

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

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

Appellate Case No. 1013-001212

**RECEIVED**

MAY 06 2014

**SC Court of Appeals**

Joseph Mickle,

Appellant-Respondent

v.

Boyd Brothers Transportation, Inc.,  
Employer, and Lumbermans  
Underwriting Alliance, Carrier,

Respondents-Appellants

---

**FINAL BRIEF OF  
APPELLANT-RESPONDENT**

---

Frank A. Barton  
Mullis Law Firm  
P.O. Box 7757  
Columbia, SC 29202  
(803) 254-8956

**Counsel for Appellant-Respondent**

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

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

Appellate Case No. 1013-001212

Joseph Mickle,

Appellant-Respondent

v.

Boyd Brothers Transportation, Inc.,  
Employer, and Lumbermans  
Underwriting Alliance, Carrier,

Respondents-Appellants

---

**FINAL BRIEF OF  
APPELLANT-RESPONDENT**

---

Frank A. Barton  
Mullis Law Firm  
P.O. Box 7757  
Columbia, SC 29202  
(803) 254-8956

**Counsel for Appellant-Respondent**

TABLE OF CONTENTS

Table of Contents.....i

Table of Authorities.....ii

Statement of Issue on Appeal.....1

Statement of the Case.....2

Argument.....3

Conclusion.....6

**TABLE OF AUTHORITIES**

Green v. Raybestos Manhattan, Inc.,  
250 S.C. 58, 516 S.E.2d 318 (1967).....3

Lowe v. Am-Can Trans. Servs., Inc.,  
283 S.C. 534, 324 S.E.2d 87 (Ct. App. 1984).....3

Riddle v. Fairforest Finishing Co.,  
198 S.C. 419, 424, 18 S.E.2d 341, 343 (1942).....3

**STATEMENT OF ISSUE ON APPEAL**

- I. Should the decision of the South Carolina Workers' Compensation Commission be corrected in order to adjust and correct the credit to Defendants for prior payment of temporary benefits and to correct the award calculations according to the undisputed evidence?**

## STATEMENT OF THE CASE

By his July 1, 2011 Form 50, Claimant sought benefits for total and permanent disability resulting from injuries to his back and legs from an admitted work accident on July 12, 2010. On July 12, 2010, Claimant was pulling the tarp off the top of the load while he was in Vernon Alabama when he felt a pinch of pain in his back. Claimant recalled that at first he didn't think too much about the pain in his back but that when he got ready to leave, there was no one there to pick up the tarp so that he and his co-worker had to pick up the tarp themselves and put it on the trailer. Claimant indicated that he reinjured his back picking up the tarp but that he kept going and he finished the trip; however, the next morning, Claimant was unable to get out of bed due to pain in his back and legs. Claimant reported the accident; the accident was admitted and the Defendants paid Claimant temporary benefits from July 12, 2010, until February 24, 2011.

The accident took place in Alabama and Claimant initially received benefits from Alabama; however, Claimant chose to pursue benefits for permanent disability in South Carolina, the state where he was hired, where he received medical care, and where he has lived for more than thirty years. Defendants, Boyd Brothers' Transportation, Inc., (Boyd Brothers) denied coverage for the claim in South Carolina, asserting that Claimant was actually employed by its wholly owned subsidiary, WTI Transport, Inc. (WTI). Boyd Brothers asserted that WTI had only three South Carolina employees.

An evidentiary hearing was held before Commissioner Scott T. Beck on November 18, 2011. On March 14, 2012, the Hearing Commissioner issued his Order finding that jurisdiction was proper before the Commission; that Claimant was entitled to lump sum payment of benefits for his total and permanent disability resulting from the injuries to his back and legs with credit

to Defendants for temporary benefits paid; and that Claimant was entitled to lifetime medical care. (R. p. 12).

Defendants appealed before the Appellate Panel. Claimant asserted in his Brief of Respondent-Claimant before the Appellate Panel that the credit awarded the employer for temporary benefits should be corrected and the award and Utica Mohawk language adjusted accordingly. (R. p. 226). The Appellate Panel affirmed the Order of the Hearing Commissioner in full. (R. p. 1). Both parties appeal.

### ARGUMENT

**I. Should the decision of the South Carolina Workers' Compensation Commission be corrected in order to adjust and correct the credit to Defendants for prior payment of temporary benefits and to correct the calculations for the award according to the undisputed evidence?**

When reviewing the award of a Single Commissioner, the Appellate Panel makes its own Findings of Fact and reaches its own Conclusions of Law either consistent or inconsistent with those of the Single Commissioner. S.C. Code Ann. § 42-17-50 (1985); Lowe v. Am-Can Trans Servs., Inc.; 283 SC 534, 324 SE 2d 87 (Ct. App. 1984); Green v. Raybestos-Manhattan, Inc., 156 S.E.2d 318 (1967). The award of a single commissioner is not a final adjudication of a claim, unless both parties are satisfied, and unless neither of them asks for a review by the Full Commission. Riddle v. Fairforest Finishing Co., 198 S.C. 419, 424, 18 S.E.2d 341, 343 (1942). Here, the award of the single commissioner which was drafted in reliance on a typographical error in the Order Directives issued by the Hearing Commissioner was not final where review of the award was sought before the Full Commission's Appellate Panel.

Defendants had paid temporary total disability benefits to Claimant from the date of accident, July 12, 2010, until February 24, 2011. (R. p. 17; p. 168, lines 7-11; p. 249).

Unfortunately, the Order Directives forwarded by the Hearing Commissioner on December 12,

2011, contained a typographical error which mistakenly indicated that Claimant's date of injury was "7/12/08" rather than the actual date of accident, July 12, 2010. (R. p, 225). Therefore, in performing the calculations for the lump sum award pursuant to Utica Mohawk, Counsel for Claimant's bookkeeper relied on the mistaken "7/12/08" date of accident and calculated a credit to Defendants for payment of temporary total disability benefits from July 12, 2008, until February 24, 2011, for a total credit of 136 weeks. It was undisputed that Defendants actually paid Claimant temporary benefits from the date of accident, July 12, 2010, until February 24, 2011, for a total credit due of only 32 weeks. Thus, the Order issued by the Hearing Commissioner incorrectly gave Defendants credit for payment of 136 weeks of temporary benefits where they had actually paid only 32 weeks of temporary total benefits and accordingly miscalculated the lump sum award.

Given that there is no procedure allowing for rehearing or reconsideration of Commission decisions, Counsel for Claimant brought the error in credit and award calculations to the attention of the Appellate Panel and Defendants through his Brief of Respondent-Claimant.

Claimant requested that the error be corrected and that the calculations be amended accordingly.

In fact, the Appellate Panel's Order specifically indicates:

In his Brief of Respondent which was properly filed with the Commission and properly served on all interested parties, and at oral arguments before the Appellate Panel on February 20, 2013, Claimant asserted that as the result of a typographical error in the Hearing Commissioner's December 12, 2011, Order Directives, the Hearing Commissioner's Order incorrectly gave the employer credit for having paid 136 weeks of temporary total disability benefits despite the fact that it was undisputed that Claimant had been paid only 32 weeks of benefits. Claimant took the position that the Appellate Panel should amend the Order so as to correct the mistaken credit and adjust the calculation of benefits due.

(R. p. 6). However, by its Order, the Appellate Panel ordered that the Hearing Commissioner's decision be affirmed in full and adopted as the Decision of the Commission without correcting or adjusting the award.

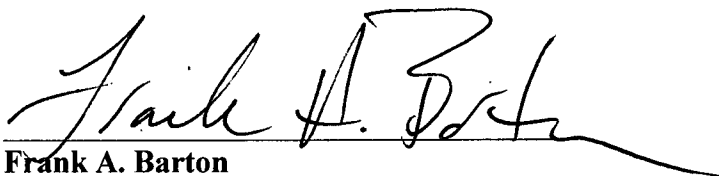
Notably, Defendants had made no response to Claimant's assertion that the credit was erroneous and Defendants made no attempt to dispute the fact that the credit awarded was in excess of the temporary benefits actually paid. Accordingly, where it was undisputed that the credit for 136 weeks was excessive and that Defendants were actually due only credit for 32 weeks of benefits paid, the Appellate Panel erred in failing to amend the Order so as to correct the error in the credit to Defendants to allow credit only for payment of temporary benefits actually paid.

Where the amount of the credit due Defendants was undisputed, the Court should affirm the Commission's substantive decision in favor of Claimant, but correct the erroneous credit and mistaken award or, in the alternative, remand to the Commission for correction of the credit due to Defendants and for correction of the award.

**CONCLUSION**

The Court should affirm the Commission's substantive ruling but correct the erroneous credit and award or, in the alternative, remand to the Commission for correction of the credit and award along with the Utica Mohawk language so as to give Defendants credit only for temporary total disability benefits actually paid to Claimant after his accident on July 12, 2010.

Respectfully submitted,



**Frank A. Barton**  
Mullis Law Firm  
1229 Elmwood Avenue  
Post Office Box 7757  
Columbia, SC 29202  
(803) 799-9577

**COUNSEL FOR APPELLANT-RESPONDENT**

May 6, 2014

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

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

**RECEIVED**

MAY 06 2014

**SC Court of Appeals**

Appellate Case No. 1013-001212

Joseph Mickle,

Appellant-Respondent,

v.

Boyd Brothers'  
Transportation, Inc.,  
Employer, and Lumbermans'  
Underwriting Alliance,  
Carrier,

Respondent-Appellants

**Certificate of Service**

I, the undersigned, an employee of the Mullis Law Firm, do hereby certify that I have served the Final Brief of Appellant-Respondent this 6<sup>th</sup> day of May, 2014, by placing a copy in the United States Mail with proper postage affixed and addressed to the following:

Duke K. McCall, Jr., Esq.  
Smith, Moore, Leatherwood, LLP  
P.O. Box 87  
Greenville, SC 29602



Karissa Ballard  
MULLIS LAW FIRM  
P.O. Box 7757  
Columbia, SC 29202  
(803) 799-9577

THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

APPEAL FROM THE SOUTH CAROLINA  
WORKERS' COMPENSATION COMMISSION

**RECEIVED**

MAY 06 2014

**SC Court of Appeals**

Appellate Case No. 1013-001212

Joseph Mickle,

Appellant-Respondent,

v.

Boyd Brothers'  
Transportation, Inc.,  
Employer, and Lumbermans'  
Underwriting Alliance,  
Carrier,

Respondent-Appellants

---

**Certificate of Counsel**

---

Undersigned counsel certifies that this Final Brief of Appellant-Respondent complies with Rule 211(b), SCACR.

May 6, 2014



Frank A. Barton  
Mullis Law Firm  
P.O. Box 7757  
Columbia, SC 29202  
(803) 254-8956

COUNSEL FOR APPELLANT-RESPONDENT