

**THE STATE OF SOUTH CAROLINA
In the Court of Appeals**

**APPEAL FROM THE SOUTH CAROLINA
WORKERS COMPENSATION COMMISSION**

Appellate Case No: 2013-001212

Joseph Mickle,)
)
Appellant-Respondent,)
 v.)
)
Boyd Brothers Transportation, Inc.,)
Employer,)
)
And)
)
Lumberman's Underwriting Alliance,)
Carrier,)
Respondents-Appellants)

**INITIAL RESPONDENT'S BRIEF OF RESPONDENTS-APPELLANTS
BOYD BROTHERS TRANSPORTATION, INC. AND LUMBERMANS
UNDERWRITING ALLIANCE, CARRIER**

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MAR 21 2014

SC Court of Appeals

ISSUES PRESENTED ON APPEAL

- I. Should the Decision of the South Carolina Workers' Compensation Commission be "corrected"/remanded to adjust and correct the credit to Respondents for prior payment of temporary benefits and correct the award calculations according to the undisputed evidence?**

STATEMENT OF THE CASE

This is a Workers' Compensation Appeal arising out of the injuries sustained by Appellant-Respondent, Joseph Mickle, when he was removing a tarp from the load on his flatbed truck on July 12, 2010, in Vernon, Alabama. (Order at 6.) At the time of this injury, Appellant-Respondent Mickle drove a flatbed truck for Appellant WTI Transport, Inc. ("WTI Transport"). (Order at 5.)

Appellant-Respondent was hired by WTI Transport in 2002 as an owner/operator. (Order at 4.) On April 19, 2010, Appellant-Respondent became a full-time, regular employee of WTI Transport. (Order at 5.) After injuring his back in July 2010, Appellant-Respondent reported his injury to WTI Transport, who paid him temporary benefits under the Alabama Workers' Compensation Act. (Order at 6.) The Appellant-Respondent was not sure as to the exact period of time. On July 1, 2011, Appellant-Respondent sought benefits in South Carolina for total and permanent disability resulting from the injury to his back and legs from Boyd Brothers Transportation, a sister corporation of WTI Transport. (Order at 3.) Though his injury occurred in Alabama and he received his temporary total weekly benefits in Alabama, Appellant-Respondent now seeks benefits for personal disability in South Carolina from Boyd Brothers Transportation, Inc. (Order at 3.)

In this appeal the Respondents-Appellants take the position that there is no evidence to support the monetary Award of the Hearing Commissioner which was adopted by the Appellate Panel. A hearing was held in this matter on November 18, 2011, in Columbia, South Carolina. (Order at 1.) In an Order dated March 14, 2012, the Hearing Commissioner ruled that the Commission had jurisdiction in the proceeding pursuant to §§ 42-3-180 and 42-1-400 of the South Carolina Code and that Appellant-Respondent is totally and permanently disabled as a

result of the injury to his back and legs. (Order at 14-15.) Respondents-Appellants appealed to the Appellate Panel of the Full Commission of the Workers' Compensation Commission which affirmed the Hearing Commissioner in its Order of May 14, 2013.

The Order of the Hearing Commissioner which was affirmed did not specify any amount of credit in Conclusions of Law No. 7. There is not Finding of Fact as to the amount of credit that the Respondents-Appellants are to take unless the credit is in the Conclusion of Laws No. 8 which does not indicate the basis for that calculation. The Order of the Appellant Panel of the S.C. Workers' Compensation is silent on the amount of credit the Respondents-Appellants are entitled to.

ARGUMENT

Whether the Decision of the South Carolina Workers' Compensation Commission should be "corrected"/remanded to adjust and correct the credit to Respondents for prior payment of temporary benefits and correct the award calculations according to the undisputed evidence?

Since the Order of the Hearing Commissioner as affirmed by the Appellate Panel of the South Carolina Workers' Compensation Commission is silent on the exact amount of credit that the Respondents-Appellants are entitled to receive, if the Commission had jurisdiction, then this issue should be remanded back to the Workers' Compensation Commission for a determination of the credit.

Further, if the Order of the Hearing Commissioner as affirmed by the Appellate Panel is in error and that error is apparent, then this matter should be remanded back to the Workers' Compensation Commission for a re-calculation of the Award. It is not the responsibility of this Court to make these calculations.

The Appellant-Respondent testified that he thought that the temporary benefits paid by Alabama were through February 24, 2011, but the Appellant-Respondent failed to seek any confirmation of the amount of or the time period the benefits were paid when the HR Director, Lynn Colley was on the stand testifying in this case. It is the responsibility of the Workers' Compensation Commission to make findings of facts of the case. The Court of Appeals in Hamilton v. Bob Bennett Ford, 336 S.C. 72, 518 S.E. 2d 599 held that this Court could not substitute its judgment for that of the Workers' Compensation Commission as to the weight of the evidence on questions of fact, but it was limited to decisions affected by error of law. This conclusion is re-affirmed in the case of Fox v. Newberry County Memorial Hosp., 319 S.C. 278,

461 S.E. 2d 392. See also Layton v. Hammond-Brown-Jennings Co., 190 S.C. 425, 425 S.E. 2d 492; Kay v. South Carolina Public Service Authority, 246 S.C. 168, 143 S.E. 2d 130; and Hucks v. Green's Fuel of S.C., 247 S.C. 457, 148 S.E. 2d 149.

Of course the Court can and does consider whether there are facts not supported by any substantial evidence. This Court in Holcombe v. Dan River Mills/Woodside Div., 286 S.C. 223, 333 S.E. 2d 338 held that in a Workers' Compensation case, the scope of the Court of Appeals' review is to determine whether there is substantial evidence of record to support the findings of the Commission.

CONCLUSION

As to any errors made in any Finding of Facts, those matters need to be remanded back to the Workers' Compensation Commission. This Court is without authority to correct them.

Respectfully submitted,



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Attorneys for the Respondents-Appellants

March 13, 2014

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CERTIFICATE OF MAILING

IT IS HEREBY CERTIFIED that a copy of the Respondents-Appellants' Initial Respondents Brief and Designation of matter to be Included in Record of Appeal was served upon the Appellant-Respondent by placing a copy of the same in the United States Mail, postage prepaid, on the 18th day of March, 2014, addressed as follows:

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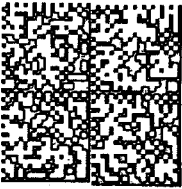
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SC Court of Appeals

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