THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM BEAUFORT COUNTY
South Carolina Worker's Compensation Commission
Full Appellate Panel

WCC FILE NO.: 1216248

Dennis Bearden, — Employee/Claimant
Respondent

v.

Winwholesale National Sales, — Employer, and
The Phoenix Insurance Company, — Carrier,

Defendants/Appellants

MOTION TO DISMISS

The Respondent hereby moves to dismiss the appeal of the Appellants, Winwholesale National Sales and the Phoenix Insurance Company in the above matter. This motion is based upon the following:

1. On November 21, 2013, the Full Appellate Panel of the South Carolina Workers' Compensation Commission issued an Order (which is attached hereto and made a part hereof) that amongst other things reversed the Order of the Single Commissioner as to the finding of a compensable injury.

2. Additionally, the Full Appellate Panel remanded the claim back to the Jurisdictional Commissioner for a determination of the extent of benefits to which the Claimant is entitled. This would include the determination as to what, if any, necessary medical treatment the Employee is entitled to, as well as a determination to what, if any, loss of wages are involved both temporary and on a permanent basis.

For the above reasons, the Employee/Claimant, Dennis Bearden, would submit under Bone v. U.S. Food Service and Indemnity Insurance Company of North America, 399 S.C. 566 (2012), 733 S.E.2d 200, that this is a classic interlocutory order and that under the under the Court's ruling in Bone it is not subject to an immediate appeal.

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December 18 2013.

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Dennis Bearden,	Employee/Claimant Respondent
v.	
Winwholesale National Sales, The Phoenix Insurance Company,	Employer, and Carrier, Defendants/Appellants

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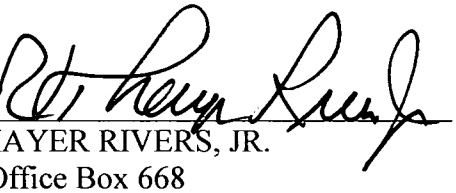
PROOF OF SERVICE

I hereby certify that I have served the Respondent's Motion to Dismiss on the Appellants, Winwholesale National Sales and the Phoenix Insurance Company, by depositing a copy of same in the United States Mail, postage prepaid, on _____, addressed to their attorney of record, F. Reid Warder, Jr., Post Office Box 31057, Charleston, SC 29417.

LAW OFFICE OF R. THAYER RIVERS, JR.



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DECISION AND ORDER

OF THE

SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION

W.C.C. FILE NO.: 1216248

DENNIS BEARDEN,

EMPLOYEE/CLAIMANT,

-VS-

BEAUFORT WINLECTRIC,
EMPLOYER, AND PHOENIX INSURANCE COMPANY,
CARRIER,

DEFENDANTS.

HEARING:	Held on September 17, 2013 in Columbia, South Carolina, per notices timely and properly served upon all parties of interest.
APPEARANCES:	Warren Paul Johnson, Esq. and R. Thayer Rivers, Jr., Jasper County, South Carolina, appearing on behalf of the Claimant.
	F. Reid Warder, Jr., Esq., Charleston, South Carolina, appearing on behalf of the Defendants.
COMMISSION PANEL:	Commissioner Susan S. Barden Commissioner Andres C. Roche Commissioner T. Scott Beck

This case was initially heard before Commissioner Gene McCaskill on February 27, 2013, in Yemassee, South Carolina. Prior to the hearing, both parties agreed to the below stipulations:

1. The parties stipulate to an average weekly wage of $855.08 with a resulting compensation rate of $570.08.
2. The parties stipulate that jurisdiction is proper with the Workers Compensation Commission.
3. That venue is proper.
4. That the Administrative Procedures Act submissions of both parties are submitted into the record without objection.
5. That the Commission's file becomes part of the record with the exception of any self-serving declarations or unstipulated medical reports.

In addition to the stipulations set forth above, the Single Commissioner made the following Findings of Fact and Conclusions of Law:

FINDINGS OF FACT

1. The Claimant was injured in an accident at the Employer's place of business on 02/01/12 when he attempted to squat lift a very large spool of wire six to eight feet wide, four to five feet high, and weighing approximately 2,500 lbs.

2. The question at bar, which is central to this claim, is did this injury arise out of the Claimant's employment and I find that it did not.

3. It is the Claimant's contention that his injury did, in fact, arise out of his employment. He contends that, as part of his responsibilities, he was charged with moving objects and showing others how to move them as well.

4. The Claimant also contends that what he was doing was showing his coworkers how to properly lift a large spool of wire when the injury occurred.

5. Frankly, the Claimant's contentions are simply not believable. The spool of wire he was trying to move was approximately six to eight feet in diameter and approximately five feet high. It weighed approximately 2,500 lbs. It is described in the record as being the largest spool of wire that had ever been delivered to the Employer.

6. There was a fork lift available to move the spool of wire.

7. While the Claimant testified that he was "showing" others how to correctly move the spool of wire manually, there is not testimony as to why it needed to be moved.

8. There were three witnesses in this case: the Claimant, Daniel Connelly, and Adam Bridwell. All three appeared to massage the facts to their individual benefit.

9. This is not an injury that arose out of the Claimant's employment.

10. This is simply a matter of horseplay, actions that were of no benefit to the employer. Claimant's injury was not proximately caused by his employment, but by his unrelated horseplay. There is no causal connection between the conditions under which his employment is to be performed and the resulting injury.

11. It defies logic that there would be an expectation that the Claimant or anyone else would be required to manually move a spool of wire of that size and weight.

12. I find the act which caused the Claimant's injury is not peculiar to the Claimant's work or any job at Beaufort Winlectric and the Claimant would have been equally exposed to this type of injury apart from his employment.

13. I find the risk undertaken by the Claimant was not connected with his employment when he engaged in squat lifting the spool of wire.

14. I find the Claimant's squat lifting of the very large spool of wire did not give rise to his injury as a natural incident of the work and accordingly, he is not entitled to workers' compensation benefits.

15. I find the Claimant has failed to meet his burden and is not entitled to any benefits under the Act.

16. It is also clear that the Employer in this case wished to avoid a Workers' Compensation claim with his mishandling of this matter. Given that the injury did not arise out of the Claimant's Employment and the Claimant has not met his burden to establish compensability for this claim, the Employer's actions are without consequence.

17. The injury cannot be seen to have followed as a natural incident of the work and to have been contemplated by reasonable person familiar with the whole situation as a result of the exposure occasioned by the nature of the employment.

18. The claimant's injury cannot fairly be traced to the employment as a contributing proximate cause.

19. The Claimant's injury does not come from a hazard to which the workmen would have been equally exposed apart from their employment with Beaufort Winlectric.

20. The causative danger here, squat lifting 2500 lbs.. is not peculiar to the Claimant's work at Beaufort Winlectric and is not incidental to the character of Winlectric. Additionally, the causative danger did not have its origin in a risk connected with the Claimant's employment at Beaufort Winlectric and did not flow from that source as a rational consequence.

21. The claimant's demonstration of how to squat lift the spool of wire in this matter did not give rise to his injury as a "natural incident of the work" and accordingly the claimant is not entitled to Workers Compensation benefits.

RULINGS OF LAW

1. Under §42-1-130, the Claimant was a covered employee and under §42-1-140, the employer was a covered employer.

2. Under §42-1-40, the Claimant's average weekly wage is $855.08 with a resulting compensation rate of $570.08.

3. Under §42-1-160, the Claimant did not sustain an injury by accident arising out of and in the course of his employment on or about February 1, 2012.

4. Under §42-15-60, the claimant is not entitled to any medical benefits.

5. Under §42-9-10, §42-9-20, §42-9-30, and Regulations 67-501 through 510, the Claimant is not entitled to any compensation benefits.

6. Under *Jones v. Hampton Pontiac,* 304 S.C. 440,405 S.E.2d 395 (1991), and applicable case law, the Claimant's injury did not arise out of his employment.

Within the statutory period, counsel for the Claimant filed an application for review in the case, setting forth his reasons, copies of which were furnished to all interested parties prior to an oral argument presented before the Appellate Panel on September 17, 2013.

By appeal, it was respectfully submitted by the Claimant that the Hearing Commissioner erred in finding that the Claimant's injury did not arise out of and in the course of his employment as such findings were against the greater weight of the evidence and controlled by an erroneous application of the law.

Upon review, the Appellate Panel shall, pursuant to S.C. Code Ann. §42-17-50, review the decision, weigh the evidence presented at the initial hearing and if good grounds be shown therefore, make its own findings of fact and reach its own conclusions of law consistent with or inconsistent with those of the Hearing Commissioner. After careful review of the instant case, the Commission has determined that the Single Commissioner's Findings of Fact and Conclusions of Law are to be REVERSED.

Furthermore, the case is to be REMANDED to the Jurisdictional Commissioner for a determination and award of benefits under the Act. Accordingly, the Appellate Panel finds that the following Findings of Fact and Conclusions of Law shall become the law of the case and consequently, the Decision and Order of the Hearing Commissioner is REVERSED INSOFAR AS IT DENIES THE CLAIMANT THE RIGHT TO COMPENSATION UNDER THE ACT ON THE GROUND THAT HIS INJURY DID NOT ARISE OUT OF AND IN THE COURSE OF HIS EMPLOYMENT, AND THE CASE IS REMANDED TO THE JURISDICTIONAL COMMISSIONER FOR DETERMINATION OF THE EXTENT OF BENEFITS UNDER THE ACT.

Based upon the evidence submitted by the respective parties pursuant to the Administrative Procedures Act and the Commission's file relative to this claim. WE, THE APPELLATE

PANEL, FIND THE FOLLOWING AS FACT:

1. That the Claimant sustained an injury to his back on February 1, 2012 on the employer's premises while demonstrating to his boss and a co-worker how to properly lift a large spool of wire.
2. At the time of the accident, an employer/employee relationship existed between the Defendant and the Claimant.
3. That the Claimant is a forty-eight (48) year old male and, at the time of the accident, was the second most senior employee of the Employer.
4. That the Claimant was routinely tasked with filling orders, lifting items, and training and/or demonstrating to others how to perform certain tasks.
5. That the Claimant encountered his employer, Daniel Connelly, and a co-worker, Adam Bridwell, attempting to lift a large spool of wire.[1]
6. That it is undisputed that the claimant was never told not to lift the spool and, in fact, was in the process of performing the same task that the employer and Mr. Bridwell were doing when the Claimant was injured.
7. That by demonstrating the proper way to lift to other employees, the Claimant conferred, or intended to confer, a benefit upon the employer.
8. That the Claimant's injury arose out of and in the course of his employment.

BASED UPON THE ABOVE FINDINGS OF FACT, WE, THE APPELLATE PANEL, MAKE THE FOLLOWING CONCLUSIONS OF LAW:

[1] While there is testimony that estimates that the spool was 2500 lbs and six to eight foot high, there is nothing in the record to support the accuracy of the statement and the exact size or weight has no real relevance to the case at bar.

1. Under §42-1-130, the Claimant was a covered employee and under §42-1-140, the employer was a covered employer.

2. Under §42-1-40, the Claimant's average weekly wage is $855.08 with a resulting compensation rate of $570.08.

3. Under §42-1-160, the Claimant sustained an injury by accident arising out of and in the course of his employment on or about February 1, 2012.

4. That the claim is to be remanded back to the Jurisdictional Commissioner to determine the extent of benefits to which the Claimant is entitled.

ORDER

IT IS HEREBY ORDERED THAT an employer/employee relationship existed between the parties on the date of the Claimant's injury, February 1, 2012.

IT IS HEREBY ORDERED THAT the Claimant sustained a compensable injury by accident on February 1, 2012 arising out of and in the course of his employment.

IT IS HEREBY ORDERED THAT the aforementioned claim is to be remanded to the Jurisdictional Commissioner for a determination of the extent of benefits to which the Claimant is entitled.

IT IS SO ORDERED.

Commissioner Susan S. Barden

Commissioner Andrea C. Roche

Commissioner T. Scott Beck

11-21, 2013

CERTIFICATE OF SERVICE

This is to certify that the undersigned has on this date served a copy of this order in the above entitled action upon all parties to this case by sending an electronic copy hereof by electronic mail addressed to the attorneys for said parties; or if there is an unrepresented party(ies), by depositing a copy hereof, postage paid in the United States mail, first class, addressed to the unrepresented party(ies) and to the attorney(s) for the represented party(ies).

By Valerie Deller on November 21, 2013