstery LLC, stating that the Compliance Division had conducted

an investigation and found that Hot Rod's Upholstery LLC was subject to the SC Workers' Compensation Act by regularly employing four or more persons in the conduct of its business.

5. Subsequently, on March 28, 2024, an agent of Hot Rod's Upholstery signed a compliance agreement with the Commission which stated in part that, "I acknowledge that for the period from April 24, 2021 until February 13, 2024, when coverage was obtained, [Hot Rod's Upholstery] was operating without workers' compensation insurance and in violation of SC Code Ann. §42-5-10 and §42-5-20 (1985)." The agreement further states that, "[b]y executing this agreement, [Hot Rod's Upholstery] is responsible for any claim found to be compensable, which occurs during the period of violation."
6. Claimant's work-accident occurred during the period for which her Employer had admitted they were subject to the act.
7. The day after Claimant's injury, December 2, 2023, Claimant saw Dr. Erin Elizabeth Harris at Lexington Medical Center. (APA A, p. 1-8)
 - a. Claimant reported that she was standing about 6 feet off the ground on a ladder and lost her balance, falling backwards off the ladder and striking the back of her head on the ground. Claimant denied losing consciousness at the time of the fall but reported that she was a bit dizzy afterwards. Claimant also reported a continued headache and neck pain.
 - b. Claimant reported that she twisted her right knee in the fall and was having difficulty with flexion and ambulation.
 - c. Claimant also reported pain in her right ankle.

- d. Dr. Harris diagnosed Claimant with sprains in her right knee and right ankle and placed her in a knee immobilizer and ankle splint. She was also given crutches.
8. CT scans of Claimant's head and cervical spine on December 2, 2023 were unremarkable. (APA A, p. 8-9)
 9. X-rays of Claimant's right knee on December 2, 2023 were unremarkable. (APA A, p. 10-11)
 10. X-rays of Claimant's right ankle showed lateral soft tissue swelling, but otherwise no acute bone-related findings. (APA A, p. 12)
 11. On December 15, 2023, Dr. Franco Godoy stated, "[t]he patient has not been able to return to work because of the intensity of the pain." (APA D, p. 25)
 12. On January 5, 2024 the same provider stated, "[t]he patient has not been able to return to work because of the limitations the knee pain is causing." Dr. Godoy also noted that Claimant was unable to put any pressure on her knee. (APA D, p. 23)
 13. It was noted during a visit to Lexington Orthopaedics and Sports Medicine on January 23, 2024 that Claimant no longer worked at the same facility. (APA B, p. 21)
 14. On January 23, 2024, it was noted that Claimant still noticed swelling around her knee. (APA B, p. 15)
 15. On February 2, 2024, Dr. Godoy noted that it is possible that Claimant had a lesion on her ACL and possibly other tissue damage. (APA D, p. 23)
 16. On February 8, 2024, an MRI of Claimant's right knee revealed edema of the anterior lateral patellofemoral fat, which is consistent with patellofemoral impingement. (APA C, p. 18)

17. On February 16, 2024, Claimant met with Dr. Godoy again to discuss her MRI. (APA D, p. 20)
- a. Dr. Godoy noted that Claimant's injury was caused by a fall from a ladder in December. (APA D, p. 23)
 - b. Dr. Godoy noted that Claimant was limping, and Claimant reported that the pain is worse with prolonged standing or walking.
 - c. Dr. Godoy stated that most of the time, patellofemoral impingement syndrome can be alleviated with physical therapy and anti-inflammatory medication.
18. By a preponderance of the evidence, we find that Claimant's injuries to her right knee and right ankle arose out of the course and scope of her work for Hot Rod's Upholstery.

Status as Employee or Independent Contractor

19. When Claimant was first hired by the owner of Hot Rod's Upholstery, she was told to show up the next day to start work. She was given a schedule telling her when she was to show up and she had to follow it. (Tr. p. 14, 36-37)
20. Claimant was trained by Mr. George and another man who acted as her supervisor. (Tr. p. 15)
21. She always worked on jobs that Mr. George told her to work on. (Tr. p. 33)
22. Claimant did use her own drills at work, but she used other tools and equipment provided by the Employer. Mr. George gave her a t-shirt and told her to wear it at work. Claimant was wearing the Employer's tee shirt when she was injured on December 1, 2023. (Tr. p. 22-24)

23. She was paid at the rate of \$14.50 per hour and had to clock in and out each day. (Tr. p. 21, 32-33; APA G)
24. Claimant was given a Form 1099-NEC in 2022 and again in 2023.

Appellate Panel's Conclusions of Law

Based on the foregoing findings of fact, the undersigned commissioners make the following conclusions of law:

1. Pursuant to S.C. Code Ann. § 42-1-360 and the Employer's own admission in their signed compliance agreement, Hot Rod's Upholstery, LLC was subject to the SC Workers' Compensation Act at the time of Claimant's accident.
2. No award under the Act is authorized unless the employer-employee relationship existed at the time of the alleged injury. *Alewine v. Tobin Quarries*, 206 S.C. 103, 33 S.E.2d 81 (1945).
3. Pursuant to S.C. Code Ann. § 42-1-130 and *Meyer v. Piggly Wiggly No. 24, Inc.*, 338 S.C. 471, 527 S.E.2d 761 (2000), coverage under the Act depends on the existence of an employment relationship. An independent contractor, on the other hand, is not covered by the Act.
4. To determine whether a worker is an employee covered by the SC Workers' Compensation Act or an independent contractor not covered by the act, we must apply the four-prong test found in *Shatto v. McLeod Reg'l Med. Ctr.*, 406 S.C. 470, 481, 753 S.E.2d 416, 422 (2013).
 - a. The first prong in the four-prong test in *Shatto* concerns Defendant's right to control Claimant in the performance of her work. Claimant's Employer was able to direct Claimant's work schedule, the tasks she performed, and what she wore to work.

Claimant was also trained by her employer. These facts favor Claimant's status as an employee.

- b. The second prong of the *Shatto* test addresses the furnishing of equipment. While Claimant did use her own drills at work, her Employer provided her with other tools and equipment, including a work t-shirt. These facts favor Claimant's status as an employee.
 - c. The third prong of the *Shatto* test addresses the method by which a worker is paid. Defendant introduced Claimant's Forms 1099-NEC from 2022 and 2023, but pursuant to *Paschal v. Price*, 380 S.C. 419 (overruled on other grounds), a Form 1099 is not dispositive by itself. Claimant was paid hourly and had to track the hours she worked. We find that the totality of the evidence pertaining to this prong favors Claimant's status as an employee.
 - d. The fourth and final prong of the *Shatto* test addresses the Employer's right to fire a worker. As the Supreme Court of South Carolina stated in *Mathis v. Brown & Brown of S.C., Inc.*, 389 S.C. 299, "[i]n South Carolina, employment at-will is presumed absent the creation of a specific contract of employment." There was no evidence in this case that suggested Claimant's employment was not at-will; therefore, the presumption holds that Claimant's employment was at-will. This weighs in favor of Claimant's status as an employee.
5. Weighing all of these prongs together in the evenhanded manner prescribed by *Wilkinson v. Palmetto State Transp. Co.*, we find that Claimant's status at the time of her accident most closely resembles that of an employee; therefore, Claimant is covered by the Workers' Compensation Act for the injuries alleged in this case.

6. Pursuant to S.C. Code Ann. § 42-9-10, Claimant is entitled to temporary total disability (TTD) for the time period for which she was out of work due to her injuries.
7. Pursuant to S.C. Code Ann. § 42-15-60, Claimant is entitled to continuing medical treatment for her causally-related injuries.
8. All other issues are held in abeyance.

ORDER

Based on the preceding findings of fact and conclusions of law,

IT IS HEREBY ORDERED that Claimant suffered compensable injuries to her right knee and right ankle arising out of her employment with Hot Rod's Upholstery.

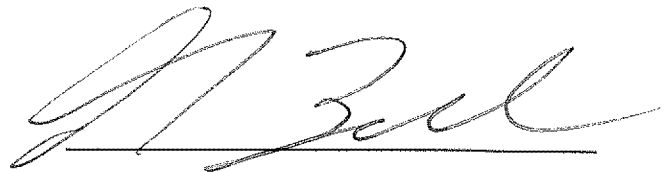
IT IS FURTHER ORDERED that Claimant was an employee of Hot Rod's Upholstery at the time of her accident.

IT IS FURTHER ORDERED that Hot Rod's Upholstery was subject to the SC Workers' Compensation Act at the time of Claimant's injury.

IT IS FURTHER ORDERED that Claimant is entitled to TTD benefits for the time period for which she was out of work due to her injuries.

IT IS FURTHER ORDERED that Claimant is entitled to continuing medical treatment for her causally-related injuries.

AND SO IT IS ORDERED.

A handwritten signature in black ink, appearing to read 'T. Scott Beck', written over a horizontal line.

T. Scott Beck, Commissioner

Cynthia C. Dooley

Cynthia C. Dooley, Commissioner

Melody L. James

Commissioner Melody L. James
Melody L. James, Commissioner

Jan 8, 2026

Date

Columbia, SC

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 Amy Bracy on January 9, 2026