APPELLATE PANEL

DECISION AND ORDER

OF THE

SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION

WCC FILE NO. 1210233

RICHARD COX, EMPLOYEE/CLAIMANT

vs.

HAMPTON GOLF, INC., EMPLOYER

AND

FFVA MUTUAL INSURANCE COMPANY, CARRIER/DEFENDANTS

Appellate Panel Review held in Columbia, South Carolina on July 21, 2014, per notices timely and properly served upon all parties of interest.

Appellate Panel Decision and Order filed

September 22, 2014

Appearances: Claimant/ Respondent represented by Brian McDaniel, Esquire of Law Offices of Brian McDaniel, LLC, Beaufort, South Carolina

Defendant/ Appellant Hampton Golf, Inc., and FFVA Mutual Insurance Company were represented by Walter R. Frye, III, Esquire of Eller Tonnsen Bach, Greenville, South Carolina

STATEMENT OF THE CASE

A hearing was held on October 25, 2013 before Commissioner Andrea C. Roche in Columbia, South Carolina. By Order filed January 22, 2014, the hearing commissioner held, inter alia,: (1) On August 8, 2012 the Claimant has suffered an injury by accident to his right knee arising out of and in the course and scope of his employment with Hampton Golf, Inc. (Employer); (2) that the factors to be considered, as set forth in the Leopard case support that the boat outing of August 8, 2012 in this case was in the course and scope of the Claimant's employment; (3) That the fishing outing of August 8, 2012 was scheduled on a day in which the Claimant would normally work, excepting for the aerification of the greens, that it was planned and organized by the Employer, that it was during the Claimant's normal working hours, that the Employer supplied the boat, the captain and all the equipment for the trip that both Claimant and a co-worker stated that the trip was both a reward and a team building exercise and that the Employer has a history of using recreational activities as team building exercises; (4) That Defendants are responsible for medical care for injuries to the Claimant's right knee related to the injury suffered by the Claimant on August 8, 2012; (5) Claimant is entitled to 19 weeks of Total Temporary Disability benefits and to 10 weeks of Partial Temporary Disability benefits; (6) Claimant is entitled to past causally related medical treatment for the injuries causally related and incurred due to the August 8, 2012 accident. Within the statutory period, counsel for the Defendant filed an Application for Review, generally averring the hearing commissioner erred in finding that the Claimant's injury was sustained in the course and scope of his employment. All testimony has been taken and delivered, with the documentary evidence, to each member of the Appellate Panel. Oral argument was heard

on July 21, 2014 and the argument and evidence has since been under study and consideration.

In Appellate Review, the Appellate Panel shall, pursuant to S.C. Code Ann § 42-17-50 review the Award, weigh the evidence as presented at the initial hearing and, if good grounds be shown therefore, make its own Finding of Fact and reach its own Conclusions of Law consistent with, or inconsistent with, those of the Single Commissioner. After careful consideration and review of all evidence in the instant case, the Commission, by unanimous vote, has determined all of the Single Commissioner's Findings of Fact and Conclusions of Law were correct as stated. According, they shall become, and hereby are, the law of the case, and, therefore, the Decision and Order of the Hearing Commissioner is Fully Affirmed and sustained in its entirety.

EVIDENCE OF THE CASE

I. Testimony

The Claimant testified at the hearing. Claimant's employment has primarily been food and beverage related and he has no other certifications or training in other fields. Claimant began working for Employer in Oldfield Plantation in March 2010 as a line cook making $14.00 per hour prior to the injury. Claimant testified that his normal work schedule for Employer, for the most part, was Tuesday, Wednesday, Thursday, Friday and Saturday and sometimes Sunday, primarily in the mornings.

Claimant testified that as part of his employment he occasionally attended events and outings outside of the Employers[1] (Oldfield) property. Claimant testified that he attended an Employer scheduled golf outing, for which he was paid. At the golf outing the Claimant played golf and the General Manager (GM), Mr. Selby, addressed the employees. It was Claimant's understanding that the Golf outing was meant to promote employee cooperation. Although he did not clock-in to work, Claimant was paid for his time at the golf outing event. Claimant also testified that the GM has scheduled events such as skeet shooting and bowling for selected managers, which were mandatory for those persons he selected to attend.

Claimant testified that for some out of office events he would not be required to clock-in to work but instead that the Executive Chef (Jason Winn) would input the time into the computer system at a later time to document the work time.

Claimant identified APA 231 and 245 as the work schedule covering the week in which the accident occurred. Claimant's accident is identified as occurring on Wednesday August 8, 2012. On the identified week's schedule the Claimant stated that the schedule notes "fishin' Wednesday/Low Country luncheon 20 people/BNI". Claimant stated that he would normally work Wednesdays. He further stated that the "BNI" is the business networking group for which he would normally be working and for which he would normally come in about 6:30am to get breakfast set up for that event. The identified schedule also has a photo of a guy fishing in a big mud puddle. The schedule marks Claimant, Jason Winn and Chris McDonald as being "OFF" with the word

[1] It appears that the Oldfield Plantation has hired Employer, Hampton Golf, Inc..to handle all of its operations and management

capitalized, whereas in other parts of the schedule and normally on the schedule "off" would not be capitalized. Claimant understood that to be a code which signaled that it was not an unpaid, normal, off day but was instead that he would be out of the kitchen on a required boat outing.

Claimant testified that he was told to attend the August 8, 2012 outing but was not invited and had no opportunity to accept or decline to go on the outing. Claimant understood the boat outing to be a paid event in which the company planned to do team building exercises which was also meant to help the kitchen crew recharge and plan. Claimant understood a purpose of the August 8, 2012 outing was also to provide the kitchen managers the opportunity to discuss issues and plans for the kitchen such as making menu changes for the upcoming season. Claimant testified that during the boat outing on the day of August 8, 2012 he did in fact discuss menu changes with the Executive Chef Jason Winn at various times during the course of the morning.

The boat outing only included employees and the Claimant was not told that he could invite any non-employee, nor did he understand there to be any non-employees invited by anyone else attending. Claimant did not pay for anything on the trip and was not asked to pay for anything including boat usage, food or gas for the trip.

The boat outing participants were Captain Charlie (Oldfield charter captain), Jason Winn (who was Claimant's supervisor and the Executive Chef), Chris McDonald (co-worker sous chef) and the Claimant. The Claimant went to his normal place of work on the morning of August 8, 2012 and the boat disembarked from the Employer's property around 6:00 or 6:30am. After setting out on the outing the boat stopped to pick

up some bait fish and it started raining harder and lightening. At that point the captain began to hurry back to port to beat the storm and struck several large waves causing the boat to rise and fall suddenly. Because the boat only had two seats, which were occupied, the Claimant was standing as the boat headed back to dock. Due to violent rising action of the boat the Claimant felt a snap in his leg as the boat rose suddenly and his leg came down injuring the Claimant's knee. The Claimant was then immediately taken to Hilton Head Hospital.

As a result of the accident the Claimant was diagnosed with a torn ACL, bruised tibia and ripped meniscus and had surgery conducted by Dr. Mihelic on August 16, 2012. Subsequently an ACL reconstruction was done October 8, 2012 by Dr. Gavin who also did a third surgery on October 22, 2012 to insert additional screws to better anchor the knee.

Claimant testified that his Doctor took him out of work during the course of the surgeries but that he is still employed by Employer and returned to work in a partial capacity from approximately December 26 until March 5th working no more than 6 hours per day. The claimant testified that he is currently restricted by his doctor to working no more than 8 hours per day and that he has lifting restrictions. Claimant testified that he is currently awaiting scheduling with Dr. Gavin for another surgery to clean up the meniscus of his knee.

Claimant testified that he discussed the injury with Jamie Selby and Jason Winn was present at the time of the injury.

On Cross-Examination the Claimant indicated that he did not ask and no one told him whether or not he was going to get paid for the boat outing, but assumed that he was to be paid and that if he had been told he would not get paid he would have opted to work in the kitchen the day of the injury. Claimant acknowledged that the Employer puts on other events such as a Christmas and Pool parties which Claimant understood were optional events to which non-employees could attend. Claimant stated that a previous Golf outing he attended had a business purpose and included an employee meeting. Claimant stated that Jason Winn told him that the boat outing was a team building exercise and that they conducted menu discussions throughout the course of the day and that it could also have been considered a reward for doing a good job.

Claimant testified that the club was not open to the public on Monday, Tuesday and Wednesday due to aerification of the greens, but that there were two special events scheduled for August 8, 2012, including a lunch and breakfast for which some cook crew would need to work.

Claimant indicated that the events hosted by Employer such as the Christmas party and Pool party were events organized by Employer/ Oldfield which were open to all employees and non-employees (such as employee families), but that the boat outing was organized by his direct supervisor and unlike the Christmas and Pool parties was not open to all Oldfield employees nor to non-employees.

Mr. McDonald was also called as a witness by the Claimant and testified that he was a sous chef for Employer on August 8, 2012. Mr. McDonald stated that he attended the boat outing with the Claimant. Mr. McDonald testified that while he was told that he

should be present on the boat outing to represent his department that he did not understand it to be a mandatory event. Mr. McDonald stated that he received his regular salary for attending the boat outing and did not have to use vacation days for the boat outing of August 8, 2012. Mr. McDonald testified that he understood the purpose of the boat outing to be for a reward and for team building. Mr. McDonald testified that he has attended other events during his employment such as bowling and food shows which occurred during regular work hours and those would be paid time for him.

Mr. McDonald acknowledged that on the August 8, 2012 boat outing that he did recall having discussions on the outing about menu items and kitchen menus with Jason Winn and the Claimant.

Upon Cross-examination, Mr. McDonald stated that he understood that he was able to decline to go on the boat outing if he really did not want to go on the outing, but that Jason Winn had told him it was best if he did go.

The Defendant called Mr. Jamie Selby to testify. Mr. Selby identified himself as the current General Manager with Oldfield and that he held that position on August 8, 2012. Mr. Selby testified that the boat outing was Jason Winn's idea but that he helped arrange the boat outing and it was not mandatory. Mr. Selby stated that the outing was meant as a reward and that since Oldfield owned the boat and had a captain he thought it a great idea. Mr. Selby stated that the Claimant was not paid for the trip. Mr. Selby stated that though the club was closed for golfing that the Claimant would normally be working but it depended on the particular staffing situation.

Upon cross-examination Mr. Selby acknowledged that only members of Employer's kitchen were invited on the August 8, 2012 boat outing, but that he had intended to go but could not due to a scheduling complication. Mr. Selby did not know if the Claimant had been notified that there was an option to invite someone else but did not tell the Claimant of that option directly.

Mr. Selby admitted that the boat was owned by Oldfield and the boat captain was an employee of Oldfield. Mr. Selby admitted that on a similar trip to Turkey Hill for clay shooting that all attending were salaried employees and none had to use vacation days to get paid for that trip. Mr. Selby also acknowledged a similar trip to Palmetto Bluff in which everyone attending was paid for their time in attendance.

II. APA Review

All APAs submitted were reviewed. Among the APAs the deposition of Jason Winn is noted. In his deposition Mr. Winn stated that he currently works for Employer and has been the executive chef for three years including on August 8, 2012. Mr. Winn testified that he was on the boat outing and witnessed the Claimant fall and scream in pain. Mr. Winn could not recall the discussions on the boat outing and whether or menu changes had been discussed. Mr. Winn indicated that he made the work schedule for the week of the accident but could not explain why the word "OFF" was capitalized in the instance of the August 8, 2012 date. Mr. Winn testified that for the outing the Employer provided the fishing rods, all the gear and the food they took out with them on the outing.

Medical Records Review Summary:

Medical records reveal that Mr. Cox received emergency care treatment for the injury to his knee from Hilton Head Hospital on August 8, 2012. On August 16, 2012 Dr.

Nicholas Mihelic performed an arthroscopy and medial-only meniscectomy on the Claimant's right knee and diagnosed the Claimant with a torn ACL and torn medial medial meniscus of the right knee. On October 8, 2012 Dr. Robert Gavin performed the ACL reconstruction and subchondroplasty to the Claimant's right knee also diagnosing a bone contusion over the lateral femoral condyle. On October 22, 2012 Dr. Gavin performed knee surgery on the Claimant to remove a surgical screw that was determined to be too long and replaced it with a shorter screw. The Claimant has also received physical therapy and prescription medication as a result of the injury to his knee.

Based upon the testimony, APA submissions and the Commission's file, the Appellate Panel incorporates the following findings of fact and conclusions of law of the single commissioner, each to be construed as the other to the extent necessary:

FINDING OF FACT

1. On August 8, 2012 the Claimant has suffered an injury by accident to his right knee arising out of and in the course and scope of his employment with Hampton Golf, Inc. (Employer).

2. That Defendants are responsible for medical care for injuries to the Claimant's right knee related to the injury suffered by the Claimant on August 8, 2012.

3. That the Claimant's average weekly wage is $457.03 yielding a compensation rate of $304.70

4. That notice of the injury was timely given to the Employer.

5. That the fishing outing of August 8, 2012 was scheduled on a day in which the Claimant would normally work, excepting for the aerification of the greens.

6. The fishing outing was planned and organized by the Employer.

7. The fishing trip was during the Claimant's normal working hours.

8. The Employer supplied the boat, the captain and all the equipment for the trip.

9. Both Claimant and a co-worker stated that the trip was both a reward and a team building exercise.

10. Employer has a history of using recreational activities as team building exercises.

11. Claimant is entitled to past causally related medical treatment for the injuries causally related and incurred due to the August 8, 2012 accident.

12. Claimant is entitled to 19 weeks of Total Temporary Disability benefits and to 10 weeks of Partial Temporary Disability benefits.

14. Claimant has not reached MMI and is in need of additional medical treatment for his right knee injury, which is causally related to the accident of August 8, 2012.

CONCLUSIONS OF LAW

1 In Leopard v. Blackman-Uhler, 318 S.C. 369, 458 S.E.2d 41 (1995), the South Carolina Supreme Court listed several factors to consider in determining whether recreational activities are within the course of employment: time and place, degree of employer initiative, financial support and equipment furnished, and employer benefit. Based on these factors we find the fishing trip to be within the course of the Claimant's employment. Although the claimant was scheduled off that day, we find that was because of the aerification of the greens at the golf course. The fishing trip was during the

claimant's normal working hours. The employer planned and organized the trip. The Employer supplied the boat, the captain, and all the equipment for the trip. Both the claimant and his co-worker stated that the trip was both a reward for their hard work and also a team-building exercise. The employer has a history of using recreational activities as team-building exercises.

2 After consideration of the testimony, review of the depositions, all APAs and all memorandum of law submitted that we find that the factors to be considered, as set forth in the Leopard case support that the boat outing of August 8, 2012 in this case was in the course and scope of the Claimant's employment.

3 Claimant proved by a preponderance of the evidence that he was injured in the course and scope of employment and has suffered a compensable injury to his right knee for which he is entitled to past incurred medical care, that he is not at MMI and is in need of ongoing medical care per Dr. Gavin, and that he has a compensation rate of $304.70.

4. Claimant is entitled to 19 weeks of TTD and 10 weeks of TPD benefits.

ORDER & AWARD

Based upon a review of the evidence submitted below, the Appellate Panel hereby AFFIRMS IN FULL the single Commissioner's Decision & Order, incorporating the following award verbatim:

IT IS THEREFORE ORDERED that, the Claimant suffered a compensable injury to his right knee and is entitled to his past causally related medical treatment. Claimant has

not reached MMI and is entitled to, and in need of, additional medical treatment. The Claimant is entitled to and awarded 19 weeks TTD and 10 weeks of TPD benefits.

IT IS SO ORDERED.

THE SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION

Gene McCaskill, Commissioner
For the Appellate Panel

FULL AFFIRMATION
WCC 1210233 Appellate Panel Order

CONCUR

Aisha Taylor, Commissioner

Susan S. Barden, Commissioner

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 Kim Falls on September 22, 2014