

THE STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM THE SOUTH CAROLINA WORKER'S COMPENSATION
COMMISSION

Appellate Panel

Appellate Case No. 2012-211870
Opinion No. 5176 (S.C. Ct. App. filed October 9, 2013)

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S.C. SUPREME COURT

Richard A. Hartzell, Employee.....Petitioner

v.

Palmetto Collision, LLC, Employer,.....Respondent

and

the S.C. Uninsured Employers Fund.....Respondent

**APPENDIX TO
PETITION FOR WRIT OF CERTIORARI
TO THE COURT OF APPEALS**

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THE STATE OF SOUTH CAROLINA
In The Court of Appeals

Richard A. Hartzell, Employee, Respondent,

v.

Palmetto Collision, LLC, Employer, Appellant,

and

South Carolina Worker's Compensation Uninsured
Employers Fund, Respondent.

Appellate Case No. 2012-211870

Appeal From The Workers' Compensation Commission

Opinion No. 5176

Heard September 11, 2013 – Filed October 9, 2013

REVERSED

Kirsten Leslie Barr, Harold Eugene Trask, and David
Alan Westerlund, Jr., all of Trask & Howell, LLC, of
Mount Pleasant, for Appellant Palmetto Collision, LLC.

Kerry W. Koon, of Charleston, for Respondent Richard
A. Hartzell.

Lisa C. Glover, of Columbia, for Respondent the South
Carolina Workers' Compensation Uninsured Employers
Fund.

PER CURIAM: The Appellate Panel of the Workers' Compensation Commission (Appellate Panel) awarded Richard A. Hartzell (Claimant) medical care and treatment benefits for a back injury. Palmetto Collision, LLC, (Employer) appeals the award, arguing the Appellate Panel erred in (1) determining Employer regularly employed four or more employees and, therefore, was subject to the South Carolina Workers' Compensation Act (Act)¹; (2) finding Claimant accidentally injured his back "on or about February 25, 2009," and failing to make any conclusion of law thereon; (3) finding Claimant reported the injury timely and failing to make any conclusion of law thereon; and (4) awarding Claimant medical benefits for the injury. We find jurisdiction was proper and reverse on the issue of notice.

FACTS

On May 10, 2010, Claimant submitted a Form 50 claim for workers' compensation benefits, alleging he had injured his back at work on or about February 25, 2009. Employer filed a Form 51 denying Claimant's injury, the applicability of the Act to Employer, and receipt of any notice of Claimant's injury prior to the Form 50. The South Carolina Uninsured Employers Fund (the Fund) filed its own Form 51, which echoed Employer's responses.

I. Evidence Presented to the Single Commissioner

A. Employment and Injury

On July 12, 2011, the parties presented their case to the single commissioner. Claimant testified he was fifty-two years old and had worked as an automobile body and paint technician for more than twenty-five years. In March 2009, Claimant worked primarily doing body work for Employer, a company solely owned and operated by Mike Stallings. Claimant had previously worked for the Stallings family in two of their other auto body shops. Although Claimant admitted he suffered from arthritis in his shoulders, he denied ever having chronic or significant lower back pain before this injury.

Claimant stated besides Stallings and himself, four other employees worked for Employer at the time of his injury: Doug Alexander (Doug), Jamie Alexander (Jamie), Harold Brock, and Jimmy Morris. Claimant did not know Employer's

¹ S.C. Code Ann. §§ 42-1-10 to -19-50 (1985 & Supp. 2012).

business arrangements with the other men. He recalled Morris was present at the shop daily. Jamie had left Employer previously and returned while Claimant worked there. According to Claimant, the other men had worked regularly for Employer.

Claimant recalled that, on or about February 25, 2009,² he began cleaning up the shop so he could access his tools more easily. According to Claimant, the clean-up required moving heavy equipment. Later that afternoon, Claimant began feeling pain in his lower back. He believed the pain was "part of the job" and would subside on its own. He did not report an injury that day.

The next day, Claimant's lower back pain had intensified so that he could hardly bend over, and "it just progressively got worse." He testified that on the day after he moved the heavy equipment, he "said something to [Stallings] that I was pretty sore, I must have hurt myself." Claimant recalled Stallings suggesting he should go to the emergency room if he were having problems. Despite experiencing back problems when bending, kneeling, squatting, and lifting, Claimant did not see a doctor and continued working for approximately two weeks after the injury. Although Claimant explained he and Stallings talked about the lower back pain during the last couple of weeks Claimant worked for Employer, nothing was done about it. Claimant stated he left Employer because work had slowed down due to the economy and Employer had no work for him.

In June 2009, Claimant applied for unemployment compensation, which was ultimately awarded. In May 2010, he filed his Form 50. Late in 2010, Stallings contacted Claimant and asked him to remove some equipment he had stored in Employer's building. Claimant recalled three of his friends moved the equipment for him. Once again, he did not ask Stallings to provide him with medical treatment.

B. Employer's Testimony and Records

Stallings testified he owned Employer as the sole member of a limited liability company. He explained that, during the third and fourth quarters of 2007 and at the time of the hearing, he had two employees. Doug, who was Stallings's uncle, worked full-time as a fireman on an Air Force base and worked part-time for

² On cross-examination, Claimant conceded he could not remember exactly which day the injury occurred.

Employer. Doug's son, Jamie, worked for Employer intermittently but on a full-time basis beginning in 2007. Brock worked for Employer throughout 2009 doing restoration work. Stallings conceded he occasionally called Morris to repair heavy frame damage but testified Morris received a Form 1099 for tax purposes. With regard to Claimant, Stallings explained he believed an employer "could legally pay an individual \$600 . . . [per] year tax free." Stallings testified that because of this belief, he paid Claimant directly when he began work at the end of 2008, even though Claimant's pay exceeded \$600. He added Claimant to Employer's payroll at the beginning of 2009.

On cross-examination, Stallings conceded that during the first quarter of 2009, Doug worked for Employer part-time but regularly. In addition, Jamie, Brock, and Claimant worked for Employer during the first quarter of 2009. Stallings maintained Morris worked as-needed but not regularly; he "would hang around sometimes when he didn't have work to do." In summary, counsel and Stallings engaged in the following exchange:

Q. [F]or the second quarter of 2009 after [Claimant] left you still had the same three other guys that were reported during . . . [the] first quarter of 2009, being Douglas Alexander, Harold Brock and James Alexander . . . ?

They were your guys during that period of time; is that correct?

A. Well technically it would have been James and Douglas because Harold, like I said, even though he was an employee[,] and I mean I have to say this because it's the truth, he was working on a -- on side work in the shop, not on the main flow of cars and stuff.

Q. But it was [Employer's] work?

A. Absolutely.

With regard to the injury, Stallings denied being asked to pay for medical treatment for Claimant's lower back until he received Claimant's Form 50. He further denied having any recollection of Claimant notifying him of an injury or a need to go to the doctor.

Stallings testified that although an insurance agent suggested, quoted, and submitted an application for workers' compensation insurance in 2008, he neither signed the application nor approved or paid for the policy.³ However, he testified he paid payroll taxes and reported to the state and federal governments the wages he paid his employees. An accountant who handled Employer's bookkeeping provided a letter stating (1) Employer never paid any company for workers' compensation insurance and (2) Employer had "no more than three full-time employees" on its payroll.

Records obtained from the Employment Security Commission (ESC) reflect Employer reported two employees for the third and fourth quarters of 2007 and the first quarter of 2008. Employer reported five employees for the second quarter of 2008, four for the third quarter of 2008, three for the fourth quarter of 2008. It reported four employees for the first quarter of 2009, three for the second quarter of 2009, and five employees (including Stallings) for the third and fourth quarters of 2009.

II. Order and Appeal to the Appellate Panel

On September 8, 2011, the single commissioner issued an order finding Employer was subject to the Act because it regularly employed four or more employees at the time of the injury, and Claimant had suffered and timely reported to Employer an injury at work. The single commissioner ordered Employer and the Fund to provide an evaluation to determine whether Claimant had reached maximum medical improvement and whether he needed any additional medical treatment. Employer appealed to the Appellate Panel, asserting twenty-one separate errors.

On December 20, 2011, the Appellate Panel heard arguments. In a split decision, the Appellate Panel affirmed the single commissioner's award. The Appellate Panel identified numerous facts as significant. First, the Appellate Panel noted records from the ESC and testimony from Stallings indicated Employer had four

³ As a result, the carrier issued an insurance policy but cancelled it for an unpaid premium after the first quarter of the term elapsed.

regular employees at the time of the injury: Doug, Jamie, Brock, and Claimant. Moreover, an application for workers' compensation insurance was submitted on Employer's behalf on May 27, 2008, and, had Employer paid the premiums, its workers' compensation coverage would have expired May 27, 2009. The Appellate Panel noted Employer did not file a Form 38 to withdraw itself from the coverage of the Act.

Furthermore, the Appellate Panel found Claimant established his report to Employer of a work-related injury primarily through his own testimony, but he was able to continue working after the injury. The Appellate Panel noted that, in rebutting Claimant's evidence, Stallings testified he could not deny with certainty that Claimant had reported the injury, but the report did not "ring a bell." However: "On[] balance, the Claimant's testimony [wa]s more credible on the issue[s] of the fact, and reporting, of the injury." The Appellate Panel observed neither side contended Employer had provided Claimant with any medical care.

In view of these findings, the Appellate Panel affirmed the single commissioner's award of benefits, concluding the Act covered both parties at the time of Claimant's injury. This appeal followed.

LAW/ANALYSIS

I. JURISDICTION

Employer asserts the Appellate Panel erred in determining it regularly employed four or more employees and, therefore, was subject to the Act. We disagree.

On appeal from the Appellate Panel, "an appellate court reviews jurisdictional issues by making its own findings of fact without regard to the findings and conclusions of the Appellate Panel." *Hernandez-Zuniga v. Tickle*, 374 S.C. 235, 244, 647 S.E.2d 691, 695 (Ct. App. 2007). The appellant bears the burden of demonstrating by a preponderance of the evidence that jurisdiction is proper. *Id.* at 244, 647 S.E.2d at 696.

The Act establishes, among other benefits, medical care and treatment for workers injured "by accident[s] arising out of and in the course of employment." S.C. Code Ann. §§ 42-1-160(A), -310 (Supp. 2012). South Carolina courts follow a policy of liberally construing the Act in favor of coverage. *Schulknicht v. City of N. Charleston*, 352 S.C. 175, 178, 574 S.E.2d 194, 195 (2002). However, the Act

specifically exempts from coverage any employer "who has regularly employed in service [fewer] than four employees in the same business within the State." S.C. Code Ann. § 42-1-360(2) (Supp. 2012). The General Assembly has broadly defined "employee" as "every person engaged in an employment under any appointment, contract of hire, or apprenticeship, expressed or implied, oral or written, . . . whether lawfully or unlawfully employed, but exclud[ing] a person whose employment is both casual and not in the course of the trade, business, profession, or occupation of his employer." S.C. Code Ann. § 42-1-130 (Supp. 2012).

In *Harding v. Plumley*, 329 S.C. 580, 586 n.2, 496 S.E.2d 29, 32 n.2 (Ct. App. 1998), this court acknowledged:

Because South Carolina adopted large portions of the North Carolina Workers' Compensation legislation, we rely on North Carolina precedent in Workers' Compensation cases. Decisions of North Carolina courts interpreting that state's Workers' Compensation statute are entitled to weight when South Carolina courts interpret the South Carolina Workers' Compensation Law because the South Carolina statute was fashioned after that of North Carolina.

(citations omitted). Thus, the *Harding* court looked to North Carolina precedent for guidance in evaluating the number of persons a business "regularly employed." 329 S.C. at 585-86, 496 S.E.2d at 32. The North Carolina court reasoned:

[T]he term 'regularly employed' connotes employment of the same number of persons throughout the period with some constancy. It would not seem that the purpose of the Act would be accomplished by making it applicable to an employer who may have had, in the total number of persons entering and leaving his service during the period, more than the minimum number required by the Act.

Patterson v. L. M. Parker & Co., 2 N.C. App. 43, 48-49, 162 S.E.2d 571, 575 (1968). Moreover, this court has found:

In the context of construing the statute, the term "regular" is often juxtaposed with the term "casual." 4 Larson, *Workers' Compensation* §§ 74.01-02 ("It has been said that the two concepts are the same . . . in the casual employment definition, both duration and regularity of recurrence are important factors."). Where employment cannot be characterized as permanent or periodically regular; but occurs by chance, or with the intention and understanding on the part of both employer and employee that it shall not be continuous, it is casual. Employment is casual when not permanent, or periodically regular but occasional or by chance and not in the usual course of the employers trade or business.

Hernandez-Zuniga, 374 S.C. at 248; 647 S.E.2d at 697-98 (some citations and quotation marks omitted). In its reasoning, this court recognized that although employees "worked irregular days and hours, their employment extended over a period of some four weeks, during which they worked, not by chance or for a particular occasion, but according to a definite employment at hourly wages which were paid at the end of each week worked." *Id.* at 250, 647 S.E.2d at 699, quoting *Durham v. McLamb*, 59 N.C. App. 165, 171, 296 S.E.2d 3, 7 (1982).

A. Test for Regularity of Employment

Our prior examinations of related issues, relying upon North Carolina law, have highlighted several common characteristics of regular employment under the Act: (1) "employment of the same number of persons," although not necessarily the same individuals; (2) during the relevant period of time; (3) "with some constancy"; (4) "not by chance or for a particular occasion"; and (5) without regard to the regularity of the days or hours worked. *Harding*, 329 S.C. at 585-86, 496 S.E.2d at 32; *Hernandez-Zuniga*, 374 S.C. at 249-50, 647 S.E.2d at 698-99; *Patterson*, 2 N.C. App. at 48-49, 162 S.E.2d at 575; *Durham*, 59 N.C. App. at 171, 296 S.E.2d at 7. We clarify that the first characteristic, "employment of the same number of persons," establishes a minimum number of employees, depending upon the facts at hand. This language does not preclude a finding of regularity if, at

some point during the relevant time period, an employer employs more than "the same number" of persons.⁴

In addition, each characteristic may require a complex analysis, depending upon the available evidence. For example, the *Hernandez-Zuniga* court examined the concept of a "relevant time period" in some depth and noted the identification of such a time period "is particularly difficult for employment in which workers come and go due to the nature and type of work they perform." 374 S.C. at 249, 647 S.E.2d at 698. However, it recognized "the employer's established mode or plan of operation dictates, to a large extent, the relevant time period, and both duration and regularity of occurrence are important factors." *Id.* Thus, the "relevant time period" turns on the facts of each case. See, e.g., *Harding*, 329 S.C. at 586-87 n.3, 496 S.E.2d at 32-33 n.3 (using the time period from "July through November" and noting the Appellate Panel had found that time period to be "critical" and neither party challenged that finding on appeal); *Grouse v. DRB Baseball Mgmt., Inc.*, 121 N.C. App. 376, 378-80, 465 S.E.2d 568, 570-71 (1996) (examining one-year period to determine number of regular employees, where employer admitted to hiring additional seasonal employees from April to August).

B. Analysis

The preponderance of the evidence, viewed in light of these five characteristics, supports a finding Employer regularly employed at least four persons, and thus, the Appellate Panel had jurisdiction over this claim. As a threshold matter, we note neither the single commissioner nor the Appellate Panel identified the time period relevant to Claimant's injury. The record contains evidence concerning Employer's employees from 2007 to 2009, subdivided into quarters annually. In view of this evidence and Claimant's assertion his injury occurred on February 25, 2009, we find the relevant time period for his claim is the first quarter of 2009, up to the date of Claimant's injury.

Accordingly, we must determine whether Employer (1) employed the same number of persons, although not necessarily the same individuals, (2) during the first quarter of 2009, (3) with some constancy, (4) not by chance or for a particular occasion, and (5) without regard to the regularity of the days or hours worked. The

⁴ If read literally, the existing description could improperly exclude from the Act employers whose payroll consistently reflected four or more regular employees but fluctuated upward.

record reflects that during that time period, Claimant, Doug, Jamie, Brock, and Morris performed work for Employer.⁵

The ESC's records, corroborated by Stallings's and Claimant's testimony, establish the first two characteristics; that Employer employed the same number of persons during the first quarter of 2009 through February 25, 2009. During the first quarter of 2009, Claimant, Doug, Jamie, and Brock were on Employer's payroll and worked together repairing, restoring, and painting automobiles for Employer. Claimant specifically recalled working with Doug, Jamie, Brock, and Morris. Doug consistently appeared on Employer's payroll beginning no later than 2007. Jamie and Brock joined the payroll in the first quarter of 2009. According to Stallings, Jamie returned to Employer during the first quarter of 2009, "[m]ost likely" while Claimant was working there.⁶ The record does not indicate any of those men departed Employer's service before Claimant became injured. Rather, all but Claimant remained with Employer through the end of 2009.

In addition, the preponderance of the evidence demonstrates Claimant, Doug, Jamie, and Brock worked for Employer with some constancy and not by chance or for a particular occasion. According to the ESC's records, all of those men appeared on Employer's payroll during the first quarter of 2009; and all but Claimant continued working for Employer through the end of 2009. Furthermore, Stallings established Claimant, Doug, Jamie, and Brock worked regularly for Employer and not for a particular occasion. He testified those men "would do, you know, the regular flow of work." By contrast, Stallings explained Employer did not always have vehicles with heavy frame damage. When he received such a vehicle, he called Morris to come to the shop and repair it. Morris used Employer's heavy frame machine but otherwise supplied his own tools. However, Morris did

⁵ We exclude Stallings from this analysis because, although he worked for Employer as well as being the sole member of its limited liability company, the record does not indicate he elected to be included as an employee for workers' compensation purposes. See § 42-1-130 ("Any sole proprietor or partner of a business whose employees are eligible for benefits under this title may elect to be included as employees under the workers' compensation coverage of the business if they are actively engaged in the operation of the business and if the insurer is notified of their election to be included.")

⁶ Claimant recalled Jamie returned to work "a few weeks before" the injury, and Employer failed to present any evidence to the contrary.

not appear on the company payroll; his work for the shop was "sporadic," and Employer issued him a form 1099.

Accordingly, based upon the facts described above, we find the preponderance of the evidence demonstrates Employer regularly employed Claimant, Doug, Jamie, and Brock during the first quarter of 2009. As a result, the Appellate Panel did not err in finding it had jurisdiction over Employer under the Act.⁷

II. NOTICE

Employer asserts the Appellate Panel erred in finding Claimant reported the injury timely and failing to make any conclusion of law thereon. We agree.

"The Administrative Procedures Act (APA) provides the standard for judicial review of decisions by the [Appellate Panel]." *Pierre v. Seaside Farms, Inc.*, 386 S.C. 534, 540, 689 S.E.2d 615, 618 (2010); accord *Lark v. Bi-Lo, Inc.*, 276 S.C. 130, 133-34, 276 S.E.2d 304, 306 (1981). Under the APA, this court can reverse or modify a decision of the Appellate Panel if the substantial rights of the appellant "have been prejudiced because the decision is affected by an error of law or is clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record." *Transp. Ins. Co. v. S.C. Second Injury Fund*, 389 S.C. 422, 427, 699 S.E.2d 687, 689-90 (2010); S.C. Code Ann. § 1-23-380(5)(d), (e) (Supp. 2012).

⁷ We decline Claimant's invitation to affirm the finding of jurisdiction because Employer became subject to the Act by procuring workers' compensation insurance. This court has previously examined the effect of "[m]ere procurement of workers' compensation insurance" and determined it does not estop the employer from denying workers' compensation coverage. *Deanhardt v. Neal C. Deanhardt Masonry Contractors*, 298 S.C. 244, 248, 379 S.E.2d 726, 728 (Ct. App. 1989). To subject itself to the Act, an otherwise exempt employer must substantially comply with section 42-1-380, which permits an employer to file a written notice of its desire to be subject to the terms and conditions of the Act. *Id.* When no evidence indicates an employer filed the requisite written notice of its desire to subject itself to the Act, an appellate court will not find the exemption waived. *Id.* In the case at bar, no evidence indicates Employer filed a notice indicating its desire to be subject to the Act.

The Appellate Panel is the ultimate factfinder in workers' compensation cases. *Shealy v. Aiken Cnty.*, 341 S.C. 448, 455, 535 S.E.2d 438, 442 (2000). As a general rule, this court must affirm the findings of fact made by the Appellate Panel if they are supported by substantial evidence. *Pierre*, 386 S.C. at 540, 689 S.E.2d at 618. "Substantial evidence is that evidence which, in considering the record as a whole, would allow reasonable minds to reach the conclusion the [Appellate Panel] reached." *Hill v. Eagle Motor Lines*, 373 S.C. 422, 436, 645 S.E.2d 424, 431 (2007). "The possibility of drawing two inconsistent conclusions from the evidence does not prevent the [Appellate Panel's] finding from being supported by substantial evidence." *Id.*

Generally, an injured employee must give his employer notice of the accident upon "the occurrence of an accident, or as soon thereafter as practicable," but he must do so within ninety days after the accident. S.C. Code Ann. § 42-15-20 (Supp. 2012). The notice provisions of section 42-15-20 "should be liberally construed in favor of claimants." *Etheredge v. Monsanto Co.*, 349 S.C. 451, 458, 562 S.E.2d 679, 683 (Ct. App. 2002), citing *Mintz v. Fiske-Carter Constr. Co.*, 218 S.C. 409, 414, 63 S.E.2d 50, 52 (1951). Nonetheless, the *Etheredge* court recognized the basic information a claimant must convey in giving such notice:

For adequate notice, there must be "some knowledge of accompanying facts connecting the injury or illness with the employment, and indicating to a reasonably conscientious manager that the case might involve a potential compensation claim." *Larson's Workers' Compensation Law* § 126.03[1][b] (2001) (footnotes omitted). "Generally, in order that the knowledge be imputed to the employer, the person receiving it must be in some supervisory or representative capacity, such as foreman, supervisor . . . physician, or nurse." *Id.* at § 126.03[2][a] (footnotes omitted).

Id. at 457, 562 S.E.2d at 682.⁸ The notice requirement protects the employer by enabling him to "investigate the facts and question witnesses while their memories

⁸ We acknowledge the notice requirement outlined by the *Etheredge* court is more relaxed than the former statutory notice requirement. See, e.g., *Sanders v. Richardson*, 251 S.C. 325, 328, 162 S.E.2d 257, 258 (1968) (reciting statutory notice must be in writing and "shall state in ordinary language the name and

are unfaded, and . . . to furnish medical care [to] the employee in order to minimize the disability and consequent liability upon the employer." *Mintz*, 218 S.C. at 414, 63 S.E.2d at 52. "The claimant bears the burden of proving compliance with these notice requirements." *Lizee v. S.C. Dep't of Mental Health*, 367 S.C. 122, 127, 623 S.E.2d 860, 863 (Ct. App. 2005).

We find the Appellate Panel's determination that Claimant provided Employer with adequate notice he had suffered a work-related injury is not supported by substantial evidence in the record, and we reverse. In particular, the record does not contain substantial evidence that Claimant notified Employer of any "facts connecting [his] injury . . . with [his] employment." *See Etheredge*, 349 S.C. at 457, 562 S.E.2d at 682 (recognizing adequate notice supplies "facts connecting the injury or illness with the employment, and indicating to a reasonably conscientious manager that the case might involve a potential compensation claim" (citation and quotation marks omitted)).

The only evidence in the record of the notice Claimant asserts is the testimony of Claimant and Stallings. Claimant testified: "The next day I said something to [Stallings] that I was pretty sore; I must have hurt myself." Claimant further testified he and Stallings "talked about" his back hurting during his last couple of weeks with Employer, but he did not indicate whether their conversation in any way connected the injury with his work for Employer. Stallings denied learning of the injury before receiving Claimant's Form 50 but also admitted he simply did not remember Claimant reporting an injury.

While these facts establish Claimant reported *an* injury to Employer, they are devoid of any reference to an alleged connection between Claimant's injury and his employment. In fact, the only reference in the record to Claimant asserting to Employer a connection between his injury and his work lies in a question Employer's attorney posed to Claimant at the hearing before the single commissioner: "And you said you had some discussion, you said you mentioned that your back was sore from working one day is that what you told [Stallings]?" We find this question, although answered affirmatively by Claimant, does not constitute substantial evidence in view of the entire record. *See Hill*, 373 S.C. at 436, 645 S.E.2d at 431 ("Substantial evidence is that evidence which, in considering the record as a whole, would allow reasonable minds to reach the

address of the employee and 'the time, place, nature and cause of the accident and of the resulting injury'").

conclusion the [Appellate Panel] reached."). Accordingly, the Appellate Panel erred by entering a finding that was not supported by substantial evidence in the record.

III. REMAINING ISSUES

Because the issue of notice is dispositive of this appeal, we need not address Employer's remaining issues. *See Earthscapes Unltd., Inc. v. Ulbrich*, 390 S.C. 609, 617, 703 S.E.2d 221, 225 (2010) (recognizing when the disposition of a prior issue is dispositive of an appeal, analysis of the remaining issues is unnecessary).

CONCLUSION

We find the preponderance of the evidence in the record demonstrates Employer regularly employed four employees during the first quarter of 2009. Therefore, we affirm the Appellate Panel's determination of jurisdiction.

We further find substantial evidence in the record does not support the Appellate Panel's determination that Claimant provided Employer with timely notice of his injury. Consequently, we reverse the award of benefits to Claimant. Because the reversal on the issue of notice disposes of this appeal, we do not reach the remaining issues on appeal. Accordingly, the decision of the Appellate Panel is

REVERSED.

HUFF and GEATHERS, JJ., and CURETON, A.J., concur.

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM THE SOUTH CAROLINA WORKER'S COMPENSATION
COMMISSION

Appellate Panel

Appellate Case No. 2012-211870

Richard A. Hartzell,

Employee.....Respondent

v.

Palmetto Collision, LLC, Employer,.....Appellant

and

the S.C. Uninsured Employers Fund.....Respondent

PETITION FOR REHEARING

Pursuant to Rules 221 and 240, SCACR, Respondent Richard A. Hartzell Petitions
this Court

to Rehear and Reconsider its opinion in Hartzell v. Palmetto Collision, LLC and S.C.
Uninsured Employers Fund, Op. No. 5176, filed October 9, 2013.

I. In reversing the decision of the Workers' Compensation Commission, the
Court may have overlooked or misapprehended the fact that the Worker's Compensation

Commission's order was not a final order within the meaning of the Administrative Procedures Act. Section 1-23-380 (A) of the APA provides:

"A party who has exhausted all administrative remedies available within the agency and who is aggrieved by a final decision in a contested case is entitled to judicial review pursuant to this article and Article 1."

and

"A preliminary, procedural, or intermediate agency, action or ruling is immediately reviewable if review of the final agency decision would not provide an adequate remedy." S.C. Code Ann. Section 1-23-380 (A).

In Bone v. U.S. Food Service, 404 S.C. 67, 744, S.E. 2nd 552 (2013), which was decided after briefing in this case, the South Carolina Supreme Court determined that an Order of the Circuit Court reversing the Worker's Compensation Commission's denial of benefits to a Claimant was not a final judgment under Section 1-23-380 (A), stating; "An order as to compensability without addressing the claimant's current medical status and specific benefits to be awarded, is not a final judgment disposing of the entirety of the action and leaving nothing further to be done but execution of the judgment." Id. at 404 S.C. 64, 79, 744 S.E. 2nd 552, 559.

Here, the order of the Worker's Compensation Commission Appellate Panel fits squarely within the Bone rule. The Order/Award provided as follows:

"IT IS HEREBY ORDERED that the Claimant be provided an evaluation to determine whether he is at MMI and whether he is in need of any additional medical treatment, together with any benefits under the Act necessarily resulting from such evaluation and determination. IT IS FURTHER,

ORDERED, that the Employer and South Carolina Worker's Compensation Uninsured Fund may choose the provider.

No hearing costs are assessed in this instance.

AND IT IS SO ORDERED!" (Record page 18).

Thus, whether Hartzell should be provided treatment after initial evaluation, MMI, the existence and degree of permanent impairment and any financial award flowing therefrom have not been decided. This case is, in this respect, factually undistinguishable from Bone. Appellants may appeal the issue of compensability if they choose to appeal the final award.

Though a matter of appellate rather than subject matter jurisdiction, see Great Games, Inc. v. South Carolina Department of Revenue, 339 S.C. 79, 83, 529 S.E. 2nd 6, 8 (2000), the issue is nonetheless jurisdictional and may be raised at any stage of the proceedings. Both the Supreme Court and the Court of Appeals have raised the lack of appellate jurisdiction on the Court's own motion. South Carolina Department of Transportation v. McDonald's Corporation, 375 S.C. 90, 650 S.E. 2nd 473 (2007); Leviner v. Sonoco Products Company, 339 S.C. 492, 530 S.E. 2nd 127 (2000); Ashenfelder v. City of Georgetown, 389 S.C. 568, 698 S.E.2d 856 (Ct. App. 2010). In Ashenfelder, this Court stated: "Even if not raised by the parties, this Court may address the issue of appealability, *ex mero motu*." Id. at 389 S.C. 568, 571, 698 S.E. 2nd 856, 858.

II. The Court may also have overlooked or misapprehended that Hartzell's testimony concerning notice of injury was substantial evidence, sufficient to affirm the Worker's Compensation Commission.

Palmetto Collision was a small shop, at the relevant time employing only four (4) employees plus the owner, Mike Stallings. Stallings and the shop employees were a close group akin to friends and family (R. p. 112, lines 15-22). Stallings daily brought breakfast

and lunch "for the guys" (R. p. 113, lines 10-12). Hartzell testified that he told Stallings that he had hurt himself the day after he became sore from moving the frame machine and that Stallings' reply was that if he was having problems he should go to the emergency room (R. p. 44, line 14- p. 45, line 4). Stallings' response is proof that the notice given was enough to indicate "...to a reasonably conscientious manager that a case might involve a potential compensation claim." Etheredge v. Monsanto Co., 349 S.C. 451, 457, 562 S.E. 2nd 679, 682 (Ct. App. 2002).

Etheredge requires only that the notice to convey the "potential" of a compensable injury. Particularly in light of the relaxed atmosphere described by Stallings, the record as a whole would allow reasonable minds to reach the conclusion the Commission reached.

Mr. Hartzell testified that in addition to the discussion with Stallings the day after the injury there were subsequent discussions between the date of the injury and the end of his employment. (R. p. 65, lines 16-22).

The Respondent further contends that the Court misapprehended the importance of Mr. Hartzell's cross examination testimony found on page 64 of the Record, lines 17- page 65, line 15. The entire premise of the discussion was framed by counsel in the initial question beginning on line 17:

"Q: And you said you had some discussions, you said you mentioned that your back was sore from working one day; is that what you told him?

A: Yes, that was the next day after I had realized that I had somehow injured my back."

After that question and answer, counsel went on to demonstrate Mr. Stallings' availability to discuss such issues and his knowledge that Hartzell had arthritis in his shoulders which was not work related, thereby distinguishing it from the work related back injury.

A judgment upon which reasonable persons might differ, or from which two (2) inconsistent conclusions could be drawn from the same evidence, does not prevent the agency's finding from being supported by substantial evidence. Hanks v. Blair Mills, Inc., 286 S.C. 378, 383, 335 S.E. 2nd ,91, 94 (Ct. App. 1985).

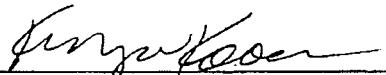
Respondent respectfully submits that the evidence of Mr. Hartzell's next day report to Mr. Stallings, the close knit nature of the shop, the subsequent discussions testified to by Mr. Hartzell, the knowledge of Hartzell's unrelated shoulder problems and the line of testimony based upon the entire premise that Mr. Hartzell's report to Mr. Stallings was concerning a work injury, provides substantial evidence of notice of an injury to a "to a reasonably conscientious manager" that the case might involve a potential compensation claim." Etheredge Supra at 349 S.C. 457, 562 S.E. 2nd at 682.

Conclusion

This Court should grant this Petition for Rehearing, and pursuant to the above cited authority, withdraw its opinion, dismiss the appeal without prejudice, and remit the case for further proceedings before the Workers' Compensation Commission.

Respectfully Submitted,

October 21, 2013



Kerry W. Koón
147 Wappoo Creek Dr., Ste. 203
Charleston, SC 29412
843-795-7000

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM THE SOUTH CAROLINA WORKERS' COMPENSATION
COMMISSION
T. Scott Beck, Commissioner

W.C.C. 0922546

Richard A. Hartzell, Employee,,.....Respondent,

v.

Palmetto Collision, LLC, Employer,.....Appellant,

and

the S.C. Uninsured Employers Fund.....Respondent.

RETURN TO PETITION FOR REHEARING

Palmetto Collision, LLC, respectfully requests that the Petition for Rehearing filed by Richard A. Hartzell be denied pursuant to Rule 221, S.C.A.C.R., because the Court of Appeals did not overlook or misapprehend any issue. Instead, the Court of Appeals properly concluded that the Workers' Compensation Commission erred in finding that the Claimant timely reported his alleged accident and in failing to make any conclusions of law with respect to S.C. Code Ann. § 42-15-20. In addition, despite the new argument raised in the Petition for Rehearing, the Court of Appeals has appellate jurisdiction over this appeal pursuant to S.C. Code Ann. § 1-23-380.

I. The Court of Appeals has appellate jurisdiction over this case.

Hartzell argues that the Court of Appeals lacks appellate jurisdiction over this appeal from the South Carolina Workers' Compensation Commission pursuant to Bone v. U.S. Food Service, 404 S.C. 67, 744 S.E.2d 552(2013). Hartzell's argument is without merit. At issue in Bone was whether a Circuit Court order remanding a case to the Workers' Compensation Commission constituted a "final judgment" in accordance with S.C. Code Ann. § 1-23-390, the statute that governs administrative appeals from the Circuit Court to the Court of Appeals.¹

However, the case *sub judice* does not involve an appeal from the Circuit Court. Therefore, the statute governing such appeals from the Circuit Court-- § 1-23-390 -- and the *Bone* opinion construing that statute, are neither applicable, nor even relevant, to whether the Court of Appeals presently has appellate jurisdiction. Instead, the statute governing the present appeal is S.C. Code Ann. § 1-23-380, which, unlike § 1-23-390, does not limit the Court's appellate jurisdiction to review of "final judgments."² Section 1-23-380 plainly states that a "preliminary, procedural, or intermediate agency action or ruling is immediately reviewable if review of the final agency decision would not provide an adequate remedy."

Palmetto Collision respectfully contends that the Commission's March 26, 2012 Order is a "final decision" as contemplated by § 1-23-380, because it fully and finally addresses the only claim advanced by the Claimant, *i.e.*, a claim for medical

¹ According to the Bone opinion, "At issue here is the meaning of a 'final judgment' under section 1-23-390."

² Note that S.C. Code Ann. § 1-23-380 does not even use the term "final judgments."

benefits, by making a blanket award of such medical benefits.³ R. p, 17, Conclusion of Law #3; p.36, lines 6-15. There are no further claims or issues pending before the Commission and it would be entirely speculative to suggest that there will be any new claim filed in the future. If the Commission's March 26, 2012 Order is not a "final decision" simply because Hartzell may or may not file a claim for additional benefits in the future, then the Court's appellate jurisdiction and Palmetto Collision's right to due process hinges entirely on the speculative future actions of an adverse party.

What if the present appeal is dismissed, but Hartzell files no future claim and there is no further, more "final" order to appeal? Would Palmetto Collision never have any right to review the March 27, 2012 Order? Plainly, such a result would be absurd.

Palmetto Collision respectfully contends that the concept of finality under S.C. Code Ann. § 1-23-380 should be considered definite, not speculative, and relative only to the issues presently in dispute, not those which may or may not come before the Commission in the future. As such, the March 27, 2012 Order should be considered final.

Even assuming, *arguendo*, that the Commission's March 26, 2012 is merely a "preliminary" or "intermediate" agency action, Palmetto Collision respectfully contends that it is immediately reviewable pursuant to S.C. Code Ann. § 1-23-380. Under the terms of the March 26, 2012 Order, Palmetto Collision must contract with third-party medical providers to render "medical, surgical, hospital and authorized treatment" for Hartzell. No appeal of some future Commission order (which may or

³ Palmetto Collision respectfully contends that the Commission erred as a matter of law in making this award of medical benefits; however, because the notice issue under S.C. Code Ann. § 42-15-20 was dispositive, the Court of Appeals did not reach this issue.

may not ever even come into existence) could alleviate or “remedy” Palmetto Collision’s contractual obligations to authorized medical providers necessitated by the March 26, 2012 Order. Therefore, to force Palmetto Collision to contract with third-party medical providers without some immediate right of review would eliminate any semblance adequate remedy and would be otherwise violative of Palmetto Collision’s right to due process. Palmetto Collision respectfully requests that the Court interpret S.C. Code Ann. § 1-23-380 so as to preserve its constitutional and statutory right to meaningful review.

II. The Court of Appeals did not misapprehend the standard of review.

Hartzell argues that the Court of Appeals somehow misapprehended the substantial evidence standard of review in reversing the Workers’ Compensation Commission’s vague and cursory finding regarding the statutory notice requirement. After discussing the substantial evidence standard of review, the Court of Appeals properly applied that standard to the paltry evidence in the record. After reviewing, considering, and discussing this paltry evidence, including the Claimant’s testimony that he said “something to [Stallings] that I was pretty sore” and that he “mentioned that [his] back was sore,” the Court properly concluded that reasonable minds could not reach the same conclusion reached by the Commission.

Palmetto Collision respectfully contends that the Court of Appeals did not misapprehend the evidence in the record or the standard of review, but instead properly applied that standard to the evidence. Furthermore, the Court of Appeals properly applied S.C. Code Ann. § 42-15-20 so as to require Hartzell to prove, by a

preponderance of the evidence, that his alleged back problem was caused by a work-related accident. The Court of Appeals properly concluded that it was legally insufficient for Hartzell to simply complain of back pain while at work. For these reasons, Palmetto Collision respectfully contends that Hartzell's argument does not satisfy the requirements for rehearing.

Conclusion

Because the Court of Appeals did not overlook or misapprehend any issue or argument, Palmetto Collision respectfully requests that the Petition for Rehearing be denied.

Respectfully submitted,



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(843) 881-4228
Attorneys for Appellant

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM THE SOUTH CAROLINA WORKERS' COMPENSATION
COMMISSION
T. Scott Beck, Commissioner

Appellate Case No.: 2012-211870
Trial Court Case No. W.C.C. 0922546

Richard A. Hartzell, Employee,.....Respondent,

v.

Palmetto Collision, LLC, Employer,.....Appellant,

and

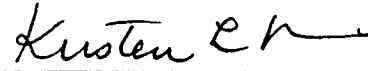
the S.C. Worker's Compensation Uninsured Employer's Fund,.....Respondent.

PROOF OF SERVICE

The undersigned hereby certifies that the above-named Respondents, Richard A. Hartzell and the S.C. Workers's Compensation Uninsured Employer's Fund, were each served with a copy of the Return to Petition for Rehearing of the Appellant this 30th day of October 2013 by depositing a copy of the same in the United States Mail, first class postage prepaid, addressed to the parties of record, as follows:

Kerry W. Koon, Esq.
147 Wappoo Creek Drive, Suite 203
Charleston, SC 29412

Lisa Glover, Esq.
S.C. Uninsured Employers Fund
Santee Building
100 Executive Center Dr., Ste. 101
Columbia, SC 29210



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(843) 881-4228
Attorneys for Appellant

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM THE SOUTH CAROLINA WORKER'S COMPENSATION
COMMISSION

Appellate Panel

Appellate Case No. 2012-211870

Richard A. Hartzell,

Employee.....Respondent

v.

Palmetto Collision, LLC, Employer,.....Appellant

and

the S.C. Uninsured Employers Fund.....Respondent

REPLY TO APPELLANT'S RETURN TO PETITION FOR REHEARING

Appellant's contention that *Bone v. U.S. Food Service*, 404 S.C. 67, 744 S.E.2d 552 (2013) is inapplicable here, is misplaced. Appellant argues that since the instant case did not involve an appeal from the circuit court, *Bone* is not controlling. Due to the 2006 amendment of S.C. Code Ann. § 1-23-380, the first appeal from the Worker's Compensation Commission is now to the Court of Appeals. Therefore, the same principles governing appeals to the circuit court under former procedure, now apply to appeals from the agency

to this court.

Bone makes clear that a denial of benefits is an appealable final judgment, but an order granting benefits, the extent of which is yet to be determined, is not. In *Bone*, the circuit court's remand order contemplated further action by the Commission to determine the claimant's "medical status and specific benefits to be awarded,..." and was "...not a final judgment disposing of the entirety of the action and leaving nothing further to be done but execution of the judgment." *Id.* at 744 S.E.2d 552, 559.

The Commission's order of March 26, 2012 is the procedural equivalent of the Circuit Court's remand in *Bone*, as it also contemplates the future determination of the issues of maximum medical improvement, the need for additional medical treatment, and award of other benefits "necessarily resulting from such evaluation and determination." R. at 18.

Respondent contends that, even if the Commission's order is "preliminary" or "intermediate", it is immediately reviewable under S.C. Code Ann. § 1-23-380(A), arguing that no future review could alleviate or remedy past medical issues or obligations to medical providers necessitated by the order. This issue was considered in *Bone* and determined adversely to the employer:

"Petitioners and the South Carolina Defense Trial Attorneys Association lastly argued it is 'unfair' and 'inequitable' to allow a claimant to receive benefits while the matter is pending on appeal, since there is no stay of an award applicable here... Petitioners, however, do not address the opposite result, *ie.*, what happens when a claimant is denied benefits and is made to wait during the pendency of appeals by their employer and the insurance carrier, when the ultimate determination is made that the claimant suffered a compensable injury for which medical care and benefits were wrongfully withheld? The claimant may receive interest after the fact, per S.C. Code Ann. § 42-17-60, but there is no provision for medical support during this time. Claimants and employers are treated the same depending on who

prevails before the commission. Moreover, there has been no definitive enforceable award entered in this case. That is the point being made here."

Id. at 561. (emphasis added)

Appellant's argument is squarely against the *Bone* precedent.

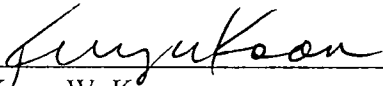
Finally, Appellant argues that this court properly applied the substantial evidence standard. On this issue, Respondent relies upon his argument in the Petition for Rehearing.

Conclusion

The Petition for Rehearing should be granted, the opinion withdrawn, and the appeal dismissed.

Respectfully Submitted,

November 6, 2013



Kerry W. Koon
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THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM THE SOUTH CAROLINA WORKER'S COMPENSATION
COMMISSION

Appellate Panel

Appellate Case No. 2012-211870

Richard A. Hartzell, Employee.....Respondent

v.

Palmetto Collision, LLC, Employer,.....Appellant

and

the S.C. Uninsured Employers Fund.....Respondent

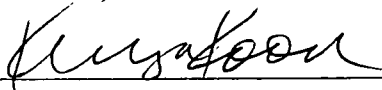
PROOF OF SERVICE

I certify that I have served Respondent Richard A. Hartzell's Reply to Appellant's Response to Petition for Rehearing on the Appellants by depositing a copy of same in the United States mail, postage prepaid, on November 6, 2013, addressed to their attorney of record, Kirsten Barr, Esq and to attorney for the S.C. Uninsured Employers Fund, Lisa Glover, Esq., as follows:

Kirsten Barr, Esq.
Trask & Howell, LLC
P.O. Box 2167
Mt. Pleasant, SC 29465

Lisa Glover, Esq.
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P.O. Box 210039
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November 6, 2013



Kerry W. Koon
147 Wappoo Creek Drive, Ste 203
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(843) 795-7000
*ATTORNEY FOR RESPONDENT
RICHARD A. HARTZELL*

The South Carolina Court of Appeals

Richard A. Hartzell, Employee, Respondent,

v.

Palmetto Collision, LLC, Employer, Appellant,

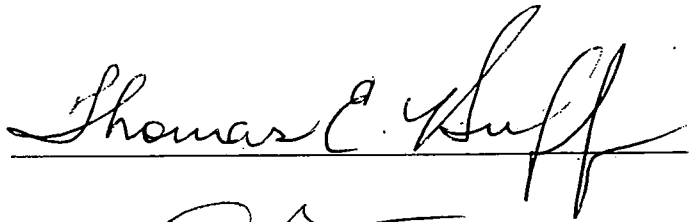
and

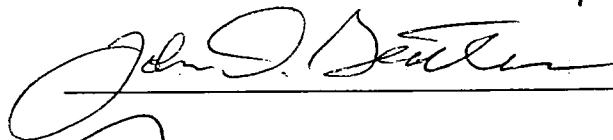
South Carolina Worker's Compensation Uninsured
Employer's Fund, Respondent.

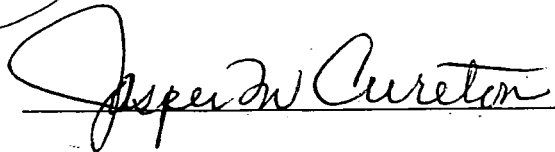
Appellate Case No. 2012-211870

ORDER

After careful consideration of the petition for rehearing, the Court is unable to discover that any material fact or principle of law has been either overlooked or disregarded, and hence, there is no basis for granting a rehearing. Accordingly, the petition for rehearing is denied.


_____ J.


_____ J.


_____ A.J.

Columbia, South Carolina

cc: Kirsten Leslie Barr
Kerry W. Koon
Lisa C. Glover
Harold Eugene Trask
David Alan Westerlund, Jr.
Virginia L. Crocker

FILED

14 November 2013

RECEIVED

DEC 13 2013

S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM THE SOUTH CAROLINA WORKERS' COMPENSATION
COMMISSION
T. Scott Beck, Commissioner

Appellate Case No. 2012-211870

W.C.C. 0922546

Richard A. Hartzell, Employee,.....Respondent,

v.

Palmetto Collision, LLC, Employer,.....Appellant,

and

the S.C. Worker's Compensation Uninsured Employers Fund,.....Respondent.

RECORD ON APPEAL

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Other Counsel of Record:

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Attorney for Respondent

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DECISION AND ORDER OF
THE SOUTH CAROLINA
WORKER COMPENSATION COMMISSION
WCC FILE NO.: 0922546

RICHARD A. HARTZELL,
Employee/Claimant,

vs.

PALMETTO COLLISION, LLC,
Employer,

And

SOUTH CAROLINA WORKER'S
COMPENSATION UNINSURED
EMPLOYER'S FUND

Defendants;

HEARING:

Held in Charleston, South Carolina on July 12, 2011.

APPEARANCES:

Claimant was represented by Kerry W. Koon, Esquire of Charleston, South Carolina; Palmetto Collision represented by Kirsten L. Barr, Esquire, Charleston, South Carolina; South Carolina Worker's Compensation Uninsured Employer's Fund represented by Lisa C. Glover, Esquire of Columbia, South Carolina.

PURPOSE OF HEARING:

To determine the issues set forth in Forms 50 and 51 and any other matters timely presented before the Commission.

DECISION AND ORDER:

By Andrea C. Roche, Commissioner

ELECTRONICALLY FILED:

September 8, 2011

I. APA SUBMISSIONS

Under the Administrative Procedures Act, the following records were submitted into evidence at the time of the hearing:

For Claimant:

- APA #1: Records of Dr. Austin H. Murray, pages 1-12.
- APA #2: ESC Quarterly Contribution and Wage Report for Palmetto Collision, LLC, pages 13-31.
- APA #3: Worker's Compensation Policy Application of Palmetto Collision, LLC, pages 32-35.
- APA #4: POC online inquiry regarding coverage and cancellation for Palmetto Collision, LLC, pages 36-39.
- APA #5: Denial letter/No coverage of Accident Fund Insurance Company of America, page 40.
- APA #6: Claimant's weekly records, page 41-43.

For Employer:

- APA #7: S.C. Employment Security Commission Unemployment Records, pages 44-54.
- APA #8: S.C. Department of Employment and Workforce – Wage Records, pages 55-58.
- APA #9: Subpoena (F27) and Proof of Service to Accident Fund Insurance Co., page 59-60.
- APA #10: Letter to Michael Felton, Compliance Officer, S. C. Worker's Compensation Commission, Compliance Division, pages 61-62.
- APA #11: Statement of Mary Beth Hammond, page 63.

For Uninsured Employers' Fund:

No submissions.

II. STIPULATIONS

Counsel for the respective parties stipulated at the time of the hearing to the following issues:

1. The purpose of the hearing was to determine the issues set forth in Forms 50 and 51 and any other issues which may timely come before the Commission;
2. That the Claimant's average weekly wage was \$561.39 with a corresponding compensation rate of \$374.28;
3. Notices were timely and properly served upon all parties in interest;
4. Venue was properly set in Charleston County.

Without objection, the Commission's file was made a part of the record in this matter with the exception of any self-serving declarations or unstipulated medical reports.

III. STATEMENT OF THE CASE

This case was heard by the undersigned Commissioner in North Charleston, South Carolina, on July 12, 2011.

The Commission's file reflects that this is a disputed claim with respect to the Claimant's lower back. No compensation or medical benefits have been provided.

It is the Claimant's position that he sustained an injury by accident to the lower back, while in the employment of Palmetto Collision, LLC, on or about February 25, 2009, while moving a heavy automotive frame machine. Claimant is requesting medical treatment and an ultimate determination of the extent of any permanent impairment or disability, but acknowledges that he has worked and has collected unemployment subsequent to the accident and is not claiming a period of temporary total disability. Claimant contends that the employer was subject to the Act because it had at least four (4) employees at the time of the accident and because it had procured a policy of Worker's Compensation Insurance from Accident Fund

Insurance Company of America which was effective May 27, 2008, until May 27, 2009, but was cancelled August 5, 2008, for non-payment of premium. The employer failed to file a Form 38 to seek to withdraw from the Act.

The employer's position, adopted by the Uninsured Employer's Fund, is that no injury by accident occurred, no report of injury was timely made, that the employer's insurance agent had submitted the application for insurance without authorization and that it did not employ four (4) or more employees on the date of the alleged accident.

The employer claims that Claimant is not entitled to treatment under Section 42-15-60, for lack of an expert medical opinion that treatment beyond ten (10) weeks would lessen the period of disability. Claimant's position is that the requirement of expert medical evidence to extend treatment beyond ten (10) weeks applies only where the employer has complied with the Act and provided initial medical treatment for the ten (10) week period, and is not intended to burden the Claimant with the expensive and difficult requirement of obtaining an expert medical opinion when the employer has not initially provided such treatment.

IV. EVIDENCE OF THE CASE

The Claimant testified that on or about February 25, 2009, while cleaning up in the shop, he moved a heavy frame machine weighing several hundred pounds and began experiencing low back pain. He initially felt that he would be better overnight but the pain increased the next day. He testified that he reported his injury and discomfort to the shop owner, who responded that he should seek treatment at the Medical University of South Carolina.

The Claimant presented medical evidence that he was treated by a chiropractor, Dr. Austin Murray with whom he had several visits but could not afford to continue treatment.

Dr. Murray's records indicate objective problems identified as lumbar segmental dysfunction and lumbosacral strain. There is no finding of maximum medical improvement.

Dr. Murray's intake history sheet (Claimant's APA submission page 2) signed by the Claimant, indicated that the injury was job related but from unknown cause.

The Claimant testified that he continued to experience pain in the low back as of the date of the hearing but it was not so severe as to prevent him from working but it did hamper him in bending and stooping which he said was routine requirements of his job as an auto body technician. He testified that he wanted to receive proper medical attention.

Claimant further testified that he had never had significant prior injury to back although he had prior shoulder problems.

As to coverage, the records of the South Carolina Employment Security Commission for the quarter ending March 31, 2009 (Claimant's APA submission, page 20), which included the date of the accident, show four (4) regular employees of Palmetto Collision, LLC, including the Claimant. Claimant testified at the time of his accident, Palmetto Collision, LLC, employed at least four employees: himself, James Alexander, Harold Brock and Douglas Alexander as well as a heavy collision specialist, Jimmy Morris.

Mike Stallings testified that the employer did, in fact, have four (4) employees at the time of the alleged accident, but considered the fifth, Mr. Morris, an independent contractor.

Records of Accident Fund Insurance Company of America show a Worker's Compensation Application (Claimant's APA submission pages 32-35) dated for Palmetto Collision with an effective date of May 27, 2008. Mr. Stallings testified that Worker's Compensation Insurance had been recommended by his insurance agent and that he answered questions for the agent but did not believe that insurance was going to be placed.

The coverage lapsed for non-payment of premium on August 5, 2008 (Claimant's APA submission page 36). The record does not reflect a withdrawal from the Act by submission of a Form 38 by the employer.

V. FINDINGS OF FACT

I find as follows:

1. I find that the employer regularly employed four (4) or more employees during the relevant time period and was therefore subject to the Act.
2. Based upon the medical records and testimony, I find that the Claimant sustained an injury by accident to his back on or about February 25, 2009, while moving a heavy frame machine while cleaning up the employer's shop.
3. I find that the Claimant timely reported the injury to the owner of the employer, Mike Stallings, and was advised to seek treatment on his own from the Medical University of South Carolina.
4. I find that the Plaintiff has had the ability to continue working.
5. I find that the Claimant is entitled to an evaluation to determine whether he is at MMI and whether he is in need of any additional medical treatment.
6. I find that the employer shall choose the provider.

VI. CONCLUSIONS OF LAW

Accordingly, it is the determination of the Commission that:

1. Under § 42-1-130, Claimant was a covered employee at the time in question; and Under § 42-1-140, Defendant/Employer was a covered employer under the Act.

2. Since the employer did not have a Worker's Compensation Insurance policy in effect as of the date of the accident, the South Carolina Worker's Compensation Uninsured Fund is initially responsible for the expense of compliance with this Order and any subsequent award.

3. Under § 42-15-60, Claimant is entitled to medical, surgical, hospital and other authorized treatment. Since treatment was not provided for a period of ten (10) weeks in compliance with this section, the employer is not entitled to the benefit of any defense based upon the lack of an expert medical opinion to extend treatment beyond the ten (10) week period. This statute provides the requirement of an expert opinion to extend treatment beyond the ten (10) week period. Since initial treatment was not provided, the question of extension of treatment is not before the Commission. This section is not intended to disadvantage or burden a Claimant with a requirement to provide an expert opinion that initial treatment is necessary, which the Commission notes would be expensive and difficult to obtain in circumstances when no treatment has been provided by the employer.

VII. ORDER/AWARD

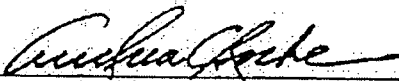
IT IS HEREBY ORDERED that the Claimant be provided an evaluation to determine whether he is at MMI and whether he is need of any additional medical treatment together with any benefits under the Act necessarily resulting from such evaluation and determination. It is further,

ORDERED that the employer and South Carolina Worker's Compensation Uninsured Fund may choose the provider.

No hearing costs are assessed in this instance.

IT IS SO ORDERED.

SOUTH CAROLINA WORKER'S
COMPENSATION COMMISSION


Commissioner Andrea C. Roche

CERTIFICATE OF SERVICE

This is to certify the undersigned has this date served this order in the above entitled action upon all parties to this cause by sending an electronic copy hereof by electronic mail addressed to the attorney or attorneys for said parties or by depositing a copy hereof, postage paid, in the United States certified mail addressed to any unrepresented party.

September 8, 2011

By: Barbara Cheeseboro, Administrative Assistant to Commissioner Roche

DECISION AND ORDER OF
THE SOUTH CAROLINA
WORKER'S COMPENSATION COMMISSION, APPELLATE PANEL
WCC FILE NO. 0922546

RICHARD A. HARTZELL,
Employee/Claimant,
vs.
PALMETTO COLLISION, LLC,
Employer,
And
SOUTH CAROLINA WORKER'S
COMPENSATION UNINSURED
EMPLOYER'S FUND
Defendants.

HEARING:

Held in Columbia, South Carolina on December 20, 2011.

APPEARANCES:

Claimant was represented by Kerry W. Koon, Esquire of Charleston, South Carolina; Palmetto Collision represented by Kirsten L. Barr, Esquire, Charleston, South Carolina; South Carolina Worker's Compensation Uninsured Employer's Fund represented by Lisa C. Glover, Esquire of Columbia, South Carolina; appearance by Tim Killen of Columbia, South Carolina.

PURPOSE OF HEARING:

To determine the issues set forth in Form 30, Application for Review filed by employer, Palmetto Collision, LLC.

DECISION AND ORDER:

By a majority of the Commission Appellate Panel, Commissioners T. Scott Beck and Susan S. Barden, Chair, voting to Affirm, Commissioner Avery B. Wilkerson, Jr. voting to Reverse.

ELECTRONICALLY FILED:

I. APA SUBMISSIONS

Under the Administrative Procedures Act, the following records were submitted into evidence before the hearing Commissioner:

For Claimant:

- APA #1: Records of Dr. Austin H. Murray, pages 1-12.
- APA #2: ESC Quarterly Contribution and Wage Report for Palmetto Collision, LLC, pages 13-31.
- APA #3: Worker's Compensation Policy Application of Palmetto Collision, LLC, pages 32-35.
- APA #4: POC online inquiry regarding coverage and cancellation for Palmetto Collision, LLC, pages 36-39.
- APA #5: Denial letter/No coverage of Accident Fund Insurance Company of America, page 40.
- APA #6: Claimant's weekly records, page 41-43.

For Employer:

- APA #7: S.C. Employment Security Commission Unemployment Records, pages 44-54.
- APA #8: S.C. Department of Employment and Workforce – Wage Records, pages 55-58.
- APA #9: Subpoena (F27) and Proof of Service to Accident Fund Insurance Co., page 59-60.
- APA #10: Letter to Michael Felton, Compliance Officer, S. C. Worker's Compensation Commission, Compliance Division, pages 61-62.
- APA #11: Statement of Mary Beth Hammond, page 63.

For Uninsured Employers' Fund:

No submissions.

II. STIPULATIONS

Counsel for the respective parties stipulated before the Hearing Commissioner to the following issues:

1. The purpose of the hearing was to determine the issues set forth in Forms 50 and 51 and any other issues which may timely come before the Commission;

2. That the Claimant's average weekly wage was \$561.39 with a corresponding compensation rate of \$374.28;
3. Notices were timely and properly served upon all parties in interest;
4. Venue was properly set in Charleston County.

Without objection, the Commission's file was made a part of the record in this matter with the exception of any self-serving declarations or unstipulated medical reports.

III. STATEMENT OF THE CASE

This case was heard by Commissioner Andrea C. Roche on July 12, 2011, in North Charleston, South Carolina. Commissioner Roche issued her Decision and Order on September 8, 2011, ordering that the Claimant be provided an evaluation to determine whether he is at MMI and whether he is need of any additional medical treatment, together with any benefits under the Act necessarily resulting from such evaluation and determination. Her Order further provided that the employer may choose the provider and that no hearing costs be assessed. Her Findings of Fact and Conclusion of Law were as follows:

Findings of Fact:

1. That the employer regularly employed four (4) or more employees during the relevant time period and was therefore subject to the Act.
2. Based upon the medical records and testimony, that the Claimant sustained an injury by accident to his back on or about February 25, 2009, while moving a heavy frame machine while cleaning up the employer's shop.
3. That the Claimant timely reported the injury to the owner of the employer, Mike Stallings, and was advised to seek treatment on his own from the Medical University of South Carolina.
4. That the Plaintiff has had the ability to continue working.
5. That the Claimant is entitled to an evaluation to determine whether he is at MMI and whether he is in need of any additional medical treatment.
6. That the employer shall choose the provider.

Conclusions of Law:

1. Under § 42-1-130, Claimant was a covered employee at the time in question; and Under § 42-1-140, Defendant/Employer was a covered employer under the Act.

2. Since the employer did not have a Worker's Compensation Insurance policy in effect as of the date of the accident, the South Carolina Worker's Compensation Uninsured Fund is initially responsible for the expense of compliance with this Order and any subsequent award.

3. Under § 42-15-60, Claimant is entitled to medical, surgical, hospital and other authorized treatment. Since treatment was not provided for a period of ten (10) weeks in compliance with this section, the employer is not entitled to the benefit of any defense based upon the lack of an expert medical opinion to extend treatment beyond the ten (10) week period. This statute provides the requirement of an expert opinion to extend treatment beyond the ten (10) week period. Since initial treatment was not provided, the question of extension of treatment is not before the Commission. This section is not intended to disadvantage or burden a Claimant with a requirement to provide an expert opinion that initial treatment is necessary, which the Commission notes would be expensive and difficult to obtain in circumstances when no treatment has been provided by the employer.

The employer timely served a Form 30 Request for Commission Review on September 19, 2011.

Both Appellant and Respondent timely filed briefs, and the matter was heard by the Appellate Panel on December 20, 2011.

IV. QUESTIONS PRESENTED

The employer raised three (3) questions for appellate review:

1. Employer contends that it regularly employed less than four (4) employees and therefore was not subject to the South Carolina Worker's Compensation Act;
2. Employer contends that the hearing Commissioner erred in finding that the Claimant sustained an injury to his back by accident on or about February 25, 2009, and in finding that the Claimant timely reported the injury; and
3. The Claimant failed to meet his burden of proof that he is entitled to medical treatment for an alleged back injury.

V. STANDARD OF REVIEW

In Worker's Compensation cases, the Appellate panel of the Worker's Compensation Commission is the ultimate finder of fact. The Appellate panel is reserved the task of assessing the credibility of witnesses and the weight to be accorded to the evidence. Robbins v. Walgreens and Broadspire Services, Inc., 652 S.E. 2nd 90 (Ct. App. 2007).

VI. EVIDENCE IN THE CASE

1. As to the threshold issue of the employer's coverage under the Act, the records of the South Carolina Employment Security Commission for the first quarter of 2009, in which the injury occurred (Claimant's APA Submissions p. 20) indicates that Palmetto Collision, LLC, had four (4) regular employees on the date of injury. On page 99 - 100 of the hearing transcript, Mike Stallings, the owner of Palmetto Collision, LLC, testified that during the first quarter of 2009 the company employed the Claimant, Jamie Alexander, Harold Brock and Douglas Alexander and that all were employed at the same time.

The regularity of employment is demonstrated by the South Carolina Employment Security Commission reports, and by Mr. Stallings' testimony. Those records show that Claimant was employed in the 2nd and 3rd quarters of 2008 (Claimant's APA Submission pps. 17-18). Mr. Stallings testified that Claimant was also employed in the 4th quarter, but that he was not reported (Transcript p. 96, l. 4- p. 97, l. 15). Jamie and Douglas Alexander and Harold Brock continued to be reported during the second quarter of 2009. The Alexanders and Mr. Brock are listed on several other quarterly reports as well (Claimant's APA Submissions p. 16-23). Another worker, Jimmy Morris was also regularly working as a heavy collision specialist during the relevant time period. Mr. Stallings testified that Morris was an independent contractor (Transcript p. 76, l. 8 - p. 77, l. 8 and p. 100, l. 5- p. 103, l. 11). The Claimant contested Mr. Morris' status as an independent contractor, but this question is not necessary for the determination as the above summarized evidence proves that the jurisdictional requirement of at least four (4) regular employees during the relevant period was satisfied.

A Worker's Compensation Insurance Application was submitted for a policy with an effective date of May 27, 2008, and to expire on May 27, 2009. The coverage went into effect for Palmetto Collision, LLC, on May 27, 2008 (Claimant's APA Submissions p. 33-36). Coverage lapsed due to non-payment of premium on August 5, 2008 (Claimant's APA Submissions p. 36-37). The record reflects that no Form 38 was filed by the employer to withdraw from the Act (Claimant's APA Submissions p. 28).

2. As to the fact of injury and reporting, the evidence comes primarily from the Claimant's testimony. The Claimant testified that on or about February 25, 2009, while engaged in cleaning up the

employer's shop so that Claimant could access his toolbox more easily, he moved tires, rims and a heavy frame machine with steel posts and chains weighing approximately two to three hundred pounds. In order to move the machine it must be tilted back and set on wheels in the manner of tilting a hand truck. Claimant testified that after moving the frame machine he began having pain in his lower back which got progressively worse. The following day he reported to Mr. Stallings that he hurt himself and Mr. Stallings suggested that he go to the emergency room if he was having problems (Transcript p. 12, l. 4- p. 14, l. 12).

Claimant was unsure of the exact day of the injury but testified that it was at the end of February, which the panel determines as most likely accurate since he only worked another couple of weeks at Palmetto Collision, LLC.

Claimant sought treatment at his own expense with Dr. Austin Murray, and on his intake form indicated the onset of the problem as February 30, 2009. This is an obvious error, but generally corroborative of his approximate date of onset of February 25, 2009. On the intake form he checked a box stating that his condition was job related (Claimant's APA Submission p. 2). Claimant testified that he discontinued treatment with Dr. Murray for financial reasons (Transcript p. 21, l. 23- p. 22, l. 1).

In his testimony, Mr. Stallings acknowledged that he could not testify with certainty that Claimant did not report the injury to him, but only that "It doesn't ring a bell." (Transcript p. 86, l. 20- p. 87, l. 18).

One balance, the Claimant's testimony is more credible on the issue of the fact, and reporting, of the injury.

3. As to the contention that § 42-15-60 requires that the Claimant provide expert medical testimony prior to the award of treatment, it is important to note that it is not contended by either side that the employer has provided any care.

The question before the panel is whether or not § 42-15-60 (A) requires an expert medical opinion under the circumstances of this case, where the employer has not provided initial treatment. That section provides:

The employer shall provide medical, surgical, hospital, and other treatment including medical and surgical supplies as reasonably may be required, for a period not exceeding ten (10) weeks from the date of an injury, to effect a cure or give relief and for an additional time as in the judgment of the Commission will tend to lessen the period of disability as evidenced by expert medical evidence stated to a reasonable degree of medical certainty.... (Emphasis added).

The answer to this question is reached by an exercise in ordinary statutory construction. At the threshold, the panel is guided by cases such as Yeomans v. Anheuser-Busch Inc. 15 S.E. 2nd 833 (1941) wherein the South Carolina Supreme Court stated "...the basic purpose of the Compensation Act is inclusion of employers and employees and not their exclusion." Id. at 835, and Caughman v. Columbia YMCA 47 S.E. 2nd 788 (1948) in which the Supreme Court citing prior case law, stated "To great extent the whole scheme of workman's compensation is to place the economic burden of industrial accidents upon industry rather than upon the workers and their dependents, and as to the latter thereby rendered indigent upon the state." Id. at 789-780. The panel is also mindful of Elliot v. S.C. Department of Transportation 607 S.E. 2nd 90 (Ct. App. 2004), wherein the Court of Appeals held that "The Workman's Compensation Act is remedial legislation enacted to protect the worker and therefore the law is given a broad construction in order to accomplish that end." Id. at 92.

With those principals in mind, the Panel concludes that the requirement of expert medical evidence stated to a reasonable degree of medical certainty is not triggered unless the employer has complied with the Act by providing medical treatment for the initial ten (10) week period after the date of injury. To construe otherwise would be to shift the burden, not only of the presentation of medical evidence to the claimant, but also that of providing initial treatment to effect a cure or give relief. This is clearly inconsistent with the purposes of the Worker's Compensation statutory scheme as reflected by the cases above cited.

This interpretation is consistent with the many well settled rules of statutory construction. In Smith v. South Carolina Insurance Company 564 S.E. 2nd 358 (Ct. App. 2002) the Court of Appeals stated: "Words used in a statute must be giving their plain and ordinary meaning without resort to subtle or forced construction to limit or expand its operation (citation omitted). The language must also be read

in a sense which harmonizes with its subject matter and accords with its general purpose." *Id.* at 361. In *State v. Woody*, 545 S.E. 2nd 521 (Ct. App. 2001) the Court held: "The Court should not consider a particular clause in isolation but should read it in conjunction with the purpose of the whole statute and the policy of the law." *Id.* at 522, and in *Heape v. Heape* 517 S.E. 2nd 1 (Ct. App. 1999) the Court stated "A statute must, as a whole, be interpreted practically, fairly, and reasonably such that the interpretation harmonizes with the purpose, design, and policy of the lawmakers." *Id.* at 2.

These cases make it clear that in order to comport with the mandate of liberal construction of the Worker's Compensation statutory scheme, to place the economic burden of workers' accidents upon industry, and favor inclusion rather than exclusion of employees, § 42-15-60 (A) should not be interpreted to exclude an employee from the right to employer provided medical treatment by the employer's failure to provide such treatment during the initial ten (10) week period.

The construction urged by the employer would make the statutory phrase "...and for additional time as in the judgment of the Commission will tend to lessen the period of disability..." meaningless by eliminating the distinction between the employer's responsibility to provide treatment during the initial ten (10) week period following the injury and, the claimant's responsibility to demonstrate by expert opinion, the need for additional treatment. Such would be violative of the rule laid down in *Barnhill v. Bank of America*, NA 318 F. Supp., 2nd 696 (D.S.C, 2005) where Judge Herlong of the United States District Court observed: "It is a cardinal principal of statutory construction that statutes, ought, upon the whole to be construed that, if it can be prevented, no clause, sentence or word shall be superfluous, void or insignificant." *Id.* at 700.

VII. FINDINGS OF FACT

A majority of the Appellate Panel finds as follows:

1. That the employer regularly employed four (4) or more employees during the relevant time period and was therefore subject to the Act.

2. That a Worker's Compensation insurance policy was procured for the employer effective May 27, 2008, and was cancelled on August 5, 2008. No Form 38 was filed by employer seeking to withdraw from coverage.

3. Based upon the medical records and the testimony, that the Claimant sustained an injury by accident to his back on or about February 25, 2009, while moving a heavy frame machine while cleaning up the employer's shop.

4. That on the day of after the injury, the Claimant timely reported the injury to the owner of the employer, Mike Stallings, and was advised to seek treatment on his own from the Medical University of South Carolina.

5. That the Plaintiff has had the ability to continue working.

6. That the Claimant is entitled to an evaluation to determine whether he is at MMI and whether he is in need of any additional medical treatment.

7. That the employer may choose the provider.

VIII. CONCLUSIONS OF LAW

Accordingly, it is the determination of a majority of the Appellate Panel that:

1. Under § 42-1-130, Claimant was a covered employee at the time in question; and under § 42-1-140, Defendant/Employer was a covered employer under the Act.

2. Since the employer did not have a Worker's Compensation Insurance policy in effect as of the date of the accident, the South Carolina Worker's Compensation Uninsured Fund is initially responsible for the expense of compliance with this Order and any subsequent award.

3. Under § 42-15-60, Claimant is entitled to medical, surgical, hospital and other authorized treatment. Since treatment was not provided for a period of ten (10) weeks in compliance with this section, the employer is not entitled to the benefit of any defense based upon the lack of an expert medical opinion. The statute requires an expert opinion to extend treatment beyond the ten (10) week period. Since initial treatment was not provided, the question of extension of treatment is not before the Panel. This section is not intended to disadvantage or burden a Claimant with a requirement to provide an expert.

opinion that initial treatment for an injury is necessary, which the Panel notes would be expensive and difficult to obtain in circumstances when no treatment has been provided by the employer, and is contrary to the intent of the Worker's Compensation Act statutory scheme as interpreted by the Court.

The Appellate Panel therefore Affirms the Decision and Order of Commissioner Roche dated September 19, 2001.

IX. ORDER/AWARD

IT IS HEREBY ORDERED that the Claimant be provided an evaluation to determine whether he is at MMI and whether he is need of any additional medical treatment together with any benefits under the Act necessarily resulting from such evaluation and determination. It is further,

ORDERED that the employer and South Carolina Worker's Compensation Uninsured Fund may choose the provider.

No hearing costs are assessed in this instance.

IT IS SO ORDERED.

CERTIFICATE OF SERVICE
This is to certify that the undersigned has this date, served this order in the above entitled action upon all parties to this cause by depositing a copy hereof, postage paid, in the United State mail addressed to the attorney or attorneys for said parties.

This 26 day of March, 2012.
By Valerie D. Deller

Administrative Assistant to the Commissioner

Lisa C. Glover
Kristen L. Barr
Kerry W. Koon
Timothy B. Allen

SOUTH CAROLINA WORKER'S COMPENSATION
COMMISSION APPELLATE PANEL

VOTING TO AFFIRM

T. Scott Beck Commissioner

Susan S. Barden Commissioner, Chair

VOTING TO REVERSE

Avery B. Wilkerson Commissioner

At Columbia, South Carolina.
This 26 day of March, 2012.

South Carolina Workers' Compensation Commission
333 Main Street, Suite 500 • Post Office Box 1715
Columbia, South Carolina 29202-1715
(803) 737-5723
www.wcc.sc.gov



WCC File #: _____
Carrier File #: _____
Carrier Code #: _____
Employer FEIN #: _____

Claimant's Name: Richard A. Hartzell SSN: 9344 Employer's Name: Palmetto Collision, LLC
Address: 415 Oxford Rd. Address: 4155 Dorchester Rd.
City: Ladson State: SC Zip: 29456 City: North Charleston State: SC Zip: 29405
Home Phone: (843) 870-0856 Work Phone: () Insurance Carrier: Uninsured Fund
Preparer's Name: Kerry W. Koon, Esq. Law Firm: same Preparer's Phone #: (843) 795-7000

Complete each information blank. To request a hearing, check Box 13b, indicate the kinds of benefits claimed by checking the box(es) at lines 6, 7, 8, and 9, and file this form in duplicate.

A claim for workers' compensation benefits is made based on the following grounds: Date of Injury or Illness: 2-25-09 (approx.)
Injury ☐ Illness ☐ Repetitive Trauma

- 1a. The claimant sustained an injury to back (Part(s) of Body Injured) on 2-25-09 (approx.) (Month/Day/Year) in Charleston county, state of SC.
- 1b. Body part(s) affected are: back.
Briefly describe how the accident occurred: Moving auto frame machine & hurt lower back.
2. Both the claimant and the employer were subject to the South Carolina Workers' Compensation Act at the time of injury.
3. The relationship of employer and employee existed at the time of injury.
4. At the time of the injury the claimant was performing services arising out of and in the course of employment.
5. Notice of the accidental injury was given to the Employer on 2-25-09 (Month/Day/Year) in the following manner:
Reported to owner
6. Due to injury, the claimant is in need of (check one):
☒ (a) medical examination and treatment for: back injury
☐ (b) additional medical examination and treatment for: _____
7. Due to injury, the claimant requests temporary total disability benefits because of lost compensable time from work and wages for the period of:
TBD
8. Due to the injury, the claimant has permanent disability of the following nature and extent (check one):
☐ (1) General Disability: ☐ Total ☐ (2) Specific Disability: ☐ Total
☐ (3) Wage Loss: ☐ Partial ☒ Partial
9. Due to the injury, the claimant has a serious bodily disfigurement consisting of:
N/A
- 10a. At the time of the injury, the claimant was paid weekly wages of \$600.00, and demands accounting of days worked and wages earned as provided by law.
- 10b. Give names and addresses of all employers for whom the claimant has worked since the date of the accident:
NONE
- 11a. Further grounds or unusual aspects of claim: _____
- 11b. List names and addresses of all physicians or other medical specialists who have seen or treated the claimant as a result of the accident:
Dr. Austin Murray, 2102 Obranto Dr., No. Chas, SC 29406; Dr. Joshua Hutchins @The Kennedy Center, 306 Airport Dr., Moncks Corner, SC 29461-2629.
- 11c. To the best of your knowledge, did you have any prior permanent disability? No
If yes, describe: _____
12. Appropriate benefits as provided in the Act for the above grounds and other relief as the Workers' Compensation Commission may direct as just and proper.
- 13a. I am filing a claim. I am not requesting a hearing at this time.
- 13b. I am requesting a hearing. A \$25 fee is required.
14. Estimated time needed for hearing: 1 hour

Verify the contents of this form are accurate and true to the best of my knowledge.

Kerry Koon Attorney for Claimant kerrykoon@hotmail.com 05-10-10
Preparer's Signature/Atty. for Claimant Title Email Date
Refer to R.67-204 through R.67-210 and R.67-601 through R.67-615. Questions about the use of this form may be directed to the Commission's Claims Department.

WCC Form # 50
Revised 9/07

FA/7A RAA

50

Employee's Notice of Claim and/or
Request for Hearing

ZZ:BI5555PR ZB:AA 6007/07/09

South Carolina Workers' Compensation Commission
P.O. Box 1715 • 1612 Marion Street
Columbia, South Carolina 29202-1715
(803) 737-5739



WCC File # x100568
Carrier File #
Carrier Code #
Employer FEIN

Richard A. Hartzell	9344	Palmetto Collision, LLC	
Claimant's Name	SSN	Employer's Name	
415 Oxford Road	Ladson, SC 29456	4155 Dorchester Road	North Charleston, SC 29405
Address	City	State	Zip
(843) 870 0856	(843) 554-1426	Uninsured	
Home Phone	Work Phone	Insurance Carrier:	
Date of Injury: February 25, 2009			
Preparer's Name: Kirsten L Barr	Law Firm: Trask & Howell, LLC	Preparer's Phone #: (843) 881-4228	

Complete each information blank. Specify clearly when contentions are admitted in part and denied in part. The employer / carrier in answer to the claim, respectfully shows:

1. It is denied the employee sustained an injury or illness on or about the date set forth in the application. The reasons for denial are:
Claimant did not sustain any injury by accident out of or in the course of his employment at any time.
2. It is denied both the employer and employee were subject to the Workers' Compensation Act at the time in question. The reasons for denial are: Employer is not subject to the Act because it does not regularly employ four or more employees and otherwise has made no voluntary election to become subject to the Act.
3. It is denied the relationship of employer and employee existed at the time in question. The reasons for denial are: See #1, above.
4. It is denied at the time in question the employee was performing services arising out of and in the course of employment. The reasons for denial are: See #1, above.
5. It is denied notice of injury was given the employer. The reasons for denial are: No notice was given until the Form 50 was filed on May 10, 2010; therefore, the claim is barred by S.C. Code Ann. § 42-15-20.
6. It is denied the employee needs medical care as a result of injury. The reason for denial are: See #1, above.
7. It is denied the employee is entitled to temporary total disability for the period(s) of: See #1, above.
8. It is denied that the employee is permanently disabled. The reasons for denial are: See #1, above.
9. It is denied that the employee has a serious disfigurement.
10. It is contended that an average weekly wage of \$ See Form 20 applies, according to attached Form 20 as provided by law.
11. Further contentions, grounds of defense, or unusual aspects are: Reserve the right to amend. Claim barred by S.C. Code Ann. 42-15-20. Employer is not subject to the Act and; therefore, the SCWCC does not have jurisdiction over this claim.
12. Estimated time needed for hearing: One hour.

I certify that I have served this document pursuant to R.67-212 by delivering a copy to: Ms. Virginia Crocker, SCWCC, P. O. Box 1715, Columbia, SC 29202-1715 and Kerry W. Koon, Esq., 147 Wappoo Creek Drive, Suite 203, Charleston, SC 29412

on the 8th day of June, 2010 by ☒ first class mail; ☐ personal service; ☒ certified mail.
I verify the contents of this form are accurate and true to the best of my knowledge.

<u>Kirsten L Barr</u>	Attorney for Defendants:	<u>kbarr@trask-howell.com</u>	<u>June 8, 2010</u>
Preparer's Signature	Title	Email	Date

Refer to R.67-204 through R.67-210 and R.67-601 through R.67-615. Questions about the use of this form may be directed to the Commission's Judicial Department. Pursuant to R.67-606, a Form 20 must be filed with the Claims Department at least 30 days from the date of filing this form.

South Carolina Workers' Compensation Commission
P.O. Box 1715
Columbia, South Carolina 29202-1715

WCC File No. X100568
Carrier File No. UEF 006873
Carrier Code No. _____
Employer FEIN _____

<u>RICHARD A. HARTZELL</u>		<u>9344</u>	<u>PALMETTO COLLISION, LLC</u>	
Claimant's Name		SSN	Employer's Name	
<u>415 OXFORD RD., LADSON, SC 29456</u>			<u>4155 DORCHESTER RD., N. CHARLESTON, SC 29405</u>	
Address	City	State	Zip	Address
<u>843 870 0856</u>				
Home Phone	Work Phone			
<u>LISA C. GLOVER</u>		<u>(803) 798-2722</u>		
Preparer's Name		Phone		

Complete each information blank. Specify clearly when contentions are admitted in part and denied in part. The South Carolina Uninsured Employers' Fund in answer to the claim, respectfully shows:

1. It is denied that the employee sustained an injury on or about the date set forth in the application. The reasons for denial are:
General; there has been no proof.
2. It is denied that both the employer and employee were subject to the Worker's Compensation Act at the time in question. The reasons for denial are:
3. It is denied that the relationship of employer and employee existed at the time in question. The reasons for denial are:
4. It is denied that at the time in question the employee was performing services arising out of and in the course of employment. The reasons for denial are:
5. It is denied that the notice of injury was given the employer. The reasons for denial are:
6. It is denied that the employee (needs)(is entitled to additional) medical care as a result of injury. The reasons for denial are:
7. It is denied that the employee is entitled to temporary total disability for the period(s) of:
8. It is denied that the employee is permanently disabled. The reasons for denial are:
9. It is denied that the employee has a serious disfigurement.
10. It is contended that an average weekly wage of \$(unknown) applies, according to attached accounting of employee's earnings as provided by law.
11. Further contentions or grounds of defense are:

See Attachment.

I certify that I have served this document pursuant to R.67-212 by delivering a copy to
See Attached Certificate Of Service

Lisa C. Glover
Preparer's Signature
220 Executive Center Drive, Suite 119 Columbia, South Carolina 29210
Address

DEPUTY GENERAL COUNSEL
Title

6-10-10
Date

Refer to R.67-205 and R.67-601 through R.67-615. Questions about the use of this form may be directed to the Commission's Judicial Department. Pursuant to R.67-606, a Form 20 must be filed with the Claims Department at least 30 days of filing this form.

WCC Form 51 Rev 9/90
PAGE 03/05

South Carolina Uninsured Employers'
Fund's Answer To Request for Hearing

06/23/23/2009 04:54 8435541422

11. The Uninsured Employers' Fund is informed and believes that no capitulation or other order has been issued by the South Carolina Workers' Compensation Commission finding that the employer is subject to Title 42 and is operating without insurance or as an unqualified self-insurer. The Uninsured Employers' Fund is not a proper party to this action and is not subject to the jurisdiction of the South Carolina Workers' Compensation Commission in this case.

All affirmative and specific defenses (see Reg. 67-603), including but not limited to Sections 42-9-60, 42-15-20, 42-15-40, 42-17-90; and fraud in the application for employment; fraud in the inducement to sign Form 15; fraud in the initiation of the claim for benefits; pre-existing disability to allegedly injured members; election of remedies; intervening trauma; no compensable injury by accident under Section 42-1-160; degree of disability, if any, attributable to this injury speculative; claimant's problems personal in nature and not work related.

Fund reserves the right to amend this Answer and plead additional defenses. This form is filed to comply with the South Carolina Workers' Compensation Commission regulations.

Fund files this Answer in response to Claimant's Form 50, Requesting a Hearing X Filing a Claim _____, dated 5-10-70.

Fund files this Answer in response to Claimant's Amended Form 50, Requesting a Hearing _____ Filing a Claim _____, dated _____.

Further, the Uninsured Employers' Fund does not represent the uninsured employer, is not an agent for the uninsured employer, nor a carrier for the uninsured employer.

South Carolina Workers' Compensation Commission

1333 Main Street, Suite 500
P.O. BOX 1715
Columbia, SC 29202-1715
(803) 737-5723



WCC File #: 0922546
Carrier File #: 0000
May 19, 2011

NOTICE OF HEARING

Richard A Hartzell v. Palmetto Collision, LLC

Subject: To determine issues as set forth on Forms 50 and 51.

Date: July 12, 2011 at 09:30 AM

Location: North Charleston City Hall, 2500 City Hall Lane, 1st Floor Court Administration
Conference Room
Charleston, SC 29406

South Carolina Regulations 67-601 through 67-615 govern hearings before the South Carolina Workers' Compensation Commission. The claimant must attend when not represented by an attorney or when disfigurement is involved. Corporations must be represented by an attorney, and uninsured employers must attend.

Attorneys must file a Form 58 with proof of service pursuant to Regulation 67-611. Postponements are only granted pursuant to Regulation 67-613. Please visit www.wcc.sc.gov/Commissioners to view Commissioners' Preferences. If you have questions regarding this matter, please contact the office of the undersigned Jurisdictional Commissioner.

Commissioner Andrea C. Roche
803-737-5678, bcheeseboro@wcc.sc.gov

CERTIFICATE OF SERVICE – This is to certify the undersigned has served this notice in the above entitled action upon all parties to this cause by sending a copy hereof by electronic mail or United States mail.

By: Barbara Cheeseboro, SC Workers' Compensation, May 19, 2011

Party

Employee: Richard A Hartzell

Attorney

Kerry W Koon
kerrykoon@hotmail.com

Carrier: WC Uninsured Employers Fund

Lisa C. Glover
lcglover@sif.sc.gov
803-798-2722

Employer: Palmetto Collision, LLC
Carrier: UNRESOLVED COMPLIANCE ISSUE

SCWCC General Counsel (Final Order Only)

Employer: Palmetto Collision, LLC

Kirsten L. Barr
kbarr@trask-howell.com
843-881-4228

South Carolina Workers' Compensation Commission
P.O. Box 1715 • 1612 Marion Street
Columbia, South Carolina 29202-1715
(803) 737-5700

CC File # 0922546

Carrier File #

Carrier Code #

Employer FEIN

Richard A. Hartzell
Claimant's Name
9344
SSN
415 Oxford Road
Address
Ladson, SC 29456
City State Zip
(843) 870 0856
Home Phone
(843) 554-1426
Work Phone

Palmetto Collision, LLC
Employer's Name
4155 Dorchester Road
Address
North Charleston, SC 29405
City State Zip
Uninsured
Insurance Carrier

Kirsten L. Barr
Preparer's Name

(843) 881-4228
Phone #

Request for Commission Review by ☐ claimant ☒ employer (check one) Date of injury: February 25, 2009

The undersigned makes application for review of the findings of the Commissioner in the above captioned case. The request for review is based on the following grounds: (State the grounds of your appeal in the form of questions presented. Each question presented must contain a concise statement of one proposition of law or fact. Refer to evidence by title and exhibit number. Use additional pages, if necessary).

See attached.

(Check one) Oral argument ☒ is ☐ is not requested. Appellant's request for oral argument is waived if not indicated on this form.

I certify that I have served this document pursuant to R.67-211 by delivering a copy to Ms. Virginia Crocker, S.C. Workers' Compensation Commission, P.O. Box 1715, Columbia, SC 29202-1715; Kerry W. Koon, Esq., 147 Wappoo Creek Drive, Suite 203, Charleston, SC 29412; and Lisa Glover, Esq., S.C. Uninsured Fund, Santee Building, 100 Executive Center Dr., Ste. 101, Columbia, SC 29210

Address
on the 19th day of September, 2011 by ☒ first class mail; ☐ personal service; ☒ certified mail.

Kirsten L. Barr
Preparer's Signature

Attorney for Defendant
Title

September 19, 2011
Date

Check this box if you are not represented by an attorney. ☐

If the claimant appeals and is representing himself or herself, the Judicial Department will prepare the additional copies of this form and serve this form on the opposing party. R.67-701 B. Otherwise, file the original and 4 copies of this form with the Judicial Department. The appeal must be postmarked no later than 14 days from the date of service of the Hearing Commissioner's decision. R.67-701 and R.67-205. Attach the filing fee to this form. Attach a Form 32 if you are unable to pay the filing fee. Refer to R.67-701 through R.67-711 for additional information.

Richard A. Hartzell v. Palmetto Collision, LLC

W.C.C. File No: 0922546

Carrier File No:

Date of Accident: February 25, 2009

Attachment to Form 30

1. The Hearing Commissioner erred in finding and concluding that "the employer regularly employed four (4) or more employees during the relevant period and was therefore subject to the Act," as this finding and conclusion is contrary to the greater weight of the evidence and the applicable law and is otherwise impermissibly vague.
2. The Hearing Commissioner erred in finding that the Claimant sustained "an injury by accident to his back on or about February 25, 2009," as this finding and conclusion is contrary to the greater weight of the evidence in the record and the applicable law and is otherwise impermissibly vague.
3. The Hearing Commissioner erred in finding and concluding that "the Claimant timely reported the injury to the owner of the employer, Mike Stallings, and was advised to seek treatment on his own from the Medical University of South Carolina," as this finding and conclusion is contrary to the greater weight of the evidence and the applicable law and is otherwise impermissibly vague.
4. The Hearing Commissioner erred in finding and concluding that "the Claimant is entitled to an evaluation to determine whether he is at MMI and whether he is in need of any additional medical treatment," as this finding and conclusion is contrary to the greater weight of the evidence and the applicable law and is otherwise impermissibly vague.
5. The Hearing Commissioner erred in finding and concluding that the Claimant was a "covered employee at the time in question," as this finding and conclusion is contrary to the greater weight of the evidence and the applicable law and is otherwise impermissibly vague.
6. The Hearing Commissioner erred in finding and concluding that the Employer "was a covered employer," as this finding and conclusion is contrary to the greater weight of the evidence and the applicable law and is otherwise impermissibly vague.
7. The Hearing Commissioner erred in finding and concluding that the SCUEF "is initially responsible for the expense of compliance with this Order and any subsequent award," as this finding and conclusion is contrary to the greater weight of the evidence and the applicable law and is otherwise impermissibly vague.
8. The Hearing Commissioner erred in finding and concluding that the "Claimant is entitled to medical, surgical, hospital and other authorized treatment, as this finding and conclusion is contrary to the greater weight of the evidence and the applicable law and is otherwise impermissibly vague.

9. The Hearing Commissioner erred in finding and concluding that "[s]ince treatment was not provided for a period of ten (10) weeks in compliance with [§ 42-15-60], the employer is not entitled to the benefit of any defense based upon the lack of an expert medical opinion," as this finding and conclusion is contrary to the greater weight of the evidence and the applicable law and is otherwise impermissibly vague.
10. The Hearing Commissioner erred in finding and concluding that § 42-15-60 "is not intended to disadvantage or burden a claimant with a requirement to provide an expert opinion that initial treatment is necessary," as this finding and conclusion is contrary to the greater weight of the evidence and the applicable law.
11. The Hearing Commissioner erred in finding and concluding that it "would be expensive and difficult to obtain" the expert medical opinion required by § 42-15-60, as this finding and conclusion is contrary to the greater weight of the evidence and the applicable law and is otherwise impermissibly vague.
12. The Hearing Commissioner erred in finding and concluding that the Claimant is entitled to "an evaluation to determine whether he is at MMI and whether he is in need of any additional medical treatment together with any benefits under the Act necessarily resulting from such evaluation and determination," as this finding and conclusion is contrary to the greater weight of the evidence and the applicable law and is otherwise impermissibly vague.
13. The Hearing Commissioner erred in finding and concluding that the SCUEF "may choose the provider," as this finding and conclusion is contrary to the greater weight of the evidence and the applicable law and is otherwise impermissibly vague.
14. The Hearing Commissioner erred in implicitly finding and concluding that the South Carolina Workers' Compensation Commission has jurisdiction over this claim.
15. The Hearing Commissioner erred in failing to find and conclude that the Employer is not subject to the Workers' Compensation Act because it does not and has not at any time regularly employed four or more employees and has never voluntarily become subject to the Act by contracting for workers' compensation insurance.
16. The Hearing Commissioner erred in failing to find and conclude that the Claimant did not sustain any injury by accident arising out of or in the course of his employment as required by § 42-1-160.
17. The Hearing Commissioner erred in failing to find and conclude that the Claimant failed to meet his statutory burden of proof by "expert medical evidence stated to a reasonable degree of medical certainty" that he requires any additional medical care or treatment to lessen the period of alleged disability associated with the alleged accident on or about February 25, 2009, as clearly and unequivocally required by § 42-15-60.
18. The Hearing Commissioner erred in failing to find and conclude that the present claim is barred due to the Claimant's failure to timely or properly give notice of the alleged

accident on or about February 25, 2009 without reasonable excuse pursuant to S.C. Code Ann. § 42-15-60.

19. The Hearing Commissioner erred in failing to find and conclude that the Claimant bears the burden of proving his entitlement to medical and compensation benefits under the Act and that his failure to meet his burden of proof does not place a burden of disproof upon the Employer.
20. The Hearing Commissioner erred in failing to find and conclude that the Claimant cannot meet his burden of proof by resorting to mere surmise, conjecture, or speculation.

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM THE SOUTH CAROLINA WORKERS' COMPENSATION
COMMISSION
T. Scott Beck, Commissioner

W.C.C. 0922546

Richard A. Hartzell, Employee,.....Respondent,

v.

Palmetto Collision, LLC, Employer,.....Appellant,

and

the S.C. Uninsured Employers Fund.....Respondent.

NOTICE OF APPEAL

Palmetto Collision, LLC appeals the Order of the South Carolina Workers' Compensation Commission dated March 26, 2012. The Appellant received written notice of entry of this Order on March 26, 2012. In accordance with S.C. Code Ann. § 42-17-60, the grounds for appeal and alleged errors of law are as follows:

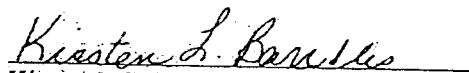
1. The Commission erred in finding and concluding that "the employer regularly employed four (4) or more employees during the relevant period and was therefore subject to the Act," as this finding and conclusion is not supported by substantial evidence in the record or the applicable law and is otherwise arbitrary, capricious, impermissibly vague, and constitutes an unwarranted abuse of discretion.
2. The Commission erred in finding and concluding that the Claimant sustained "an injury by accident to his back on or about February 25, 2009, " as this finding and conclusion is not supported by substantial evidence in the record or the applicable law and is otherwise arbitrary, capricious, impermissibly vague, and constitutes an unwarranted abuse of discretion.

3. The Commission erred in finding and concluding that "the Claimant timely reported the injury to the owner of the employer, Mike Stallings, and was advised to seek treatment on his own from the Medical University of South Carolina," as this finding and conclusion is not supported by substantial evidence in the record or the applicable law and is otherwise arbitrary, capricious, impermissibly vague, and constitutes an unwarranted abuse of discretion.
4. The Commission erred in finding and concluding that "the Claimant is entitled to an evaluation to determine whether he is at MMI and whether he is in need of any additional medical treatment," as this finding and conclusion is not supported by substantial evidence in the record or the applicable law and is otherwise arbitrary, capricious, impermissibly vague, and constitutes an unwarranted abuse of discretion.
5. The Commission erred in finding and concluding that the Claimant was a "covered employee at the time in question," as this finding and conclusion is not supported by substantial evidence in the record or the applicable law and is otherwise arbitrary, capricious, impermissibly vague, and constitutes an unwarranted abuse of discretion.
6. The Commission erred in finding and concluding that the Employer "was a covered employer," as this finding and conclusion is not supported by substantial evidence in the record or the applicable law and is otherwise arbitrary, capricious, impermissibly vague, and constitutes an unwarranted abuse of discretion.
7. The Commission erred in finding and concluding that the SCUEF "is initially responsible for the expense of compliance with this Order and any subsequent award," as this finding and conclusion is not supported by substantial evidence in the record or the applicable law and is otherwise arbitrary, capricious, impermissibly vague, and constitutes an unwarranted abuse of discretion.
8. The Commission erred in finding and concluding that the "Claimant is entitled to medical, surgical, hospital and other authorized treatment, as this finding and conclusion is contrary to the greater weight of the evidence and the applicable law and is otherwise impermissibly vague.
9. The Hearing Commissioner erred in finding and concluding that "[s]ince treatment was not provided for a period of ten (10) weeks in compliance with [§ 42-15-60], the employer is not entitled to the benefit of any defense based upon the lack of an expert medical opinion," as this finding and conclusion is not supported by substantial evidence in the record or the applicable law and is otherwise arbitrary, capricious, impermissibly vague, and constitutes an unwarranted abuse of discretion.

10. The Commission erred in finding and concluding that § 42-15-60 "is not intended to disadvantage or burden a claimant with a requirement to provide an expert opinion that initial treatment is necessary," as this finding and conclusion is not supported by substantial evidence in the record or the applicable law and is otherwise arbitrary, capricious, impermissibly vague, and constitutes an unwarranted abuse of discretion.
11. The Commission erred in finding and concluding that it "would be expensive and difficult to obtain" the expert medical opinion required by § 42-15-60, as this finding and conclusion is not supported by substantial evidence in the record or the applicable law and is otherwise arbitrary, capricious, impermissibly vague, and constitutes an unwarranted abuse of discretion.
12. The Commission erred in finding and concluding that the Claimant is entitled to "an evaluation to determine whether he is at MMI and whether he is in need of any additional medical treatment together with any benefits under the Act necessarily resulting from such evaluation and determination," as this finding and conclusion is not supported by substantial evidence in the record or the applicable law and is otherwise arbitrary, capricious, impermissibly vague, and constitutes an unwarranted abuse of discretion.
13. The Commission erred in finding and concluding that the SCUEF "may choose the provider," as this finding and conclusion is not supported by substantial evidence in the record or the applicable law and is otherwise arbitrary, capricious, impermissibly vague, and constitutes an unwarranted abuse of discretion.
14. The Commission erred as a matter of law in implicitly finding and concluding that the South Carolina Workers' Compensation Commission has jurisdiction over this claim, as such an implicit finding and conclusion is not supported by substantial evidence in the record or the applicable law and is otherwise arbitrary, capricious, impermissibly vague, and constitutes an unwarranted abuse of discretion.
15. The Commission erred as a matter of law in failing to find and conclude that the Employer is not subject to the Workers' Compensation Act because it does not and has not at any time regularly employed four or more employees and has never voluntarily become subject to the Act by contracting for workers' compensation insurance, based upon the undisputed evidence in the record that is capable of but one inference.
16. The Commission erred in failing to find and conclude that the Claimant did not sustain any injury by accident arising out of or in the course of his employment as required by § 42-1-160, based upon the undisputed evidence in the record that is capable of but one inference.

17. The Commission erred as a matter of law in failing to find and conclude that the Claimant failed to meet his statutory burden of proof by "expert medical evidence stated to a reasonable degree of medical certainty" that he requires any additional medical care or treatment to lessen the period of alleged disability associated with the alleged accident on or about February 25, 2009, as clearly and unequivocally required by § 42-15-60 and based upon the undisputed evidence in the record that is capable of but one inference.
18. The Commission erred as a matter of law in failing to find and conclude that the present claim is barred due to the Claimant's failure to timely or properly give notice of the alleged accident on or about February 25, 2009 without reasonable excuse pursuant to S.C. Code Ann. § 42-15-60, based upon the undisputed evidence in the record that is capable of but one inference and the applicable law.
19. The Commission erred as a matter of law in failing to find and conclude that the Claimant bears the burden of proving his entitlement to medical and compensation benefits under the Act and that his failure to meet his burden of proof does not place a burden of disproof upon the Employer and the Commission's failure in this regard was arbitrary, capricious, and constitutes a clear abuse of discretion.
20. The Commission erred as a matter of law in failing to find and conclude that the Claimant cannot meet his burden of proof by resorting to mere surmise, conjecture, or speculation and the Commission's failure in this regard was arbitrary, capricious, and constitutes a clear abuse of discretion.

Respectfully submitted,



Kirsten L. Barr, Esq.
Trask & Howell, L.L.C.
P.O. Box 2167
Mt. Pleasant, SC 29465
(843) 881-4228
Attorneys for Appellant

April 24, 2012

The South Carolina Second Injury Fund



STEPHEN L. ELLIOTT
INTERIM DIRECTOR

100 EXECUTIVE CENTER DRIVE, SUITE 101
SANTEE BUILDING
COLUMBIA, S.C. 29210
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December 6, 2012

The Honorable Jenny Abbot Kitchings
Clerk, South Carolina Court of Appeals
Post Office Box 11629
Columbia, South Carolina 29211

Re: Richard A. Hartzell, Respondent vs. Palmetto Collision, LLC, Appellant,
and South Carolina Workers' Compensation Uninsured Employers' Fund,
Appellant
WCC File No. 0922546
COA Case No. 2012-211870

Dear Ms. Kitchings:

This is to advise that the South Carolina Workers' Compensation Uninsured Employers' Fund, Appellant, concurs with the arguments made by Kirsten L. Barr, Esquire, Attorney for Appellant.

Sincerely,

Lisa C. Glover
Deputy General Counsel
Telephone Ext. 124
lcglover@sif.sc.gov

LCG/ss

C: Kirsten L. Barr, Esq.
Kerry W. Koon, Esq.

Workers' Compensation Uninsured Employers' Fund

BEFORE THE
SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION
WCC FILE NO. - 0922546

RICHARD A. HARTZELL,	)	
	)	
CLAIMANT,	)	HEARING
	)	
VS.	)	BEFORE COMMISSIONER
	)	ANDREA C. ROCHE
PALMETTO COLLISION, LLC,	)	
	)	<u>TRANSCRIPT</u>
EMPLOYER,	)	
	)	
AND	)	
	)	
UNINSURED,	)	
	)	
CARRIER,	)	
DEFENDANTS.	)	
	)	

 COPY

WORKERS' COMPENSATION COMMISSION HEARING TAKEN
BEFORE CORA ELLIS BRUTON, A NOTARY PUBLIC IN AND FOR
THE STATE OF SOUTH CAROLINA, COMMENCING AT THE HOUR OF
9:40 AM ON TUESDAY, JULY 12, 2011, NORTH CHARLESTON
CITY HALL, 2500 CITY HALL LANE, NORTH CHARLESTON,
SOUTH CAROLINA 29406.

CORA ELLIS BRUTON - COURT REPORTER
131 BROWNING COURT - LEXINGTON, SOUTH CAROLINA 29073
803-397-0189

APPEARANCES

FOR THE CLAIMANT

KERRY W. KOON, ESQUIRE
147 WAPPOO CREEK DRIVE
CHARLESTON, SOUTH CAROLINA 29412
843-795-9000

FOR THE DEFENDANT

PALMETTO COLLISION, LLC
KIRSTEN L. BARR, ESQUIRE
TRASK & HOWELL, LLC
POST OFFICE BOX 2167
MOUNT PLEASANT, SOUTH CAROLINA 29465
843-881-4228

FOR THE SOUTH CAROLINA UNINSURED EMPLOYERS FUND

LISA C. GLOVER, ESQUIRE
100 EXECUTIVE DRIVE, SUITE 101, SANTEE BUILDING
COLUMBIA, SOUTH CAROLINA 20210
803-798-2722

REPORTED BY

CORA ELLIS BRUTON - COURT REPORTER
131 BROWNING COURT
LEXINGTON, SOUTH CAROLINA 29073
803-397-0189

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(EXHIBITS)

No Exhibits Proffered

CORA ELLIS BRUTON - COURT REPORTER
131 BROWNING COURT - LEXINGTON, SOUTH CAROLINA 29073
803-397-0189

1 THE COURT: Today's date is July the 12th, 2010.
 2 This is WCC File No. 0922546. This is the case of the
 3 Claimant, Richard A. Hartzell represented by Attorney
 4 Kerry W. Koon versus the Employer, Palmetto Collision,
 5 LLC. There is no carrier involved. Kirsten L. Barr
 6 represents the Employer and Lisa C. Glover is here on
 7 behalf of the Uninsured Employers Fund.

8 We have a date of accident of February 25th,
 9 2009. We're here today on the issues set forth in the
 10 Forms 50 and 51. We have an average weekly wage of
 11 \$561.39 with a resulting compensation rate of \$374.28.

12 Are there any objections to APAs or venue?

13 MR. KOON: No.

14 MS. BARR: No, Your Honor. We do, our opinion as
 15 to (inaudible).

16 THE COURT: Right and I'll go over that when we
 17 go over the issues.

18 Without objection the Commission's file becomes a
 19 part of the record with the exception of self-serving
 20 declarations and unstipulated medical reports.

21 Before going on the record we did have a
 22 pre-hearing conference.

23 It is the position of the Claimant that he
 24 sustained an injury by accident arising out of the
 25 course and scope of his employment to his back on

1 February 25th, 2009. It is the position of the
2 Claimant that the Employer Palmetto Collision, LLC was
3 subject to the Act either by having a policy and not
4 filing the proper form to be released from having the
5 policy or from the fact that they had four or more
6 employees. It is the position of the Claimant that he
7 is in need of medical care. That he would be entitled
8 to his past causally related medical care which I
9 think consisted of chiropractic care from a Dr.
10 Murray. That he has not reached maximum medical
11 improvement and that he is in need of additional
12 medical care.

13 It is the position of the Claimant that he has
14 been working so he's not claiming any temporary total
15 disability benefits at this time.

16 It is the position of the Defendant Palmetto
17 Collision that they are not subject to the Act and
18 there is no jurisdiction in this case. It's the
19 position of the Defendant that they do not employ four
20 or more employees and therefore are not subject to the
21 act. Furthermore, they never procured workers'
22 compensation insurance. That they never signed an
23 application or paid any or anything on any kind of
24 workers' compensation insurance so they did not
25 procure any. It is the position of the Defendants

1 that the Claimant also cannot carry his burden of
2 proving that he suffered an injury by accident arising
3 out of the course and scope of his employment; that
4 the medical records do not support an injury by
5 accident and that the Claimant has not submitted
6 anything that would support that.

7 Furthermore, it's the position of the Defendant
8 Palmetto Collision that the Claimant failed to give
9 timely notice; that the first notice of any accident
10 at all was when the Form 50 was filed 14 months after
11 the accident and which would obviously be past the 90
12 days in which the Claimant should have reported the
13 accident.

14 The Uninsured Employers Fund agrees and takes the
15 position of the Defendant Palmetto Collision.

16 In response to the notice claim it's the position
17 of the Claimant that he did give notice when it
18 happened, to Mr. Stallings, and therefore the Employer
19 did have notice and he gave it within a day or two I
20 think after the accident so the 90 days certainly had
21 not lapsed.

22 Anything any of you would like to add?

23 MS. BARR: No, Your Honor.

24 MS. GLOVER: No.

25 MR. KOON: I would. I think there was an

1 argument made that -- that he would require some kind
2 of a -- a medical opinion because ten weeks initial
3 care had -- had -- had lapsed by the time he filed his
4 Form 50 and I think that requires a pretty tortured
5 reading of the Statute when the -- if Your Honor rules
6 in our favor then you would have ruled that the
7 Employer had violated the Act. And they cannot profit
8 by then coming back and saying because we didn't give
9 him medical care there was nobody to certify that his
10 care should continue beyond ten weeks. So I think
11 that is a tortured reading of the Statute and I just
12 wanted that on the record. It's a little like the
13 child who has killed his parents and then comes back
14 and wants charity because he's an orphan.

15 THE COURT: Okay. Anything in addition?

16 MS. BARR: Your Honor, obviously I take umbrance
17 to characterizing my client as a murderer, but
18 42-15-60 clearly and unequivocally states that
19 additional medical treatment beyond ten weeks can be
20 awarded only when there is expert medical evidence
21 stated to a reasonable degree of medical certainty.
22 I'm reading verbatim from 42-15-60. So that was the
23 basis for our position not some sort of ill gotten
24 gain. Of course the Commission does not sit in
25 equity; this is not an equitable claim. The Claimant

1 bears the burden of proof to all entitlement of
2 benefits.

3 THE COURT: Okay. Anything in addition? Mr.
4 Koon, I understand the Claimant is your first witness?

5 MR. KOON: That's correct.

6 THE COURT: Mr. Hartzell, please raise your right
7 hand. Do you swear to tell the truth, the whole truth
8 and nothing but the truth?

9 THE WITNESS: Yes, I do.

10 THE COURT: Please state your full name for the
11 record.

12 THE WITNESS: Richard Allen Hartzell.

13 THE COURT: Okay. Mr. Koon, your witness.

14 MR. KOON: Thank you.

15 Richard Allen Hartzell,

16 Having first been duly sworn, testified as follows:

17 DIRECT EXAMINATION

18 BY MR. KOON:

19 Q Mr. Hartzell, how old are you?

20 A I'm 52.

21 Q And are you married?

22 A No.

23 Q Where do you live?

24 A 415 Oxford Road, Ladson.

25 Q All right. And who -- who lives there with

1 you?

2 A My mother.

3 Q All right. And how much education do you
4 have?

5 A I graduated from high school.

6 Q And where did you go to high school?

7 A I went to Penn Trafford High School in
8 Harrison City, Pennsylvania.

9 Q Are you originally from Pennsylvania?

10 A Yes.

11 Q And how long have you been in the Charleston
12 Tri-County area?

13 A Approximately 25 years.

14 Q What -- what is your profession or -- or
15 customary employment?

16 A I'm an auto body paint technician.

17 Q And how long have you been in the auto body
18 and paint business?

19 A Over 25 years.

20 Q All right. And in February of 2009 where
21 were you working?

22 A I was working at Palmetto Collision.

23 Q All right. And who is the owner of Palmetto
24 Collision?

25 A Mike Stallings.

1 Q Okay. And is that Mr. Stallings seated to
2 your right?

3 A Yes, sir.

4 Q Have you ever worked for Mr. Stallings or
5 anyone connected with Mr. Stallings on previous
6 occasions?

7 A Yes.

8 Q Explain that answer, please.

9 A Can you repeat that?

10 Q Explain that answer, please.

11 A I worked for Mike previously when I first
12 moved here I worked for him, Mike, Sr., and then I
13 worked --

14 Q What was the name of Mike, Sr.'s shop?

15 A It was called Mike's Paint and Body.

16 Q All right. And did you have another stint
17 with the Stallings family in the paint and body
18 business before this particular employment?

19 A Yes, I worked for them in 19 -- what was
20 that, 2000? When was that?

21 Q Just approximately.

22 A It was -- I believe it was like '90 -- when
23 was that? '96.

24 Q And was their shop located at the same place
25 as it was in February of 2009?

1 A No, they had moved to a new shop.

2 Q Did it have the same name?

3 A No, they changed the name to Mark Clark
4 Collision.

5 Q Okay. Now what occasioned for you to come
6 back to work for Mr. Stallings -- well, first, the
7 time that you worked for Palmetto Collision last what
8 were the dates of your employment?

9 A From this last time?

10 Q The last time, when did you -- and you can
11 look at the exhibits to your deposition if that
12 refreshes your memory.

13 A It was from -- let's see, that was -- in --
14 okay, it was -- according to this it was -- started
15 working there around -- it's seven of '08.

16 Q Okay. And when did you last work for
17 Palmetto Collision?

18 A February of '09.

19 Q Okay. And did you work for a couple of
20 weeks in March?

21 A Yes.

22 Q Okay. And you're reviewing some notes that
23 you made of your pay records back during the time of
24 your employment; is that correct?

25 A Yes.

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1 Q All right. Now, what kind of work did you
2 do for Palmetto Collision?

3 A I was doing body work, paint work.

4 Q Okay. And let's talk about what, if
5 anything, occurred on or about February 25th of 2009.
6 Did anything unusual happen on that day?

7 A That's when I was -- went to work and we
8 started doing a few jobs and I started to clean up so
9 I could get access to my tool box more easily and I
10 started moving tires and rims and heavy frame
11 equipment, frame posts and chains --

12 Q Explain to the Commissioner what -- what
13 frame equipment and a frame post is.

14 A It's a very large steel post about five foot
15 tall with hydraulic rams with a heavy steel base with
16 wheels and you attach chains to a post that's attached
17 into the floor. And you attach chains to the post to
18 the vehicle with clamps that pull out frames with
19 severe body damage and -- it's quite large and heavy
20 and it weighs probably 200, 300 pounds, somewhere, and
21 you've got to pull back and set it on its wheels.
22 It's like a hand truck you have to pull back to move
23 it and I was rolling it around, pulled it out of the
24 way and I was picking up wheels and other heavy
25 equipment on that day. And just getting through the

1 day and I was fine. Later on that afternoon I started
2 having pain and just realized it was, you know, part
3 of the job and I just figured, you know it would go
4 away naturally, you know, just from everything I was
5 doing.

6 Q What was the location of the pain?

7 A It was in my lower back.

8 Q Have you ever had chronic problems or
9 significant problems with pain in your lower back
10 before?

11 A No.

12 Q All right. Go ahead.

13 A And then --

14 Q Did you report that to anybody on that very
15 day?

16 A No, I didn't say nothing that day, I just
17 felt it was just, you know, being sore from doing that
18 kind of work and then the next day is when I really
19 felt very sore in my lower back and I just -- I
20 couldn't bend over very much and it just progressively
21 got worse. And bending over and I had a hard -- I
22 couldn't lift up heavy stuff basically.

23 Q Did you report that pain in your lower back
24 to anybody?

25 A Yes. The next day I said something to Mike

1 that I was pretty sore, I must have hurt myself.

2 Q Okay. What was his response to you?

3 A He said, "Well, if you're having problems",
4 he said, "go to the emergency room."

5 Q Did he offer you any medical care at company
6 expense?

7 A No.

8 Q Did he give you the name of any doctor to
9 see?

10 A No.

11 Q Did he offer to pay for medical care for
12 you?

13 A (No verbal response).

14 Q No? At the time that you were injured, and
15 I don't mean the very time, but I mean the -- the day
16 that you were injured how many employees were working
17 at Palmetto Collision?

18 A It was four of us.

19 Q All right. And who were they?

20 A Doug Alexander, Jimmy Alexander, Harold
21 Brock and Jimmy Morris.

22 Q And yourself as well?

23 A And myself, yes.

24 Q Is that a total of five?

25 A Yes.

1 Q Now let's talk about Jimmy Morris. What
2 kind of work did Jimmy Morris do customarily?

3 A He was doing mainly the heavy collision.

4 Q Do you know why he did the heavy collision
5 work?

6 A Because he had the most experience in
7 putting out the amount of work. He was very, very
8 good at it.

9 Q All right. And was he a regular employee?

10 A Yes.

11 MS. BARR: Objection; foundation. I don't
12 believe that Mr. Hartzell is in the capacity to hire
13 and fire any employees.

14 THE COURT: All right. Just lay the foundation
15 Mr. Koon.

16 Q Did he come to work on a regular basis?

17 A Correct.

18 Q Did he do the work at the shop?

19 A Yes.

20 Q Did he do what Mr. Stallings instructed him
21 to do?

22 A Yes.

23 Q And -- now let's talk about Jamie Alexander.
24 Do you remember if -- if -- when he came -- excuse me.
25 When did Jamie Alexander start working at Palmetto

1 Collision, to your knowledge?

2 A He started just a few weeks before -- before
3 I got hurt.

4 Q Do you know if he had worked for Palmetto
5 Collision on -- on prior occasions?

6 A Yes.

7 Q Okay. Was there a gap in his employment,
8 through your observation?

9 A Yes..

10 Q And are you -- are you saying he came back a
11 couple of weeks prior to your accident?

12 A Yes.

13 Q All right. Were all the people that you
14 mentioned regularly working at Palmetto Collision at
15 the time of your accident?

16 A Yes.

17 Q All right. And that would include both
18 Alexanders --

19 MS. BARR: Objection to leading.

20 Q I'm saying did that include both Alexanders,
21 James and Douglas?

22 A Yes.

23 Q Harold Brock?

24 A Yes.

25 Q Yourself, Richard Hartzell?

1 A Yes.

2 Q And Jimmy Morris?

3 A Yes.

4 Q Did Mr. Stallings himself sometimes come and
5 work in the shop along with you?

6 A Yes.

7 Q Okay. Was that on a routine basis or an
8 occasional basis?

9 A Occasionally.

10 Q All right. How long did you --
11 approximately how long did you work after your
12 accident?

13 A About two weeks.

14 Q Okay. Did you continue to have difficulties
15 with your back?

16 A Yes.

17 Q What activities related to paint and body
18 work caused you the most difficulty with your back?

19 A Mainly when I was bending over and lifting
20 stuff and kneeling down and squatting.

21 Q Is that type of activity common in the paint
22 and body business?

23 A Yes, it is.

24 Q Okay. Is it almost routine in the paint and
25 body business?

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1 A Yes, it is.

2 Q Okay. All right. Why did you leave
3 Palmetto Collision?

4 A At that point the work was very slow; it was
5 slowing down because of the economy and when this
6 happened I -- I couldn't work very much; it was very
7 hard. That's why I left.

8 Q All right. How long was it before you got
9 re-employment in the paint and body business?

10 A About a year and a half.

11 Q Okay. And who did you go to work for in the
12 paint and body business?

13 A Altman Suzuki.

14 Q And how did your job duties compare with the
15 duties you had at Palmetto Collision when you went to
16 work at Altman Suzuki?

17 A I was more in painting -- I was painting
18 instead of doing collision repair and body work.

19 Q Okay. When did you start with Altman
20 Suzuki?

21 A It was in -- in August -- towards the end of
22 August.

23 Q Of what year?

24 A Of ten -- 2010.

25 Q Did you initially start full time or part

1 time?

2 A It was part time.

3 Q Did you continue to have trouble with your
4 lower back when you went back to work?

5 A Yes, it was very sore like if -- like if I
6 did a lot of work that day like it -- it was very
7 sore, my lower back was.

8 Q And what -- what specific activities would
9 cause your back to become sore and painful?

10 A When I was bending over and squatting down.

11 Q Now at some point you applied for
12 unemployment compensation; is that correct?

13 A Yes.

14 Q All right. And that was after you left
15 Palmetto Collision but before you started with Altman
16 Suzuki; is that correct?

17 A Yes.

18 Q Approximately when did you apply for
19 unemployment compensation?

20 A I think it was like in June.

21 Q Is that -- at that time was your back still
22 bothering you?

23 A Yes, it was sore.

24 Q Did you believe you would be able to work in
25 some capacity at that time?

1 A Yes.

2 Q All right. Now, how long did you stay on
3 unemployment compensation?

4 A I believe it was 26 weeks.

5 Q Okay. Did you apply for any extensions?

6 A No.

7 Q Now after your unemployment compensation ran
8 out did you have any other activity that provided
9 income for you?

10 A No.

11 Q Did you work the flea market some?

12 A Yes, I went up to the flea market on a
13 weekend.

14 Q Where -- where is that located?

15 A It's in the Ladson fairground.

16 Q Okay. And what do you do at the flea
17 market?

18 A I would set up tables and sell merchandise,
19 household stuff and things.

20 Q Okay. And are you doing that still today?

21 A I do that once in a while, yes.

22 Q Okay. How frequently?

23 A Maybe once or twice a month.

24 Q Okay. And is it weekend or full time?

25 A It's just on weekends, maybe one Saturday or

1 maybe one Sunday.

2 Q Do you have difficulty with your back in
3 that endeavor?

4 A It bothers me when I pick up tables and pick
5 up totes.

6 Q What do you mean totes? What are totes?

7 A The plastic totes that I keep my merchandise
8 in.

9 Q Okay. All right. Do you have difficulty
10 walking?

11 A Yes. When I walk for long periods of time
12 it's -- it's sore. When I walk a lot or if I'm
13 sitting a lot I've got to move around a little bit
14 back and forth.

15 Q You went to a chiropractor after your
16 injury. Who was that?

17 A That was Dr. Murray.

18 Q Okay. How did you choose Dr. Murray?

19 A I went to Dr. Murray probably 20 years ago.
20 I had shoulder pain; I hurt my shoulder a little bit
21 and he made a few adjustments and I was very good
22 after that.

23 Q Okay. Why did you stop going to Dr. Murray?

24 A I just wasn't working and I couldn't afford
25 to keep going for his treatments and they wanted -- he

1 wanted me to go back twice a week.

2 Q All right. Are you asking the Commission to
3 award you medical care for your back?

4 A Yes.

5 Q At this time are you requesting any
6 temporary total or even permanent partial disability
7 until you find out what the medical situation with
8 your back is?

9 A Yes.

10 Q Are you going to try to go back to work now?

11 A Yes.

12 Q Have you got applications in with other
13 firms?

14 A Yes.

15 Q And for what kind of work?

16 A In the auto body field, automotive field,
17 auto parts.

18 Q At this time you're not claiming that you're
19 totally disabled from working in the auto parts --
20 auto -- well, I think body business, is that correct?

21 A Right.

22 Q Now you mentioned that you had a shoulder
23 problem; did you have a shoulder injury or a shoulder
24 condition prior to injuring your back at Palmetto
25 Collision?

1 A Yes.

2 Q Did you -- did that have anything to do with
3 Palmetto Collision?

4 A No, none whatsoever.

5 Q I can't remember if I asked you this and if
6 I did I apologize for repeating myself. Have you ever
7 had lower back problems of the nature that you've
8 claimed now prior to your injury of February 25th of
9 2009?

10 A No.

11 Q Please answer any questions Ms. Barr may
12 have.

13 THE COURT: Ms. Barr.

14 MS. BARR: Thank you, Your Honor.

15 CROSS EXAMINATION

16 BY MS. BARR:

17 Q Mr. Hartzell, we met a while back when I
18 took your deposition. Again, my name is Kirsten Barr
19 and I'm going to be asking you the following
20 questions.

21 A All right.

22 Q It's my understanding that you don't really
23 remember when you hurt your back; is that true?
24 You're not sure what day it might have been?

25 A I'm not sure exactly what day it was.

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1 Q Okay.

2 A It would be that week or a week when I was
3 working or that particular date was approximately
4 around the end of February or at that time.

5 Q And you believe you worked approximately two
6 weeks after when your back started hurting; is that
7 what you said?

8 A Yes.

9 Q All right. And your back didn't start
10 hurting while you were allegedly moving the heavy
11 items, it started hurting some time later after you
12 moved the heavy items?

13 A After -- when I -- when I started moving all
14 this stuff, the heavy stuff that's when I started
15 having pain in my lower back.

16 Q You testified that you moved the heavy stuff
17 and then you felt pain later in the day or sometime
18 after that; is that true?

19 A Yes.

20 Q You didn't have a moment where you lifted
21 one item and had a sudden onset of pain did you?

22 A No.

23 Q And you didn't even say anything the day
24 that you were moving this heavy stuff and say -- you
25 didn't speak to Mike or anybody at Palmetto Collision

1 about injuring your back?

2 A No.

3 Q It's my understanding that the reason you
4 quit working for Palmetto Collision is because work
5 was slow; that's true, correct?

6 A Yes.

7 Q Okay. And you gave a sworn statement --

8 MS. BARR: Commissioner, I'm looking at page 48
9 of the APAs.

10 Q You gave a sworn statement to the South
11 Carolina Employment Security Commission that you quit
12 your job because there was no work; is that correct?

13 A Yes, the parking lot was empty.

14 Q The parking lot was empty and you work on a
15 commission basis; is that correct?

16 A Yes.

17 Q If there's no work to be done it's hard to
18 make some money?

19 A Correct.

20 Q And you left looking for other employment;
21 is that correct?

22 A (No verbal response).

23 Q You need to -- is that correct? I
24 understand you but we need to make a verbal response.

25 A Yeah.

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1 Q And you thought you would just find other
2 work after you left Palmetto Collision?

3 A Yes, after I was -- I was looking for work
4 after -- when I started feeling better.

5 Q And it's my understanding that you said
6 you've been in the Charleston area about 25 years; is
7 that right?

8 A Approximately.

9 Q And is it fair to say that ever since you
10 came to the Charleston area you have worked for the
11 Stallings family and then sometimes would find other
12 jobs for a period of time and would come back to work
13 for the Stallings family?

14 A Yes.

15 Q So you've had an ongoing relationship with
16 these folks for a long time?

17 A Yes.

18 Q And you've known Mr. Mike Stallings, the
19 owner of Palmetto Collision is it fair to say since he
20 was a boy?

21 A Yes, ma'am.

22 Q And you've always had a job to go back to at
23 Palmetto Collision when there was work to be done?

24 A Yes.

25 Q So you had some communication with -- with

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1 Mike with Palmetto Collision during the course of your
2 unemployment claim, you had to go file an appeal and
3 there's maybe some questions about your unemployment
4 claim; is that right?

5 A Yes.

6 Q And at no time during the course of this
7 unemployment claim or after you left Palmetto
8 Collision did you ever go and talk to Mike and say I'm
9 hurting, I need medical treatment, please pay to send
10 me to the doctor?

11 A No.

12 Q And then I believe you had some contact
13 after you started drawing the unemployment towards the
14 end of 2010, you had been storing some equipment at
15 Palmetto Collision; is that right, some engines or
16 some other equipment?

17 A Yes.

18 Q And it's my understanding that Mike had
19 leased out that portion of his -- of his shop and
20 needed you to remove the equipment; is that right?

21 A Yes, he called me and asked me if I could
22 move my tools.

23 Q Okay. And did you -- and you actually went
24 and did that; is that correct?

25 A I had three friends of mine come down and

1 actually moved everything for me months later.

2 Q Okay. During the course of those
3 discussions and when you went over there to move the
4 equipment it's my understanding you didn't have any
5 conversations with Mike about your back being hurt or
6 needing medical treatment or ask him for that sort of
7 thing?

8 A No, he was not there at that time, he was
9 busy.

10 Q You had talked to him on the telephone?

11 A Yes, I spoke to him on the phone.

12 Q When you spoke to him on the phone you
13 didn't say Mike, my back's hurting, I need to go to
14 the doctor, can you help me out did you?

15 A No.

16 Q Now we have some of the records from -- from
17 Dr. Murray, the chiropractor and I'm going to show
18 you.

19 MS. BARR: This is APA page 2, Commissioner that
20 I'm referring to.

21 Q This is a form that looks like the standard
22 kind of intake form you fill out when you go to the
23 doctor. Is this your handwriting? Did you complete
24 that form?

25 A Yes.

1 Q And when it's asked what caused your
2 problems you checked the box unknown; is that right?

3 A Yes.

4 Q And you're not currently under the care of
5 Dr. Murray or any other doctors or chiropractors; is
6 that right?

7 A No, I -- I go and see Dr. Hutchinson.

8 Q Blood pressure medicine; is that what you
9 said?

10 A I get for -- yeah, cholesterol.

11 Q Cholesterol medication?

12 A Cholesterol and I'm taking Naproxen for the
13 anti-inflammatory.

14 Q Okay. You've had arthritis in your shoulder
15 for a good number of years; is that right?

16 A Yes.

17 Q Is it both shoulders or just one?

18 A Both.

19 Q And Mr. Stallings, Mike, Jr. knew that you
20 had some shoulder problems; is that right?

21 A Yes.

22 Q Is it fair to say that he tried to give you
23 work that maybe was easier on your shoulders?

24 A At times he -- he tried.

25 Q He tried? All right. And did Dr. Murray

1 ever give you a -- a work restriction slip or issue
2 any work restrictions saying you couldn't work or that
3 you needed work -- certain limitations?

4 A No, he gave me exercises to do and I did
5 those exercises.

6 Q So some time after you saw Dr. Murray in
7 April 2009 that you -- you went to work for Altman; is
8 that right?

9 A Yes.

10 Q Okay. How long did you work for Altman?

11 A About probably eight months, nine months.

12 Q Okay. And just so I'm clear you -- I think
13 you drew unemployment, let's see, through -- you drew
14 unemployment through October, November 2009; does that
15 sound about right?

16 MS. BARR: Your Honor, I'm looking at page 57.

17 A What -- what were those dates you're talking
18 about?

19 Q Somewhere around early November 2009 is that
20 when your unemployment ran out? I'm just trying to --

21 A Yeah, it was -- yeah, it was around -- I
22 started collecting it probably around June or July is
23 when I applied for it and then I collected it until
24 like the first of 2010.

25 Q Okay. And after that you started that

1 working for -- for Altman?

2 A I went -- yeah, I went to work with Altman
3 on 9/20/10.

4 Q 9/20/10? And again, how long did you work
5 there?

6 A Until 7/20/11.

7 Q And you were doing paint and body work
8 through July -- I mean are you working there now?

9 A No.

10 Q Okay. When did you last work at Altman?

11 A Well, it was the 4th of July week.

12 Q Of this year?

13 A Yes, 2011, 7/20/11.

14 Q And what were your job -- what was your job
15 description or your job title at the time you last
16 worked with Altman?

17 A I was a paint technician.

18 Q Okay. Were you working full time?

19 A Yes.

20 Q And doing basically the same type of work
21 you had done for Mr. Stallings at Palmetto Collision?

22 A I was just painting, I was not doing body
23 work.

24 Q And why are you no longer working for
25 Altman?

1 A We -- having lack of work.

2 Q That's just a problem with this economy in
3 the auto industry right now with lack of work around?

4 A Yes. Yes. Yes.

5 Q And if there was still work to be had would
6 you continue working with Altman in your capacity as a
7 painter?

8 A Yes.

9 Q Did you ever miss any significant time from
10 work at Altman's?

11 A No.

12 Q I mean did you have any restrictions on your
13 duties or were you working the regular painting job
14 that they hired you for?

15 A I was working --

16 Q Did you ever miss any significant periods of
17 time or injure yourself while working for Altman?

18 A No.

19 Q Have you put in an unemployment claim since
20 you left Altman?

21 A No.

22 Q Did you ask them for a severance package or

23 --

24 A No.

25 Q Do you plan to file for unemployment now

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1 that you've been discharged?

2 A No.

3 Q Why not?

4 A Because I'm looking for work right now.

5 Q And you feel obviously then that you're able
6 to work in -- in your trained profession in the auto
7 body painting?

8 A Yes.

9 Q When was the last time you talked to Mike
10 Stallings, Jr.? Was it when he asked you to move the
11 equipment?

12 A Yes.

13 Q And since -- since you left your last day
14 some time in March of 2009 you've never asked Mike to
15 see if you can go to the doctor or see anyone?

16 A No.

17 Q And you said you had some discussion, you
18 said you mentioned that your back was sore from
19 working one day; is that what you told him?

20 A Yes, that was the next day after I had
21 realized I had somehow had injured my back.

22 Q Mike's around the shop and he's somebody
23 when you worked at Palmetto Collision you talked to on
24 a regular basis; is that fair to say?

25 A Yes.

1 Q He was always available to talk?

2 A Yes.

3 Q And I think y'all had talked about some of
4 your other -- your arthritis in shoulders with Mike
5 before?

6 A Yes.

7 Q I think you and Mike even discussed about
8 what you might need to do to maybe get your shoulders
9 fixed or how he could help you get the treatment you
10 needed for your shoulders even though that wasn't a
11 work related condition?

12 A Not really. I mean you know, we spoke about
13 it but there was --

14 Q Nothing came out of it?

15 A No.

16 Q After this one time you mentioned to Mike
17 that -- that your low back was hurting did you ever
18 have any discussions with him ever again about your
19 back or your back injury?

20 A Just in the time when I worked there the
21 last couple of weeks, I mean we talked about it but
22 there was never really nothing done about it.

23 Q And you never did anything about it? You --
24 you didn't -- you didn't go to the emergency room or
25 go to the doctor until you saw Dr. Murray on your own

1 after you quit the job?

2 A Yes, that's right.

3 Q Did you ever -- how much did Dr. Murray
4 charge per appointment?

5 A I think it was like \$75 dollars
6 approximately.

7 Q And you never took any of Dr. Murray's bills
8 over to Mike or anybody at Palmetto Collision?

9 A No.

10 Q And even after you started working full time
11 at Altman you didn't go seek any additional medical
12 treatment for your back?

13 A No, I'm still going back to see Dr.
14 Hutchinson.

15 Q And he's just your family doctor?

16 A He is our family doctor.

17 Q What was your pay rate at Altman?

18 A Per hour?

19 Q Yes, sir.

20 A It was \$20 dollars.

21 Q And you worked an average of 40 hours a
22 week, more or less?

23 A It was all commission.

24 Q All commission? So was it \$20 dollars an
25 hour plus commission or was \$20 dollars an hour about

1 what it worked out to be?

2 A \$20 dollars commission only.

3 Q So on average how much were you earning per
4 week at Altman?

5 A I was turning if I was -- if it was more
6 busy and it was like at the most 15 to 20 hours on
7 average.

8 Q Did you have any benefits through Altman?

9 A They -- yes, they offered it and I didn't
10 get it.

11 Q You declined it?

12 A Yeah.

13 Q And those would have been for your health
14 benefits?

15 A I didn't take it because it would have been
16 too much out of my check at that time.

17 Q Now the job you had done for Palmetto
18 Collision you did paint, right, painting cars?

19 A I -- I did all the body work and did all the
20 preparation work and once in a great while painted a
21 part or a couple of parts or something like that, but
22 the primary painter, that was his job.

23 Q You weren't a supervisor over any other
24 employee?

25 A No.

1 Q You didn't write paychecks?

2 A No.

3 Q And you didn't hire or fire anybody?

4 A No.

5 Q Is it fair to say that an auto body shop the
6 guys would hang around? People would drop in and
7 visit from time to time?

8 A Yes. Yes.

9 Q But you wouldn't have any way of knowing
10 what their legal relationship would be with Palmetto
11 Collision would you?

12 A No, I would not.

13 Q And there would be times that -- in a body
14 shop you'd get projects that were out of the ordinary
15 that you might have to call in somebody with special
16 skills or experience to work on a job?

17 A Maybe so.

18 Q Okay. Was Jimmy Morris one of those kind of
19 guys who knew how to do the hard jobs, questions that
20 the regular guys couldn't do?

21 A Yes.

22 Q But you would have no way of knowing what
23 the business arrangement is or was between Palmetto
24 Collision and Jimmy Morris?

25 A No.

1 Q And for that matter you wouldn't really know
2 what the business relationship was between Palmetto
3 Collision and Doug or Jamie Alexander or anybody who
4 had worked in the shop?

5 A No, they just worked there.

6 Q People came and went; is that correct?

7 A Yes.

8 Q And during the six months, nine months you
9 worked at Palmetto it wasn't the same people every
10 month was it? People --

11 A Yes.

12 Q -- people changed?

13 A They were -- yeah, people were there all the
14 time.

15 Q Right, but the -- the actual individuals
16 changed like you mentioned that Jamie Alexander or
17 James Alexander he had worked in the past, left for a
18 while and came back just like you had done; is that
19 right?

20 A Right.

21 Q And there were others who came and went
22 throughout the period of time when you worked there?

23 A Jamie was the only one that left and came
24 back when I worked there.

25 Q What about Tom Griffin?

1 A He was working there and then he left.

2 Q Was there a fellow named Edward Davis who
3 came and left?

4 A That must have been before or after me, I
5 don't know.

6 Q Now we've got --

7 MS. BARR: And Commissioner, this is APA 6 I'm
8 referencing.

9 Q -- you mentioned earlier something that was
10 marked as an exhibit to your deposition and it's now
11 marked as APA page 6, some handwritten notes. I
12 believe you prepared those; is that correct?

13 A Yeah, I just wrote them down and kept track
14 of them.

15 Q The checks that you earned?

16 A Yes.

17 Q As I -- as I'm looking at this -- this tally
18 that you prepared on page 41, for the record, it looks
19 like you received a check; about a \$497 dollar check
20 on August the 8th of 2008 but didn't get any other
21 checks from Palmetto Collision until -- until mid
22 December of 2008; is that right?

23 A Yes.

24 Q All right. Had you gone to work somewhere
25 else during that period of time?

1 A Yes.

2 Q And who were you working for during that
3 period of time?

4 A Precision Collision, I worked there about
5 two weeks and he was kind of slow because he didn't
6 have a whole lot of work and I went down there helping
7 out a little bit and then --

8 Q And you came back at the end of December to
9 work for Palmetto?

10 A Uh-huh.

11 Q And did -- you've applied for work in the
12 auto body world you believe you're capable of doing at
13 some point in time?

14 A Yes.

15 Q That's all the questions I have. Thank you.

16 THE COURT: All right. Ms. Glover.

17 CROSS EXAMINATION

18 BY MS. GLOVER:

19 Q Mr. Hartzell, I just have a few questions
20 for you. Now in regards to your employment at the
21 flea market when did you start doing that?

22 A It was during the summer of -- of -- it was
23 during the summer of '09.

24 Q Okay. And you were -- during the summer of
25 '09 you were out there every weekend?

1 A No, not every weekend.

2 Q How often would you go?

3 A I would go maybe once on maybe Saturday or
4 Sunday.

5 Q And you testified that you're still going
6 out there maybe one or two times per month. What --
7 what type of items are you selling?

8 A I was selling household stuff, dishes,
9 clothes, some tools and miscellaneous car parts and
10 stuff like that.

11 Q Okay. How many tables do you have set up?

12 A I had three tables, sometimes four.

13 Q Okay. And where are you getting these items
14 from to sell them?

15 A At home, just stuff I gathered up from
16 around the house.

17 Q And how long would you stay out there and
18 man your tables?

19 A Probably five, six hours.

20 Q And you testified that -- what -- what size
21 tables were you using?

22 A They're like three by five.

23 Q And you -- you testified that lifting those
24 tables hurt your back?

25 A I could feel pain.

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1 Q Okay. And in regards to your work with
2 Altman Suzuki -- I guess describe your job, because
3 you said you were a paint tech so what -- what exactly
4 were you painting?

5 A I was painting parts, bumpers, spot jobs
6 such as maybe a door and a fender, maybe a quarter
7 panel of a car, half of a car, just parts.

8 Q Okay. And how many hours per day were you
9 working?

10 A Eight.

11 Q And were you required to be on your feet the
12 whole eight hours basically?

13 A Yes.

14 Q Could you do any of your work for Altman
15 Suzuki seat -- in a seated position?

16 A Yes, I sat down from time to time in a small
17 roll around chair.

18 Q And while you worked for Altman did you
19 notice that your back hurt every day that you worked
20 for Altman?

21 A It depended upon what I did that day. I
22 mean it was sore from bending over.

23 Q Okay. Now how did you relieve the pain?

24 A I did -- I just took the Naproxen that Dr.
25 Hutchinson gave me.

1 Q Now you were asked earlier if you had any
2 prior back problems and you've indicated that you
3 haven't.

4 A No, I have not.

5 Q Okay. When is the -- when is the first time
6 you came into contact with Dr. Murray?

7 A It was -- it was probably in the middle of
8 March.

9 Q March of what year?

10 A Of -- when was that, '08 -- it was '09.

11 Q And did you go to see him for this
12 particular incident?

13 A Yes.

14 Q Well, the records indicate that you went to
15 see him on April the 1st of 2009 and --

16 A Okay.

17 Q Well my question is his records state --

18 MS. GLOVER: That's on page 3 of Ms. Barr's APA
19 submissions.

20 Q -- it says that you had returned for a
21 recurrence, problems with your spine, your ribs, your
22 pelvic region. So had you treated with Dr. Murray
23 prior to this date of accident for back problems --

24 A No.

25 Q -- problems with your ribs and pelvic

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1 region?

2 A No.

3 Q Okay. He indicated that this problem that
4 you went there for on April the 1st was not related to
5 any work or automobile accident. He said it was just
6 a recurrence of a -- I'll -- I'll read it into the
7 record. It says, "The patient entered the office
8 reporting a recurrence of complaints related to a
9 previously resolved spine, ribs, pelvic region
10 condition which is acute based on onset of less than
11 six weeks ago and was not caused by a work or
12 automobile accident. He states the mechanism for the
13 current condition is attributed to overexertion and
14 the current symptoms are described as pain and
15 stiffness." So you're testifying that you've never
16 been to Dr. Murray prior to this first time in April?

17 A No. I mean I went there 20 years ago for my
18 shoulders.

19 Q And from the timeframe of that 20 year -- 20
20 years ago up until when you went there in April 2009
21 you've never been back to see him?

22 A Not to my recollection.

23 MR. KOON: I want to object to this. I think
24 they're misreading the statement that was read into
25 the record, Commissioner. It says the onset was less

1 than six weeks ago which coincides with the 25th of
2 February date. I think the doctor is saying that the
3 -- the recurrence of complaints had their initiation
4 less than six weeks ago, not as a --

5 THE COURT: I mean she read it properly into the
6 record and I think the record speaks for itself.

7 MR. KOON: Well, maybe it's a matter of
8 interpretation, but the line of questioning seems to
9 suggest an interpretation that I don't think is
10 warranted, I guess, is the objection.

11 MS. GLOVER: Well the Commissioner said the
12 record speaks for itself so we'll just rely on the
13 Commissioner's reading and interpretation.

14 BY MS. GLOVER:

15 Q Now I guess your last treatment with Dr.
16 Murray according to these records I believe was on
17 April the 13th of 2009?

18 A I'm not sure of the exact dates, ma'am.

19 Q Well, you haven't been to him since then --

20 A No.

21 Q -- as you indicated because you couldn't
22 afford to pay for it?

23 A Correct.

24 Q Have you received any treatment for your
25 back since then?

1 A No.

2 Q Okay. What is Dr. Hutchinson treating you
3 for?

4 A I went there to see him about my back and he
5 gave me a prescription for the Naproxen, it's an
6 anti-inflammatory and he took blood -- blood work and
7 seen I needed some cholesterol medicine.

8 Q Okay. When is the last time you saw Dr.
9 Hutchinson?

10 A It was -- I think it was January or February
11 of --

12 Q Of this year?

13 A -- of 2011.

14 Q Okay. Now is he with the Franklin C. Fetter
15 Family Health Center?

16 A Yes.

17 Q Okay. And do you have any outstanding
18 appointments to see him?

19 A No, there's -- I have one -- I have one
20 coming up here pretty soon.

21 Q Okay. When is that scheduled for?

22 A I'm not quite sure. It's like every six
23 months so it was like the last time I was there was in
24 February -- January, February so I should have one
25 coming up here pretty soon.

1 Q And does he -- does he routinely refill your
2 prescription for Naproxen?

3 A Yes.

4 Q Okay. Is he prescribing any sort of
5 painkiller for you?

6 A Just the Naproxen and when I first went up
7 there to see him the first time, maybe the second time
8 he gave me a shot in my butt.

9 Q Okay. Have you had any more injections?

10 A No. No.

11 Q And how many times have you re -- refilled
12 the prescription for Naproxen?

13 A Many.

14 Q Okay.

15 A I don't know the exact answer.

16 Q Okay.

17 A It's been many. I take that and Pravachol
18 for the cholesterol and he also prescribed me
19 Flexeril, it's a muscle relaxer. I take them once in
20 a great while in the evening at home.

21 Q Okay. And you said you're currently seeking
22 employment now?

23 A Yes.

24 Q What type of employment are you seeking?

25 A Automotive field.

1 MS. GLOVER: Okay. I don't have any other
2 questions.

3 THE COURT: All right. Mr. Koon.

4 MR. KOON: Thank you.

5 REDIRECT EXAMINATION

6 BY MR. KOON:

7 Q Look at page 2 of our -- of Claimant's APA
8 submissions. Is this your statement to Dr. Murray
9 when you first saw him on April the 1st of 2009?

10 A Yes.

11 Q And did you check the box saying that your
12 injury was job related?

13 A Yes.

14 Q So you, in fact, told him that it was a job
15 related injury did you not?

16 A Yes, I did and he took x-rays.

17 Q All right. Now the Franklin Fetter Clinic
18 is -- is that basically the low income provision for
19 public health; is that correct?

20 A Yes.

21 Q All right. And he -- Dr. Hutchinson is not
22 a specialist of any kind, he's --

23 A He's a family practitioner.

24 Q -- a family practitioner that treats low
25 income people? Do you -- do you have to pay to go

1 there?

2 A Yes. Yes.

3 Q Is it a sliding scale type thing or -- or --

4 A Yeah, they base it upon what you make.

5 Q Okay. So it's sort of a -- a basic level of
6 care --

7 A Yes.

8 Q -- for people who don't have their own
9 private physicians; is that a fair way to explain what
10 they do?

11 A Yes, it is.

12 Q Okay. Now was Jamie Alexander working for
13 Palmetto Collision at the time you hurt your back
14 moving the frame machine?

15 A Yes.

16 Q And this Jimmy Morris, was he there
17 sporadically or -- or was he a full time participant
18 in -- in whatever form at Palmetto Collision?

19 A Yes, he was there every day.

20 Q Okay. And did he work on -- who told him
21 what jobs to work on and -- and what to do?

22 A Mike, Mike Stallings.

23 Q Could you observe any difference in the flow
24 of instruction or work or supervision between Jimmy
25 Morris as opposed to any other employees in the shop?

1 A No, he -- he mainly did a lot of the heavy
2 collision.

3 Q Okay.

4 A That was his specialty.

5 Q Okay. All right. But he didn't just -- did
6 he come in just for a specific job or was he routinely
7 there during the time that you worked for Palmetto
8 Collision?

9 A He was there all the time.

10 Q All right. Thank you, Mr. Hartzell.

11 THE COURT: All right. Ms. Barr.

12 MS. BARR: Just briefly.

13 RE-CROSS EXAMINATION

14 BY MS. BARR:

15 Q Ricky, Jimmy Morris is a friend of yours
16 isn't he?

17 A I've known him for a long time.

18 Q All right. So y'all talk; do you have a
19 good relationship with him?

20 A Yeah.

21 Q You didn't bring him here to testify on your
22 behalf today?

23 A No.

24 Q And you have no records documenting any sort
25 of financial arrangement between Palmetto Collision

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1 and Jimmy Morris, you just know he was around?

2 A I know he worked there.

3 MS. BARR: That's all I have.

4 THE COURT: Okay.

5 MS. GLOVER: I don't have any other questions.

6 THE COURT: Any other witnesses for the Claimant?

7 MR. KOON: No, ma'am.

8 THE COURT: Any witnesses for the Defendants?

9 MS. BARR: Yes, Your Honor, I'd like to call Mike
10 Stallings.

11 THE COURT: Please raise your right hand. Do you
12 swear to tell the truth, the whole truth and nothing
13 but the truth?

14 THE WITNESS: Yes, ma'am.

15 THE COURT: Please state your full name for the
16 record.

17 THE WITNESS: Michael Lawrence Stallings.

18 THE COURT: Okay. Ms. Barr.

19 Michael Lawrence Stallings,
20 Having first been duly sworn, testified as follows:

21 DIRECT EXAMINATION

22 BY MS. BARR:

23 Q And Mike, you're Mike, Jr.; is that --

24 A That's what they call me.

25 Q That's what they call you? Your father also

1 is Mike Stallings; is that right?

2 A But I'm not legally a junior.

3 Q Okay.

4 A We defer to senior and junior for our
5 customers mainly.

6 Q Okay. How old are you, Mr. Stallings?

7 A 31.

8 Q And you're the sole proprietor of Palmetto
9 Collision; is that right?

10 A Yes, ma'am.

11 Q And I understand that you -- your father had
12 been in the same type of business and you basically
13 bought him out some years ago?

14 A Yes, ma'am.

15 Q And how long have you been in operation?

16 A About ten years.

17 Q And in that ten year period have you ever
18 had workers' compensation insurance to your knowledge?

19 A No, ma'am.

20 Q All right. Did you at any time ever sign a
21 contract to obtain or procure workers' compensation
22 insurance?

23 A No, ma'am.

24 Q Have you ever paid a premium on a workers'
25 compensation insurance policy to -- to anybody?

1 A No, ma'am.

2 Q Did your insurance agent ever offer to get
3 you a quote for workers' comp insurance?

4 A Several times. They would always come
5 around knowing I didn't have it so they would offer it
6 and I would say no, you know, I didn't -- and that was
7 it.

8 Q So they offered to sell you a policy of
9 insurance but you weren't interested?

10 A Absolutely.

11 Q All right. Now did you ever, even when you
12 had these discussions with the insurance agents about
13 selling you a policy of workers' comp insurance, I
14 mean did you ever have any intention to enter into a
15 contract with an insurance agency or an insurance
16 company to provide you with workers' comp insurance?

17 A No.

18 Q All right. We've got --

19 MS. BARR: Your Honor, it's page 33 to 35 of the
20 APAs, they're Claimant's APAs.

21 Q In evidence is a document -- I showed it to
22 you early this morning, but prior to today had you
23 ever seen this document that's entitled "Workers'
24 Compensation Application"?

25 A No.

1 Q Did you complete this -- this workers'
2 compensation application?

3 A No, ma'am.

4 Q On page 35 there's a signature line for
5 applicant signature. Did you sign that line?

6 A No.

7 Q Did anybody sign that line?

8 A No, ma'am.

9 Q All right. Did you ever authorize anyone to
10 sign an application like this on your behalf?

11 A No way.

12 Q Okay. And you -- did you ever pay Accident
13 Fund Insurance any amount of money for workers'
14 compensation insurance?

15 A Never, just the garage liability policy.

16 Q All right. So you've had general liability
17 policies for your business with -- with Accident Fund
18 or other insurance companies?

19 A Yes, ma'am, three -- three total.

20 Q Three different companies you've worked
21 with?

22 A Uh-huh.

23 Q Was it ever your intention to become subject
24 to the South Carolina Workers' Compensation Act by
25 obtaining workers' compensation insurance?

1 A No.

2 Q Did you have an understanding as to -- to
3 whether a company with -- with three regular employees
4 even required workers' comp insurance?

5 A No, but down the road I had learned that but
6 I was still -- I was -- you know at the time just knew
7 I didn't want it.

8 Q We have records from the South Carolina
9 Employment Security Commission and -- dating back to
10 the third quarter of 2007. Did you pay payroll taxes
11 and report the wages that you pay your employees to
12 state and federal government?

13 A Yes.

14 Q You did that for all your employees?

15 A Every month.

16 Q Every month? And you have an accountant who
17 helps you with this task?

18 A Yes.

19 Q All right. How many employees do you
20 currently have?

21 A Two.

22 Q Okay. And -- and how do you pay those two
23 employees?

24 A Through Quick-Books by commission.

25 Q Okay. They're paid on a commission of -- on

1 what the invoice is going to be for -- for the job you
2 do?

3 A Per job, yes, we break it down sometimes,
4 but they're always paid fair.

5 Q Now in looking at this -- the records for
6 the quarter ending September 30th, 2007 it lists two
7 employees; is that correct?

8 A Yes, ma'am.

9 Q All right. The first -- or the second
10 listed is Doug Alexander. Doug's your uncle?

11 A Yes, ma'am.

12 Q All right. So you're -- you're paying
13 payroll taxes and reporting the wages you paid to your
14 uncle, Doug Alexander?

15 A He is part time.

16 Q He's part time? And why does he only work
17 for you part time?

18 A His main job is an Air Force Base fireman
19 which he works for me part time.

20 Q So even though he's part time you report his
21 wages and -- and he's on the books?

22 A Yes.

23 Q All right. And then there's another James
24 Alexander. Are you related to James?

25 A Yes, ma'am, that's Doug's son.

1 Q He's your cousin?

2 A My cousin.

3 Q All right. And he -- he goes by Jamie?

4 A Jamie.

5 Q All right. So if we've talked about a Jamie
6 in the record he's the Jamie who has worked for you?

7 A Yes, ma'am.

8 Q Jamie, does he work part time or full time?

9 A Full time.

10 Q Has he worked for you on a consistent basis
11 since 2007 or does he come and go?

12 A Comes and goes.

13 Q All right. But just the privilege of being
14 a family member?

15 A He is an exceptional employee when he is
16 doing well so it's hard to turn him down when he comes
17 back around for employment and you -- you know, he's
18 good at what he does when he does it.

19 Q And when he is there working for you on
20 average how much does Jamie Alexander earn per week?

21 A He would make between eight to \$1200
22 dollars, which I sometimes couldn't understand that,
23 but it was on paper. He -- he earned it.

24 Q He earned it?

25 A Uh-huh.

1 Q And that was consistent throughout the
2 different periods that Jamie worked for you?

3 A Yes, he was very fast and efficient.

4 Q All right. And then looking to the fourth
5 quarter of 2007, the quarter ending 12/21/07 looks
6 like you still only have two employees?

7 A It appears so, yes, ma'am.

8 Q All right. And it was still your Uncle Doug
9 and Jamie; is that right?

10 A Yes.

11 Q All right. Now during that period of time,
12 those last two quarters of 2007 did you regularly
13 employ anyone other than the two you reported, James
14 and Doug?

15 A No.

16 Q All right. And in looking at those last two
17 quarters of 2007 it looks like your average payroll
18 was \$21,000 to about \$23,000 per quarter; is that
19 right?

20 A That's about right.

21 Q Did that amount stay fairly consistent over
22 the years?

23 A Yes.

24 Q Okay. And would that be indicative of the
25 volume of work you have in your shop?

1 A It would cover the expenses that the
2 business accrues throughout that quarter so it would
3 have to generate a certain amount of money to even
4 break even, so that's why that number is what it is.

5 Q Okay. So you -- you could generate that
6 volume of work with -- with Doug working part time and
7 then -- and then James working full time and working
8 well?

9 A Uh-huh. Absolutely.

10 Q Okay. Now -- and I guess another question,
11 Jamie he never -- does he ever work part time for you?

12 A No, he would just -- he'd usually be working
13 or he wouldn't be working.

14 Q Okay. When he was there he was working full
15 time earning about \$800 to \$1000 dollars -- or \$1200
16 dollars a week?

17 A That's correct.

18 Q Okay. Now turning -- looks like page 16,
19 the quarter ending 3/31/2008 how many employees did
20 you have during that quarter?

21 A It's still Doug and Jamie.

22 Q And when you go to the next quarter it looks
23 like during the -- or excuse me, the second quarter --
24 or the first quarter of 2008 Jamie earned about
25 \$13,000 that quarter?

1 A Yes.

2 Q All right. And your total payroll is still
3 about \$20,000 for the quarter -- \$21,000 for the
4 quarter; is that right?

5 A That's right.

6 Q When we flip to the next page, page 17 I
7 notice that -- that Jamie -- it appears he earned
8 less. How much did Jamie earn in the quarter ending
9 June 30th of 2008?

10 A It was 20 -- a little over \$2200 dollars
11 which means that he only worked a few weeks that
12 quarter --

13 Q Okay.

14 A -- of three months.

15 Q Did he leave in the early part of that
16 quarter to go work elsewhere or --

17 A I would imagine so.

18 Q Now --

19 A It's hard for me to think back that far but
20 just looking at the quarterly reports I know the men
21 who would not have worked together --

22 Q Okay.

23 A -- very long.

24 Q All right. Well, we've got Doug on here,
25 your Uncle Doug. He's working his regular part time?

1 A Yes, every other day.

2 Q Every other day? And then we have Ricky
3 Hartzell, the Claimant; is that right?

4 A That's correct.

5 Q And according to the records that Ricky gave
6 us he started working for you sometime in mid July,
7 maybe July 18th of 2008 based on what he recollects?

8 A It's always a slow start for anybody that
9 comes back and then you get -- get in the swing of
10 things and normally it always picks back up.

11 Q All right. And when you say come back,
12 Ricky had worked for you and your father --

13 A Oh, yeah, off and on --

14 Q -- over the years?

15 A -- over the years, yes.

16 Q What about Mark Barnes? How long did Mark
17 Barnes work for you?

18 A Just a few weeks.

19 Q All right. And why did Mark only work for
20 you for a few weeks?

21 A He was developing some sort of gastric or
22 intestinal illness that he has, I heard, still
23 suffering with. He stayed sick the entire time he was
24 employed. We did not get a good start off so he
25 didn't last very long and he was -- he was gone.

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1 Q Did you have to hire -- or did you hire a
2 replacement for -- for Mark Barnes in the -- in the
3 second quarter of 2008?

4 A I hired Tommy Griffin.

5 Q All right. And did Tommy Griffin -- he came
6 in and replaced Mark Barnes?

7 A Oh, yeah, and eventually Jamie also. They
8 were both very efficient, fast. Jamie and Tommy would
9 have never made it long working together and so --

10 Q To the best of your recollection did Jamie
11 and -- and Tommy work together during that quarter
12 ending June 30, 2008?

13 A Very, very briefly.

14 Q You said Mark was only there for a few
15 weeks?

16 A Yes.

17 Q All right. Now if we go to the quarter --

18 MS. BARR: And this is page 18.

19 Q -- ending September 30th of 2008 -- I may
20 have misspoke earlier, but we have Doug's. We know he
21 -- he's a regular part time employee again during that
22 quarter. Ricky it appears earned about \$3565 dollars,
23 but isn't it true or do you agree with -- with Ricky's
24 recollection that -- that he did not work that entire
25 quarter, that he left by August 8 of 2008 to go work

1 for Precision Collision?

2 A Yes.

3 Q All right. And if Ricky's recollection is
4 that he didn't come back to work for you until mid to
5 late December of 2008 would you agree with that
6 recollection?

7 A Yes.

8 Q Okay. So during the quarter ending 9/30/08
9 Mr. Hartzell worked, at best, a couple of weeks if at
10 all? Actually he stopped working in -- you know,
11 maybe a couple of weeks?

12 A It would have been a couple -- a good couple
13 of weeks, maybe even, you know, a month between the
14 two of our records, you know, I -- I -- to make that
15 amount of money.

16 Q Okay. And Doug stayed as a regular --

17 A Part time.

18 Q -- part time employee?

19 A Yes.

20 Q All right. And what about Tommy Griffin?

21 A He was doing the -- the majority of the work
22 as Jamie Alexander used to do and basically I hired
23 Edward Davis as a -- a helper to assist Tommy. Mixed
24 thoughts, you know, at the time not sure how that was
25 going to work out, didn't know the guy very well.

1 First time we'd hired someone like we didn't know from
2 the past it's -- it's normally strange. Normally we
3 keep the same group of guys, they float around from
4 shop to shop, but you know, you know them. And he --
5 he turned out to be a pretty good fellow, just had a
6 -- a eye problem, couldn't see very well and then of
7 course Edward and Tommy both didn't last too much
8 longer, but --

9 Q Well it looks like Edward only made \$840 in
10 the quarter ending September 30, 2008. Was that
11 because he came in on -- at the end of the quarter?

12 A That would be about two weeks worth of work.

13 Q Okay. And then the next quarter is the
14 quarter ending December 31, 2008 and Mr. Hartzell's
15 not on there because he -- he really didn't work for
16 you at all during that quarter; he was at Palmetto
17 Collision and hadn't come back yet?

18 MR. KOON: Objection. He just testified that he
19 came back in December.

20 THE COURT: Well, he can answer the question.

21 A I'm sorry?

22 BY MS. BARR:

23 Q Is it possible that Ricky came back the last
24 two weeks of December and you -- you paid him cash; is
25 that right?

1 A Yes.

2 Q All right. But he didn't work for the vast
3 majority of the -- the fourth quarter of 2008?

4 A No, it was very briefly and the reason for
5 that I couldn't remember why he worked so little.
6 Possibly didn't -- probably were slow and it was
7 Christmastime but I've always tried to look out for my
8 guys and Ricky in a time of need would have known we
9 would have found some work for him to do and I believe
10 that's what we did around that time.

11 Q Around Christmas of 2008?

12 A Uh-huh, I'm certain of it.

13 Q Okay. Now Tommy Griffin, fourth quarter of
14 2008 shows that he earned \$650 dollars. Did he work
15 throughout the fourth quarter of 2008?

16 A No, he was fired at the very beginning of
17 October -- I'm sorry, released at the very beginning
18 of October.

19 Q All right. How do you remember that he was
20 -- was -- that you let him go in the beginning of
21 October of 2008?

22 A Well, I had had a surveillance system
23 installed a few weeks or months before that and it was
24 the night of my birthday I had asked him to come in
25 the next morning and open for me as he already did,

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1 just making sure that he was understanding that I may
2 have been coming in late that morning. To only find
3 out that he didn't show up for work that morning and I
4 went to the camera system and he had been through my
5 office, through my desk at 2:00 that morning for
6 whatever reason, so I immediately, you know, released
7 him from his job as soon as he did show up for work
8 that day.

9 Q But the reason you remember the date --

10 A It was my birthday.

11 Q -- it was your birthday?

12 A My 30th birthday.

13 Q So during the fourth quarter of 2008 did --
14 Tommy wouldn't have been working at the same time with
15 Ricky Hartzell?

16 A Not after that date.

17 Q Okay. Now I noticed that Edward Davis is
18 not on your payroll for the first quarter of 2009.
19 Did he leave you at some point in the third quarter of
20 2008?

21 A Yes. He stayed a little bit after Tommy did
22 because based on Tommy's actions is what got him
23 terminated, but you know, Edward was like I said an
24 honest, hard working employee, he just couldn't see
25 very good at all and his eye problem was -- was just.

1 an issue and he and I both understood that. And he
2 moved to California where he originally moved from --
3 lived.

4 Q Okay.

5 A So that's where Tony Davis stopped working.
6 It was a mutual understanding.

7 Q All right. So neither Tommy nor Edward
8 would have been on your payroll for the first quarter
9 of 2009; is that correct?

10 A No, shouldn't have been.

11 Q But we do have Doug Alexander --

12 MS. BARR: That's page 20 of the APAs.

13 Q Doug Alexander is continuing his regular
14 recurring part time role; is that right?

15 A Yes.

16 Q All right. And you also had Ricky Hartzell
17 working for you until he quit; is that right?

18 A Uh-huh.

19 Q Is that yes?

20 A That's correct.

21 Q And Harold Brock, when did Harold Brock
22 start working for you?

23 A Harold Brock started I suppose at the
24 beginning of '09. I'm not quite sure of the exact
25 month, date, but he had come from the previous shop

1 that my father had built years ago. He was the only
2 employee there and they had closed down and he had a
3 -- he was the oldest employee that I had ever
4 employed, but he was the -- had a very good history
5 behind him. So I took him in solely to work on a
6 couple of projects that had been sitting around for
7 several years. They called it their restoration jobs,
8 and that's all and only what he worked on his duration
9 of being there.

10 Q And it looks like the last -- that first
11 quarter of 2009 your payroll stayed about that \$20,000
12 dollar average total?

13 A Uh-huh.

14 Q Is that right?

15 A That's correct.

16 Q Okay. It looks like Jamie Alexander was
17 added back to your payroll in the first quarter of
18 2009?

19 A Yeah, just for a very few weeks.

20 Q All right. And would those few weeks have
21 been at the beginning of the quarter or at the end of
22 the quarter?

23 A Probably I -- I would have thought the
24 beginning. There was a gap there I would -- no it
25 would have to be the end, because once he was there he

1 was there.

2 Q And it looks like from -- from the records
3 that Jamie was working in the second and third quarter
4 and on into the fourth quarter of 2009; is that
5 correct?

6 A Most likely. The payroll records would --
7 would prove that exactly, which I do not have.

8 Q All right.

9 THE COURT: Mr. Hartzell, does your company have
10 any payroll records? Do y'all keep payroll records at
11 your company?

12 THE WITNESS: Yes.

13 THE COURT: And you still have those?

14 THE WITNESS: Absolutely.

15 THE COURT: You don't have them with you today?

16 THE WITNESS: I don't.

17 THE COURT: Okay. Thank you.

18 THE WITNESS: But they are on Quick-Books saved
19 for every year.

20 BY MS. BARR:

21 Q You have an accountant who handles that sort
22 of thing for you, or --

23 A Yes.

24 Q -- at least back then?

25 A Still the same one.

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1 Q Okay. Same accountant, little bit different
2 way of keeping books now. I think you said?

3 A Well, she just -- we -- we keep it all on
4 the computer and we back it up every few months and
5 save the information.

6 Q Looking at Jamie's payroll it looks like --
7 what -- he earned about \$1500 dollars during the third
8 quarter of 2009?

9 A Yes, ma'am.

10 Q All right. So what --

11 A I -- I think that's the first quarter.

12 Q The first quarter, yes, the first quarter of
13 2009.

14 MS. BARR: Page 20 of the Employment Security
15 Commission.

16 A Yes, ma'am.

17 Q What does that tell you about how -- how
18 long Jamie worked for you during that quarter?

19 A Well, that definitely shows about two week's
20 salary at the minimum.

21 Q At the minimum or at the maximum?

22 A He would make at least \$800 dollars a week,
23 there was just no way around it. I often asked him
24 how he figured out how to do that each week, but --
25 and a good week would come it would be over -- over

1 \$1000 dollars sometimes. So \$1500 dollars for Jamie
2 is a good two week's salary.

3 Q Okay. Now we know that -- that Ricky left
4 in the first quarter of 2009; is that right?

5 A Yes.

6 Q And what's your understanding of why he
7 stopped working for you in the first quarter of 2009?

8 A He just complained, which I didn't feel was
9 the case, that there was too much family and that he
10 thought that they would get the jobs over him.

11 Q Was work slow?

12 A It had slowed down but there was no -- I
13 mean I wasn't planning on releasing him or letting him
14 go.

15 Q Did he ever tell you -- did Ricky ever tell
16 you that he was going to -- to stop working for you
17 because he had hurt his back?

18 A No. That was never an issue, it was work,
19 the amount of money made on the job and how to get the
20 paychecks higher at the end of the week and we
21 struggled with that a good bit.

22 Q All right. Well I see looking at page 21,
23 by the second quarter of 2009 your -- your total
24 payroll was down a good bit; down to about \$13,000
25 dollars for that quarter?

1 A Yes, ma'am.

2 Q All right. And after Ricky left you didn't
3 have to replace him?

4 A No.

5 Q Okay. And payroll stayed low after that in
6 the following quarters?

7 A It -- everything went down for a little
8 while there.

9 Q Okay. Now in this -- this is in the record
10 and I -- I want to address it. It's page 22, the
11 quarter ending September 30th of 2009, you have five
12 employees listed on what you reported to the
13 Employment Security Commission; is that right?

14 A Yes, ma'am.

15 Q Is that because you just -- you always
16 report -- report everything that you pay out to your
17 employees?

18 A Just by the rules, try to keep track of
19 everything so her quarterly reports match up with
20 checks and the tax payments and the whole nine yards.

21 Q All right. So there's an entry here, one of
22 the listed employees is Michael C. Stallings. Is that
23 you?

24 A It should be an "L".

25 Q Oh, "L", excuse me.

1 A Yes.

2 Q Is that you?

3 A Yes, ma'am.

4 Q And your -- that's your social security
5 number listed in this --

6 A That's my social, right.

7 Q Right. And you reported \$500 dollars worth
8 of income for you as the owner of the company?

9 A Yes.

10 Q All right. And then you also listed four
11 other employees during -- during that period?

12 A I did.

13 Q Now Doug was doing the part time job. You
14 had Jamie, your cousin, working a full time job that
15 quarter; is that right?

16 A That's correct.

17 Q You had Harold Brock working on restoration
18 projects, on special projects for you?

19 A Yes.

20 Q All right. And then there's also a James
21 Benton added. Why did you hire James Benton?

22 A Well, he had come from a previous employer
23 of 25 years standing at his last job. They had --
24 were in the process of shutting down and I had hoped
25 that I would be able to hire and hold on to him as

1 being a standup background and body man that he was.

2 Q Did you intend for Mr. Benton to replace Mr.
3 Brock?

4 A Yes.

5 Q Could you -- I see you -- he had payroll
6 about \$11,000 dollars that quarter. Could you --
7 could you justify financially keeping both men on the
8 job; Mr. Brock and Mr. Benton?

9 A Well Brock worked for I would call pennies
10 on the dollar. He would work for a very affordable
11 salary and he was happy with that. It was the only
12 way I was able to get some of these restoration jobs
13 done is to have someone solely for those jobs. His --
14 the jobs were getting wrapped up, they were -- and he
15 couldn't perform like the other guys. He couldn't --
16 his quality of work was low and he knew that. His
17 eyes, his hearing were deteriorating.

18 Q He was an older gentleman?

19 A Very much so. He was in his mid 60s, a
20 super nice guy. I still think the world of him. And
21 just wasn't able to compete with what I needed done on
22 the newer high end cars. And James -- James Benton
23 was the opposite, he was ready, he was good and I
24 hated to work that out. I try to keep on my guys. I
25 try to do it by the rules, but I -- it's hard -- I've

1 seldom released people from employment. Normally
2 folks get a job there, we do whatever it takes to make
3 it happen for -- for both of us and --

4 Q So it looks like you -- you held onto to Mr.
5 Brock as long as you could and kept him through the
6 end of 2009?

7 A It appears so, yes.

8 Q So you wouldn't dispute that the Employment
9 Security Commission records for the third and fourth
10 quarter of 2009 show you plus four other individuals
11 working in your shop?

12 A Yes, it's very true and no real explanation
13 except for, you know, Brock did work there a little
14 longer than intended. Like I said, that was
15 eventually changed.

16 Q Do you -- after that fourth quarter of 2009
17 up until the current day today have you ever had this
18 many people working in your shop?

19 A No.

20 Q And I believe you said you had two people
21 working for you now?

22 A Yes.

23 Q Okay. And have you always reported all the
24 wages you pay to your employees at Palmetto Collision?

25 A Yes.

1 MR. KOON: Object to the leading.

2 THE COURT: I'll overrule.

3 Q Other than these two quarters that are
4 referenced, the third and fourth quarter of 2009
5 during any other quarters have you had four or more
6 employees working at Palmetto Collision?

7 A No.

8 Q There was mention of a gentleman named Jimmy
9 Morris. Do you know a gentleman named Jimmy Morris?

10 A Yes.

11 Q And has he come to do certain jobs for you
12 on occasion?

13 A Yes..

14 Q All right. Is he a full time employee of
15 Palmetto Collision?

16 A No, he is not.

17 Q Does he work for you on a regular basis?

18 A No, he comes in when needed and brings his
19 own tools and has his own establishment of employment
20 at his house or out of his garage.

21 Q And I think Ricky referred to him as kind of
22 a heavy duty guy; he -- he tackled the hard jobs?

23 A He would be in charge of using the frame
24 machine and the heavy pulls when we would get a job of
25 that nature. Not always did we have the heavier stuff

1 even though they were the better paying jobs we
2 couldn't keep them in there and other than that the
3 other guys would do, you know, the regular flow of
4 work.

5 Q So if you needed to call somebody would
6 Jimmy Morris' skills to work on a job you had on a
7 certain occasion you paid him on a 1099; is that
8 right?

9 A Yes, I did.

10 Q My understanding that after Ricky left you
11 had some contact with him through his unemployment
12 claim; is that right?

13 A Yes.

14 Q Okay. And through the course of that
15 unemployment claim did he ever give you any reason to
16 believe that he had injured his back working for you
17 or was in need of medical treatment?

18 A No.

19 Q Okay. It's my understanding that y'all also
20 had another occasion to speak towards the end of 2009;
21 you called him about some items; is that right?

22 A Yes.

23 Q Did you speak to him directly on the
24 telephone at that time?

25 A Yes, I attempted to call him several times

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1 and finally got in touch with him and told him he
2 needed to move the stuff that I had stored for him for
3 the last probably ten years and it was just time to
4 clean up and he came and did it.

5 Q You had leased the space where his items
6 were being stored?

7 A Through my landlord's approval we had
8 subleased four of the 12 bays of this building.

9 Q Okay. Were you still on a friendly basis
10 with -- with Ricky when you -- when you spoke to him?

11 A Yes, fine.

12 Q And when you talked to him on the phone in
13 late 2009 about removing those items from storage did
14 he give you any reason to believe he had injured
15 himself working for you or injured his back or needed
16 medical treatment?

17 A No.

18 Q What about while he was still working for
19 Palmetto Collision in February of 2009, did Ricky ever
20 come to you and say that he had injured him -- injured
21 his back moving heavy equipment?

22 A Not that I recall.

23 Q Now Ricky has testified today that he was
24 moving some heavy items, a pole; is that right?

25 A It's called a pulling post.

1 Q Pulling post? Was that something that Ricky
2 would normally do, moving pulling posts or the frame
3 machine?

4 A No.

5 Q And why wouldn't that be a normal part of
6 his job?

7 A Pulling frames is not in his job
8 description, he didn't deal with that department. He
9 stuck with body work and painting or minor, you know,
10 parts, collision, the smaller -- and I knew he had
11 weak shoulders so therefore I would never have asked
12 him to do framework even though he possibly could have
13 been capable of doing it.

14 Q So if Ricky had come to you and said that he
15 had been moving the frame machine or the pole --

16 A Uh-huh.

17 Q I mean would that have gotten your
18 attention?

19 A It wouldn't have made much sense why he
20 would have been messing with that, but I would think
21 so, you know, but I don't recall that ever becoming a
22 topic of -- of anything. It was always what can we
23 work on, I need to make some, you know, more than we
24 made last week and --

25 Q Did he ever give you an indication that he

1 was having difficulty performing his job duties
2 because he had sustained a back injury?

3 A That never occurred to me, only shoulders
4 from time to time.

5 Q To the best of your recollection did Ricky
6 ever ask you to pay for medical treatment or to send
7 him to a doctor for his low back?

8 A He did not.

9 Q Did he ever ask you to pay a medical bill?

10 A No.

11 Q Had you -- he did not have health insurance
12 with -- in his job with you; is that correct?

13 A No, he does not -- did not.

14 Q Did you ever talk to him prior to February
15 of 2009 about trying to help him get some insurance
16 benefits or medical treatment for his arthritis in his
17 shoulders?

18 A I knew he had had benefits at his previous
19 job and I had discussed with him about either
20 retirement or possible health insurance to try to
21 possibly maybe have some help on his shoulders one
22 day. And when we get more serious about that topic,
23 the cost, taking more money out of a paycheck each
24 week just didn't interest him and I mean I could -- I
25 didn't know what else to do for the situation but say,

1 okay, well apparently let's just keep trucking
2 forward, so we would. I offered Aflac to my guys. I
3 had a good friend of mine join the Aflac field and he
4 would come by and I really tried to push that on my
5 guys because it was affordable and they didn't want to
6 do that either, so I said, okay, well, they're not
7 interested.

8 Q All right.

9 A And that was it.

10 Q And at any time did you have any reason to
11 believe that -- that Ricky Hartzell was in need of
12 medical treatment for his back while he was working
13 for you?

14 A No.

15 Q And in your shop I understand -- y'all are a
16 close group, you're friends and family?

17 A Yes.

18 Q All right. And you've -- you've known I
19 think you said Mr. Hartzell since you were a boy?

20 A Right. Uh-huh.

21 Q You have a good relationship?

22 A Yes.

23 Q I think you said, "If Ricky was happy
24 everybody was happy."?

25 A Yes, that's true.

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1 Q But you took care of each other in the shop;
2 is that right?

3 A Very much so.

4 Q And is that why he would come back to
5 Palmetto Collision after other jobs would -- wouldn't
6 work out?

7 A Yes, he was good at what he did, so he
8 always, you know -- always had a job if the work was
9 there.

10 Q In the shop you buy breakfast and lunch for
11 the guys?

12 A Every day.

13 Q If it was something you could do to help one
14 of your guys out would you ever refuse them?

15 A Never. They know better than that.

16 Q When did you first learn that -- that Ricky
17 had -- was filing a workers' compensation claim
18 alleging that he had injured his back moving heavy
19 equipment back in February of 2009?

20 A When I started receiving notices from
21 different areas, from the state.

22 Q Did you get some letters from the South
23 Carolina Workers' Compensation Commission about the
24 insurance coverage issue?

25 A Yes, I got several letters from them, a

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1 couple of the perforated smaller envelopes with
2 amounts that I already owed them for either penalties
3 or whatever. I didn't understand any of it at first.
4 I was just advised to get an attorney and further --
5 more look into it.

6 Q Okay. And then some time after you started
7 getting correspondence from the Workers' Compensation
8 Commission you got a Form 50 from -- from Ricky's
9 attorney; is that right?

10 A That's correct.

11 Q Prior to reviewing this Form 50 which is
12 dated May 10 of 2010 did you have any knowledge or
13 reason to believe that -- that Ricky Hartzell had
14 injured his back while working for you?

15 A No, ma'am.

16 Q Okay. How did -- how did you react when --
17 when you found out Ricky was filing this claim against
18 you?

19 A I was very surprised and unsure about what
20 was going on and why he didn't speak with me more
21 about the situation if it was such a large deal why he
22 never said anything to me.

23 Q Did you speak to Doug or anybody else --

24 A I did.

25 Q -- that was around? Did anybody else have

1 any knowledge --

2 MR. KOON: Objection to hearsay.

3 Q Did -- and during the course of your
4 investigation did you locate anyone who had any
5 knowledge about this alleged claim of -- of Ricky
6 injuring his back?

7 A I went to each of the guys that were there
8 at the same time he was there.

9 MR. KOON: Hearsay, objection.

10 THE COURT: I'll sustain that.

11 Q During the course of your investigation did
12 -- did anybody give you any reason to believe that --
13 that Ricky had in fact injured his --

14 MR. KOON: Same objection.

15 Q -- injured his back while working for you?

16 A No.

17 THE COURT: I'm going to sustain the objection.

18 Q After Ricky filed this claim against you
19 have you had any conversations with him; has he called
20 you at any time?

21 A No, ma'am, not except for the time we -- oh,
22 I'm sorry. Not since the claim, no.

23 Q Okay. If -- if you were to have to pay for
24 Ricky to -- to go get medical treatment at this point
25 in time where -- where would the money come from? Do

1 you --

2 MR. KOON: Objection, relevance.

3 Q -- do you have the money in your business?

4 A No.

5 THE COURT: Would you speak to the relevance of
6 that, Ms. Barr?

7 MS. BARR: It just goes to the severity of the
8 claim and his emotions, reactions to the claim.

9 THE COURT: I'll sustain the objection.

10 BY MS. BARR:

11 Q Mr. Hartzell said that he came to you some
12 time in February or maybe March of 2009 and said he
13 needed to go to the doctor. Do you have any
14 recollection of that conversation?

15 A I do not.

16 Q Thank you, Mr. Stallings, please answer any
17 questions that Mr. Koon or Ms. Glover may have for
18 you.

19 THE COURT: All right. Ms. Glover.

20 CROSS EXAMINATION

21 BY MS. GLOVER:

22 Q Mr. Stallings, could you give me a business
23 address?

24 A 4155 Dorchester Road, Unit D.

25 Q And that's in Charleston?

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1 A I'm sorry, North Charleston, South Carolina
2 29405.

3 Q And the telephone number for the business?

4 A It's 843-554-1426.

5 Q And do you have a -- a federal employment
6 identification number for your business?

7 A Yes, ma'am.

8 Q What is that?

9 A It's [REDACTED].

10 Q What is your social security number?

11 A It's [REDACTED].

12 MS. GLOVER: I don't have any other questions.

13 THE COURT: Okay. Mr. Koon.

14 MS. BARR: And we would just ask that personal
15 identifiers be redacted from the formal record.

16 THE COURT: That's fine with me. Mr. Koon.

17 MR. KOON: No objection.

18 CROSS EXAMINATION

19 BY MR. KOON:

20 Q Mr. Stallings, you testified that you had no
21 recollection of the conversation between yourself and
22 Mr. Hartzell when he told you that he had hurt himself
23 moving a frame machine and you advised him to go to
24 the emergency room; is it correct you have no
25 recollection of that?

1 A That is correct.

2 Q Now since you have no recollection of it you
3 can't say that that conversation did not happen can
4 you?

5 A I cannot tell you what was said or what I
6 said, no, sir.

7 Q And I notice that in just about every other
8 answer to every other question posed to you by your
9 counsel you were very definite about what happened and
10 what did not happen.

11 A For the most part.

12 Q But in this occasion you don't have a
13 recollection.

14 A I don't have proof or I can tell you what
15 was said, no, and if I did I would say something more
16 about the situation but I don't.

17 Q All right. Now --

18 A It doesn't ring a bell.

19 Q Okay.

20 A I'm sorry.

21 Q Your company is an LLC; is that correct?

22 A Yes, sir.

23 Q All right. And you earn money working for
24 the company; is that correct?

25 A Yes.

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1 Q Okay. I noticed on the application for
2 workers' compensation insurance that there were some
3 numbers about your payroll and about your office and
4 clerical staff. Are you the office and clerical
5 staff?

6 A At times.

7 Q Okay. And do you get paid for doing that?

8 A You could say so.

9 Q Okay. And in fact your affidavit of your
10 own accountant which you attached to your submissions
11 indicated that you were sometimes considered your own
12 employee -- an employee of the company; is that
13 correct?

14 A Well, I was the company.

15 Q Well the company is a limited liability
16 company; is that correct?

17 A That's correct.

18 Q All right.

19 A That was before that I was the sole member.

20 Q How long -- how long has it been a limited
21 liability company?

22 A That is a good question; I'd have to ask my
23 accountant about that.

24 Q Well if you look at page --

25 MS. BARR: Your Honor, I object to relevance to

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1 this line of questioning. He's the sole proprietor.

2 He does --

3 THE COURT: I assume he's trying to establish
4 that he's one of the employees. Would that be
5 correct?

6 MR. KOON: Well that's what his -- his only -- is
7 on --

8 THE COURT: I assume that's what you're looking
9 for.

10 MR. KOON: That is correct and that is what is on
11 --

12 THE COURT: I'm going to overrule the objection.

13 MS. BARR: Well do not --

14 MR. KOON: That is on his affidavit.

15 MS. BARR: -- employers have to be elected --
16 formally elect to be subject to workers' compensation?

17 THE COURT: No, not if he's an employee of the
18 LLC he doesn't.

19 BY MR. KOON:

20 Q If you would look at the application --

21 MS. BARR: We don't even know -- there's no
22 foundation. We don't know who prepared this document.

23 THE COURT: All right. Lay the foundation, Mr.
24 Koon.

25 MR. KOON: All right.

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1 BY MR. KOON:

2 Q You have an insurance agent, is that
3 correct?

4 A Absolutely.

5 Q And who is your insurance agent?

6 A Right now it is --

7 Q Excuse me, who was your insurance agent in
8 2008?

9 A It was through Travelers.

10 Q All right. And did you have an agent that
11 you personally dealt with?

12 A I don't remember his name. He would come by
13 periodically.

14 Q And you said he tried to push workers'
15 compensation insurance on you. Does that mean that
16 y'all discussed the possibility of having workers'
17 compensation insurance?

18 A The thought was random at times, depending
19 on the amount of workflow the shop was doing. I -- I
20 -- I probably -- he -- as much as he would bring it up
21 he acted like I was the only one in South Carolina
22 without having the workman's compensation policy and
23 I'm like, "Well really, I just don't see how I can
24 afford that right now; is it necessary?" And he --
25 they wrote up a quote I suppose and I gave them some

1 makeshift numbers so they could get the quote accurate
2 based on what the guys made.

3 Q All right. And in fact --

4 A So -- and if I was low or high it would have
5 been I'm like, you know, and it was just -- like I
6 said, it was just something that I was looking into
7 because of the pressure from my agent really.

8 Q And as part of the quote process you gave
9 him your approximate annual payroll; is that correct?

10 A Right.

11 Q And you told him that it was approximately
12 \$117,000 dollars; is that correct?

13 A I think I was shooting high so we weren't
14 underbidding for some sort of penalty we would have
15 gotten for -- for being too low in that depart -- in
16 that area.

17 Q All right. But my -- but let me ask it to
18 you this way. This figure of \$117,000 dollars
19 wouldn't be on a -- as on your application --

20 MR. KOON: Page 34 of the Claimant's submissions,
21 Your Honor.

22 Q -- that wouldn't be just a number that was
23 made up out of the air, that would have been a number
24 that you would have estimated as a little bit high for
25 purposes of the quote; is that correct?

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1 A Possibly.

2 Q Is it most likely correct?

3 A Most likely.

4 Q All right. And you also stated that you had
5 clerical employee expense of \$50,000 dollars and that
6 would -- I'd have the same question for you, that
7 wouldn't be a number that an agent just pulled out of
8 the air, that would be most likely a number that you
9 gave to the agent for the purposes of the quote; is
10 that correct?

11 A I am not at will to answer that because I'm
12 not quite sure what that is and I don't remember
13 giving them that information from that -- from my
14 behalf, so.

15 Q Okay. Well, you are the clerical and --
16 clerical employee; is that correct?

17 A I would imagine so.

18 Q You keep your own books?

19 A I have a bookkeeper.

20 Q You run the office and give the bookkeeper
21 the information?

22 A I basically just write estimates and checks.

23 Q Okay.

24 A That's it. I don't do any of the filing or
25 Quick-Books or any of the accounting at all.

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1 Q But you earn money from the company; is that
2 correct?

3 A Well, it pays some of my bills.

4 Q Does the company write you a check?

5 A It -- not always, I pay taxes on a lot of
6 the money that I spend through the company because I
7 don't write myself a check. But sometimes the money
8 just isn't there for me to write a check.

9 Q When -- when the money's there you write
10 yourself a check from the company; is that correct?

11 A I try to do that. My accountant likes it
12 when I do that.

13 Q All right. And do you have a salary that
14 you normally pay yourself when you're able to?

15 A Normally it's about \$300 dollars a week.

16 Q All right. And how -- and has that been the
17 case --

18 A Lately that's been the case.

19 Q All right.

20 A Over the years it was not even that. After
21 payroll it was any -- there was any or none leftover.

22 Q But it was always something?

23 A Never always something, it was -- a lot of
24 times there was never any money left over.

25 Q I understand that, but when you were able to

1 take a paycheck you took a paycheck; is that correct?

2 A Absolutely; who wouldn't?

3 Q And that's the purpose of having a business
4 isn't it?

5 A That's the purpose of working I would -- I
6 would think.

7 Q And you understand that an LLC is a -- is a
8 -- is a legal entity separate and apart from the
9 members who operate it; is that correct?

10 A Well, -- yes.

11 Q Now -- so you did cooperate with your agent
12 back in 2008 to submit a -- enough information for a
13 quote; is that correct?

14 A Just a quote.

15 Q And -- but you're testifying today that you
16 never authorized your agent to electronically submit
17 that for a policy; is that correct?

18 A That's correct.

19 Q He just did it on his own?

20 A That's -- that's -- I assume so.

21 Q Okay. But you knew you had a policy because
22 you certainly got -- got notices for non-payment of
23 premium; isn't that correct?

24 A A good while afterwards I -- I -- I got a
25 letter from a collection agency stating that there was.

1 a amount of money put away that was for a accident
2 fund and I wasn't aware of what that was for at the
3 time. I had to call and ask what the bill was for.
4 That's how unaware I was about it.

5 Q Did you pay the bill?

6 A No.

7 Q Did you compromise the bill?

8 A I refused any of it because I didn't -- I
9 told them that I had not initiated or asked or
10 approved or said anything other than I didn't want
11 workman's comp. I strictly was just getting a quote.

12 Q Did you file any forms with the Workers'
13 Compensation Commission to cease becoming an insured
14 under this policy?

15 A No, I didn't.

16 Q Whether or not you authorized it --

17 A No, I didn't.

18 Q -- did you file any forms?

19 A No, sir.

20 Q Okay. Did you seek any waivers or anything
21 else?

22 A I did not.

23 Q Now, you were asked a number of questions
24 about the Employment Security records. Now let me
25 establish from the beginning that the records that

1 Employment Security has comes from you. They don't
2 magically determine these records; is that correct?

3 A Me or my accountant one.

4 Q Okay. And then the quarter ending December
5 31st, 2008 I think we've already established that the
6 report for that quarter is in error because you
7 acknowledged that Mr. Hartzell came back to work in
8 December of 2008 yet he's not reported at all on the
9 quarter -- the quarter ending December 31st, 2008; is
10 that correct?

11 A Well, there's a reason. My accountant had
12 mentioned to me that you could legally --

13 MR. KOON: Objection to hearsay.

14 A I apologize.

15 MS. BARR: He's answering the question.

16 MR. KOON: I didn't ask him about what his
17 accountant would have said. I asked him if this was
18 an accurate document.

19 MS. BARR: And he's explaining his answer.

20 THE COURT: I'm going to let him testify to that.

21 A That you could legally pay an individual
22 \$600 dollars a year tax free and since I had never
23 done that with Mr. Hartzell he come back through
24 Christmas, did slow work and for me to get him I just
25 paid him -- tried to keep it at \$600 dollars, which I

1 clearly went over that amount. And -- and I did
2 remember having conversation with him saying, "All
3 right, listen, if things pick back up, you know, I
4 can't pay you directly. I must put you back on -- on
5 the books." I had to be right about this and that's
6 where those three miscellaneous checks would have come
7 from, just trying --

8 Q But knowing you were over \$600 dollars you
9 still didn't report or have your accountant report him
10 in the third -- fourth quarter of 2008; is that
11 correct?

12 A I was probably gray in that area just ever
13 so little, but yes, that's -- that's what happened.

14 Q That is correct?

15 A That is correct.

16 Q All right. Now Mr. Doug Alexander is on
17 just about every quarter -- quarterly report; is that
18 correct?

19 A Yes.

20 Q All right. And he's a firefighter; is that
21 right?

22 A Yes.

23 Q And does he do like a lot of firefighters do
24 and have regular employment on the side because he
25 works long shifts and then has many days off? Is --

1 is that the way his firefighting goes?

2 A No, it's every other day.

3 Q Okay. So he's got every other day off, he
4 doesn't work --

5 A He has to work for -- because he doesn't
6 make enough money --

7 Q All right.

8 A -- for his whole job so he must work.

9 Q So he comes in every other day for you on a
10 routine basis?

11 A That's correct.

12 Q And he's been a regular employee for the
13 entire time that we have records for going back to
14 2007; is that correct?

15 A Right.

16 Q And for how many years before that that we
17 don't have records for would you say he has been a
18 regular employee?

19 A Only a couple.

20 Q A couple of years?

21 A Uh-huh.

22 Q Okay. All right. So he's been a regular
23 employee for about six years then, since 2005?

24 A Possible gap -- a few gaps in between, but
25 for the most part he's a -- he's a very reliable

1 employee.

2 Q And Jamie Alexander is his son; is that
3 correct?

4 A Yes, sir, that's correct.

5 Q All right. And he left for a time and came
6 back during the first quarter of 2009; is that
7 correct?

8 A Uh-huh.

9 Q Now he was there at the same time that Ricky
10 Hartzell was there was he not?

11 A Most likely.

12 Q All right. And Harold Brock came in in the
13 first quarter of 2009; is that correct?

14 A Yes.

15 Q And he was certainly there at the same time
16 that Ricky Hartzell was there; is that correct?

17 A That's correct.

18 Q And Douglas Alexander was there at the same
19 time that Ricky Hartzell was there; is that correct?

20 A Yes, sir.

21 Q All in the first quarter of 2009?

22 A Uh-huh.

23 THE COURT: Is that a yes?

24 THE WITNESS: I'm sorry.

25 THE COURT: You need to say yes or no instead of

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1 uh-huh and huh-uh because we're getting it for the
2 record.

3 THE WITNESS: I'm sorry.

4 A Yes, that is correct.

5 Q All right. And Jimmy Morris does the heavy
6 collision work; is that correct?

7 A Yes.

8 Q Okay. And so he uses the frame machine that
9 Ricky Hartzell testified about; is that correct?

10 A Yes.

11 Q All right. And that's your machine?

12 A The company's machine.

13 Q That's the company's machine? I stand
14 corrected. And that's a substantial part of what he
15 does; is that correct; use the frame machine to do
16 heavy collision work; is that correct?

17 A When it's -- when it's needed.

18 Q Does he do other work as well?

19 A Not really.

20 Q And he's there on a regular basis as well,
21 is he not?

22 A Uh-huh -- not -- not necessarily. Jimmy?

23 Q Jimmy Morris.

24 A He would hang around sometimes when he
25 didn't have work to do. He was friends with everyone.

1 Sometimes he'd, you know, just hang out kind of --
2 just kind of, you know.

3 Q How long has he been associated with
4 Palmetto Collision; how many years?

5 A As far as working or just there?

6 Q Working.

7 A It's really kind of hard to say. It's just
8 sporadic throughout the last probably three or four
9 years. There would be large gaps where he wasn't
10 there.

11 Q But when he was there he was there working
12 hard; is that correct?

13 A Sure.

14 Q Okay. And for weeks at a time?

15 A Sometimes.

16 Q And he was there at the same time Ricky
17 Hartzell was there in the first quarter of 2009 was he
18 not?

19 A Yeah.

20 Q Okay. And you said that he brought his own
21 tools, but everybody in the automotive industry brings
22 their own tools; isn't that correct?

23 A Well, you're -- you're supposed to, but --

24 Q That's common; is that correct?

25 A It is common.

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1 Q And when Jimmy Morris was working for you,
2 you as the boss had the right to tell him what to do
3 did you not?

4 A We would discuss things. I would actually
5 hire him in there for his -- his knowledge and his
6 expertise.

7 Q But you told him what to work on, you told
8 him what job to get out, is that correct?

9 A We would agree on what he would do for my
10 business on a particular job.

11 Q Right. You had the right to control what he
12 did, is that correct?

13 A He had free run of in and out when he
14 decided to work, whether it would be on the weekends
15 or after hours.

16 Q Did you work on the weekends?

17 A Occasionally he might work a day sometimes
18 on his own stuff. I'd let him --

19 Q Anybody had the right to do that, is that
20 correct?

21 MS. BARR: Let him finish his answer, please.

22 A I'm sorry?

23 Q Anybody had the right to work after hours if
24 they wanted to didn't they?

25 A If they asked me. I would not -- I wouldn't.

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1 really, you know, want that done that was, but due to
2 Jimmy's other schedule that he would only be able to
3 come in at other hours because he had other
4 obligations.

5 Q What were his other obligations?

6 A He had done lots of work out of his home as
7 a mechanic garage versus the paint and body side of
8 the auto industry.

9 Q Now it wouldn't be unusual for Ricky
10 Hartzell to be cleaning up at the end of the day or
11 any time during the day if -- if it needed to be done;
12 is that correct?

13 A He would not be scared to pick up a broom
14 over some of the other guys on that.

15 Q Okay. And that could have included moving
16 the frame machine out of the way if it needed to be
17 done; is that correct?

18 A Possibly. Still had no business messing
19 with that.

20 Q Well, he didn't say he was working with it
21 did he?

22 A No.

23 Q All right. And if there were tires to be
24 picked up he would be the type of guy that would do
25 that; is that correct?

1 A On his own will, yeah, he would get --

2 Q Well, somebody had to clean up the shop?

3 A Well, I think that, you know, it still
4 should be left up to me, you know, who does it. If he
5 takes on his own good will that he wants to clean up,
6 but then I had no control over that.

7 Q If it makes his employment easier to have a
8 clean workspace is that part of the deal with Ricky?

9 A It's a personal preference.

10 Q Okay.

11 A It's a very messy industry and everybody
12 knows that who works in it and that's just the way it
13 is. If work gets slow maybe, you know, they didn't
14 want to stand around so he decided to stay busy with
15 doing something else besides work, but I -- I had no
16 -- really no control over that. I was used to having
17 a messy place.

18 Q You're not testifying you didn't want your
19 employees to keep the shop clean are you?

20 A Absolutely not.

21 Q All right. Now we mentioned earlier -- or
22 it was mentioned earlier that there was Quick --
23 Quick-Books records?

24 A Uh-huh.

25 Q And those are within your control?

1 A Oh, yeah, I need help from my accountant to
2 download them, but --

3 Q But that could have easily been done and you
4 could have brought them here today to show who worked
5 which week; is that correct?

6 A Sure.

7 Q Okay. All right. And you pointed out that
8 Jamie Alexander left for a time and then came back and
9 when he came back he was a hard worker; is that
10 correct?

11 A He -- he had a lot of family to support so
12 when he did work he had to turn a certain amount of
13 work to provide for his five children.

14 Q All right. And when you come back to work,
15 as you said, it takes a while to start earning money
16 because you've got to -- to complete jobs for the
17 money to come in to earn your commission; is that
18 correct?

19 A To kind of get back into the swing of
20 things.

21 Q All right. And so if you would look at the
22 list of employees for the second quarter of 2009 after
23 Ricky Hartzell left you still had the same three other
24 guys that were reported during the quarter of -- first
25 quarter of 2009, being Douglas Alexander, Harold Brock

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1 and James Alexander; is that correct?

2 A That's correct.

3 Q They were your guys during that period of
4 time; is that correct?

5 A Well technically it would have been James
6 and Douglas because Harold, like I said, even though
7 he was an employee and I mean I have to say this
8 because it's the truth, he was working on a -- on side
9 work in the shop, not on the main flow of cars and
10 stuff.

11 Q But it was Palmetto Collision work?

12 A Absolutely.

13 THE COURT: We're going to go off the record.

14 (Off the record at 11:49 a.m.)

15 (On the record at 11:50 a.m.)

16 THE COURT: We're back on the record.

17 MR. KOON: That's all the questions I have.

18 THE COURT: Do y'all have a long follow-up?

19 MS. GLOVER: I don't have anything.

20 MS. BARR: Just to clean up.

21 REDIRECT EXAMINATION

22 BY MS. BARR:

23 Q Looking at this, these wage records from the
24 first quarter of 2009 did you bring in Harold Brock to
25 actually replace Ricky; was that your intention?

1 MR. KOON: Objection, Your Honor.

2 Q Why did you hire Harold Brock in --

3 THE COURT: Hold on. Let me hear the objection.
4 What's the objection?

5 MR. KOON: Well, it's without foundation because
6 he's already testified they worked there together.

7 THE COURT: And you rephrased it to why did you
8 hire him.

9 BY MS. BARR:

10 Q Why did you hire Harold Brock to work at
11 Palmetto Collision in the first quarter of 2009?

12 A I hired Harold Brock to work on the -- just
13 two or three restoration jobs that I had been sitting
14 on for several years that I wasn't able to get done
15 with my normal staff, so I hired him to do work that
16 my other guys couldn't do.

17 Q Based on the reported wages of five --
18 \$1,560 dollars that you paid to Jamie Alexander in the
19 first quarter of 2009 how long did he work during that
20 quarter; how many weeks?

21 A Well it would only have been a couple of
22 weeks and I was -- I'm certain of that based on what
23 he had to make each week.

24 Q And -- and would that have been at the
25 beginning of the quarter or the end of the quarter he

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1 was working in the second quarter of 2009?

2 A I would assume the end of the quarter. I'd
3 really need to see the payroll records to be exact.

4 Q But in the third quarter of 2008 you
5 regularly employed how many employees?

6 A I tried to keep it around three guys or less
7 is what it eventually come down to.

8 Q And that's how it was in the second quarter
9 of 2009?

10 A Yes.

11 Q And Jimmy Morris, did he ever work for you
12 on a regular basis day in, day out?

13 A No. Honestly, I mean he is just -- he would
14 rather be doing his own thing. For him to come in
15 there is doing me a favor. I couldn't get him to work
16 like that -- I asked him to and he just didn't have
17 the spare time to work for me in that type of
18 position. So I had to use him only when I could, when
19 I needed him.

20 Q When you needed him?

21 A Uh-huh.

22 Q In the first quarter of 2009 did Jimmy
23 Morris work for you daily or even weekly during that
24 quarter?

25 A I really don't remember. I don't -- I'd

1 have to look back and see that far back.

2 Q If he -- if he worked more than a couple of
3 days in the first quarter of 2009 would it be on a --
4 on a particular job and then he would go back to his
5 own business?

6 A More than likely.

7 Q And you would call him when you had a
8 special project and needed --

9 MR. KOON: Objection to leading, Your Honor.

10 Q When you -- when you would engage Jimmy
11 Morris to do a project for you was he under any sort
12 of compulsion to work for you? Did you have some sort
13 of agreement that he was going to be at your beck and
14 call?

15 A No, I did not.

16 Q And if you asked him to -- to do a project
17 for you --

18 A I would --

19 Q -- could he say no?

20 A Absolutely.

21 Q Did he ever say no?

22 A A time or two I'm sure.

23 Q And would y'all then have to negotiate a
24 price of what you would pay him for his services?

25 A If the job was to that extreme and he would

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1 say no then we would normally not fix the particular
2 job, it would just be moved somewhere else.

3 Q You wouldn't do it?

4 A No.

5 Q All right.

6 A And that was just, you know, ever so often.

7 Q If -- if Jimmy Morris had been a regular
8 employee would you have reported him -- his wages to
9 the Employment Security Commission like you did your
10 other employees?

11 A Yes.

12 Q And the times that you did pay yourself a
13 paycheck out of Palmetto Collision you reported it to
14 the Employment Security Commission?

15 A Yes.

16 Q So if in the quarter ending September 30th,
17 2009 you report \$500 dollars of income to yourself
18 that's what you paid yourself?

19 A Yes.

20 Q All right. Help us believe, I mean that's
21 all -- it was \$500 dollars?

22 A I'm not going to say that the company wasn't
23 paying some of the bills, I just wasn't taxing it
24 first and there I was paying taxes at the end of the
25 year on being the sole proprietor or sole member. Not

1 knowing that I would end up paying as many taxes on
2 that untaxed money as I would have done things
3 differently, but --

4 Q So you took a draw from the profits of the
5 company?

6 A Sometimes it would just use our company
7 money to pay a mortgage, you know, and therefore it
8 wasn't through Quick-Books. Still on the books, just
9 not through my payroll.

10 Q When you paid yourself a paycheck you
11 reported it?

12 A Yes, every time. Now it's finally to the
13 point where I get one once a week. I just -- I
14 couldn't do that before, it wasn't always there. I
15 couldn't write a check when there wasn't any money in
16 there and I would definitely be the last person to --
17 to get a paycheck if -- if I did.

18 Q Mike, thank you for your questions --
19 Commissioner Glover -- excuse me, Ms. Glover and
20 Commissioner Roche may have some questions.

21 MS. GLOVER: I don't have any questions.

22 THE COURT: All right. Mr. Koon.

23 MR. KOON: One quick one.

24 THE COURT: Okay.

25 RE-CROSS EXAMINATION

1 BY MR. KOON:

2 Q You're not telling us, Mr. Stallings, that
3 since these records began or they were obtained in the
4 third quarter of 2007 that \$500 dollars is the only
5 thing that you've paid yourself out of the company?

6 A No, I'm not saying that.

7 Q There was other monies that you were paid
8 for your supervisory and clerical work; is that
9 correct?

10 A There was somewhat -- bills paid when they
11 needed to be paid.

12 Q And you tried to take a salary --

13 A I tried --

14 Q -- when it was available?

15 A -- when it was available -- just isn't --
16 back then I'm going to tell you --

17 Q And that -- and that was for compensation
18 working for Palmetto Collision; is that correct?

19 A That's -- well, if I got any money that's
20 what it was for.

21 Q Thank you.

22 A Thank you.

23 THE COURT: All right. Any other witnesses for
24 the Defendants?

25 MS. BARR: No, Your Honor.

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1 THE COURT: Any witnesses for the UEF?

2 MS. GLOVER: No.

3 THE COURT: That concludes the hearing.

4 (The hearing concluded at 11:55 a.m.)

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STATE OF SOUTH CAROLINA)
)
 COUNTY OF LEXINGTON)

CERTIFICATE

BE IT KNOWN THAT I TOOK THE FOREGOING
 WORKERS' COMPENSATION HEARING;

THAT I WAS THEN AND THERE A NOTARY PUBLIC IN
 AND FOR THE STATE OF SOUTH CAROLINA-AT-LARGE;

THAT THE FOREGOING TRANSCRIPT CONSISTING OF 112
 TYPEWRITTEN PAGES REPRESENTS A TRUE, ACCURATE AND
 COMPLETE TRANSCRIPTION OF THE TESTIMONY SO GIVEN AT
 THE TIME AND PLACE AFORESAID TO THE BEST OF MY SKILL
 AND ABILITY;

THAT I AM NOT RELATED TO NOR AN EMPLOYEE OF
 ANY OF THE PARTIES HERETO, NOR A RELATIVE OR EMPLOYEE
 OF ANY ATTORNEY OR COUNSEL EMPLOYED BY THE PARTIES
 HERETO, NOR INTERESTED IN THE OUTCOME OF THIS ACTION.

WITNESS MY HAND AND SEAL THIS 22ND DAY OF
 SEPTEMBER, 2011.

 CORA ELLIS BRUTON
 NOTARY PUBLIC FOR SOUTH CAROLINA
 MY COMMISSION EXPIRES JANUARY 18, 2015

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 803-397-018

STATE OF SOUTH CAROLINA
BEFORE THE
SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION
WCC No. 0922546

Richard Hartzell,

Employee,

v.

Palmetto Collision, LLC,

Employer/Defendants.

(COPY)

HEARING

Tuesday, December 20, 2011
10:30 a.m. - 10:54 a.m.

The hearing before the Workers' Compensation Commission, Panel B, was taken at 1333 Main Street, Suite 500, Columbia, South Carolina, on the 20th day of December 2011, before Alexandra A. Patrick, Court Reporter and Notary Public in and for the State of South Carolina.

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EXHIBITS

(No Exhibits were marked during this hearing.)

STIPULATIONS

It is stipulated and agreed that this hearing is being taken pursuant to the Administrative Procedures Act and the South Carolina Rules of Civil Procedure.

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1 OPENING STATEMENT - BY MS. BARR:

2 CHAIRWOMAN BARDEN: Ms. Barr?

3 MS. BARR: Thank you. May it please the Panel, I
4 represent Palmetto Collision, which is a kind
5 of family-oriented auto body shop in the
6 Charleston area owned by Mr. Mike Stallings.
7 We've raised several grounds for appeal today.
8 And, of course, first and foremost, is that
9 seminal jurisdiction as to whether or not
10 Palmetto Collision was subject to the Act.
11 You'll see that the basis for what we believe
12 was an impermissibly vague finding and
13 conclusion by the hearing commissioner on this
14 issue was that he employed four or more
15 employees at the time in question. We
16 respectfully submit that this is not supported
17 by the greater weight of the evidence and that
18 Palmetto Collision did not regularly employ
19 four or more employees at the time Mr. Hartzell
20 claims to have been injured in February of
21 2009. We have the Employment Security
22 Commission records as well as the testimony of
23 Mr. Mike Stallings in the record. You'll see
24 that in the quarter prior to the alleged
25 accident that Mr. Stallings only reported wages

1 for three employees, those were the only
2 employees he had. They were not
3 contemporaneously employed for the entire
4 quarter. The claimant was not working for Mr.
5 Stallings during that quarter and one of the
6 gentlemen, you'll see who earned \$650 that
7 quarter was reportedly fired, according to the
8 testimony of Mr. Stallings. He actually
9 remembered the day clearly because it was his
10 birthday and he found the man rummaging through
11 his desk drawer and promptly terminated him, so
12 that stuck out in his mind. So, one of the
13 three employees was terminated at the beginning
14 of the quarter prior to the accident which
15 meant that in that quarter prior to the
16 accident, there were really on two employees
17 regularly employed at Palmetto Collision. So
18 ---

19 MR. WILKERSON: How about the three quarters prior
20 to then, was there any testimony, or just that
21 one quarter?

22 MS. BARR: I think that one -- well, there was
23 testimony about all the quarters.

24 MR. WILKERSON: Oh, yeah, okay.

25 MS. BARR: And again ---

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1 MR. WILKERSON: But records?

2 MS. BARR: Yes, all the records are in there from
3 the Employment Security Commission and we went
4 through in detail who was who.

5 MR. WILKERSON: Okay.

6 MS. BARR: There was a cousin and an uncle who
7 worked at various periods who came and went,
8 much like the claimant who came and went.
9 Business was bad and you can see that from the
10 total payroll and the gross earnings and from
11 even the testimony of the claimant. The
12 claimant left shortly after this alleged
13 accident because there was just no work in the
14 lot. As you might imagine in a sour economy,
15 the last thing that you're going to spend your
16 few dollars on is fixing the dent in your
17 bumper. A lot of people are just letting that
18 roll and that's had a significant impact on Mr.
19 Stallings' business as, again, even the
20 claimant admitted. He filled out -- work --
21 for an unemployment claim in the months after
22 this alleged accident, a very protracted
23 unemployment claim, where he repeatedly
24 testified and even testified at the hearing
25 there was just no work to be had at the lot, it

1 was empty, there was nothing to be done. And
2 if you're going to work on a commission basis,
3 when there's no work to be done, there's nobody
4 going to be there to do the work, like Mr.
5 Hartzell who left. So, we have the records.
6 And again in looking at the most germane
7 period, I believe that quarter before, the
8 quarter during which the alleged accident
9 occurred and the quarter after, you'll see that
10 in the quarter after, there were only two
11 employees. One was the cousin, one was the
12 uncle, a total payroll of \$13,000. So,
13 certainly, that wouldn't support a finding that
14 there were regularly four or more employees on
15 the lot. During the quarter in which the
16 accident occurred, you'll see that there was a
17 total of four employees listed but the
18 testimony explains that. They were not
19 contemporaneous employees. How do we know
20 that? Well, number one, the claimant admits he
21 quit halfway through the quarter because there
22 was no work to be done. So, he did not work
23 that entire quarter. The fourth employee is a
24 James Alexander, the owner's cousin, who earned
25 when he was there approximately \$800 a week,

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1 which is the way he did business. He worked
2 for about two weeks at the end of the quarter
3 and that is corroborated by the fact that he
4 only earned \$1,560 that quarter at the end of
5 the quarter. So, four employees total, yes,
6 but not contemporaneous and not regularly
7 employed. And we believe that when you look at
8 all of this evidence, especially coupled with
9 the testimony from Mr. Stallings, you'll see
10 that he did not regularly employ four or more
11 employees. And again, an auto body shop, no
12 work to be done, doesn't need four or more
13 employees and that's why Mr. Stallings did not
14 believe he was subject to the Act, that's why
15 we believe he should not be compelled to be
16 subject to the Act by the hearing commissioner
17 and that her finding was infamously vague and
18 not supported by the greater weight of the
19 evidence.

20 MR. WILKERSON: Do you know if the employer ever
21 excluded themselves from the Workers' Comp Act?

22 MS. BARR: There was a question, and you'll see --
23 you probably have some of the coverage in the
24 client's records, one of the issues that was
25 raised, and the commissioner did not make a

1 finding or a conclusion on this issue, whether
2 or not he had been issued workers' compensation
3 coverage and failed to file an exception to
4 come out from the Act. You'll see that the
5 insurance company from whom his insurance
6 broker obtained a quote for workers' comp
7 insurance ---

8 MR. WILKERSON: Commonwealth down in Charleston,
9 okay.

10 MS. BARR: --- never complied with the Commission's
11 subpoena or the one we sent because he says
12 I've never been able to afford it, I'm sure if
13 my agent said let me quote it, I would have
14 let, you know, I would have borne to the
15 pressure but this was not something I could
16 afford, this is not something I thought I
17 needed, my business was floundering, I never
18 wrote a premium payment, I never signed an
19 application, I never paid or intended to have
20 workers' compensation insurance. So, that was
21 something that coverage compliance didn't
22 pursue because the insurance company could not
23 produce a signed application, could not show
24 that a check was ever done. And you'll see, it
25 appears that a policy may have been reported

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1 but then immediately terminated because there
2 was never ---

3 MR. WILKERSON: Non-payment?

4 MS. BARR: --- payment. Non-payment of premium.
5 So, we believe on that issue, which really was
6 not developed at this hearing, could not be
7 proven because of the claimant's testimony and
8 the fact that the insurance company was unable
9 to produce any evidence of his intent to become
10 subject to the Act by contracting for workers'
11 compensation insurance. It was not his intent
12 and there's no evidence of any such intent. We
13 believe it was a reporting error.

14 MR. WILKERSON: And there was no prior coverage ---

15 MS. BARR: No prior ---

16 MR. WILKERSON: --- for '07-'08? That would have
17 been the initial period of time that that
18 policy would have been issued if he'd have paid
19 for it, is that correct?

20 MS. BARR: Yes, Your Honor, that's my understanding
21 based on the records from coverage compliance
22 and from the testimony of Mr. Stallings. Now,
23 we have a few other -- a rather germane issue
24 that goes to the issue of compensation. Were
25 you to find that Palmetto Collision is subject

1 to the Act, we have a real question about
2 whether or not Mr. Hartzell was even injured in
3 an accident arising out of and in the course of
4 his employment. And, of course, we have Mr.
5 Hartzell's testimony now that he believes he
6 was injured sometime in February, he's not sure
7 when, of 2009 and he thinks it was lifting
8 heavy equipment. Then we also have his
9 testimony, specifically at page 24 when he
10 thinks he was moving some equipment, it didn't
11 start hurting immediately lifting anything,
12 there was no, you know, lightning-bolt moment,
13 but he thinks he was lifting something and
14 shortly thereafter or sometime after he worked
15 at Palmetto Collision his back started hurting.
16 So, even the claimant's own testimony is really
17 not strong support in favor of finding that
18 there was an injury to his back by accident
19 arising out of and in the course of his
20 employment. What would we look to next?
21 Normally, the medical records but all we have
22 here in this record is the reports from his
23 chiropractor from April of 2009, APA pages two
24 and three. You'll see that the chiropractor's
25 report said that he had a recurrence of

1 complaints related to a previously resolved
2 spine-rig pelvic region condition which was not
3 caused by a work or automobile accident. That
4 to me -- that's page three of the APAs, does
5 not support a finding that the claimant injured
6 himself lifting a heavy frame machine on
7 February 25, 2009, which is what his allegation
8 is now. There is also page two of the APAs,
9 which is an intake report. The claimant did
10 check job-related but when asked what caused
11 it, he said unknown cause. Again, the most
12 contemporaneous reports, even though they're
13 approximately six weeks after this alleged
14 accident, the claimant felt the cause was
15 unknown at this time. Coupled with the
16 claimant's testimony and that of Mr. Mike
17 Stallings, the claimant never asked Mike
18 Stallings for medical treatment. He never gave
19 Mike Stallings any reason to believe he was
20 having problems with his back, that was Mr.
21 Stallings's testimony. These were men who had
22 known each other for years and years and years;
23 Mr. Stallings had no reason to believe that
24 this man had left his employ and was in the
25 need of medical treatment because even the

1 claimant said I left because the parking lot
2 was empty. And he filed for unemployment by
3 saying I left because there was no work to be
4 done. There again, it was a protracted
5 unemployment claim after he left the employ of
6 Palmetto Collision. And even during that time
7 and discussions about whether or not Mr.
8 Hartzell needed to come and pick up some of his
9 equipment or other items he had stored on the
10 lot, never once did he ask Mike Stallings for
11 medical treatment or say, hey, I injured my
12 back at work and I'm in a lot of pain, I need
13 treatment, can you pay for my medical bills,
14 nothing. The first notice to Mr. Mike
15 Stallings that there was any allegations of a
16 work-related injury was the Form 50, which was
17 well beyond the time required for the notice
18 provision. We have seen that the hearing
19 commissioner didn't make a finding as to
20 notice. Or, excuse me, made a finding but made
21 no conclusion, just said notice was timely
22 given and awarded benefits. Now, no
23 compensation benefits were awarded because
24 there's no evidence the claimant was unable to
25 work. And again, he averred to the State, that

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1 he was ready, willing and able to work and
2 would be at Palmetto Collision but for the lack
3 of work. And I will finish my argument on
4 reply. Thank you.

5 MR. WILKERSON: Thank you. All right, Mr. Koon.

6 OPENING STATEMENT - BY MR. KOON:

7 MR. KOON: As to the jurisdictional issue, I think
8 that is clear from the testimony and the
9 finding of fact of the hearing commissioner,
10 it's well supported. The claimant himself, Mr.
11 Hartzell, testified that he worked with both
12 Alexanders, James and Doug Alexander, Harold
13 Brock, himself and another gentleman named
14 Simmons, I believe it was, and -- Morris,
15 excuse me. Morris was later characterized as
16 potentially an independent contractor, although
17 I think that could be disputed, but the
18 important thing is that on cross-examination,
19 and I set out the cross-examination in my brief
20 on pages 99 and 100, I questioned Mr. Stallings
21 about each of these employees and he
22 acknowledged clearly that they all worked
23 together in the first quarter of 2009 when this
24 injury occurred. Mr. Hartzell places the
25 injury on or about the 25th of February, which

1 is only about two or three weeks before he
2 quit. But there's no evidence that any of
3 these employees was a replacement for Hartzell.
4 If you'll notice, especially the Alexanders are
5 listed in other quarters. It's just beyond
6 dispute that both the claimant and the employer
7 testified that all four worked at the same
8 time. And the point was made in argument that
9 Mr. Hartzell had not worked during the prior
10 quarter, but that is contrary to the testimony
11 as well. Mr. Stallings acknowledged that
12 Hartzell had worked during the last quarter of
13 2008 for a partial quarter but had been paid
14 without being put on the Employment Security
15 rolls and that, of course, is the employer's
16 choice. Mr. Stallings testified that he had
17 QuickBooks records that would show exactly when
18 all these people worked but he didn't bring
19 them to the hearing. If something is under his
20 control it was incumbent upon him, if he
21 thought it was going to be helpful, to bring
22 those QuickBooks records to the hearing. The
23 best record and the best evidence that was
24 before the hearing commissioner, and it's
25 substantial evidence, is that all four worked

1 together, meaning Hartzell, Brock, who it was
2 testified came in to do some -- what I
3 concluded were some restoration-type jobs, and
4 the two Alexanders and Morris who, to us,
5 looked like an employee but Mr. Stallings'
6 claim was an independent contractor.
7 Additionally, Mr. Stallings, in this
8 application for workers' compensation
9 insurance, which was filed in May of 2008 to be
10 effective through the same date in 2009 which
11 would have included February 25, 2009, when Mr.
12 Hartzell was hurt, he listed clerical employees
13 at \$50,000 a year on this employment. He
14 acknowledged in his testimony, and I cited it
15 in my memorandum the specific reference to the
16 transcript, he acknowledged that he gave the
17 agent the information about the payroll, he
18 acknowledged that he gave him the clerical
19 figures and he acknowledged that he was the
20 clerical employee. Now, he came under the Act
21 in May of 2008 by the filing of that
22 application. Now, he would have you to believe
23 that that was some rogue agent out there acting
24 on his own, but I think the answer to that
25 question is found at the claimant's APA number

1 17 which is the quarterly report for the second
2 quarter of 2008, quarter ending 6-30, the
3 quarter ending within the time the application
4 was filed which showed five employees. And
5 obviously, it would be plus Mr. Stallings
6 himself as the clerical employee of the
7 company. And I note in later quarters, he did
8 list himself as the clerical employee, or an
9 employee. He never filed a Form 38 to be
10 exempted from the Act, and that's in the APA
11 submissions as well, that being ---

12 MR. WILKERSON: He's an LLC, right?

13 MR. KOON: He's an LLC, that's correct.

14 MR. WILKERSON: So, if he ---

15 MR. KOON: Page 28 ---

16 MR. WILKERSON: So, if he had signed the exclusion
17 form, what does that for the workers' comp
18 policy?

19 MR. KOON: Well, if it was improper, I don't think
20 it would have -- it should have been excepted,
21 but he didn't even attempt it is what I'm
22 saying, Commissioner. But he clearly needed
23 insurance when he took out the policy and the
24 inference that he gave that his agent was out
25 there acting on his own is just not

1 substantiated by the record. If you've got
2 five employees at the time you take out a
3 policy, you need the coverage, and, plus he had
4 himself. And he didn't even list himself
5 during that quarter and he didn't list himself
6 during the quarter in which the accident
7 occurred but his own testimony indicated that
8 he should have listed himself because he was
9 acting as the clerical employee of the company.
10 He didn't say there was anybody else providing
11 that service. And, of course, it is an LLC,
12 not a sole proprietorship. And we cited that
13 as well as an additional ground on the
14 jurisdictional issue so I don't think ---

15 MR. WILKERSON: Tell me what the difference in a
16 sole proprietorship and an LLC is for workers'
17 comp, or your understanding of it.

18 MR. KOON: Well, I would have to go back just to my
19 general understanding of business
20 organizations. An LLC is an entity separate
21 and apart from the members of the LLC.

22 MR. WILKERSON: But is an LLC treated as a sole
23 proprietor, a partnership or is it treated as
24 a corporation underneath the Workers' Comp Act?

25 MR. KOON: I cannot tell you I know the answer.

1 MR. WILKERSON: Okay.

2 MR. KOON: Generally, from my knowledge of business
3 organizations, it would be treated as an entity
4 separate and apart from the member or a sole
5 proprietor. That would be my opinion but I
6 cannot give you a cite on that, Commissioner.

7 MR. WILKERSON: Okay. That's fine.

8 MR. KOON: But I think the real jurisdictional
9 question is satisfied by both the claimant and
10 the employer's testimony, there is just no
11 doubt that they worked there at contemporaneous
12 times. As to the issue of the occurrence of
13 the accident, Mr. Hartzell gave a pretty
14 detailed description and a logical, detailed
15 description of what he was doing when he was
16 hurt. He was sweeping up the shop, picking up
17 the shop, and moved a frame machine. Now, it
18 was later suggested he had no business around
19 the frame machine because he didn't do frame
20 work but, nevertheless, if you were cleaning up
21 the shop and it's necessary to move something,
22 you move it. It apparently is a heavy machine
23 with a post that you lift backwards sort of
24 like you would a hand truck and that was what
25 he did to move that frame machine. And the

1 testimony that he gave was that when he moved
2 that machine, or thereafter that same day, he
3 started feeling the discomfort in his back. It
4 wasn't at some vague later time, it was the
5 same day. He reported it to the employer the
6 next day. Mr. Stallings, when pressed on
7 cross-examination about that conversation,
8 said, well, that doesn't ring a bell. He
9 didn't deny it, he just said he didn't remember
10 it. Well, he didn't have as good a reason to
11 remember it as Mr. Hartzell did, and I would
12 suggest that the hearing commissioner was in
13 the best position to judge the credibility of
14 the testimony. And the testimony that we had
15 this insurance agent out there acting on his
16 own, I think, is significant in that to me that
17 is not credible testimony and, again, the
18 hearing commissioner was in the best position
19 to judge the relative credibility of the two
20 witnesses and she chose to believe, to a
21 preponderance of the evidence, Mr. Hartzell.
22 There is sufficient evidence in the record to
23 support that conclusion. Your Honors, we have
24 the other issue, which I don't think was
25 addressed on opening argument by Ms. Barr, but

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1 I'm sure she'll talk about it in reply, and
2 that is the issue of whether or not Mr.
3 Hartzell needed a doctor's opinion to a
4 reasonable degree of medical certainty to be
5 entitled to any treatment at all and I think
6 that is a strained reading of the Act; 42-15-60
7 says that the employer shall provide medical,
8 surgical, hospital and other treatment,
9 including supplies, for a period not exceeding
10 ten weeks and for an additional time as will
11 lessen the period of disability. Well, if he
12 hasn't provided in the first ten weeks, the
13 phrase additional time does not come into play.
14 The purpose of that statute is not to penalize
15 the employer and allow an -- excuse me, an
16 employee -- and allow the employer to fail to
17 provide the required benefits that are
18 mandatory on the Act and then shift some burden
19 to the employee. That would go entirely
20 against the entire statutory scheme as has been
21 recognized by the Supreme Court since the '40s,
22 when the Court said to a great extent, the
23 whole scheme of workers' compensation is to
24 place the economic burden of industrial
25 accidents upon industry rather than upon the

1 workers. Well, that being the case, you look
2 for well-settled rules of statutory
3 construction which settle that issue and I
4 cited several in the memo.

5 CHAIRWOMAN BARDEN: Finish your thought.

6 MR. KOON: Thank you.

7 CHAIRWOMAN BARDEN: Finish your thought.

8 MR. KOON: The language must be read so that it
9 harmonizes with the subject matter of the
10 statute and it's general purpose. You don't
11 isolate a particular clause but read it in
12 conjunction with the whole purpose of the
13 statute. And clearly, the purpose of that
14 statute is not to shift the burden of the
15 initial treatment to the employee.

16 CHAIRWOMAN BARDEN: Okay. Thank you, sir.

17 MR. KOON: Thank you, ma'am.

18 CHAIRWOMAN BARDEN: All right. Ms. Barr?

19 REPLY - BY MS. BARR:

20 MS. BARR: Thank you, Your Honor. I want to speak
21 briefly again to the jurisdictional issue but
22 I would like to get to the fact that there's
23 really no evidence in support of any claim for
24 benefits in this case. As to the
25 jurisdictional issue and the claim of the

1. employer's intent to become subject to the Act,
2. again we feel that there's no evidence of such
3. intent. There's no signed contract, there's no
4. signed application, there is no check endorsed,
5. no consideration given for a policy of
6. insurance which could make him subject to the
7. Act. However, I believe that under 42-11-30
8. and the definition of sole proprietorship,
9. getting to Mr. Wilkerson's question, that a
10. single member LLC, such as Palmetto Collision,
11. would be treated as a sole proprietorship for
12. tax reasons by the South Carolina Department of
13. Revenue. And for that reason, as a sole
14. proprietor or a single member LLC, Mr.
15. Stallings himself would not be considered an
16. employee for purposes of the Act or making him
17. subject to the Act. Instead, he would have to
18. be elected; elect and take affirmative action
19. to become an employee for purposes of that
20. four-member rule or four-employee rule. So, we
21. believe that in any way you want to look at it,
22. he does not become subject to the Act. Again,
23. you'll look at the testimony of Mr. Stallings,
24. accompanied with those Employment Security
25. Commission records, just because employees come

1 and go and during the course of a three-month
2 period you might see four names, you might see
3 five names, when you look and see that those
4 five names maybe made \$1,500 and you couple
5 that with his testimony what their earnings
6 were, these were people who came and went. It
7 was an auto body shop. He might bring somebody
8 in for a special project but then there's no
9 more work; they leave, somebody else comes in.
10 It's the nature of the business. Simply
11 because you reported wages on four employees on
12 a quarter does not mean you regularly employed
13 four employees and I think that is very well
14 borne out by the testimony of Mr. Stallings.
15 Now, the question of benefits. You will see
16 that there was no award of compensation
17 benefits because the claimant has not been
18 disabled as a result of this alleged accident.
19 At no time did he miss any time from work
20 except when he voluntarily took himself out of
21 the employment of Palmetto Collision. He then
22 obtained unemployment benefits and then for the
23 past year, he's been working at Altman Suzuki.
24 So, he does not even claim entitlement to
25 temporary compensation benefits. With respect

1 to medical benefits, great hay has been made
2 over the first ten weeks after the accident,
3 you'll see both from the testimony of Mr.
4 Hartzell as well as Mike Stallings, he never
5 asked for any medical treatment. He went to
6 the chiropractor a few times on his own but
7 again, there was no obligation, even if there
8 were compensable injury, for Mr. Stallings to
9 provide medical treatment that was never
10 requested. But the Act is clear, 42-15-60
11 clearly and unequivocally requires not only
12 that the claimant have the burden of proof
13 which he has always had under the Act, to prove
14 his entitlement to benefit with evidence that's
15 beyond mere surmise, conjecture or speculation.

16 CHAIRWOMAN BARDEN: Finish your thought.

17 MS. BARR: But under this Act, specifically, medical
18 evidence is required. That was the intent of
19 the legislature, that's the plain language and
20 we've seen most recently under *Mishoe v.*
21 *Georgetown County* that they mean business.
22 When the claimant has the burden of proof by
23 medical evidence, it means medical evidence.
24 Thank you.

25 CHAIRWOMAN BARDEN: Okay. Thank you. That

1 concludes this proceeding.

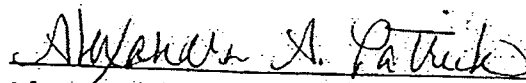
2 (There being nothing further, the hearing concluded
3 at 10:54 a.m.)
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CERTIFICATE

This is to certify that the within hearing consisting of Twenty-Five (25) pages, is a true and correct transcript of the testimony given by said witnesses after being duly sworn; said hearing was reported by the method of Stenomask with Backup.

I further certify that I am neither employed by nor related to any of the parties in this matter or their counsel; nor do I have any interest, financial or otherwise, in the outcome of same.

IN WITNESS WHEREOF I have hereunto set my hand and seal on August 31, 2012.



Alexandra A. Patrick
Court Reporter

Notary Public for South Carolina
My Commission Expires: February 13, 2019

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JOINT APA SUBMISSIONS

Richard A. Hartzell v. Palmetto Collision, LLC

W.C.C. File No.: 0922546

Date of Hearing: July 12, 2011

APA #	DESCRIPTION	DATES	PAGES
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APA #	DESCRIPTION	DATES	PAGES
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9	Subpoena and Proof of Service to Accident Fund Insurance Company	05/26/10-05/27/10	59-60
10	Letter to Michael Felton, Compliance Officer, SC Workers' Compensation, Compliance Division	05/28/10	61-62
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DEFENDANT'S APA SUBMISSIONS UNINSURED EMPLOYER'S FUND

APA #	DESCRIPTION	DATES	PAGES
	No submissions		

Confidential Patient Health Record

Today's Date: 9/1/09

Patient Number: 0000000000

Please fill in all information on the front and back of this form.

How did you FIRST hear about us?

CONSULT 3111 NC

Personal Information

Last: HARTZELL First: Ricky Middle:

Birth Date: 10/29/58 Age: 50 Gender: Male Female Social Security #:

Driver's License #: State: SC

Marital Status: ☒ Single ☐ Married ☐ Widowed ☐ Divorced ☐ Separated

Address: 415 OXFORD Apt #

City: Lenoir State: SC Zip: 29456

Home Phone: (843) 571-3118 ext Work Phone: () ext

Cell Phone: (843) 82-0859 ext Fax #: () ext

Email Address: Spouses Name:

Children (Names and Ages):

Emergency Contact

Name: ~~DOLORES~~ HARTZELL First: DOLORES Middle:

Relationship: ☐ Spouse ☐ Relative ☐ Friend ☐ Other: mother

Home Phone: (843) 571-3118 ext Cell Phone: ()

Employment Information

Business Name:

Address: Apt #

City: State: Zip: Country: County:

Phone: () Fax #: ()

Employer's Email Address:

Occupation/Job Title: Job Description

Insurance Information

Who Is Responsible For Your Bill? YOU and... (Mark appropriate box (s)) ☒ Myself ONLY

☐ Spouse ☐ Worker's Comp ☐ Auto Insurance ☐ Medicare ☐ Medicaid ☐ Other (be specific):

Personal Health Insurance Carrier: Health ID Card #:

Policy Holder's Name: Group #:

Policy Holder's Date of Birth: Policy Holder's Employment:

Policy Holder's Social Security #: Phone number:

Primary Care Physician:

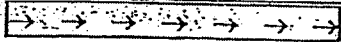
Current Health Condition:

Unwanted Condition (Why you are here today?):

Use the letters BELOW to indicate the TYPE & LOCATION of your sensations right now:

PLEASE LABEL ON THE DIAGRAM THE AREA OF DISCOMFORT

Key: A=Ache B=Burning N=Numbness



d/acc 2/25/09 per P50 P=Pins & Needles S=Stabbing

When did this Condition BEGIN? 2-1-30-09

Has it ever occurred before? ☐ Yes ☒ No. When? _____

Is the Condition: ☐ Auto Related ☒ Job Related ☐ Home Injury

☐ Slip or Fall ☐ Lifting ☐ Slept Wrong ☒ Unknown Cause ☐ Other

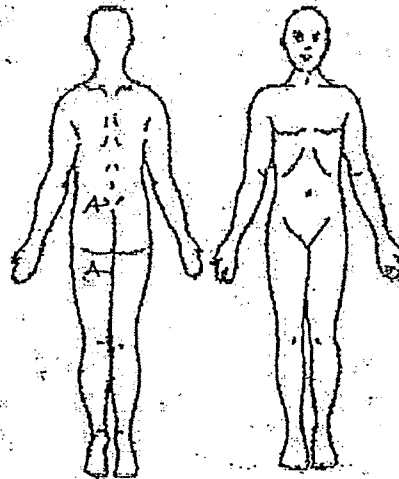
Explain: _____

Date of Accident: _____ Time of Accident: _____ am/pm

Condition/Pain STARTED on what Date: 2-25-09

Have you seen other doctors for THIS CONDITION?

If yes, Who? (Name): _____



Type of Treatment: _____ Were you satisfied with the results of your treatment? ☐ Yes ☒ No

Explain: _____

Current Medication (s): List ANY/ALL medications you are CURRENTLY taking. Be Specific.

Medication	Dosage	For What Condition?	How long have you been taking this?

Do you SUFFER with ANY OTHER Condition than that which you are now consulting us? _____

I understand and agree that health and accident insurance policies are an arrangement between an insurance carrier and myself. Furthermore, I understand that the Chiropractic Clinic will prepare any necessary reports and forms to assist me in making collection from the insurance company and that any amount authorized to be paid directly to the Chiropractic Clinic will be credited to my account upon receipt. However, I clearly understand and agree that all services rendered to me are charged directly to me and that I am personally responsible for payment. I also understand that if I suspend or terminate my care or treatment, any fees for professional services rendered me will be immediately due and payable.

I hereby authorize the Doctor to treat my condition as he or she deems appropriate through the use of Chiropractic Health Care, and I give authority for these procedures to be performed. It is understood and agreed the amount paid the Doctor, for x-rays, is for examination only and the x-ray negative will remain the property of this office, being on file where they may be seen at any time while a patient of this office. The patient also agrees that he/she is responsible for all bills incurred at this office.

Patient Print Name: Rich Hartzell

Patient's Signature: Rich Hartzell

Date: 4-1-09

Consent to treat a Minor: _____

Date: _____

Guardian or Spouse's Signature of Authorizing Care: _____

Date: _____

I acknowledge that I have received the Chiropractic Clinic's Notice of Privacy Practices for protected health information.

Patient Print Name: Rich Hartzell

Date: 4-1-09

Patient's Signature: Rich Hartzell

Date: 4-1-09

Charleston Neck & Back Center

1835 Savage Road
Charleston, SC 29407
Phone: 843-763-2225 Fax: 843-763-3433

Narrative Report:

Patient: Ricky Hartzell
Age: 51 **Gender:** Male

Date of This Report: April 2, 2009

Ricky was initially evaluated on 04/01/2009 by Dr H Austin Murray.

Spine, Ribs, Pelvic Region Complaint:

Recurrence: The patient entered the office reporting a recurrence of complaints related to a previously resolved spine, ribs, pelvic region condition which is acute based on onset of less than 6 weeks ago and was not caused by a work or automobile accident. Instead, the mechanism for the current condition is attributed to overexertion, and the current symptoms are described as: pain and stiffness.

History of Present Illness (Spine/Ribs/Pelvis):

- **Location:**
Location of the spine, ribs and pelvis symptoms: left medial low back region;
- **Quality:**
The quality of the symptom is described as: sharp occasionally, diffuse, localized and dull aching. The pain is said to feel like pressure over his pelvis when standing and walking.
- **Severity:**
Severity of the functional deficit associated with the patient's reported symptoms was rated on a scale of 0-10 where 0 represents a patient who is pain free and can perform all activities without aggravation, and 10 represents a patient who is precluded from all activities as a result of symptoms.

At rest, the patient rated their level of functional impairment as a 3 out of 10.

During activity, the patient rated their level of functional impairment as a 8 out of 10.

- **Duration:**
The patient's current symptoms started on 02/25/2009. *date on P50*
- **Timing:**
The symptoms are reported to remain constant. The symptoms are reported to worsen with activity.
- **Associated Signs and Symptoms:**
The patient reported the following associated signs and symptoms: stiffness.
- **Modifying Factors:**
Modifying factors were reported as follows: the patient reported no temporary relief of symptoms.

Subjective Functional Complaint Summary

- VAS - Rest = 3
- VAS - Active = 8

Musculoskeletal Exam Findings:

Results of the 04/01/2009 Exam: Inspection Palpation of the Spine, Ribs and Pelvis Region:

Spine, Ribs and Pelvis - Visual Inspection:

- **Finding:** pelvic unleveling. Indicates pelvic deformity. Radiographs to rule out congenital anomaly and physical performance test to confirm/rule out structural defect are indicated.

Spine, Ribs and Pelvis - Static Joint Palpation:

- Lumbar Finding: Palpation revealed lumbar hypomobility. Indicates lumbar segmental dysfunction at: L5; L4;
- Lumbar Finding: Mild to moderate tenderness at spinous or facet joint with recent history of mild to moderate trauma. Indicates a possible sprain of the lumbar supra/interspinous ligaments.

Results of the 04/01/2009 Exam: Active Thoracic and Lumbar ROM Assessment:

Lumbar Flexion (Norm = 60 degrees):

- Finding: normal active lumbar ROM.

Lumbar Extension (Norm = 25 degrees):

- Finding: mild limitation due to pain with history of recent trauma. Indicates mild lumbar strain.

Lumbar Left Lateral Flexion (Norm = 25 degrees):

- Finding: mild limitation due to pain with history of recent trauma. Indicates mild lumbar strain.

Lumbar Right Lateral Flexion (Norm = 25 degrees):

- Finding: mild limitation due to pain with history of recent trauma. Indicates mild lumbar strain.

Results of the 04/01/2009 Exam: Spine, Ribs and Pelvis Orthopedic Evaluation:

Left Straight Leg Raising Test:

- No abnormal findings.

Right Straight Leg Raising Test:

- No abnormal findings.

Results of the 04/01/2009 Exam: Spine, Ribs and Pelvis Sensory/Reflex Tests:

All reflexes (patellar, achilles and pathological) were tested and found to be normal.

Sensation was evaluated and found to be normal in all lumbo-sacral dermatomes.

Diagnostic Test Orders:

- Lumbar radiographs to confirm/rule out the presence of a congenital anomaly are ordered as indicated. Lumbar Views Ordered Include: AP lumbar view and Lumbar lateral view.

Physical Performance Test Orders:

Physical performance test to evaluate biomechanical functional impairment is deferred pending results of treatment.

Diagnostic Test Results:

- The following X-Rays were taken on 04/01/2009.
- Thoraco-Lumbar X-Ray finding: negative for congenital anomaly. Visual inspection indicates an acquired postural defect.
- Lumbosacral / Pelvis Radiographs Results:
- Lumbar X-Ray finding: lumbar dextroscoliosis with apex at: L2.

Primary Objective Problems:

- Lumbar Segmental Dysfunction (739.3)
- Lumbosacral Strain (846.0)

Secondary Problems:

- Lumbalgia (724.2)

4

- Subjective Stiffness (719.58)

Complicating Conditions and Anticipated Effect on Treatment Outcome:

- Pelvic Deformity (738.6): The identified condition is not expected to complicate either the patient's response to treatment or outcome potential.
- Acquired Postural Defect (781.92) The identified condition is not expected to complicate either the patient's response to treatment or outcome potential.
- Dextroscoliosis (737.30) The identified condition is not expected to complicate either the patient's response to treatment or outcome potential.

Treatment Orders:

- Lumbar Segmental Dysfunction (739.3) will be treated with manipulation utilizing a diversified technique; three times per week for one month or until patient reaches MMI. The goal is to improve the status of the following problems: VAS - Rest = 3 and VAS - Active = 8.
- Lumbosacral Strain (846.0) Treatment for this problem is deferred at this time.

Re-evaluation:

Reevaluations will be performed at appropriate intervals based on the expected progress from treatment which is expected on or before 05/02/2009.

- Interim re-evaluation will occur as needed to measure the patient's progress as a result of treatment. Notable progress is anticipated to occur on or before the date noted.

Note electronically signed by:

Dr H Austin Murray

5

Charleston Neck & Back Center

1835 Savage Road
Charleston, SC 29407
Phone: 843-763-2225
Fax: 843-763-3433

Visit Date: 04/01/2009
Patient: Ricky Hartzell

Daily Encounter:

Findings during today's encounter were as follows:

Subjective:

Today's Analysis:

Objective:

Current Objective Problems:

- Lumbar Segmental Dysfunction (739.3)
- Lumbosacral Strain (846.0)

Today's Analysis:

Assessment:

Plan:

Complicating Conditions and Anticipated Effect on Treatment Outcome:

- Pelvic Deformity (738.6): The identified condition is not expected to complicate either the patient's response to treatment or outcome potential.
- Acquired Postural Defect (781.92) The identified condition is not expected to complicate either the patient's response to treatment or outcome potential.
- Dextroscoliosis (737.30) The identified condition is not expected to complicate either the patient's response to treatment or outcome potential.

Treatment Orders:

- Lumbar Segmental Dysfunction (739.3) will be treated with manipulation utilizing a diversified technique; three times per week for one month or until patient reaches MMI. The goal is to improve the status of the following problems: VAS - Rest = 3 and VAS - Active = 8.
- Lumbosacral Strain (846.0) Treatment for this problem is deferred at this time.

Ordered Procedures:

- 98940 - Manipulation

Today's Treatment Details:

- Treatment was performed as ordered in the current treatment plan. The following regions were manipulated primary to the area(s) of complaint: Lumbar. Treatment in the lumbar region was performed at the following levels: L4 and L5.
- Treatment was performed to the thoracic region (secondary to the area of complaint) at the following levels: T5, T6 and T7.
- The patient tolerated the therapy provided well and did not report any adverse effects from treatment.
- The patient responded well to treatment noting improvement following therapy.

Notation electronically signed by: Dr H Austin Murray

Name: Ricky Hartzell

Visit Date: 04/01/2009

Page: 1

Charleston Neck & Back Center

1835 Savage Road
Charleston, SC 29407
Phone: 843-763-2225
Fax: 843-763-3433

Visit Date: 04/03/2009

Patient: Ricky Hartzell

Daily Encounter:

Findings during today's encounter were as follows:

Subjective:

Today's Analysis:

- The patient reported no significant change in their level of symptoms or their capacity for noted daily, recreational and/or occupational activities.

Objective:

Current Objective Problems:

- Lumbar Segmental Dysfunction (739.3)
- Lumbosacral Strain (846.0)

Today's Analysis:

- Examination revealed findings consistent with those noted in the current treatment plan. The current objective problem list is unchanged.

Assessment:

- No change to the diagnosis or treatment is appropriate.

Plan:

Complicating Conditions and Anticipated Effect on Treatment Outcome:

- Pelvic Deformity (738.6): The identified condition is not expected to complicate either the patient's response to treatment or outcome potential.
- Acquired Postural Defect (781.92) The identified condition is not expected to complicate either the patient's response to treatment or outcome potential.
- Dextroscoliosis (737.30) The identified condition is not expected to complicate either the patient's response to treatment or outcome potential.

Treatment Orders:

- Lumbar Segmental Dysfunction (739.3) will be treated with manipulation utilizing a diversified technique; three times per week for one month or until patient reaches MMI. The goal is to improve the status of the following problems: VAS - Rest = 3 and VAS - Active = 8.
- Lumbosacral Strain (846.0) Treatment for this problem is deferred at this time.

Ordered Procedures:

- 98940 - Manipulation

Today's Treatment Details:

- Treatment was performed as ordered in the current treatment plan. The following regions were manipulated primary to the area(s) of complaint: Lumbar. Treatment in the lumbar region was performed at the following levels: L4.
- Treatment was performed to the thoracic region (secondary to the area of complaint) at the following levels: T5, T6 and T7.
- Treatment was performed to the sacral region (secondary to the area of complaint) at the following levels: S2.

Name: Ricky Hartzell

Visit Date: 04/03/2009

Page: 1

Patient: Ricky Hartzell

Page: 2

- The patient tolerated the therapy provided well and did not report any adverse effects from treatment.
- The patient responded well to treatment noting improvement following therapy.



Notation electronically signed by: Dr H Austin Murray

Name: Ricky Hartzell

Visit Date: 04/03/2009

Page: 2

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Charleston Neck & Back Center

1835 Savage Road
Charleston, SC 29407
Phone: 843-763-2225
Fax: 843-763-3433

Visit Date: 04/10/2009
Patient: Ricky Hartzell

Daily Encounter:

Findings during today's encounter were as follows:

Subjective:

Today's Analysis:

- The patient reported no significant change in their level of symptoms or their capacity for noted daily, recreational and/or occupational activities.

Objective:

Current Objective Problems:

- Lumbar Segmental Dysfunction (739.3)
- Lumbosacral Strain (846.0)

Today's Analysis:

- Examination revealed findings consistent with those noted in the current treatment plan. The current objective problem list is unchanged.

Assessment:

- No change to the diagnosis or treatment is appropriate.

Plan:

Complicating Conditions and Anticipated Effect on Treatment Outcome:

- Pelvic Deformity (738.6): The identified condition is not expected to complicate either the patient's response to treatment or outcome potential.
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Treatment Orders:

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- Lumbosacral Strain (846.0) Treatment for this problem is deferred at this time.

Ordered Procedures:

- 98940 - Manipulation

Today's Treatment Details:

- Treatment was performed as ordered in the current treatment plan. The following regions were manipulated primary to the area(s) of complaint: Lumbar. Treatment in the lumbar region was performed at the following levels: L5.
- Treatment was performed to the sacral region (secondary to the area of complaint) at the following levels: S1.

Name: Ricky Hartzell

Visit Date: 04/10/2009

Page: 1

Patient: Ricky Hartzell

Page: 2



Notation electronically signed by: Dr H Austin Murray

Name: Ricky Hartzell

Visit Date: 04/10/2009

Page: 2

10

Charleston Neck & Back Center

1835 Savage Road
Charleston, SC 29407
Phone: 843-763-2225
Fax: 843-763-3433

Visit Date: 04/13/2009
Patient: Ricky Hartzell

Daily Encounter:

Findings during today's encounter were as follows:

Subjective:

Today's Analysis:

- The patient reported no significant change in their level of symptoms or their capacity for noted daily, recreational and/or occupational activities.

Objective:

Current Objective Problems:

- Lumbar Segmental Dysfunction (739.3)
- Lumbosacral Strain (846.0)

Today's Analysis:

- Examination revealed findings consistent with those noted in the current treatment plan. The current objective problem list is unchanged.

Assessment:

- No change to the diagnosis or treatment is appropriate.

Plan:

Complicating Conditions and Anticipated Effect on Treatment Outcome:

- Pelvic Deformity (738.6): The identified condition is not expected to complicate either the patient's response to treatment or outcome potential.
- Acquired Postural Defect (781.92) The identified condition is not expected to complicate either the patient's response to treatment or outcome potential.
- Dextroscoliosis (737.30) The identified condition is not expected to complicate either the patient's response to treatment or outcome potential.

Treatment Orders:

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- Lumbosacral Strain (846.0) Treatment for this problem is deferred at this time.

Ordered Procedures:

- 98940 - Manipulation

Today's Treatment Details:

- Treatment was performed as ordered in the current treatment plan. The following regions were manipulated primary to the area(s) of complaint: Lumbar. Treatment in the lumbar region was performed at the following levels: L4.
- Treatment was performed to the thoracic region (secondary to the area of complaint) at the following levels: T12.
- Treatment was performed to the sacral region (secondary to the area of complaint) at the following levels: S1.

Name: Ricky Hartzell

Visit Date: 04/13/2009

Page: 1

Patient: Ricky Hartzell

Page: 2

- The patient tolerated the therapy provided well and did not report any adverse effects from treatment.
- The patient responded well to treatment noting improvement following therapy.

Notation electronically signed by: Dr H Austin Murray

Name: Ricky Hartzell

Visit Date: 04/13/2009

Page: 2

12

EMPLOYER QUARTERLY CONTRIBUTION AND WAGE REPORTS

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925 ORIGINAL
FORM ALIGNMENT BOXES

X

1. EMPLOYER NAME
PALMETTO COLLISION

2. ACCOUNT NUMBER
465556

3. QUARTER ENDING DATE
9/30/2007

4. TOTAL NO. PAGES
(including continuation sheets)

5. TOTAL NO. OF EMPLOYEES

2

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11 EXCESS WAGES PAID THIS QUARTER
(Enter on Line 2b, Form UCE-101)
(See example for computing excess wages)

9.095⁰⁰

9 TOTAL WAGES THIS PAGE

10 TOTAL WAGES THIS REPORT
(Enter on Line 2a, Form UCE 101)

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EMPLOYER QUARTERLY CONTRIBUTION AND WAGE REPORTS

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551 ORIGINAL

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FORM ALIGNMENT BOXES

1. EMPLOYER NAME
PALMETTO COLLISION

2. ACCOUNT NUMBER
0465556

3. QUARTER ENDING DATE
12/31/2007

4. TOTAL NO. PAGES
(including Continuation Sheets)

5. TOTAL NO. OF EMPLOYEES

2



6. EMPLOYEE'S SOCIAL SECURITY NUMBER
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7. NAME: FIRST MIDDLE INITIAL LAST

3. TOTAL WAGES

3171

James D. Alexander
Doug K. Alexander

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SCWCC

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INSURANCE &
MEDICAL SERVICE

11. EXCESS WAGES PAID THIS QUARTER
(Enter on Line 2b, Form UCE 101)
(See examples for computing excess wages)

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(Enter on Line 2a, Form UCE-101)

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Acct 465556 Qtr 03/31/08 Form 120C



**SOUTH CAROLINA
SECURITY COMMISSION**

idsden Street

Box 995

na, SC 29202

05/27/2008

PALMETTO COLLISION

C/O MICHAEL STALLINGS
4155 DORCHESTER RD STE C
NORTH CHARLESTON, SC 29405

In reply refer to
Wage Records Section
Telephone (803) 737-0330
Account Number 465556
Doc # 303

Dear Employer

We have received and processed your Employers Quarterly Tax and Wage Report for the 3/31/2008, however, we were unable to process wages for the employee(s) listed below because we do not have a valid Social Security number. For each employee listed, please enter the correct Social Security number in the space provided. We have listed the reported wages and the employees name. When completed, return this letter to the address shown above, Attention: Wage Records Section.

Social Security Number	Employee's Last Name	Wages
3171	ALE	7750 00
1116	ALE	13026 00

If you have questions or need assistance, contact our Wage Records Section at telephone (803) 737-0330.

Sincerely,

Anita Philips
Wage Records Supervisor

UI-4

Received Wage Records

JUN 30 2008

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INSURANCE &
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(Including Continuation Sheet)

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EMPLOYER QUARTERLY CONTRIBUTION AND WAGE REPORTS

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PALMETTO COLLISION

2. ACCOUNT NUMBER

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(See example for computing excess wages)

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10 TOTAL WAGES THIS REPORT
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**INSURANCE &
MEDICAL SERVICE**

OCT 07 '10

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EMPLOYER QUARTERLY CONTRIBUTION AND WAGE REPORTS

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ARM & JOINT EXERCISES

FORMAL ALPHABET 8-77-9

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PALMETTO COLLISION

2. ACCOUNT NUMBER
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MEDICAL SERVICE

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EMPLOYER QUARTERLY CONTRIBUTION AND WAGE REPORTS

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FORM ALIGNMENT BOXES

1. EMPLOYER NAME
PALMETTO COLLISION

2. ACCOUNT NUMBER
0465556

3. QUARTER ENDING DATE
12/31/2008

4. TOTAL NO. PAGES (including Cover Sheet and Index)

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OCT 07 1960

INSURANCE &
MEDICAL SERVICE

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10. TOTAL WAGES THIS REPORT
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EMPLOYER QUARTERLY CONTRIBUTION AND WAGE REPORTS

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ORIGINAL

1. EMPLOYER NAME
PALMETTO COLLISION

2. ACCOUNT NUMBER:
0465556

3. QUARTER ENDING DATE
03/31/2009

4. TOTAL NO. PAGES :
(including Continuation Sheet)

5. TOTAL NO. OF EMPLOYEES
4

[illegible]The image is a high-contrast, black and white scan of a textured surface, likely a book cover or endpaper. The majority of the frame is filled with a dense, grainy texture of black and white speckles. On the left side, there is a vertical strip of lighter, more uniform material, possibly a hinge or a different section of the cover. A small, bright white circular mark is visible on the left edge, near the bottom. The overall appearance is that of a heavily degraded or high-contrast photograph.

21

OUT- AND-VA DEPARTMENT COUNTY COMMISSION
 EMPLOYER QUARTERLY CONTRIBUTION AND WAGE REPORTS
 FORM UCE 101 (Rev. 10/01)

108 ORIGINAL

1. EMPLOYER NAME PALMETTO COLLISION	2. ACCOUNT NUMBER 0465556	3. QUARTER ENDING DATE 12/31/2009
4. TOTAL NO. PAGES 1		5. TOTAL NO. OF EMPLOYEES 5



6. EMPLOYEE SOCIAL SECURITY NUMBER	7. NAME: FIRST, MIDDLE INITIAL, LAST	8. TOTAL WAGES
1116	James D Alexander	5977.00
5007	James M Benton	5810.00
2233	Harold D Brock	2050.00
4788	Michael C Stallings X	1500.00
3171	Douglas K Alexander LPT	4700.00

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State of South Carolina

1333 Main Street, Suite 500
P.O. Box 1715
Columbia, S.C. 29202-1715



Tel: (803) 737-5700
Fax: (803) 737-1258
www.wcc.sc.gov

Workers' Compensation Commission

August 3, 2010

H.W. Funderburk, Jr.
Deputy Executive Director
SC Dept. of Employment & Work Force
P.O. Box 995
Columbia, SC 29202

Re: SCWCC v. Palmetto Collision
WCC File No: X1000568
ESC Account No: 465556

Dear Mr. Funderburk:

Please find under cover of this letter a subpoena for ESC Account No. 465556, for all quarters of 2007, 2008, and 2009.

An extra copy of the subpoena has been enclosed. We would appreciate it if you would attach that copy to the copy of the ESC records you are providing to us.

Thank you for your assistance.

Sincerely,

Marion Buraczynski
Coverage Specialist & Paralegal
SCWCC Coverage Division
(803) 737-5708

/mb
Enclosures

24

South Carolina Workers'
Compensation Commission
333 Main Street, Suite 500
P.O. BOX 1715
Columbia, SC 29202-1715r



803-737-5675

WCC File #: X1000568

Carrier File #: _____

Carrier Code #: _____

Employer FEIN: 680651687

SC Workers' Compensation Commission
Petitioner.

Palmetto Collision
Respondent.

P.O. Box 1715, Columbia, SC 29202
Petitioner's Address

4155 Dorchester Road, North Charleston, SC 29405
Respondent's Address

Garry Smith, Director, Compliance Division
Preparer's Name, Position, and Office

803-737-5707
Telephone #

Subpoena for Document(s) at an Order and Rule to Show Cause Hearing

TO: H. W. Funderburk, Jr., Deputy Executive Director, SC Department of Employment and Work Force, P.O. Box 995, Columbia, SC 29202.

You are commanded to provide the following document(s) or object(s) to the Compliance Division of the SC Workers Compensation Commission, for the purpose of being used as evidence at an order and rule to show cause hearing: (List Documents or Objects)

SC Department of Employment and Work Force records for Palmetto Collision

c/o Michael Stallings, 4155 Dorchester Rd, Ste C, North Charleston, SC 29405

465556
ESC Account # for all quarters of 2007, 2008, and 2009

This subpoena shall remain in effect until you are granted permission to depart by the Commissioner or an officer acting on behalf of the Commissioner.

Eleanor Duffy Cleary
Eleanor Duffy Cleary, Attorney for the Commission.

7/30/2010
Date

SC Employment Security Commission
Attn: Melinda Hoffman
P.O. Box 995
Columbia, SC 29611

Serve this form according to R.67-212B. Refer to R.67-212 and R.67-214 for additional information. Procedural questions may be addressed to the Judicial Department at 803-737-5765.

WCC Form # 27
Rev. 3/96

27

25

SUBI

State of South Carolina

1333 Main St, Suite 500
P.O. Box 1715
Columbia, S.C. 29202



Tel: (803) 737-5700
Fax: (803) 737-5768
www.wcc.sc.gov

Workers' Compensation Commission

June 12, 2010

Accident Fund Insurance Co. of America
Attn: Ms. Sheila Wright
Office of General Counsel
P.O. Box 40790
Lansing, MI 48901-7990

Carrier Code No. 00000

Carrier File No.

Re: Compliance investigation:
WCC File No. X100568
Richard Hartzell v. Palmetto Collision, LLC
Date of Injury: 02/25/2009

Dear Ms. Wright:

Please accept this as an official request for the policy and application for insurance pertaining to coverage that was provided briefly to Palmetto Collision, LLC, 4155 Dorchester Road, North Charleston, SC 29405. The policy number is WCV6045020. The policy effective dates were 5/27/2008 to 5/27/2009..

The insurance records of the Commission indicate the policy was cancelled on 8/5/2008. The proof of coverage document showing the cancellation is enclosed. However, the employer's attorney has disputed that her client ever contracted for insurance with Accident Fund Insurance Co. of America. She stated that her client was never issued an insurance policy by Accident Fund Insurance Co. of America, and never made a premium payment to Accident Fund Insurance Co. of America. The attorney's letter is also enclosed.

The policy and specifically the application the employer executed are critical to the adjudication of the above claim, because it is the position of the Compliance Division is that the employer came under the Act by obtaining insurance, lapsed or did not renew his policy, but continued under the Act. In order to come out from under the Act, an eligible employer -- one that does not now regularly have four employees -- must file a Form 38 to withdraw from the Act. That was not done.

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If you have questions or comments about the above, please call me directly at
803-737-5707.

Sincerely,



Garry Smith, Director
Compliance Division

GS:s

Enclosures: as stated above

c:

Kirsten L. Barr, Esquire
Trask & Howell LLC
P O Box 2167
Mt. Pleasant, SC 29465-2167

Kerry W. Koon
Attorney at Law
147 Wappoo Creek Drive, Suite 201
Charleston, SC 29412

27

State of South Carolina

1333 Main St, Suite 500
P.O. Box 1715
Columbia, S.C. 29202



Tel: (803) 737-5700
Fax: (803) 737-5768
www.wcc.sc.gov

Workers' Compensation Commission

June 12, 2010

Kerry W Koon
Attorney at Law
147 Wappoo Creek Drive, Suite 201
Charleston, SC 29412

Carrier Code No. 00000

Carrier File No.

Re: Compliance investigation:
WCC File No. X100568
Richard Hartzell v. Palmetto Collision, LLC
Date of Injury: 02/25/2009

Dear Counselor:

Please find enclosed pertinent documents that have been obtained as the result of the investigation of this claim. Also included is a letter from the employer's legal counsel, Kirsten L. Barr, denying the employer was subject to the Act.

The position of the Compliance Division is that the employer came under the Act by obtaining insurance, lapsed or did not renew his policy, but continued under the Act. In order to come out from under the Act, an eligible employer -- one that does not now regularly have four employees -- must file a Form 38 to withdraw from the Act. That was not done. (See R67-403 and R67404.) The issue as to whether the employer was also subject to the Act by regularly having four or more employees has not been addressed in this compliance action, but that could be the case as well.

My intention has been to: 1) obtain an compliance agreement or order finding the employer subject to the SC Workers' Compensation Act and in noncompliance, 2) assess a compromised fine, 3) bring the employer into compliance within 30 days, and 4) turn your client's claim over to the SC Uninsured Employers' Fund to pay or defend. If I had a compliance agreement or order, I could turn your client's claim over to the Fund.

However, the employer's attorney has disputed that her client ever contracted for insurance with Accident Fund Insurance Co. of America. She stated that her client was never issued an insurance policy by Accident Fund Insurance Co. of America, and never made a premium payment to Accident Fund Insurance Co. of America.

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I will be obtaining the carrier records concerning the policy that NCCI records indicate was issued. I specifically will be asking for the insurance application to determine who executed it. Once I have that I will get back with you for further discussion about this matter.

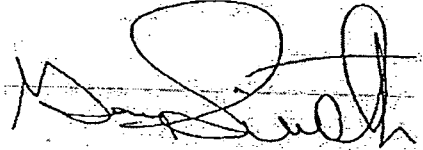
Also, for your information, I have subpoenaed the employer's records from the SC Department of Employment and Work Force (formerly the SC Employment Security Commission). The employer indicated he has three employees, so those should have been reported.

The employer is a limited liability company; therefore, the owners/members of the company are not employees. They are treated the same as a sole proprietor or partners and are not included in the account.

My delayed prosecution of an uninsured action against the employer does not of course preclude you from requesting a 50/51 hearing in this matter. You may go forward at any time, but if you do, you would have to prove the employer is subject to the Act at the hearing. If you do decide to go forward, please serve Ms. Barr and the SC Uninsured Employers' Fund.

If you have questions or comments about the above, please call me directly at 803-737-5707.

Sincerely,



Garry Smith, Director
Compliance Division

GS:s

Enclosures: as stated above

c:

Kirsten L. Barr, Esquire
Trask & Howell LLC
P O Box 2167
Mt. Pleasant, SC 29465-2167

**South Carolina Workers' Compensation
Commission**

333 Main Street, Suite 500
P.O. BOX 1715
Columbia, SC 29202-1715r

803-737-5675



WCC File #: X10056

Carrier File #: _____

Carrier Code #: _____

Employer FEIN: 6806516

SC Workers' Compensation Commission
Petitioner

P.O. Box 1715, Columbia, SC 29202
Petitioner's Address

Garry Smith, Director, Compliance Division
Preparer's Name, Position, and Office

Palmetto Collision, LLC.
Respondent

4155 Dorchester Rd. Ste C, North Charleston, SC 294
Respondent's Address

803-737-5707
Telephone #

Subpoena for Document(s) at an Order and Rule to Show Cause Hearing

TO: H. W. Funderburk, Jr., Deputy Executive Director, SC Department of Employment and Work Force
P.O. Box 995, Columbia, SC 29202

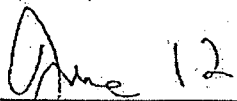
You are commanded to provide the following document(s) or object(s) to the Compliance Division of the SC Workers Compensation Commission, for the purpose of being used as evidence at an order and rule to show cause hearing: (List Documents or Objects)

SC Employment Security Commission records for Palmetto Collision, LLC.
4155 Dorchester Road, Ste C
North Charleston, SC 29405

ESC Account #680651687 for all quarters of 2007, 2008 and 2009

This subpoena shall remain in effect until you are granted permission to depart by the Commissioner or officer acting on behalf of the Commissioner.


Garry Smith, Director, Compliance Division


Date June 12, 2010

Serve this form according to R.67-212B. Refer to R.67-212 and R.67-214 for additional information. Procedural questions may be addressed to the Judicial Department at 803-737-5765.

WCC Form # 27
Rev. 3/96

SUBPO

27
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Smith, Garry

From: Smith, Garry
Sent: Thursday, May 06, 2010 2:36 PM
To: "kerrykoon@hotmail.com"
Subject: Palmetto Collision LLC

RE: Richard A. Hartzell v. Palmetto Collision, LLC
WCC File No. 100568
Date of accident: 2/25/09

Dear Mr. Koon:

The position of the Compliance Division is that Palmetto Collision, LLC was, on the date of your client's accident, subject to the SC Workers' Compensation Act and uninsured.

The employer came under the Act by obtaining insurance coverage, lapsed it, but continued under the Act in order to come out from under the Act, an eligible employer – one that has dropped below four employees – must file a Form 38 with the Commission. That was not done.

Also, you provided compelling evidence from your client that the employer had four or more employees.

I'm going to prosecute an uninsured action against the employer, but I suggest if you want to move could client's claim forward quickly, that you request a 50/51 hearing and serve the uninsured employer and the SC Uninsured Employers' Fund.

Garry Smith, Director
Compliance Division/SCWCC
Direct dial: 803-737-5707
Fax: 803-737-1258
email: gsmith@wcc.sc.gov

5/6/2010

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232 S. Capitol Avenue
P. O. Box 40790
Lansing, MI 48901-7990
517 342 4200
www.accidentfund.com



July 15, 2010

Garry Smith, Director
Compliance Division
Workers' Compensation Commission
State of South Carolina
1333 Main Street, Suite 500
P.O. Box 1715
Columbia, SC 29202

1st SE

Re: Compliance Investigation:
WCC File No. X100568
Richard Hartzell v. Palmetto Collision LLC
Date of Injury: 02/25/2009

Dear Mr. Smith,

As requested, I am enclosing a copy of the application and policy for Palmetto Collision, LLC. Our applications are delivered electronically to us from our agents, and we deliver the policy back to them electronically, as well.

do ya
know
↓
don't
know
name

The policy was issued effective May 27, 2009 per the instructions of our agent, Lindsay McMillan at Commonwealth Insurance Group. The insured did not make a payment on the initial invoice, so we cancelled the policy for nonpayment of premium effective August 5, 2008. We performed an audit for the period of time we provided coverage, and have referred the collection of the premium due (\$900) to a collection agency.

Please let me know if you need anything further. I can be reached at (517) 367-7482.

Sincerely,

Sheila A. Wright
Sheila A. Wright, CPCU, CIC
Corporate Underwriting Director

Encl.

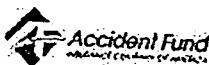
SCWCC

JUL 20 10

INSURANCE &
MEDICAL SERVICES

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Accident Fund is a group of companies including: Accident Fund Insurance Company of America, Accident Fund National Insurance Company and Accident Fund General Insurance Company



Accident Fund Insurance Company of America
PO BOX 40790
Lansing, MI 48901-7990

Confirmation Letter

Workers Compensation Application

Producer Information

Agency Name: Commonwealth Insurance Group
Agency Contact: LINDSAY MCMILLAN
Agency Number: 0005083
Agency Phone: 843-572-4567
User Name: Glenn Woytisek(BDC)

Applicant Information

Applicant Name: PALMETTO COLLISION
Name Continued:
FEIN/SSN: 680651687
Mailing Address: 4155 DORCHESTER RD
Business Description: AUTO REPAIR SHOP
City/State/Postal Code: NORTH CHARLESTON, SC
State: South Carolina
29405-7426

Policy Information

Effective Date: 05/27/2008
Expiration Date: 05/27/2009
Anniversary Date:
Policy Number: WCV 6045020
Total Claims prior 4 years: \$0.00
Payment Plan: Direct Bill - 4 Pay (Deposit 25%)
Legal Entity: Limited Liability Corporation
Company: ACCIDENT FUND INS CO OF AMERICA
Total Number of Years In Business: 10
Total number of employees: 4
Lost time claims prior 4 years: 0
Dividend Plan:

Installment Schedule

Installment #	Date Due	Installments	Amount(\$)
1	5/27/2008	WC Policy - Initial Down Payment - 25%	
2	8/27/2008	WC Policy - Installment	955.75
3	11/27/2008	WC Policy - Installment	955.75
4	2/27/2009	WC Policy - Installment	955.75

Total Installments

\$3,823.00

Location

Location #1
Name: PALMETTO COLLISION
Address: 4155 DORCHESTER RD
City: NORTH CHARLESTON
State: South Carolina
Postal Code: 29405-7426
Unemployment Number: Not Available
Group Program:

Employment Information

Each Accident: \$500,000.00
Disease - Policy Limit: \$500,000.00
Disease - Each Employee: \$500,000.00

Policy Information

Location #: 1 Additional Interest #: 1

Interest Type:
Audit Contact:
Mailing Address: 4155 DORCHESTER RD
Name: PALMETTO COLLISION
Extended Mailing Address:
Extended Name:
City/State/Postal Code: NORTH CHARLESTON, SC 29405-7426

Contract Information

South Carolina SC SCHEDULE CREDIT 5%

Other Information

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Location #: 1

Name:

SSN:

Ownership %:

Excluded/Included:

Salary (\$):

MIKE STALLINGS

100

Included

\$50,000.00

State	Location	Class Code	Class Description	Premium Basis	Rate per \$100/Factor	Est. Annual Premium
South Carolina	1	8393	AUTOMOBILE BODY REPAIR	\$117,000.00	2.9000	\$3,393.00
South Carolina	1	8810	CLERICAL OFFICE EMPLOYEES NOC	\$50,000.00	0.4800	\$240.00
Total for Location Subtotal						\$3,633.00
South Carolina	1	9741	DOMESTIC TERRORISM, EARTHQUAKE AND INDUSTRIAL ACCIDENTS	\$167,000.00	0.0100	\$17.00
South Carolina	1	9807	INCR LIMITS OF EMPLOYERS LIAB	\$3,633.00	0.0170	\$62.00
South Carolina	1	9848	TO EQUAL MINIMUM PREMIUM (E L)	\$0.00	0	\$38.00
South Carolina	1	9887	SCHEDULE CREDIT	\$3,733.00	0.9500	(\$187.00)
South Carolina	1	0900	EXPENSE CONSTANT	\$0.00	0	\$260.00
SubTotal						\$190.00
Total State Premium						\$3,823.00
Total For Policy						\$3,823.00

Insured Information

- No 1 Does applicant engage in nuclear energy ?
- No 2 Does applicant engage in railroads ?
- No 3 Does applicant engage in underground mining ?
- No 4 Does applicant engage in oil and gas drilling, refining, or manufacturing ?
- No 5 Does applicant engage in commercial airlines ?
- No 6 Does applicant engage in manufacturing, storage, or transportation of fireworks, nitrogen-glycerin, or other explosive substances or devices ?
- No 7 Does applicant engage in professional sports teams and/or professional athletes ?
- No 8 Does applicant engage in asbestos abatement, manufacturing or distribution ?
- No 9 Does applicant engage in ship building ?
- No 10 Does applicant engage in explosives manufacturers, haulers, or distributors ?
- No 11 Does applicant engage in Jones act, defense base act, outer continental shelf lands act ?
- No 12 Does applicant engage in demolition and blasting ?

Insured Statements

- No 1 Does the applicant own, operate or lease aircraft/watercraft?
- No 2 Do/Have past, present or discontinued operations involve(d) storing, treating, discharging, applying, disposing, or transporting of hazardous material? (e.g. landfills, wastes, fuel tanks, etc)
- No 3 Any work performed underground or above 15 feet?
- No 4 Any work performed on barges, vessels, docks, or bridge over water?
- No 5 Is applicant engaged in any other type of business?
- No 6 Are sub-contractors used? (If yes, give % of work subcontracted)
- No 7 Any work sublet without certificates of ins.?
- No 8 Is a written safety program in operation?
- No 9 Any group transportation provided?
- No 10 Any employees under 16 or over 60 years of age?
- No 11 Any seasonal employees?
- No 12 Is there any volunteer or donated labor?
- No 13 Any employees with physical handicaps?
- No 14 Do employees travel out of state?
- No 15 Are athletic teams sponsored?
- No 16 Are physicals required after offers of employment are made?
- No 17 Any other insurance with this insurer?
- No 18 Any prior coverage declined/cancelled/non-renewed (last 3 years)?
- No 19 Are employee health plans provided?
- No 20 Is there a labor interchange with any other business/subsidiary?
- No 21 Do you lease employees to or from other employers?
- No 22 Do any employees predominantly work at home?
- No 23 Any tax liens or bankruptcy within the last 5 years?

34

- No 24 Any undisputed and unpaid workers compensation premium due from you or any commonly managed or owned enterprises?
- Yes 25 Are your employees U.S. Citizens, or do they have the legal right to remain and work in the U.S.?
- No 26 Does the risk wish to have a medical-benefits deductible quote?
- Yes 27 Is the Applicant a 24-hour Business?

Signature

The above Policy will take effect at 12:01 AM on 05/27/2008
 The estimated premiums generated by this program are based on the information provided. Rates are subject to change without prior notice. The Payment Plan, Coverage B, Scheduled Rating, Credits, and Experience/Merit Modification options are all subject to approval or denial by the Accident Fund Insurance Company of America.

Applicant's signature x _____ Date ____/____/____

Signature of Agent/Producer x _____ Date ____/____/____ Time _____

IMPORTANT NOTICE

This is an Interim installment schedule based on estimated premium and is subject to change after the underwriting and policy issuance. Payments should be made in accordance with the above until the policy is issued and you begin receiving regularly scheduled billing notices.

Payments must be received on or before the due date to avoid cancellation.

Insured will receive a Billing Statement prior to the due date of each installment.

QUESTIONS ABOUT YOUR INSTALLMENT SCHEDULE? PLEASE CONTACT YOUR AGENT.

Please make checks payable to:
 ACCIDENT FUND
 PO Box 77000 Dept 77125
 Detroit, MI 48277-0125

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Policy Provider Reports

Policy and Coverage Provider

SOUTH CAROLINA

Policy and Cov Provider	Names and Addresses	Names	Addresses	Canc/Reinst/Non-Renew	Transaction History
Policy Nbr: WCV5045020 Primary Insured Name: PALMETTO COLLISION LLC Orig Pol Nbr: Primary Insured Information Primary Insured Name: PALMETTO COLLISION LLC Street: 4166 DORCHESTER RD City: NORTH CHARLESTON State: SC Zip Code: 294057426 Orig Pol Rcvl Dt: 06/11/2008 Prior Pol Nbr: State Cov Prvdr: State Exp Dt: 06/27/2008 Cov Class: 5393 Legal Nature of Insured: 10 - LIMITED LIABILITY COMPANY (LLC) Wrap Up Pol: 2 - NON-WRAP-UP POLICY Employee Leasing Code: 1 - NON-EMPLOYEE LEASING POLICY Pol Type Plan: 01 - VOLUNTARY POLICY Pol Type Cvr: 01 - STANDARD WORKERS' COMPENSATION POLICY	Cov Prvdr ID: 19968 Orig Cov Prvdr ID: Coverage Provider Information Cov Prvdr ID - Cov Prvdr Name: 19968 - ACCIDENT FUND INS CO OF AMERICA Street: 232 S CAPITOL AVE, POB 40790 City: LANSING State: MI Zip Code: 489017990 Group ID: 19968 Branch: 000 Orig POC Rcvl Dt: State Exp Dt:	Pol Eff Dt: 05/27/2008 Pol Exp Dt: 05/27/2009 Primary Insured FEIN: 680651687 Orig Pol Eff Dt: Last Rcvl Dt: 07/01/2008 Last Activity Dt: 07/01/2008			

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My Preferences | Disclaimer

Coverage lapsed
for nonpayment of premium
on 8/5/2008

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<http://www.ncci.com/ncchelp/PolicyDetail.aspx?unitId=1419007212H5Y1IdASpdl.A> 4/13/2010



POC Online Inquiry

Main Page | Log Out

Policy Provider Reports

Cancellations / Reinstatements / Non-Renewals

SOUTH CAROLINA

Policy and Cov Provider	Names and Addresses	Names	Addresses	Canc/Reinst/Non-Renew	Transaction History
Policy Nbr: Primary Insured Name:	WCV6045020 PALMETTO COLLISION LLC	Pol Eff Dt: 05/27/2008	Pol Exp Dt: 05/27/2009 Cov Prvdr ID: 19968		
C/R/N Received Date	C/R/N Effective Date	Cancellation Notice Mail Date	Transaction Code	Cancel Type	Cancel Reason
07/01/2008	08/05/2008	08/30/2008	01 - CANCELLATION	02 - CANCELLED PRO-RATA	05 - NONPAYMENT OF PREMIUM

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My Preferences | Disclaimer

DOA 2-25-09
cancelled 8-5-08

[Handwritten signature]
9/22

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State of South Carolina

1333 Main Street, Suite 500
P.O. Box 1715
Columbia, S.C. 29202-1715



TEL: (803) 737-
FAX: (803) 737-

Workers' Compensation Commission
Report of Investigation

April 22, 2010

To: Investigation file
Fm: Michael Felton, Compliance Division

RE: Investigation file:
Richard A. Hartzell v. Palmetto Collision, LLC
WCC File No. X100568
Date of accident: 2/25/09

1. Synopsis of interview(s)

No interview conducted

2. Observations made during on-site investigation.

No on-site investigation conducted

3. Documents obtained during the course of the investigation:

Exhibit A: South Carolina Secretary of State incorporatin data for Palmetto Collision, LLC

Exhibit B: Proof of coverage document showing coverage lapsed 8/5/08

Exhibit C: South Caorlina Employment Security Commission account data for Palmetto Collision, LLC

4. Analysis of the evidence:

The employer is subject to the South Carolina Workers' Compensation Act and uninsured from 8/5/08 through the present. The employer came under the Act by purchasing insurance, lapsed its policy, but remained under the Act.

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www.wcc.sc.gov

5. Action taken:

Prosecute uninsured action against employer

Enclosures: Exhibits A - C

No. of Emp	Period A				Period B				Periods A
	Lapsed Cov	End	Total Days	Cost	Start	End	Total Day	Cost	
2	1/0/00	1/0/00	0	\$ -	8/05/08	8/27/08	22	\$ 6,250.00	Total C 6,250.00

Period of violation: 8/5/08 and continuing: (Fine starts the quarter in which the employer first reported four or more employees. The beginning date to assess the fine is 8/5/08)

232 S. Capitol Ave
Lansing, MI 48901-7990
www.accidentfund.com



04/01/2010

Richard A. Hartzell
c/o Kerry W. Koon, Esq.
147 Wappoo Creek Dr.
Charleston SC 29412

CH#: 300000004262
WCC File No: unknown
Date of Accident: 02/25/2009

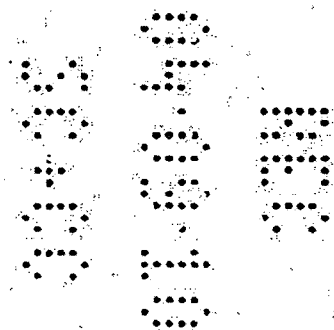
Dear Mr. Hartzell:

Based upon our investigation, this letter is to notify you that your claim is being denied as there is no coverage under the policy.

Sincerely,

Chuck Chapko/csp
Chuck Chapko
Customer Service Associate III

cc: SC Workers' Compensation Commission
Enclosure- Form 19



04/01/2010
SCDenialLetter

40

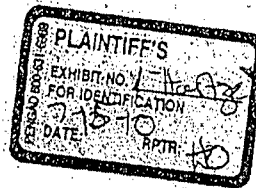
check #	\$	date	
6982	461.75	7-18-08	TAX
7022	472.56	7-25-08	TAX
7072	714.36	8-6-08	TAX
7087	497.43	8-8-08	TAX
	525.00	12-19-08	NO TAX
7714	325.00	12-24-08	NO TAX - Christmas bonus
7747	200.00	12-31-08	NO TAX
7794	572.05	1-9-09	TAX
7845	481.09	1-16-09	TAX
7883	332.16	1-23-09	TAX
7921	410.75	1-30-09	TAX
7949	448.68	2-6-09	TAX
8018	448.68	2-20-09	TAX
8061	403.21	2-28-09	TAX
8093	424.81	3-6-09	TAX
896	504.96	3-30-09	TAX

Precum
 Colman
 end of deane
 @Palmdale

→ gap in wages

bought tools
 from Ricky, but not working
 during this time

41



2-29-08

Precision Collision Inc.

NET \$292.95 CK# 2980

NET 143.26 CK# 3028

mikes

* 6357 # \$400 - 3-29

* 6342 # \$570 - 3-20

* 6395 # \$570 - 3-28

* 6433 # \$400 - 4-3

* 6852 # \$261 - 4-11 materials

6483 # \$400 - 4-22

6496 # \$300 4-24

6509 # \$540 4-28-08

6562 # \$400 5-7

6580 # \$910 5-9

6643 382 ⁵² 5-21-08 * TAX

6657 80 ⁰⁰ 5-23

6681 418 ¹⁹ 5-30 * TAX

6753 336 ¹⁸ 6-13- * TAX

6800 433 ⁰¹ 6-27-08 * TAX

6938 595 ⁹³ 7-11-08 * TAX

42

Check

DATE

3-18-09 = \$ 486.

85190

8018

2-12-09

\$ 448.09

8061

\$ 403.21

43

It has been determined that you are eligible without disqualification for unemployment compensation. This determination is made based on the South Carolina Employment Security Law and on evidence available at the time of this notice.

MAILING DATE 08/14/2007

APPEAL TRIBUNAL
P. O. BOX 895
COLUMBIA, S.C. 29202

SC 29456 3220

SOUTH CAROLINA EMPLOYMENT SECURITY COMMISSION
INITIAL DETERMINATION OF STATUS AS AN INSURED WORKER

LOCAL OFFICE 180

EFFECTIVE DATE 08/05/07

DATE FILED 08/06/07

DATE PREPARED 08/06/07

RICHARD A HARTZELL
415 OXFORD RD

LADSON

SC 29456

POTENTIAL BENEFITS ESTABLISHED

MILITARY ASSIGNMENTS

WEEKLY BENEFIT AMOUNT 326.00

MAXIMUM TOTAL BENEFITS 8476.00

BENEFIT YEAR ENDS

08/04/08

SEE BACK FOR CLAIMANT INFORMATION

SEE BACK FOR CLAIMANT INFORMATION

EMPLOYMENT RECORD		BASE PERIOD QUARTERLY EARNINGS							
EMPLOYER	ACCOUNT NO.	YEAR	QTR	YEAR	QTR	YEAR	QTR	YEAR	QTR
AMERICAN LAFRANCE LL	427846	2006	02	2006	03	2006	04	2007	01
		9292.33		10649.08		11206.50		9212.20	
BASE QUARTER TOTAL		9292.33		10649.08		11206.50		9212.20	

*QTR
1-JAN/FEB/MAR 3-JULY/AUG/SEPT
2-APR/MAY/JUNE 4-OCT/NOV/DEC

Eligibility Review Data

Office Number: 180		Registered for Work and Filed a Claim.	
CLMTKR ID: REMSN			
Name: RICHARD A HARTZELL		SSN: 9344	Search
Sequence Number: 1			
Last day worked:	08-03-2007	Date of review:	08-06-2007
Type of work performed:	Painters, Transportation Equipment	Expect recall:	N
Type of work seeking 1:	PRODUCTION	Years experience:	25
Type of work seeking 2:		Years experience:	
Previous wage:	16.82 HOURLY	Wage willing to accept:	16.00 HOURLY
Hours last worked:	6:00AM - 2:30PM	Hours willing to work:	6:00AM-2:30PM
Miles traveled last:	10	Miles willing to travel:	10
Job Location City & State:	JEDBURG, SC	Job Location Phone:	
Transportation:	AUTOMOBILE	Attending or plans to attend school:	N
		School:	
		Hours:	
Days not willing to work:	SATURDAY SUNDAY		
Dependent/Childcare:	N/A	Available Immediately:	Y
Self-employed:	N	Name of employer:	
Pensions/Retirement:	N		
Pension Effective:			
% Employer contributed:			
Medical condition:	N	Explanation of condition/disability:	

View CID Data

Previous

Search

Exit

NET-101
TV B/O5

S2001

SOUTH CAROLINA EMPLOYMENT SECURITY COMMISSION
REQUEST FOR INFORMATION
UNEMPLOYMENT INSURANCE BENEFITS

CLAIMANT'S NAME RICHARD A HARTZELL

SS#

-8344

NAME WORKED UNDER

DATE MAILED 2008-08-05

EMPLOYER'S ACCOUNT # 465556

EMPLOYER'S NAME PALMETTO COLLISION
& ADDRESS C/O MICHAEL STALLINGS
4155 DORCHESTER RD STE C
NORTH CHARLESTON SC 29405-7428RETURN WITHIN SCESC
7 DAYS OF THE 2885 W 5th N Street
ABOVE DATE TO P O BOX 1888
SUMMERVILLE, SC 29484

FAX NUMBER 843-871-1448

This person has filed a claim for Unemployment Insurance Benefits and named you as a previous employer. Please explain the reasons this person no longer works for you so that a determination can be made on eligibility for benefits. If you reply by letter, fax, or email, you must include all information requested, as well as the claimant's name and social security number. For instructions about responding by email, please go to our agency website at www.scesc.org. YOU WILL RECEIVE A DETERMINATION ON THIS CLAIM ONLY IF IT IS FOUND THAT YOU ARE THE BONA FIDE AND/OR LIABLE EMPLOYER.

☒ CLAIMANT'S Reason for Separation LACK OF WORK
LACK OF WORK:

☐ Contact the local Employment Security Office shown above by 08/12/2009 if you wish to appear or be represented at an interview regarding the reason for separation

SEPARATION INFORMATION

- ☐ LACK OF WORK (No additional written explanation is necessary)
- ☐ DISCHARGED (Give specific reason)

State company policy that claimant violated, if applicable, and describe the final incident leading to the separation.

List any warnings, note if verbal or written and give dates.

If discharged for absenteeism, list dates of absences.

- ☒ VOLUNTARILY QUIT (Give specific reason) Didn't show or return to work
- ☐ OTHER (Explain in detail)

Dates of Employment FROM: TO: 1378 00
During all terms of employment, have you paid this claimant as much as \$ 1378 00 ☒ YES ☐ NO
If NO, how much have you paid this claimant in all terms of employment? \$ 60 Employment Comm.

Are you paying, or WILL YOU PAY, this claimant a pension or retirement pay? ☐ YES ☒ NO
If YES, what amount? \$ PER SEP 11 2009

Did claimant contribute to pension plan? ☐ YES ☒ NO If YES, what percent? Received Benefits Div.

EMPLOYER NAME Palmetto Collision LLC ACCOUNT NUMBER 465556

EMPLOYER SIGNATURE: [Signature] TITLE LLC Solembr

1. PHONE NUMBER (843) 554-1426 DATE 8/14/09

**FORM MUST BE SIGNED IN ORDER FOR INFORMATION TO BE CONSIDERED

UCB-102VL
8/99
08123

SOUTH CAROLINA EMPLOYMENT SECURITY COMMISSION
UNEMPLOYMENT INSURANCE DIVISION
VOLUNTARY LEAVING
FACT FINDING

Effective Date of Issue 7/26/2009	
Type of Claim	
New ☒	Add ☐
Trans ☐	Rein ☐
Cont ☐	
BYE 7/25/2010	

L O No 1800

CLAIMANT'S

NAME Richard Hartzell

SOCIAL SECURITY
NUMBER

- 9 3 4 4

1 Most recent BONA FIDE employer (Name of Company) Palmetto Collision

Address of Company 4155 Dorchester Road Ste C, N Chas, SC 29405 Telephone No of Company 843-554-1426

Name of individual at Company to contact for more information Michael Stallings Owner

Validated by

2 Dates of employment with this company beginning 2-28-08 ending 3-20-09

Date:

Hours worked from 8 00 am to 5 00 pm or which shift for 5 days per week

9/24/2009

Ending salary \$ 15 to 20 00 per hour Occupation Auto Body Technician

Time: 11:06

AM

3 CLAIMANT'S STATEMENT

JC

a. I quit my job because (Include reason for leaving work on that particular day) because there was no work. My last day at work was on Friday 3/20/09. I called Mike Stallings on Monday 3/23/09 to see if there was going to be any work for the upcoming week. Mike told me that there was no work in the shop and the storage lot was empty. I told him I would call him back or he could call me back if work became available. I called Mike back on 3/31/09 and he stated there was no work to be done. I talked to some of my co-workers who stated there was no work and that they were just standing around. At that point I just started looking for other work.

b. If you left because of working conditions, describe the situation in detail.

c. Were you granted a bona fide leave of absence by your employer? Yes ☐ No ☐ NA ☐
If "Yes" describe briefly giving beginning and ending dates
Date you reported to employer to return to work

d. What did you do to resolve the problem before leaving? For example, did you ask for a transfer or leave of absence, file a grievance or talk to your supervisor?

4. CLAIMANT'S CERTIFICATION I certify that the information stated herein is true. I understand that the Law prescribes penalties for false statements for the purpose of securing benefits to which I am not entitled.

CLAIMANT'S SIGNATURE Richard Hartzell

DATE 9/11/2009

5. INTERVIEWER'S STATEMENT Employer Reply received? Yes ☐ No ☐ (If "Yes," all the employer's allegations not addressed in the claimant's statement must be addressed in Section 4. If "No," information was not adequate, was employer contacted to obtain adequate information?

Yes ☐ No ☐ If "No," give a date of attempt(s) to contact and explain.

SEP 11 2009

Received Benefits Div

INTERVIEWER'S SIGNATURE Jessie F. [Signature]

DATE OF REPORT 9/11/2009

BENEFIT DEPARTMENT

NAME Richard A. Hartzell

SOCIAL SECURITY # _____

- 9 3 4 4

6 EMPLOYER'S STATEMENT (ALSO USE FOR REBUTTAL OF CLAIMANT'S STATEMENT)

The work had slowed down and there was just not enough work for everyone. Richard was a good worker, takes pride in his work and does quality work. Overall, the car business has just slowed down due to economic times.

Perthone/D

EMPLOYER'S SIGNATURE OR NAME OF INDIVIDUAL CONTACTED

TELEPHONE _____

☒

IN PERSON _____

Mikael Stallings, Owner

TITLE OF INDIVIDUAL CONTACTED

9/11/2009

DATE

7 REBUTTAL OF EMPLOYER REPLY

CLAIMANT'S SIGNATURE

DATE

3a CLAIMANT'S STATEMENT CONTINUED (USE ONLY IF ADDITIONAL SPACE IS NEEDED FOR FACT-FINDING STATEMENTS)

CLAIMANT'S SIGNATURE

5a INTERVIEWER'S STATEMENT CONTINUED

BO Employment Comm.

SEP 11 2009

Received Benefits Div.

1 UCB-103
REV. May 2007

SOUTH CAROLINA EMPLOYMENT SECURITY COMMISSION
P.O. BOX 995, COLUMBIA, S.C. 29202

1 PALMETTO COLLISION
1 C/O MICHAEL STALLINGS
1 4155 DORCHESTER RD STE. C
1
1
1 NORTH CHARLESTON SC 29405

DATE OF THIS NOTICE 09/24/09

CLAIMANT'S NAME				SOCIAL SECURITY NUMBER	EFFECTIVE DATE	DISQUALIFICATION ENDS	
RICHARD A. HARTZELL				1-9344	07/26/09	INDEF	
LG. NO.	TYPE	CATEGORY	WEEKLY BENEFIT AMOUNT	MAXIMUM POTENTIAL ENTITLEMENT	LESS REDUCTION OF	NET TOTAL BENEFITS	BENEFIT YEAR ENDS
180	I	01	\$ 218.00	\$ 4580.00	\$ 0.00	\$ 4580.00	07/25/10

1 DETERMINATION BY CLAIMS ADJUDICATOR ON CLAIM FOR BENEFITS

- 1 _____ You are eligible for benefits from the above effective date.
- 1 ☒ You have been disqualified from receiving benefits or have been found to be ineligible for benefits for the following reason(s).

1 YOU LEFT YOUR MOST RECENT BONA FIDE EMPLOYER TO SEEK WHAT YOU CONSIDERED TO BE MORE SUITABLE
1 EMPLOYMENT. THEREFORE, YOU LEFT VOLUNTARILY WITHOUT GOOD CAUSE UNDER THE SOUTH CAROLINA
1 EMPLOYMENT SECURITY LAW, SECTION 41-35-120(1). YOU ARE DISQUALIFIED FROM 07/26/09 AND UNTIL YOU
1 RETURN TO WORK AND EARN AT LEAST EIGHT TIMES YOUR WEEKLY AMOUNT.

1
1 _____ LAST SEPARATION FROM NON-LIABLE EMPLOYER

UI CLAIMS ADJUDICATOR

MAILING DATE 09/25/2009

IMPORTANT: THIS DETERMINATION WILL BE THE FINAL DECISION OF THE COMMISSION UNLESS YOU FILE AN APPEAL SETTING FORTH IN DETAIL THE GROUNDS FOR APPEAL WITHIN TEN (10) CALENDAR DAYS, INCLUDING WEEKENDS AND HOLIDAYS, FROM THE MAILING DATE SHOWN ABOVE. IF THE TENTH DAY FALLS ON A SATURDAY, SUNDAY, OR HOLIDAY, THE APPEAL PERIOD IS EXTENDED TO THE NEXT BUSINESS DAY. YOUR APPEAL MAY BE FILED IN PERSON AT ANY EMPLOYMENT SECURITY OFFICE OR BY MAIL, ADDRESSED TO THE "APPEAL TRIBUNAL," P.O. BOX 995, COLUMBIA, SOUTH CAROLINA 29202. FOR ADDITIONAL INFORMATION OR ASSISTANCE IN FILING AN APPEAL, CONTACT YOUR LOCAL EMPLOYMENT SECURITY OFFICE.

SOUTH CAROLINA EMPLOYMENT SECURITY COMMISSION
P. O. Box 995, Columbia, South Carolina 29202

Notice of Appeal to Appeal Tribunal

Sent
10/5
HJ

Claimant's Name: Richard Hartzell Social Security Number: 3344
Claimant's Address: 415 Oxford Road Ladson, SC 29456
Date of Birth: 10/29/1958 Date of Initial Claim: 07/26/09 Telephone: 843-870-0859
(Month/Day/Year) (Month/Day/Year)
Employer's Name: Palmetto Collision Telephone: 843-554-1426
Employer's Address: 4155 Dorchester Road N. Chas, SC 29405

On 09/26/09 I received a claims examiner's determination mailed 09/25/2009 from
(Date) (Date)
which I appeal and hereby apply for a hearing because I believe it was issued in error for the following reasons:
I did not leave for more suitable employment. I was let go of my position at Palmetto Collision by Mike Stallings Jr.
due to lack of work.

If appeal is untimely, state the reason: _____

I know that I must continue to file my claim for each week of unemployment until I receive the Appeal Tribunal's or Commission's decision, until I return to work, or until my claim is exhausted. If I win the appeal, I know I can only be paid for those weeks that I have claimed timely.

RH
(Claimant's Initials)

Does claimant need an interpreter? ☐ YES ☒ NO What language/dialect? _____ Claimant is ☐ Deaf ☐ Mute
(If it appears necessary to subpoena witnesses or documents, the Workforce Center representative should use Form 107 and attach them to this form at the time of transmittal to the Central Office.)

SUBPOENA ☐ YES ☒ NO

Appellant: claimant

Signed By: Richard Hartzell

Title: claimant

Date: 10-2-09

Date Determination Delivered
by Workforce Center:

OCT 05 2009

(Date)

Received Benefits Div.

Signed: _____

(Workforce Center Representative)

Filed at: Summerville WFC - 1800

(Workforce Center Name and Number)

Date: 10

(Month)

02

(Day)

20

(Year)

APP-100...Revised 2/05
Catalog#: 05080

Received By: _____

(Workforce Center Representative)

51

SOUTH CAROLINA EMPLOYMENT SECURITY COMMISSION
P. O. Box 995, Columbia, South Carolina 29202

Notice of Appeal to Appeal Tribunal

Claimant's Name: Richard Hartzell Social Security Number: 1-9344
Claimant's Address: 415 Oxford Road Ladson, SC 29456
Date of Birth: 10/29/1958 Date of Initial Claim: 07/26/09 Telephone: 843-870-0859
(Month/Day/Year) (Month/Day/Year)
Employer's Name: Palmetto Collision Telephone: 843-554-1426
Employer's Address: 4155 Dorchester Road N. Chas, SC 29405

On 09/26/09 I received a claims examiner's determination mailed 09/25/2009 from
(Date) (Date)

which I appeal and hereby apply for a hearing because I believe it was issued in error for the following reasons:
because I feel like I was eligible for benefits on 8-8-09 to 8-29-09. I was let go of my position at Palmetto Collision by
Mike Stallings Jr. (owner) due to lack of work, therefore, I feel this disqualification is unjust and needs to be
reconsidered.

appeal is untimely, state the reason:

I know that I must continue to file my claim for each week of unemployment until I receive the Appeal Tribunal's or Commission's
decision, until I return to work, or until my claim is exhausted. If I win the appeal, I know I can only be paid for those weeks that I
have claimed timely.

RH
(Claimant's Initials)

Does claimant need an interpreter? ☐ YES ☒ NO What language/dialect? _____ Claimant is ☐ Deaf ☐ Mute
(If it appears necessary to subpoena witnesses or documents, the Workforce Center representative should use Form 107 and
attach them to this form at the time of transmittal to the Central Office.)

SUBPOENA ☐ YES ☒ NO

Appellant: claimant

Signed By: Richard Hartzell

Title: claimant

Date: 10-2-09

Date Determination Delivered OCT 05 2009
by Workforce Center:

(Date)
Received Benefits Div.

Signed: _____
(Workforce Center Representative)

at: Summerville WFC - 1800
(Workforce Center Name and Number)

Date: 10 02 20 09
(Month) (Day) (Year)

APP-100...Revised 2/05
Catalog#: 05080

Received By: Jerry Meyer

(Workforce Center Representative)

52

Appeal No: 0917483

DECISION NO: 2009-A-19349

SOUTH CAROLINA
EMPLOYMENT SECURITY COMMISSION

DECISION OF APPEAL TRIBUNAL

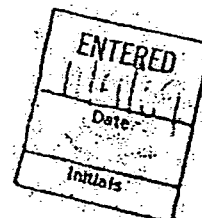
Hearing Date: October 29, 2009

RICHARD A. HARTZELL
415 OXFORD RD
LADSON, SC 29456 3220

CLAIMANT

PALMETTO COLLISION
C/O MICHAEL STALLINGS
4155 DORCHESTER RD STE C
NORTH CHARLESTON, SC 29405

EMPLOYER



APPELLANT: Claimant

SS NO: 9344

APPEARANCES

FOR THE
CLAIMANT: PRESENT

FOR THE
EMPLOYER: ONE WITNESS

FINDINGS OF FACT

The issue in this case is whether the claimant was discharged for "cause."

The claimant appealed the determination mailed September 25, 2009, which held the claimant indefinitely disqualified from receiving benefits effective July 26, 2009, upon a finding the claimant voluntarily quit without good cause.

The claimant worked from February 28, 2008 through March 20, 2009, with the subject employer, most recently as an auto body technician. The owner of the company advised the claimant that work was slow and there was not enough work for him. The claimant did not quit or intend to quit his job. The employer witness did not have first hand knowledge of all the events causing the separation.

REASONS

The South Carolina Employment Security law provides in §41-35-120(2) for a disqualification of from five (5) to twenty-six (26) weeks, with a corresponding monetary reduction, if the Commission finds the claimant was discharged for "cause" connected with the most recent bona fide employment.

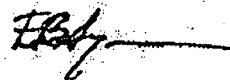
"Cause" includes, but is not limited to, a violation of the employer's reasonable rules or regulations, or a disregard for the standards of behavior that an employer has a right to expect of an employee.

In this case, the testimony is disputed; however, after careful consideration of the facts, this Tribunal finds the greater weight of evidence lies with the claimant as the employer witness did not have first hand knowledge of all the events causing the separation. The employer no longer had work available for the claimant. Therefore, this Tribunal finds the employer discharged the claimant for a non-disqualifying reason under the law.

DECISION

The Tribunal hereby holds the claimant eligible for benefits effective July 26, 2009 upon a finding that the claimant was discharged without cause under the law. This decision reverses the determination mailed September 25, 2009.

This will be the final decision of the Agency, unless you file an appeal to the Full Commission setting forth in detail the grounds for appeal within ten (10) calendar days, including weekends and holidays, from the mailing date of this decision. If the tenth day falls on a Saturday, Sunday or holiday, the appeal period is extended to the next business day. Your appeal may be filed in person at any Employment Security Office, or by mail, addressed to "Commission Appeals," Post Office Box 995, Columbia, South Carolina 29202. For additional information or assistance in filing an appeal, contact your local Employment Security Office.



E. B. Ayers
Administrative Hearing Officer

EBA: ha
Decision Mailed: 10/30/09
Mailed on the above Date by: 

06/28/2010 02:11 PM

06/28/10

CLAIMANT PROFILE DATA

0002

SSN: 9344 0 CURRENT PROGRAM: 01
NAME: RICHARD A HARTZELL

ADDR: 415 OXFORD RD

CITY: LADSON

TELE: 843 870 0859

LIABLE STATE: 45

CO: 015

ADDR CHG DATE:

ST: SC ZIP: 29456

BYE: 07/26/09

BYE: 07/26/10

CLAIM TAKER: 099

LOCAL OFFICE: 180

I.C. PROG CDE: 01

ENTRY DATE: 08/04/09

FILE DATE: 08/04/09

SOC CODE: 53609999

UNCONVERTED:

LAST OCCUPATION: Transportation W CHILD SUP PCT:

EDUCATION CODE: 12

SEVERANCE IND: N

SEVERANCE AMT: .00

PENSION IND: N

SOC SEC AMT: .00

OTHER PENSION AMT: .00

WBA: 218.00

TOTAL POSSIBLE: 4,580.00

CHILD SUP EFF:

EB EFFECTIVE:

DUA #: -DRSC

CLAIM TYPE: T

F/S WITHHOLDING: N

PAYMENT OPTION: CK

METHOD OF FILING: T

PAID TO DATE: 4,580.00

ACTIVE ISSUES: 0

MONETARY COMP: Y

OVERPAY BAL: .00

PRIOR BYE DTE: 08/04/08

REQUAL IND: Y

EUC EFFECTIVE:

EUC FILE DATE:

EUC ELIG IND:

EUC2 EFF DATE:

BALANCE: .00

CLAIM STATUS: BENEFITS EXHAUSTED

TRANSACTION OPTION: 01

06/28/2010 02:11 PM

06/28/10

BENEFIT PAYMENT HISTORY

0004

SSN: 9344 0 NAME: RICHARD A HARTZELL
 BENEFITS WBA: 218.00 UI MBA : 4580.00 BALANCE: BYE: 07/25/10
 .00

PGM	PO	CWE	ENTRY	CHECK	PAYMENT	CHK/SBQ	PAY	AMOUNT	UNR	DISQ	TOTAL
CDE	DOI		DATE	BY	OPTION	NUMBER	TYPE	PAID	FLG	REAS	AMOUNT
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01	092709	100309	100409	T	110409	7070794	01	218.00	0	00	218.00
01	092009	092609	092709	T	110409	7070794	01	218.00	0	00	218.00
01	092009	091909	092009	T	110409	7070794	01	218.00	0	00	218.00
01	090709	091209	092009	T	110409	7070794	01	218.00	0	00	218.00
01	083109	090509	090609	T	110409	7070794	01	218.00	0	00	218.00
01	082409	082909	083109	T	083109	7070794	01	218.00	0	00	218.00
01	081709	082209	082309	T	082409	6100038	07	218.00	0	00	218.00
01	081009	081509	081609	T	081809	5995726	07	218.00	0	00	218.00
01	081009	080809	080909	T	081809	5930391	07	218.00	0	00	218.00
01	080409	080109	080909	T		5930391	07	218.00	0	00	218.00
						0000000	10	.00	0	00	.00

FOR MORE THAN 12 PAYMENTS DEPRESS PF2

TRANSACTION OPTION:

08/28/2010 02:45 FAX
06/28/10

BENEFIT PAYMENT HISTORY

0003

SSN: 9344 0 NAME: RICHARD A HARTZELL
BENEFITS WBA: 218.00

UI MBA : 4580.00

BALANCE: BYE: 07/25/10
00

PGM	PO	CWE	ENTRY	CHECK	PAYMENT	CHK/SEQ	PAY	AMOUNT	UNR	DISQ	TOTAL
CDE	DOI		DATE BY	DOI	OPTION	NUMBER	TYPE	PAID	FLG	REAS	AMOUNT
01	122809	010210	010410	T 010410		7989286	16	2.00	0	00	2.00
01	122109	122609	122709	T 122809		7871121	01	218.00	0	00	218.00
01	121409	121909	122009	T 122109		7751343	01	218.00	0	00	218.00
01	120709	121209	121309	T 121409		7639974	01	218.00	0	00	218.00
01	113009	120509	120609	T 120709		7537732	01	218.00	0	00	218.00
01	112209	112809	112909	T 113009		7434206	01	218.00	0	00	218.00
01	111609	112109	112209	T 112209		7291196	01	218.00	0	00	218.00
01	110809	111409	111509	T 111609		7229846	01	218.00	0	00	218.00
01	110209	110709	110809	T 110809		7084751	01	218.00	0	00	218.00
01	102609	103109	110109	T 110409		7070794	01	218.00	0	00	218.00
01	101909	102409	102509	T 110409		7070794	01	218.00	0	00	218.00
01	101209	101709	101909	T 110409		7070794	01	218.00	0	00	218.00

FOR MORE THAN 12 PAYMENTS DEPRESS PF2

TRANSACTION OPTION:



South Carolina Department of Employment and Workforce

1550 Gadsden Street
Post Office Box 995
Columbia, South Carolina 29201
803-737-2120
Fax: 803-737-3108

FAX TRANSMISSION COVER SHEET

Date: June 28, 2010
To: Ms. Claudia Warley / Trask & Howell
843 881 8784
Re: ~~Richard A. Hartzell~~
Sender: Melinda H. Hoffman

YOU SHOULD RECEIVE 4 PAGE(S), INCLUDING THIS COVER SHEET. IF YOU DO
NOT RECEIVE ALL THE PAGES, PLEASE CALL 803-737-2120.

CONFIDENTIALITY

The documents accompanying this facsimile transmission contain information from the South Employment Security Commission which may be confidential or privileged. The information is intended only for the individual or entity named on this transmission sheet. If you are not the intended recipient, you are hereby notified that any disclosure, copying, distribution, or telecopied information is strictly prohibited and the documents should be returned to this office immediately. If you have received this facsimile in error, please notify us by telephone immediately.

South Carolina Workers' Compensation Commission
P.O. Box 1715 • 1612 Marion Street
Columbia, South Carolina 29202-1715
(803) 737-5700

WCC File # x100568

Carrier File # _____

Carrier Code # _____

Employer FEIN _____

Richard A. Hartzell 9344
Claimant's Name SSN
415 Oxford Road Ladson, SC 29456
Address City State Zip
(843) 870 0856 (843) 554-1426
Home Phone Work Phone

Palmetto Collision, LLC
Employer's Name
4155 Dorchester Road North Charleston, SC 29405
Address City State Zip
Uninsured
Insurance Carrier

Kirsten L. Barr
Preparer's Name

(843) 881-4228
Phone #

To: Accident Fund Insurance Co. of America, Attn.: Southern Claims Unit, P.O. Box 40790, Lansing, MI 48901-7990

☐ YOU ARE COMMANDED to appear before the above named Commission at the place, date and time specified below to testify in the above case.

PLACE OF TESTIMONY: _____

ROOM: _____

DATE AND TIME: _____

☐ YOU ARE COMMANDED to appear at the place, date and time specified below to testify at the taking of a deposition in the above case.

PLACE OF DEPOSITION: _____

DATE AND TIME: _____

☒ YOU ARE COMMANDED to produce and permit inspection and copying of the following documents or objects in your possession, custody or control at the place, date and time specified below (list documents or objects): (See below)

PLACE: Trask & Howell, LLC, P.O. Box 2167, Mt. Pleasant, SC 29465-2167 DATE AND TIME: Within 10 days of receipt
to provide to the law firm of Trask and Howell, ANY AND ALL RECORDS, including but not limited to correspondence, payment logs, checks, emails, or other information pertaining to Policy WCV6045020, allegedly issued in South Carolina in March 2008 (Palmetto Collision, LLC), and to provide the same immediately, at least within 10 days, upon receipt of this Subpoena Duces Tecum, to the Attorney for the Defendant(s) listed below.

☐ YOU ARE COMMANDED to permit inspection of the following premises at the date and time specified below.

PREMISES: _____

DATE AND TIME: _____

THIS SUBPOENA SHALL REMAIN IN EFFECT UNTIL YOU ARE GRANTED PERMISSION TO DEPART BY THE COMMISSIONER OR AN OFFICER ACTING ON BEHALF OF THE COMMISSIONER. QUESTIONS CONCERNING THIS SUBPOENA SHOULD BE ADDRESSED TO THE ISSUING OFFICER.

Kirsten L. Barr Attorney for the
ISSUING OFFICER'S SIGNATURE AND TITLE Defendant(s)

(843) 881-4228
PHONE #

May 26, 2010
DATE

File this form according to R.67-212B. Refer to R.67-212 and R.67-214 for additional information. Procedural questions may be addressed to Judicial Department (803/737-5675).

PROOF OF SERVICE

I hereby certify that on this 27th day of May 2010, I served the foregoing

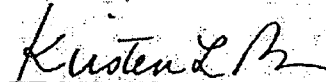
Claimant, Richard A. Hartzell, with a copy of the attached Subpoena Duces Tecum,
which was mailed to the following:

Accident Fund Insurance Co. of America
Attn.: Southern Claims Unit
P.O. Box 40790
Lansing, MI 48901-7990

(1 page)

by mailing a copy of the same, first-class, postage pre-paid, to the Claimant's attorney
addressed as follows:

Kerry W. Koon, Esq.
147 Wappoo Creek Drive, Suite 203
Charleston, SC 29412



Kirsten L. Barr
TRASK & HOWELL, LLC.
Attorneys for Defendant
Mt. Pleasant, South Carolina

12911\pos 127

HAROLD E. TRASK
ROY A. HOWELL, III
KIRSTEN L. BARR
JAMIE C. GUERRERO

ALLISON C. NUSSBAUM
JILL W. KING
WILLIAM H. LYON
D. ALAN WESTERLUND, JR.

TRASK & HOWELL, L.L.C.

ATTORNEYS AT LAW
763 JOHNNIE DODDS BOULEVARD
P.O. Box 2167
MT. PLEASANT, SC 29465

PHONE
(843) 881-4228

FAX
(843) 881-8784

E-MAIL
KBARR@TRASK-HOWELL.COM
DIRECT DIAL: (843) 881-1027

May 28, 2010

Michael Felton, Compliance Officer
S.C. Workers' Compensation Commission
Compliance Division
P.O. Box 1715
Columbia, SC 29202-1715

Re: Richard A. Hartzell v. Palmetto Collision, LLC
W.C.C. File No.: x100568
Carrier File No.:
Date of Accident: February 25, 2009

Dear Mr. Felton:

As we discussed last week, I represent Palmetto Collision, LLC in regard to the above-referenced matter. It has been alleged that Palmetto Collision, LLC is subject to the South Carolina Workers' Compensation Act and is in non-compliance by being uninsured. It is my understanding from our conversation that the Commission does allege that Palmetto Collision at any time regularly employed four or more employees. In fact, Palmetto Collision denies that it ever regularly employed four or more employees, making it subject to the Act.

Based on our conversation, it is my understanding that it is alleged that Palmetto Collision became subject to the Act by virtue of a policy of insurance allegedly issued Accident Fund Insurance Co. of America. Please be advised that Palmetto Collision, LLC never contracted for insurance with Accident Fund Insurance Co. of America, was never issued an insurance policy by Accident Fund Insurance Co. of America, and never made a premium payment to Accident Fund Insurance Co. of America. We firmly believe that any report of insurance contract between Accident Fund Insurance Co. of America and Palmetto Collision, LLC was in error on the part of Accident Fund Insurance Co. of America or one of its brokers. Mr. Michael Stallings, the owner of Palmetto Collision, LLC, is adamant that he never obtained, nor intended to obtain workers' compensation insurance, nor did he intend to make Palmetto Collision, LLC subject to the Act at any time.

I hope that we are able to resolve this matter without the necessity of a hearing. However, it is my understanding that a Form 50 has been filed by Mr. Richard Hartzell against Palmetto Collision. Therefore, your time and attention to this matter is greatly

SCWCC

JUN 02 10

INSURANCE &
MEDICAL SERVICES

SCWCC

JUN 01 10
61

INSURANCE &
MEDICAL SERVICES

Michael Felton, Compliance Officer
May 28, 2010
Page 2

appreciated. Once you have had an opportunity to review this case, please contact me at your earliest convenience to let me know how you wish to proceed.

Yours very truly,



Kirsten L. Barr

KLB/czw/lcs

cc: Mike Stallings, Palmetto Collision, LLC
12911 IV-wcc re: compliance

SCWCC

JUN 02 '10

INSURANCE &
MEDICAL SERVICES

SCWCC

JUN 01 '10

INSURANCE &
MEDICAL SERVICES

July 29, 2010

Trask & Howell, LLC
Attorneys at Law
P.O. Box 2167
Mt. Pleasant, SC 29465

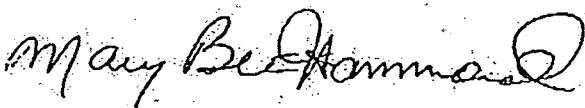
I have been Palmetto Collision LLC's accountant since January of 2007. Mike Stallings is a single member LLC for Palmetto Collision. As his accountant, I am responsible for recording the daily bookkeeping transaction for his business. I am responsible for submitting the payroll taxes, quarterly federal and state reports, the end of year W-2's and Mike's income tax.

There has been no payment made to Accident Fund for Worker's Comp or no payment made to any company for Worker's Comp insurance.

There had been no more than three full time employees on Palmetto Collision payroll. Mike Stallings takes a paycheck as an employee but does not receive a paycheck regularly.

If you have any more questions, please feel free to contact me by phone at 843-214-0815 or by mail at the address below.

Thanks,



Mary Beth Hammond
107 Rice Planters Ct.
Goose Creek, SC 29445

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM THE SOUTH CAROLINA WORKERS' COMPENSATION
COMMISSION

T. Scott Beck, Commissioner

Appellate Case No. 2012-211870

W.C.C. 0922546

Richard A. Hartzell, Employee,.....Respondent,

v.

Palmetto Collision, LLC, Employer,.....Appellant,

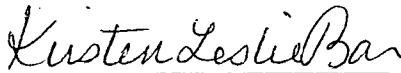
and

the S.C. Worker's Compensation Uninsured Employers Fund,.....Respondent.

CERTIFICATE OF COUNSEL

The undersigned hereby certifies that the Record on Appeal contains all material
proposed to be included by any of the parties and not any other material.

The undersigned further certifies that this
Record on Appeal complies with Rule
211(b), SCACR and Supreme Court Order
2007-08-16-02, dated August 13, 2007,
requiring redaction of personal data
identifiers.


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February 28, 2013

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM THE SOUTH CAROLINA WORKERS' COMPENSATION
COMMISSION
T. Scott Beck, Commissioner

W.C.C. 0922546

Richard A. Hartzell, Employee,.....Respondent,

v.

Palmetto Collision, LLC, Employer,.....Appellant,

and

the S.C. Uninsured Employers Fund.....Respondent.

FINAL BRIEF OF THE APPELLANT

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Statement of the Issues on Appeal

- I. Did the Workers' Compensation Commission err in finding and concluding that Palmetto Collision regularly employed four or more employees and; therefore, is subject to the South Carolina Workers' Compensation Act?
- II. Did the Workers' Compensation Commission err in finding that the Claimant sustained an injury to his back by accident "on or about February 25, 2009" and in failing to make any conclusion of law with respect to S.C. Code Ann. § 42-1-160?
- III. Did the Workers' Compensation Commission err in finding that the Claimant "timely reported the injury" and in failing to make any conclusion of law with respect to S.C. Code Ann. § 42-15-20?
- IV. Did the Workers' Compensation Commission err as a matter of law in awarding the Claimant "medical, surgical, hospital and other authorized treatment" in direct contravention of S.C. Code Ann. § 42-15-60?

Statement of the Case

The Appellant, Palmetto Collision, seeks review and reversal of the South Carolina Workers' Compensation Commission's Decision and Order dated March 26, 2012, which affirmed the prior order of Hearing Commissioner Andrea Roche by a vote of two to one. The Appellant respectfully contends that the Commission erred in finding and concluding that "the employer regularly employed four (4) or more employees during the relevant time period and was therefore subject to the Act," as this finding and conclusion is not supported by substantial evidence in the record and the applicable law and is otherwise impermissibly vague. The Commission further erred in finding and concluding that the Claimant timely reported an "injury by accident to his back on or

about February 25, 2009,” as this finding and conclusion is also unsupported by substantial evidence in the record or the applicable law and is otherwise impermissibly vague. Finally, the Appellant respectfully contends the Commission erred as a matter of law in concluding that the Claimant is entitled to medical treatment under S.C. Code Ann. § 42-15-60, despite the fact that he utterly failed to meet his express statutory burden of proof by “expert medical evidence stated to a reasonable degree of medical certainty.”

Evidence Summary

The Claimant, Richard Hartzell, was 52 years old at the time of the hearing before Workers’ Compensation Commissioner Andrea Roche. The Claimant testified that he was working for Palmetto Collision in February 2009 doing paint and body work. The Claimant had worked for Palmetto Collision in the past, but had most recently begun working there in mid-December 2008 (approximately 2 months). (R. p.70). He claims that on or about February 25, 2009, he “started to clean up” by “moving tires and rims and heavy frame equipment, frame posts and chains” and “was fine.” However, he claims that “[l]ater” that day he “started having pain.” (R. pp.43-44). The Claimant admits that he is “not sure exactly what day it was.” (R. p.54).

The Claimant admits that he did not report any accident or injury to anyone at Palmetto Collision the day he alleges he was moving equipment. (R. p.44). However, he alleges that he told Mike Stallings, the owner of Palmetto Collision, the “next day” that he “was pretty sore” and “must have hurt himself.” (R. p.45).

The Claimant did not seek medical treatment, but instead, continued working for Palmetto Collision. The Claimant testified that he worked for two weeks (R. p.48), but in his application for unemployment benefits, the Claimant gave the following statement:

“I quit my job because...there was no work. My last day at work was Friday 3/20/09. I called Mike Stallings on Monday 3/23/09 to see if there was going to be any work for the upcoming week. Mike told me that there was no work in the shop and the storage lot was empty. I told him I would call him back or he could call me back if work became available. I called Mike back on 3/31/09 and he stated there was no work to be done. I talked to some of my co-workers who stated there was no work and that they were just standing around. At that point I just started looking for other work.” (R. p. 220).

The Claimant’s unemployment claim was initially denied and the Claimant admits that he was in contact with Mike Stallings during the course of his unemployment appeal. (R. p.58). The Claimant testified that he ultimately received unemployment benefits for approximately 26 weeks. (R. p.51). However, he never told Mike Stallings his back was hurting, nor did he ever ask Mike Stallings to assist him with medical treatment. (R. pp.58—59, p.64, p.66).

Apparently, the Claimant saw a chiropractor, Austin Murray, in April 2009. According to Murray’s narrative report dated April 2, 2009, the Claimant reported “a recurrence of complaints related to a previously resolved spine, ribs, pelvic region condition which...was not caused by a work or automobile accident.” (R p. 175). Murray, who is not a medical doctor, did not relate the Claimant’s symptoms or alleged

need for chiropractic treatment, to any work-related accident or injury, did not state that the Claimant required any medical treatment to lessen his period of disability, and did not give any opinion to a "reasonable degree of medical certainty." The Claimant admits that he did not ask Mike Stallings to send him to Murray or to pay for any of his bills. (R. p.66).

The Claimant later found employment as a painter at Altman Suzuki. (R. p.66). The Claimant testified that after doing work at Altman Suzuki, his lower back was "very sore." (R. p.50). He also sets up tables and sells merchandise on the weekends at the Ladson fairground. (R. p.21). At the time of the hearing, the Claimant was looking for work in the automotive field.

Mike Stallings, testified that he is the sole proprietor of Palmetto Collision and has operated the business for approximately 10 years. (R. p.83). Palmetto Collision has never had workers' compensation insurance. According to Stallings, he has always reported the earnings of his employees to the South Carolina Employment Security Commission and has paid payroll taxes on them, even the family members who have worked for him. (R. p.87).

Palmetto Collision currently has two employees, both of whom are paid on a commission basis. In the fourth quarter of 2008, Palmetto Collision filed a Quarterly Contribution and Wage Report with the South Carolina Employment Security Commission showing wages for three employees: Tommy D. Griffin, Edward A. Davis, and Doug K. Alexander. (R. p.191). Stallings testified that Tommy D. Griffin earned only \$650.00 that quarter because he was fired in early October 2008, which Stallings clearly recalls because it was his 30th birthday. (R. pp.96-97). Edward A. Davis also left

Palmetto Collision in the middle of the fourth quarter of 2008 because he moved to California. (R. p.97. The only employee to work the entire fourth quarter of 2008 was Stallings's uncle, Doug Alexander. (R. p.98). Both Stallings and the Claimant testified that the Claimant did not come to work for him until mid-December and was paid in cash for those two weeks.

In the first quarter of 2009, when Hartzell claims he was injured, Employer Quarterly Contribution and Wage Reports filed by Palmetto Collision (R. p. 192) show the names of four employees: the Claimant, James D. Alexander, Harold D. Brock, and Douglas K. Alexander. The Claimant testified that he stopped working for Palmetto Collision in mid-March 2009. The record further shows that James D. Alexander came to work at the end of the first quarter of 2009 and earned only \$1,560.00. (R. p.100). Stallings further testified that James D. Alexander typically earned at least \$800 per week, indicating that he only worked for about 2 weeks at the end of the first quarter of 2009. (R. pp. 101-102). In the second quarter of 2009, Palmetto Collision reported wages for three employees. (R. p. 193).

Mike Stallings further testified that the Claimant never gave him any reason to believe that he had injured his back at Palmetto Collision or that he needed medical treatment. (R. pp.108-109, p.112). In the year after the Claimant left Palmetto Collision, Stallings spoke to him several times and maintained a friendly relationship with the Claimant. (R. pp.108-109). Stallings testified that he first learned that the Claimant was alleging a back injury when he received a letter from the Workers' Compensation Commission and a Form 50 from the Claimant in May 2010. (R. pp.113-114, p.19).

Arguments

I. The Workers' Compensation Commission erred in finding and concluding that Palmetto Collision regularly employed four or more employees and; therefore, is subject to the South Carolina Workers' Compensation Act.

The Appellant specifically raised S.C. Code Ann. § 42-1-360(2) as a defense.

According to this section, the Workers' Compensation Act does not apply to "any person who has regularly employed in service less than four employees." Unfortunately, the Commission failed to address this seminal jurisdictional issue with anything but an impermissibly vague finding and cursory legal conclusion, which necessitates reversal of the Commission's March 26, 2012 Decision and Order.¹

According to the Commission, "under § 42-1-140, Defendant/Employer was a covered employer under the Act." (R. p. 17). The Commission cited no evidence and made no finding of fact in support of this conclusion, other than the conclusory statement that "the employer regularly employed four (4) or more employees during the relevant time period." (R. p. 16). The Appellant respectfully contends that this constitutes plain legal error and requests that Court of Appeals enter its own finding that the Appellant regularly employed fewer than four employees and conclude that the Appellant is not subject to the South Carolina Workers' Compensation Act based upon its own view of the preponderance of the evidence. Shuler v. Tri-County Electric Co-op, Inc., 385 S.C. 470,

¹ The Commission must make specific findings of fact upon which a claimant's right to compensation are based. *See* S.C. Code Ann. § 1-23-350 (1986); Shealy v. Algernon Blair, Inc., 250 S.C. 106, 109, 156 S.E.2d 646, 648 (1967). In fact, "awards without such specific findings do not comply with the requirements of the [workers' compensation] act and are illegal." *Id.* at 110, 156 S.E.2d at 648; *see also* Airco, Inc. v. Hollington, 269 S.C. 152, 160, 236 S.E.2d 804, 808 (1977) (finding that the commission has a statutory duty to make a finding of fact for all "essential factual issues.").

472, 684 S.E.2d 765, 767 (2009) (holding that “[w]hen the issue involves jurisdiction, the appellate court may take its own view of the preponderance of the evidence.”).

The Claimant alleges that he was injured in February 2009 and thereafter ceased working for Palmetto Collision because “there was no work.” (R. p.56, l.12) and “the parking lot was empty.” (R. p.56, l.13). In fact, the Claimant gave a sworn statement to the Employment Security Commission that he quit his job in February 2009 because there was “no work in the shop and the storage lot was empty.” (R. p.220). The Appellant respectfully contends that as body shop with an empty parking, it did not regularly employ four or more employees in the first quarter of 2009.

The record contains Palmetto Collision’s Quarterly Contribution and Wage Reports, including the reports for the fourth quarter of 2008 and the first quarter and second quarters of 2009. During the fourth quarter of 2008, Palmetto Collision had a total of three employees, one of whom, Tommy Griffin, earned only \$650. (R. p.191). According to Mike Stallings, the owner of Palmetto Collision, Griffin was fired in October 2008 and; therefore, Palmetto Collision had only two employees for the majority of the fourth quarter of 2008. (R. p.96, l.21 through p.97, l.16). There is no competent evidence that Palmetto Collision regularly employed four or more employees in the quarter prior to the Claimant’s alleged accident.

During the first quarter of 2009, Palmetto Collision reported a total of four employees; however, one of these employees was the Claimant, who admittedly quit in the middle of the first quarter. (R. p.192). At the end of the first quarter (and after the Claimant quit working), Stallings’s cousin, James Alexander, came to work for Palmetto Collision earning “\$800 dollars a week.” (R. p.101, l.22). The wage reports show that

James Alexander earned a total of \$1,560.00 in the first quarter of 2009, indicating that he worked for about two weeks. (R. p.192). Therefore, the greater weight of the evidence indicates that Palmetto Collision did not regularly employ four or more employees in the quarter during which the Claimant alleges to have been injured.

In addition, the wage reports for the second quarter of 2009 show that Palmetto Collision had only three employees – including Mike Stallings’s cousin and his uncle -- and a total payroll of only \$13,259.00. (R. p.193). There is no evidence that Palmetto Collision under-reported its employees or its wages to the Employment Security Commission, especially considering the fact that Stallings reported wages on his own family members. Clearly, the greater weight of the evidence indicates that Palmetto Collision did not regularly employ four or more employees in the quarter after which the Claimant alleges to have been injured.

The Appellant respectfully contends that the preponderance of the evidence supports a finding that Palmetto Collision did not regularly employ four or more employees before, during, or after the Claimant alleges to have been injured. Instead, Palmetto Collision is a small, struggling, family business that is exempted from the South Carolina Workers’ Compensation Act by virtue of S.C. Code Ann. § 42-1-360(2). Because the Commission failed to adequately address this seminal issue, the Appellant respectfully requests that the Commission’s Decision and Order be reversed and that the Court of Appeals enter its own finding and conclusion on this jurisdictional issue in accordance with the greater weight of the evidence and the applicable law.

II. The Workers' Compensation Commission erred in finding that the Claimant sustained an injury to his back by accident "on or about February 25, 2009" and in failing to make any conclusion of law with respect to S.C. Code Ann. § 42-15-160.

According to the Commission, "on the day after the injury, the Claimant timely reported the injury." (R. p.17, #4). The Commission failed to make any conclusions of law regarding this issues and the March 26, 2012 Decision and Order does not even mention the legal requirements of S.C. Code Ann. § 42-1-160. (R. pp.17-18). The Appellant respectfully contends that the Commission's impermissibly vague finding in this regard and utter failure to properly apply the law to the facts constitutes plain, reversible legal error. *See* S.C. Code Ann. § 1-23-350.² Essentially, there can be no "meaningful review" of the Commission's ruling on whether the Claimant sustained an injury by accident arising out of or in the course of his employment pursuant to S.C. Code Ann. § 42-1-160 because the Commission failed to make any such ruling.

Furthermore, the Commission's impermissibly vague finding of fact that the Claimant did sustain "an injury by accident to his back" [sic] is not supported by substantial evidence and should be reversed. While the Commission purportedly relied on the "medical records" to find that the Claimant sustained an injury to his back "on or about February 25, 2009," the only "medical records" in evidence are the reports of a chiropractor, Austin Murray.

² S.C. Code Ann. § 1-23-350 requires that "[a] final decision or order adverse to a party in a contested case shall be in writing or stated in the record. A final decision shall include findings of fact and conclusions of law, separately stated. Findings of fact, if set forth in statutory language, shall be accompanied by a concise and explicit statement of the underlying facts supporting the findings."

The Claimant did not see Dr. Murray until April 2009. According to Dr. Murray's April 2, 2009 narrative report, the Claimant complained of "a recurrence of complaints related to a previously resolved" condition that "was not caused by a work or automobile accident." (R. p.175) (emphasis added). The Claimant signed a statement for Dr. Murray on April 1, 2009 indicating that his condition began on February 30, 2009 and that the cause of his condition was "unknown." (R. p.174). There are no other records—medical, chiropractic, or otherwise -- concerning the cause of the Claimant's alleged back problem and there are no records whatsoever that mention the Claimant moving some heavy machine. Therefore, the Appellant respectfully contends that the "medical records" simply do not support a finding that the Claimant injured "his back on or about February 25, 2009, while moving a heavy frame machine."

While the Claimant may have testified at the July 12, 2011 hearing that he now believes he injured his back lifting a frame machine on February 25, 2009, he was forced to admit on cross-examination that he was "not sure exactly what day it was." (R. p.54, l.25). The Claimant also admitted that he did not have a sudden onset of pain moving anything at work. (R. p.55, ll.20-22). In addition, the Claimant admits that he continued working at Palmetto Collision after the alleged accident and that the reason he quit working for Palmetto Collision in March 2009 was not due to an alleged back injury, but was because work was slow. (R. p.56). The Claimant also admits that he applied for unemployment benefits after he left his job at Palmetto Collision (R. pp.216--229) and began looking for work. Even during the course of his protracted unemployment claim, the Claimant admits that he never asked Mike Stalling for medical treatment, never asked him to pay any medical bills, and never even told him that his back was hurting. (R.

pp.58-59, p.64, p.66). The Appellant respectfully contends the Claimant's testimony is not substantial evidence in support of a finding that he injured his back on or about February 25, 2009 lifting a heavy frame machine.

Furthermore, Mike Stallings, the owner of Palmetto Collision testified that the Claimant never gave him any reason to believe that he had injured his back while working for Palmetto Collision and the Claimant never requested any medical treatment. (R. pp. 108-109, p.111--114). Even in his discussions with the Claimant in the year after he quit working for Palmetto Collision, the Claimant never gave Mike Stallings any reason to believe that he had injured his back or was in need of medical treatment. Mr. Stallings further testified that nothing about the Claimant's job even required him to move a heavy frame machine and that Mr. Stallings would have never asked the Claimant to move a frame machine because the Claimant was known to have weak shoulders due to arthritis. (R. p.110). The Commission failed to discuss to discuss or otherwise discount this testimony in making its conclusory finding and having made no ruling of law on this issue; the Appellant respectfully contends that the Commission's finding that the Claimant injured his back on or about February 25, 2009 and implicit ruling of law on this issue should be reversed.

III. The Workers' Compensation Commission erred in finding that the Claimant "timely reported the injury" and in failing to make any conclusion of law with respect to S.C. Code Ann. § 42-15-20.

According to the Commission, "the medical records and testimony" support a finding that the Claimant injured his back "on or about February 25, 2009, while moving a heavy

frame machine” and “timely reported the injury” to Mike Stallings. The Commission failed to make any conclusions of law regarding these issues and the March 26, 2012 Decision and Order does not even mention the legal requirements of S.C. Code Ann. § 42-15-20. The Appellant respectfully contends that the Commission’s impermissibly vague finding in this regard and utter failure to properly apply the law to the facts constitutes plain, reversible legal error. *See* S.C. Code Ann. § 1-23-350.³ Essentially, there can be no “meaningful review” of the Commission’s rulings on these important legal issues because the Commission failed to make any such rulings.

Furthermore, the Commission’s impermissibly vague finding of fact on the notice issue is not supported by substantial evidence and should be reversed. Mike Stallings, the sole owner of Palmetto Collision, testified that his first notice of the alleged accident was a Form 50 dated May 10, 2010 – fourteen months after the Claimant last worked for him. (R. p.114, ll.11-15). However, S.C. Code Ann. § 42-15-20 requires that the Claimant give the employer notice of a job-related accident within ninety days after its occurrence. Hanks v. Blair Mills, Inc., 286 S.C. 378, 335 S.E.2d 91 (Ct. App. 1985); see also McCraw v. Mary Black Hosp., 350 S.C. 229, 237, 565 S.E.2d 286, 290 (2002). The burden is upon the Claimant to show compliance with the notice provisions of section 42-15-20. *See* Lowe v. Am-Can Transport Servs., Inc., 283 S.C. 534, 324 S.E.2d 87 (Ct. App. 1984). Unless the Claimant meets this burden of proof by a preponderance of the

³ S.C. Code Ann. § 1-23-350 requires that “[a] final decision or order adverse to a party in a contested case shall be in writing or stated in the record. A final decision shall include findings of fact and conclusions of law, separately stated. Findings of fact, if set forth in statutory language, shall be accompanied by a concise and explicit statement of the underlying facts supporting the findings.”

evidence, the alleged injury is not compensable. Muir v. C.R. Bard, Inc., 336 S.C. 266, 519 S.E.2d 583 (Ct. App. 1999). The Appellant respectfully contends that the Claimant failed to meet his burden of proof under S.C. Code Ann. § 42-15-20 and any finding to the contrary is not supported by substantial evidence.

While the Claimant testified that that he told Mike Stallings, the owner of Palmetto Collision, the “next day” that he “was pretty sore” and “must have hurt himself.” (R. p.45, l.1), this alone is insufficient evidence upon which a conclusion in his favor could have been made under S.C. Code Ann. § 42-15-20. The South Carolina Supreme Court has explained that “the employer's knowledge of the fact that an employee becomes ill while at work does not necessarily, of itself, serve the employer with notice that such illness constituted or resulted in a compensable injury.” Sanders v. Richardson, 251 S.C. 325, 162 S.E.2d 257 (1968). Here, there is no evidence or testimony that the Claimant ever told Mike Stallings that his alleged back pain was in any way related to any alleged accident at work. Furthermore, any allegation to the contrary is seriously undermined by the fact that the Claimant continued working for two more weeks before he quit to go to work elsewhere and the fact that the Claimant admittedly never asked for any medical treatment or made any complaint of back pain for the next fourteen months to Mike Stallings, a man whom he considered a friend for 30 years.

Unfortunately, the Commission failed to adequately address the basis for their cursory finding that notice was given and, perhaps more importantly, failed to make any conclusion of law with respect to the requirements of S.C. Code Ann. § 42-15-20. Therefore, the Appellant respectfully requests that the Commission’s March 26, 2012 Decision and Order be reversed.

IV. The Workers' Compensation Commission erred as a matter of law in awarding the Claimant "medical surgical, hospital and other authorized treatment" in direct contravention of S.C. Code Ann. § 42-15-60.

The Commission found that the Claimant is entitled to medical treatment; however, no evidence is cited in support of this vague and conclusory finding. The Appellant respectfully contends that there is no competent evidence upon which such a finding could be properly based and that only surmise, conjecture, and speculation support the claim for medical benefits. Perhaps more importantly, the Commission erred as a matter of law by completely relieving the Claimant of his burden of proof under S.C. Code Ann. § 42-15-60. (R. pp.17-18, #3). As such, the Appellant requests that the Commission's finding and conclusion regarding the Claimant's entitlement to medical benefits be reversed.

According to the Commission, S.C. Code Ann. § 42-15-60 "is not intended to disadvantage or burden a Claimant" who seeks an award of medical benefits. This conclusion is plainly contrary to the applicable law, including the unequivocal terms of S.C. Code Ann. § 42-15-60. It was heretofore well-settled that the Claimant bears the burden of proving his entitlement to benefits under the Workers' Compensation Act and that an award in his favor may not rest on mere surmise, conjecture, or speculation. Jennings v. Chambers Development, 516 S.E.2d 453 (Ct. App. 1999). In addition, S.C. Code Ann. § 42-15-60 specifically requires a heightened burden of proof for claims for medical treatment beyond ten weeks from the date of the alleged injury. According to its plain and unequivocal terms, the Commission may only award medical benefits beyond ten weeks from the date of an injury when such treatment

“will tend to lessen the period of disability as evidence by expert medical evidence stated to a reasonable degree of medical certainty.”

The record contains no medical evidence that the Claimant requires additional medical treatment to “lessen the period of disability” related to an alleged low back strain in February 2009 and the record contains no opinion from any medical expert “stated to a reasonable degree of medical certainty.” Because the Claimant did not and cannot meet his burden of proof by “expert medical evidence stated to a reasonable degree of medical certainty,” the Commission relieved him of his burden entirely, ostensibly because it “would be expensive and difficult to obtain.”

However, the Legislature, within its sole discretion, has chosen to place this burden of proof squarely upon the Claimant, despite any alleged expense or difficulty. “Once the legislature has made [a] choice, there is no room for the courts to impose a different judgment based upon their own notions of public policy.” South Carolina Farm Bureau Mut. Ins. Co. v. Mumford, 299 S.C. 14, 19, 382 S.E.2d 11, 14 (Ct. App. 1989).

Therefore, the Appellant respectfully contends that the Commission erred as a matter of law in ignoring the plain and unambiguous requirements of S.C. Code Ann. § 42-15-60 and in entering an impermissibly vague finding in the Claimant’s favor that is unsupported by substantial evidence. The Appellant requests that the award of medical benefits be reversed in accordance with S.C. Code Ann. § 42-15-60.

Conclusion

Based upon these arguments, the Appellant respectfully requests that the Court of Appeals reverse the March 26, 2012 Decision and Order of the South Carolina Workers' Compensation Commission. The Appellant further requests that the Court of Appeals enter its own findings and conclusions that Palmetto Collision is not subject to the South Carolina Workers' Compensation Act pursuant to S.C. Code Ann. § 42-1-360(2).

Respectfully submitted,

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March 19, 2013
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THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM THE SOUTH CAROLINA WORKERS' COMPENSATION
COMMISSION

T. Scott Beck, Commissioner

W.C.C. 0922546

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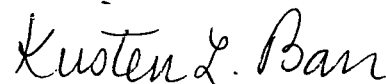
and

the S.C. Uninsured Employers Fund.....Respondent.

CERTIFICATE OF COUNSEL

The undersigned certified that this Final Brief complies with Rule 211(b), SCACR and Supreme Court Order 2007-08-16-02, dated August 13, 2007, requiring redaction of personal identifiers.

March 19, 2013



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THE STATE OF SOUTH CAROLINA
In the Court of Appeals

DEC 13 2013

S.C. SUPREME COURT

APPEAL FROM THE SOUTH CAROLINA WORKER'S COMPENSATION
COMMISSION

Appellate Panel

Appellate Case No. 2012-211870

Richard A. Hartzell, Employee.....Respondent

v.

Palmetto Collision, LLC, Employer.....Appellant

and

the S.C. Uninsured Employers Fund.....Respondent

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STATEMENT OF ISSUES ON APPEAL

I. The Workers' Compensation Commission did not err in finding and concluding that Palmetto Collision regularly employed four or more employees and; therefore, subject to the South Carolina Workers' Compensation Act.

II. The Worker's Compensation Commission did not err in finding that Claimant sustained an injury to his back by accident "on or about February 25, 2009" or in failing to make an enumerated conclusion of law with respect to S.C. Code Ann. § 42-1-160.

III. The Worker's Compensation Commission did not err in finding that the Claimant "timely reported the injury" or in failing to make an enumerated conclusion of law with respect to S.C. Code Ann. § 42-15-20.

IV. The Worker's Compensation Commission did not contravene S.C. Code Ann. Sec. 42-15-60 in awarding Claimant "medical, surgical, hospital and other authorized treatment."

STATEMENT OF THE CASE

Respondent Hartzell filed a Form 50 Complaint with the South Carolina Worker's Compensation Commission on March 23, 2011, alleging an injury by accident occurring on or about February 25, 2009, when employed as a paint and body man by Appellant Palmetto Collision, LLC. The Respondent alleged an injury to his lower back while moving a heavy automotive frame machine when cleaning up the employer's shop.

The employer timely filed a Form 51 disputing the claim. No benefits or compensation have yet been provided.

A hearing was held before Commissioner Andrea C. Roche on July 12, 2011. Commissioner Roche filed her Decision and Order on September 8, 2011, ordering that Respondent be provided an evaluation to determine whether or not he is at maximum medical improvement and whether he is in need of any additional medical treatment and for any benefits

under the Worker's Compensation Act necessarily resulting. Respondent has not claimed a period of temporary total disability, but is seeking medical care, a determination on maximum medical improvement and any resulting benefits provided for in the Act.

Appellant Palmetto Collision, LLC, timely filed an application for review.

An Appellant Panel of the Commission heard the matter on December 20, 2011, and in a majority decision, affirmed the single Commissioner, from which Decision and Order, Appellant Palmetto Collision, LLC, has appealed.

FACTS

The facts, as summarized and found by the Commission (R. pp. 12-17), are that on or about February 25, 2009, while engaged in cleaning up his employer's shop, Respondent was moving tires, rims and a heavy frame machine consisting of steel posts and chains weighing approximately 200-300 pounds. In order to move the machine it must be tilted back and set on wheels in the manner of tilting a hand truck. Respondent testified that after moving the frame machine he began having pain in his lower back which then got progressively worse. The following day he reported this to shop owner Mike Stallings. Mr. Stallings suggested that he go to the emergency room if he was having problems (R. p. 43, line 4 -p. 45, line 12).

Although the Respondent was unsure of the exact date of injury, he testified that it was at the end of February 2009 and fixed the date because he only worked for the Appellant another couple of weeks.

Respondent sought chiropractic treatment at his own expense with Dr. Austin Murray, but eventually discontinued treatment with Dr. Murray for financial reasons R. p. 52, line 15 - p. 53,

line 1).

On Dr. Murray's intake form, the Respondent indicated the onset of his problem was "February 30th, 2009". The Commission found this to be an obvious error but generally corroborative of the approximate date of injury determined by the Respondent as February 25, 2009 (R. p. 174).

The Commission found that Mr. Stallings acknowledged that he could not testify with certainty that Respondent had not reported the injury, only that "It does not ring a bell" (R. p. 117, line 20 - p. 118, line 18).

The Commission found the Respondent's testimony to be more credible than Mr. Stallings, on the issues of the fact of injury and its reporting (R. p. 14). Concerning the jurisdictional issue, the Commission found that Appellant regularly employed 4 employees as of the date of injury. The Commission relied upon the records of the South Carolina Employment Security Commission for the first quarter of 2009, which included the date of injury (R. p. 192). The report indicates that Palmetto Collision, LLC had 4 regular employees including the Respondent, Jamie Alexander, Douglas Alexander and Harold Brock. The Commission further relied on Mr. Stallings' own testimony acknowledging that all 4 men worked at the same time within the first quarter of 2009 (R. pp. 130-131). The Commission found that the regularity of employment was demonstrated by the Employment Security records indicating that Respondent himself was employed in the second and third quarters of 2008. Mr. Stallings testified that Respondent was also employed during the fourth quarter of 2008 but that he was not reported on the Employment Security documents (R. p. 127, line 4 - p. 128, line 15). Both Alexanders and Harold Brock continued to be reported during the second quarter of 2009 and are listed on

several other quarterly reports as well (R. pp. 188-195). Another worker, Jimmy Morris was also regularly working as a heavy collision specialist during the relevant time period, though Mr. Stallings characterized him as an independent contractor (R. p. 107, line 8 - p. 108, line 9). The Commission acknowledged that Respondent contested Mr. Morris's status as an independent contractor but observed that it was unnecessary to determine that issue as the Employment Security Commission's records and Mr. Stallings own testimony provided ample evidence of the jurisdictional requirement of at least 4 regular employees during the relevant period.

The Commission also noted that a Worker's Compensation insurance policy application was submitted for Appellant, and that coverage went into effect on May 27, 2008 (R. pp. 204-207), but lapsed on August 5, 2008 due to non-payment of premium (R. pp. 208-209). No form 38 was filed to withdraw Palmetto Collision, LLC, from coverage under the Act (R. p. 200).

Based upon these facts the Appellate Panel found that the Commission had jurisdiction, and that Respondent suffered an injury by accident on or about February 25, 2009.

ARGUMENTS

Standard of Review. As to jurisdictional issues, this Court reviews the entire record and decides the facts in accordance with its view of the preponderance of the evidence Fortner v. Thomas M. Evans Construction and Development, LLC Op. No. 5073 (Ct. App. Filed January 16, 2013).

As to all other factual issues, the Court may not substitute its judgment for that of the Commission as to the weight of the evidence, and will affirm if the record contains substantial evidence to support the Commission's findings. Substantial evidence is not a mere scintilla of evidence, nor evidence viewed blindly from one side of the case, but is evidence which,

considering the record as a whole, would allow reasonable minds to reach the conclusions reached by the Commission. Canteen v. McLeod Regional Medical Center 400 S.C. 551, 735 S.E. 2nd 246, 249 (S.C. App. 2012).

I. The Workers' Compensation Commission did not err in finding and concluding that Palmetto Collision regularly employed four or more employees and; therefore, subject to the South Carolina Workers' Compensation Act.

Examination of the record as a whole demonstrates, to a preponderance of the evidence, that Palmetto Collision, LLC, regularly employed at least 4 employees. The Appellate Panel summarized in detail the evidence upon which it relied in finding jurisdiction (R. p. 13). The panel specifically relied upon the 2009 first quarter contribution and wage report by the Appellant to the South Carolina Employment Security Commission (R. p. 192), in which it reported 4 employees. That quarter included the date of injury. The panel further relied upon Mr. Stallings testimony found at pages 99 and 100 of the transcript (R. pp. 130-131) where he testified as follows:

“Q: And Jamie Alexander is his son; is that correct:

A: Yes sir that's correct.

Q: All right. And he left for a time and came back during the first quarter of 2009; is that correct?

A: Uh huh.

Q: Now he was there at the same time that Ricky Hartzell was there, was he not?

A: Most likely.

Q: All right. And Harold Brock came in in the first quarter of 2009; is that correct?

A: Yes.

Q: And he was certainly there at the same time that Ricky Hartzell was there; is that correct?

A: That is correct.

Q: And Douglas Alexander was there at the same time that Ricky Hartzell was there; is that correct?

A: Yes sir.

Q: All in the first quarter of 2009?

A: Uh huh.

The Court: Is that a yes?

The Witness: I am sorry.

The Court: You need to say yes or no instead of "uh huh" and "huh uh" because we're getting it for the record.

The Witness: I am sorry.

A: Yes, that is correct.

Respondent testified that he, both Alexanders, Brock and Morris were at work on the date of injury (R. p. 45, line 14 -p. 48, line 3).

This testimony conclusively demonstrates that all 4 employees listed on the first quarter 2009 report were working contemporaneously. Further corroboration is found in the fourth quarter 2008 report which lists 3 employees, Tommy D. Griffin, Edward A. Davis and Doug K. Alexander. Mr. Stallings' testified that Respondent was also employed late in the fourth quarter though his name was not included on the fourth quarter report (R. p. 96, line 22 - 9.97, line 12) Employment Security records also show 5 employees during the second quarter of 2008 (R. p. 189) and 4 employees for the third quarter 2008 (R. p. 190). Thus, there is evidence of 4 or more

employees at least for the second, third and fourth quarters of 2008 and the first quarter of 2009. The records for the second quarter of 2009 show that both Alexanders and Harold Brock continued as regular employees.

Despite claiming to have Quickbook records, which, inferentially would have shown the dates each employee worked, the Appellant failed to produce those records (R. p. 100, lines 2-19).

In Hernandez-Zuniga v. Tickle 374 S.C. 235, 647 S.E. 2nd 691 (Ct. App. 2007), this Court considered the 4 employee requirement. The Court observed:

“The most common problem under the usual wording of statutes conferring this type of exemption is the question of whether the employer “regularly” employs more than the minimum number. Since the practical effect of the numerical boundary is normally to determine whether compensation insurance is compulsory, an employer can not be allowed to oscillate between coverage and exemption as its labor force exceeds or falls below the minimum from day to day. Therefore, if an employer has once regularly employed enough men to come under the Act, it remains there even when the number employed temporarily falls below the minimum. The term “regularly employed” has been construed to embrace regularly-employed part time as well as full time workers. In all these cases, the fact that the number working at the exact time of injury was below the minimum is of course immaterial...” Id. at 647 S.E. 2nd 696.

By this reasoning ,Palmetto Collision, LLC, came under the Act in the second quarter of 2009 when it had 5 employees and remained covered on the date of injury.

The Court further stated:

“The question whether a particular employee should be disregarded for numerical/minimum purposes is very similar to the question whether he or she is a casual employee.” Id. at 647 S.E. 2nd 691.

and:

“...Employment is casual when not permanent or periodically regular but occasional or by chance and not in the usual course of the employer’s trade or

business.” Id. at 647 S.E. 2nd 698.

None of the employees can be characterized as “casual” under the this definition, since all were working in the usual course of the employer’s trade or business.

The relevant time period must be identified. The relevant time period could be said to have begun in the middle of December 2008 when Respondent returned to the Appellant’s employ and continuing through approximately the middle of March 2009 when work slacked off and Respondent separated from employment. Or, the Court could reasonably determine that the relevant time period began in the second quarter of 2008 when the Appellant employed 5 workers and continued through the date of injury.

The record contains an alternative ground for a determination of coverage.

A preponderance of the evidence indicates that the employer voluntarily subjected itself to the Act by procuring insurance coverage effective May 27, 2008, (R. pp. 204-212). This was within the quarter in which the Appellant reported 5 employees. Since Appellant did not file a Form 38 to remove itself from coverage, it was subject to Act continually from May 27, 2008 (the date of the policy) at least through the date of the Respondent’s injury.

Any contention that the panel did not make adequate findings of fact on this issue is misplaced. Though the panel’s enumerated finding of fact is brief, elsewhere in the Decision and Order it recited in detail the evidence on which it relied (R. p. 13). Under the Administrative Procedures Act, findings of fact and conclusions of law need not be presented in any particular format, but need only be sufficiently detailed to enable a reviewing court to determine if fact findings are supported by the evidence and whether the law has been correctly applied, Cloyd v. Mabry 295 S.C. 86, 367 S.E. 2nd 171, 173 (S.C. App. 1988). The panel’s decision and order is

more than sufficient for that purpose.

II. The Worker's Compensation Commission did not err in finding that Claimant sustained an injury to his back by accident "on or about February 25, 2009" or in failing to make an enumerated conclusion of law with respect to S.C. Code Ann. § 42-1-160.

This question is determined under the "substantial evidence" rule.

The Respondent presented his own testimony concerning the manner of his injury while moving the heavy frame machine and the resulting low back pain. The pain got progressively worse until the following day when he reported the injury to Mike Stallings (R. p. 43, line 4- p. 45, line 12). Corroborative of his testimony, is the fact that he sought treatment with a chiropractor and fixed the date of the injury, and stated that it was job related (R. p. 174).

Although, Mike Stallings testified that Respondent had no business "messaging" with the frame machine. He acknowledged that Respondent was the type of employee that would clean up the shop on his own, was not "scared to pick up a broom", move tires and possibly move the frame machine (R. p. 134, line 9 -p. 135, line 20).

The Respondent's recollection of the circumstances of his injury is substantial evidence. The Appellate Panel found the Respondent's testimony on this issue more credible than that of Mike Stallings (R. p. 14). In a Worker's Compensation Commission case, the task of assessing the credibility of witnesses is reserved to the Appellate Panel. Canteen v. McLeod Regional Medical Center, supra at 735 S.E. 2nd 249.

The Appellate Panel's findings as to the fact of injury are substantially supported in the record and should be affirmed.

The form of the Panel's findings and conclusions on this issue is sufficient under Cloyd v.

Mabry, supra.

III. The Worker's Compensation Commission did not err in finding that the Claimant "timely reported the injury" or in failing to make an enumerated conclusion of law with respect to S.C. Code Ann. § 42-15-20.

This issue is also governed by the "substantial evidence" rule. The Respondent testified that he reported his injury to Mike Stallings on the day following the onset of pain (R. p. 44, line 23 - p. 45, line 7). He reiterated this fact at pages 33-34 (R. pp. 64-65) of the hearing transcript, where he once again recounted the conversation with Mike Stallings the day after the injury, but also testified that they talked about it (the injury) during the last couple of weeks that Respondent was employed (R. p. 64, line 17- p. 65, line 22).

When Mr. Stallings was pressed on cross examination, he acknowledged that he could not testify with certainty that Respondent had not reported the injury, only that "it does not ring a bell" (R. p. 117, line 20 -p. 118, line 18).

On this issue, the Appellate Panel also found the Respondent's testimony more credible than that of Mr. Stallings (R. p. 14).

The findings and conclusions of the Appellate Panel on this issue are, also, sufficiently stated under Cloyd v. Mabry, supra.

IV. The Worker's Compensation Commission did not contravene S.C. Code Ann. Sec. 42-15-60 in awarding Claimant "medical, surgical, hospital and other authorized treatment."

The question framed by this issue is whether Section 42-15-60 (A) requires an expert medical opinion where the employer has not first provided initial treatment as mandated. That section provides:

“The employer shall provide medical, surgical, hospital, and other treatment including medical and surgical supplies as reasonably may be required, for a period not exceeding ten (10) weeks from the date of an injury, to effect a cure or give relief and for an additional time as in the judgment of the Commission will tend to lessen the period of disability as evidenced by expert medical evidence stated to a reasonable degree of medical certainty....”

To reach its conclusion the Appellate Panel first looked at the general purposes of the Worker’s Compensation Law. The panel cited Yeomans v. Anheuser Busch, Inc. 198 S.C. 65, 15 S.E. 2nd 833 (1941) :

“The basic purpose of the Compensation Act is inclusion of employers and employees and not their exclusion.” Id. at 15 S.E. 2nd 835,

and Caughman v. Columbia YMCA 212 S.C. 337, 47 S.E. 2nd 788 (1948):

“To great extent the whole scheme of workman’s compensation is to place the economic burden of industrial accidents upon industry rather than upon the worker’s and their dependents, and as to the latter thereby rendered indigent, upon the state.” Id. at 15 S.E. 2nd 789-790.

The panel also cited Elliot v. South Carolina Department of Transportation 362 S.C. 234, 607 S.E. 2nd 90 (Ct. App. 2004), wherein this Court observed:

“The Workman’s Compensation Act is remedial legislation enacted to protect the worker and therefore the law is given a broad construction in order to accomplish that end.” Id. at 607 S.E. 2nd 92.

The Appellate Panel correctly recognized that the legal principles above cited prohibit placing undue burdens upon the employee. The panel therefore concluded that the requirement of expert medical evidence is not triggered until the employer has complied with the Act by providing medical treatment for the initial ten (10) week period after the date of injury (R. p. 15). The panel reasoned that to do otherwise would shift the burden of providing initial treatment “to effect a cure or give relief” to the employee which is inconsistent with the statute and the

purposes of the Act.

The Appellate Panel further relied upon settled rules of statutory construction.

“Words used in a statute must be given their plain and ordinary meaning without resort to settle or forced construction to limit or expand its operation” (Citation omitted). “The language must also be read in a sense which harmonizes with its subject matter and accords with its general purpose.” Smith v. South Carolina Insurance Company 350 S.C. 82, 564 S.E. 2nd 358, 361 (Ct. App. 2002).

It considered State v. Woody 345 S.C. 34, 545 S.E. 2nd 521 (Ct. App. 2001) wherein this Court held:

“...the Court should not consider a particular clause in isolation but should read it in conjunction with the purpose of the whole statute and the policy of the law.” Id. at 545 S.E. 2nd 521, 522,

and Heape v. Heape 335 S.C. 420, 517 S.E. 2nd 1 (Ct. App. 1999) where it was stated:

“A statute must, as a whole be interpreted practically, fairly, and reasonably such that the interpretation harmonizes with the purpose, design, and policy of the lawmakers.” Id. at 517 S.E. 2nd 2.

The Appellate Panel concluded that under these rules of construction and in order to be consistent with the Act’s statutory purpose to place the economic burden of workers’ accidents upon industry and favor inclusion rather than exclusion, Section 42-15-60 (A) should not be interpreted to deny an employee the right to employer provided medical treatment where the employer had failed to provide such treatment during the initial ten (10) week period. Otherwise, the panel reasoned, the phrase “....and for additional time as in the judgment of the Commission will tend to lessen the period of disability...” would be made meaningless by eliminating the distinction between employer responsibility to provide initial treatment and the Claimant’s responsibility to demonstrate by expert opinion the need for additional treatment, see Barnhill v. Bank of America, N.A. 318 F. Supp., 2nd 696 (DSC 2005) wherein United States District Judge

Herlong observed:

“It is a cardinal principal of statutory construction that statutes, ought, upon the whole to be construed that, if it can be prevented, no clause, sentence or words shall be superfluous, void or insignificant.” Id. at 700.

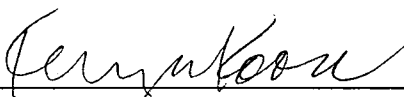
In the routine case, the expert medical opinion required by 42-15-60 (A) is rendered by the physician chosen by the employer to provide mandatory initial treatment. The interpretation urged by the Appellant, would require that, before receiving treatment, the employee identify a doctor willing to accept a workers compensation case without the usual prior employer approval, and procure and pay for an expert opinion. Such a burden on the employee would be unreasonable and inconsistent with our Appellate Courts’ interpretation of the purposes of the Act.

CONCLUSION

The Decision and Award of the Worker’s Compensation Commission Appellate Panel of December 20, 2011, should be affirmed in its entirety.

Respectfully Submitted,

March 12, 2013



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