BEFORE THE SOUTH CAROLINA
WORKERS' COMPENSATION COMMISSION'S
APPELLATE PANEL

RUDY BARREIRA ALMAZAN, Employee/Respondent, v. HENSON & ASSOCIATES, Employer, and AUTO OWNERS INSURANCE, Carrier, Appellants, and S.C. UNINSURED EMPLOYERS FUND., Respondent.	WCC FILE NO. 0919909 DECISION & ORDER

RECEIVED
JUL 17 2015
SC Court of Appeals

Statement of the Case

This matter is before the Commission's Appellate Panel pursuant to the Form 30 filed by Henson & Associates and Auto Owners Insurance, by which they appeal the Decision and Order of Commissioner Andrea Roche dated July 8, 2014. Commissioner Roche denied the Appellants' Petition to Transfer Liability to the Uninsured Employers Fund. Commissioner Roche found that Henson & Associates "should have been on notice to investigate to confirm whether or not there was coverage in South Carolina." The Appellants, Henson & Associates and Auto Owners Insurance, argue that Commissioner Roche erred in denying the Petition to Transfer Liability. The Appellate Panel agrees. The overwhelming weight of the evidence in the record shows that the Appellants met all of the requirements to transfer liability to the Uninsured Fund pursuant to

§42-1-415. Therefore, the decision of Commissioner Roche is REVERSED.

Procedural History

Commissioner Roche entered the following findings of fact and conclusions of law on July 8, 2014:

> *1. The certificate of insurance at issue does not indicate coverage in South Carolina anywhere on its face.*
>
> *2. The producer, insured and certificate holder were all shown on the certificate to be out of state.*
>
> *3. Based on the case of Hopper v. Terry Hunt Construction, 383 S.C. 310, 680 S.E. 1, 2009) the employer should have been on notice to investigate to confirm where or not there was coverage in South Carolina.*
>
> *4. The carrier has failed to meet the requirements of Section 42-1-415 and related case law to enable it to transfer liability to the SCUEF. Therefore, Henson & Associates, through its carrier, Auto Owners Insurance, shall remain liable for this claim.*
>
> *5. The undersigned does not agree with the argument made by the SCUEF that the request to transfer liability should be denied based on the lack of an authorized signature. The certificate was signed, and the employer had no further duty to investigate that signature.*
>
> ***
>
> *1. Pursuant to Section 42-1-415 and R. 67-415 and relative case law, the Petitioner is denied its motion to transfer liability to the SCUEF.*

The Appellants filed a Form 30 on July 18, 2014 raising the following grounds and exceptions:

> *1. The single Commissioner erred as a matter of fact and as matter of law in finding that based on the case of Hopper v. Terry Hunt Construction, the employer should have been on notice to investigate to confirm whether or not there was coverage in South Carolina, the error being that Section 42-1-415 does not require the employer to investigate further once a certificate of insurance on the proper form has been presented by a lower tier sub-contractor;*
>
> *2. The single Commissioner erred as a matter of fact and as matter of law in finding Fact No. 4 and finding that the carrier has failed to meet the requirements of Section 42-1-415 and related case law to enable it to transfer liability to the SCUEF. Therefore, Henson & Associates, through its carrier, Auto Owners Insurance, shall remain liable for this claim, the error being that the carrier did meet its burden of proving all of the requirements of Section 42-1-415;*
>
> *3. The single Commissioner erred as a matter of fact and as a matter of law in rul-*

ing that pursuant to Section 42-1-415, and Regulation 67-415 and relative case law, the Petitioner was denied its Motion to Transfer Liability to the SCUEF;

4. The single Commissioner erred as a matter of fact and as a matter of law in ruling that the Employer, Henson & Associates, through its carrier, Auto Owners Insurance, is denied its Petition to transfer liability to the SCUEF and therefore, remains liable for the claim, the error being that the carrier met all of the requirements to transfer liability under Section 42-1-415 and Regulation 67-415.

5. The single Commissioner erred in denying the carrier's Petition to Transfer Liability to the UEF, the error being that the Commissioner found that undisputed evidence in the record shows that the employer and therefore the carrier met all the requirements under the plain language of Section 42-1-415 and Regulation 67-415 and therefore the Petition to transfer liability should have been granted as a matter of law.

Discussion

Henson & Associates and Auto Owners Insurance ("Appellants") petitioned to transfer liability for the above-referenced claim to the Uninsured Employers Fund ("UEF") and seeks reimbursement of all benefits paid to or on behalf of the Claimant pursuant to S.C. Code Ann. § 42-1-415. Section 42-1-415 provides that when a subcontractor "has represented himself...as having workers' compensation insurance" to a higher tier contractor, the higher tier contractor "must be relieved of any and all liability under this title." (emphasis added). In order to transfer liability under the statute, the statute only requires that the Appellants prove:

- Documentation of insurance was collected at the time the subcontractor "was engaged to perform work;"
- Documentation of insurance was "turned over to the Commission" at the time a claim is filed by the employee;

- Documentation of insurance was on a "standard form acceptable to the commission;"

Consistent with § 42-1-415, the Commission promulgated S.C. Code Reg. 67-415 to specify that a Certificate of Insurance "shall serve as documentation of insurance" and that the Certificate "must be dated, signed, and issued by an authorized representative of the insurance carrier for the insured." S.C. Code Reg. 67-415 (Supp.2007).[1] Of course, the Regulation should not be interpreted to alter or add to the simple requirements of § 42-1-415, because the Commission had no authority to do so. Goodman v. City of Columbia, 318 S.C. 488, 490, 458 S.E.2d 531, 532 (1995); Banks v. Batesburg Hauling Co., 202 S.C. 273, 24 S.E.2d 496, 499 (1943); *see also* Society of Prof'l Journalists v. Sexton, 283 S.C. 563, 567, 324 S.E.2d 313, 315 (1984) (holding that "[a]lthough a regulation has the force of law, it must fall when it alters or adds to a statute."). Therefore, Regulation 67-415 does not and cannot do more than define what form qualifies as a "standard form acceptable to the commission."

Because the Appellants collected a Certificate of Insurance at the time the subcontractor,

[1] Note that S.C. Code Reg. 67-415 was amended after the accident in this case; therefore, the current version regulation is not applicable.

Contreras Panels, was engaged to perform work[2], because the Certificate was signed and dated, and because the Certificate was turned over to the Commission prior to the adjudication of the employee's claim, the Appellants have met all of the statutory requirements of S.C. Code Ann. § 42-1-415 and are entitled to transfer liability to, and reimbursement from, the UEF. To date, the UEF has refused to accept liability, arguing that the Appellants are required to meet additional requirements that are not contained in the statute.

The UEF suggests that the Appellants were required to conduct an investigation into the identity of the person who signed the Certificate of Insurance as the "authorized representative" and whether he was "acting outside of the scope of any authority he may have had." The UEF

---

[2] The job on which the Claimant was injured began in April 2009. (Smith APA #2, p. 35; H.T. p. 100, l. 22). Prior beginning work, Contreras was required to provide a Certificate of Insurance to Henson and Associates. (H.T. p. 100, l. 22; Killen APA #2, p. 20; Killen APA #2, p. 26) Contreras Paneling provided Henson with a Certificate of Insurance dated April 23, 2009. (Smith APA #3, p. 38). The Certificate of Insurance dated April 23, 2009 was provided before the work began and was issued directly by Associates Benefits to Henson. (H.T. p. 101, l. 13). Prior to the expiration of the first Certificate of Insurance, a second certificate was obtained and dated May 8, 2009. (H.T. p. 102, l. 21; APA #8, p. 88). The May 8, 2009 Certificate of Insurance lists the Insurance Company of Pennsylvania as the workers' compensation carrier. (H.T. p. 102, l. 21; APA #8, p. 88). Kenneth Henson, President of Henson & Associates, believed that Contreras Paneling had workers' compensation coverage in South Carolina, as the Certificate specifies the York High School project in the description of operations. (H.T. p. 103, l.15). Kenneth Henson also testified that he obtained a separate Certificate of Insurance for each job. (H.T. p. 99, l. 6).

also argues that Henson had an obligation to investigate whether the Certificate on Insurance was for a policy that provided coverage in South Carolina. Commissioner Roche specifically rejected the UEF's argument that Henson was required to investigate the authenticity of the signature on the Certificate of Insurance and we agree that this argument is without merit. Accordingly, the only issue is whether the plain language of § 42-1-415 required Henson to do more to meet the requirements to transfer liability to the UEF.

S.C. Code Ann. § 42-1-415 does not require the Appellants to investigate the authenticity of a fully-completed Certificate of Insurance or to investigate whether the policy in question provides South Carolina coverage. In this case, each and every section of the Certificate of Insurance was completed: *the name of the producer, the name of the insured, the name of the insurance company, the date, the policy number, the policy dates, the policy limits, the description of operations, the name of the certificate holder, and an authorized representative's signature.* The fact that the Certificate of Insurance was fully completed clearly distinguishes the present case from that of Barton v. Higgs, 674 S.E.2d 145 (2009), which is cited by the UEF. In Barton, the Certificate of Insurance had no signature whatsoever and the Court held that the upstream contractor could not reasonably rely on an unsigned Certificate of Insurance without investigating further. However, Barton does not support the UEF's contention that the Appellants were required to investigate the authenticity of a fully completed Certificate or whether the policy provided coverage in South Carolina, as such an interpretation would have been beyond the scope of the Court's authority when § 42-1-415 says nothing about investigating the specific provisions of

the workers compensation policy, including whether the policy provided coverage in South Carolina. *See* City of Camden v. Brassell, 326 S.C. 556, 561, 486 S.E.2d 492, 495 (Ct.App.1997) (stating that "[w]here the language of the statute is clear and explicit, the court cannot rewrite the statute and inject matters into it which are not in the legislature's language.").

If the Legislature had intended to require the Certificate holder to do more than "collect documentation," the Legislature would have explicitly included such a requirement in the statute. Therefore, because the Legislature mandated no such investigation requirement, it is not even within the authority of the Courts or the Commission – by regulation or otherwise – to impose additional requirements or to amend this clear and unambiguous statute. *See* Harris v. Anderson County Sheriff's Office, 381 S.C. 357, 362, 673 S.E.2d 423, 425 (2009) (holding that "[t]he Court will give words their plain and ordinary meaning, and will not resort to a subtle or forced construction that would limit or expand the statute's operation.") (internal citations omitted); *see also* City of Camden v. Brassell, 326 S.C. 556, 561, 486 S.E.2d 492, 495 (Ct.App.1997) (stating that "[w]here the language of the statute is clear and explicit, the court cannot rewrite the statute and inject matters into it which are not in the legislature's language."); Timmons v. S.C. Tricentennial Comm'n, 254 S.C. 378, 402, 175 S.E.2d 805, 817 (1970) (observing that where the language of the statute is clear and explicit, the court cannot rewrite the statute and inject matters

into it that are not in the legislature's language).

Commissioner Roche also cited Hopper v. Terry Hunt Construction, 383 S.C. 310, 680 S.E. 2d 1, (2009) as authority for her finding that Henson was required to do more to satisfy the requirement of § 42-1-415. The Commissioner's reliance on Hopper is misplaced. In Hopper, the higher tier contractor, Kajima, hired Terry Hunt Construction ("Hunt") as a subcontractor to install pipe at a jobsite in Greenwood, South Carolina. Hunt had worked for Kajima on a previous project and at that time presented an Acord Form 25-S Certificate of Insurance indicating that Hunt had a workers' compensation policy *See* Hopper, 680 S.E.2d. 1, 2. The Certificate in *Hopper* showed coverage for the period from May 2, 2002 through December 31, 2002 and included all of the appropriate information in the "Description of Operations/Locations" section including the project number, subcontract number, and the claim deductible. *Id.* Before beginning work on the Greenwood project, Hunt presented the Certificate to Kajima showing coverage for January 1, 2003 through December 31, 2003, but unlike the previous Certificate, the "Description of Operations/Locations" was blank. Hopper's accident occurred on February 19, 2004, and Hunt did not have workers' compensation insurance. Kajima and its carrier, Zurich, were required to pay the Hopper's award of workers' compensation benefits and petitioned the Commission under § 42-1-415 to transfer liability to the UEF. The single commissioner ruled that Kajima and Zurich could not shift liability because the Certificate of Insurance did not indicate

that Hunt had coverage in South Carolina. The Appellate Panel, adopted the single commission's order in its entirety. The Circuit Court reversed and found that there was no evidence that the Certificate of Insurance showed that there was coverage only in Georgia and no coverage in South Carolina. Id. at p. 3. The Court of Appeals held that there was substantial evidence to support the Commission's finding that Kajima did not comply with the requirements of § 42-1-415. The Supreme Court granted Certiorari. *Id.*

In affirming the Commission's decision, the Supreme Court ruled as follows:

> "We find substantial evidence in the record to support the Commission's finding that Kajima failed to comply with the requirements of § 42-1-415(A). The Description of Operations box on the Certificate of Insurance was left blank and unlike the previous Certificate of Insurance that Kajima accepted, this Certificate contained no information regarding the coverage that the policy provided, the deductible amount, or the project to which the policy applied. In failing to fill out the entire Accord Form, Hunt essentially submitted an incomplete document purporting to show that it had a workers' compensation policy, which Kajima accepted. In our view, accepting an incomplete Acord Form does not constitute proper documentation." *Id.* at p 3.

The instant case is clearly distinguishable from Hopper. First, Hopper was a substantial evidence case. The Court found there was substantial evidence to support the commission's findings of fact. In addition, the facts of this case are distinguishable from Hopper. Henson accepted

a fully completed Certificate of Insurance. Every section of the Certificate of Insurance was completed and provided Henson & Associates with documentation purportedly showing that Gabriel Contreras had workers' compensation insurance. The Court in Hopper ruled that an "incomplete Acord Form does not constitute proper documentation." Here the Acord Form was fully completed and; therefore, Commissioner Roche's reliance on Hopper was misplaced.

The UEF also argues that the Accord Form must contain information specifically showing that the policy provided coverage in South Carolina. This argument is similarly without merit. There was no statute or regulation requiring that a Certificate of Insurance state that the policy provided coverage in South Carolina. Regulation 67-415 was amended on February 26, 2010 to provide:

> "For an out of state employer, the Acord Form 25-S is acceptable, provided the authorized representative of the insurance carrier for the insured affirms the following in an accompanying statement: South Carolina is a named state in section 3A or 3C of the declaration page of the insured's policy." *See* Reg. 67-415(A)(2).

This amendment is clear indicia that no such information was required prior to that amendment on February 26, 2010. There was no reason for Henson & Associates to request such information before accepting the Acord Form, which they reasonably relied upon.

S.C. Code Ann. § 42-1-415 only requires proof that the subcontractor (Contreras) *represented* itself as having workers' compensation insurance, not that it *actually* has such coverage. Similarly, nothing in § 42-1-415 requires that the producer or "authorized representative" have

actual authority. Instead, the Appellants were entitled to rely on the reasonable *representation* of authority.[3] The facts of the case show that the Certificate of Insurance provided to Henson was fraudulent. In other words, this was not a situation in which there was coverage in place and the policy lapsed prior to the accident. It appears the agency in Texas was issuing Certificates showing coverage when in fact there was never any policy. However, the Certificate of Insurance was completely filled out with policy numbers, dates of coverage, the location of the job in York County, the amount of coverage, the name of the carrier, and the signature of an authorized representative of the carrier. Section 42-1-415 does not require Henson to investigate whether there really was a policy or whether the policy provided coverage in South Carolina. Henson is only required to collect the documentation on the required forms as set forth in § 42-1-415(A) and Reg. 67-415(A). Henson & Associates reasonably relied on the Certificate they collected and;

---

[3] The greater weight of the evidence shows that Henson & Associates did, in fact, rely on the Certificates of Insurance they collected from Contreras. Despite the UEF's allegations to the contrary, the record contains the testimony of Wendy Henson, the company's office manager, who clearly stated that when she receives a Certificate of Insurance, she reads it, records that it was received, records the dates of coverage, and places the Certificate in a project file under the contractor's name. (W. Henson deposition p.18, lines 13—18; p.25, lines 8—10). Ms. Henson further testified that, looking at the face of the Certificate of Insurance she collected from Contreras, there was not anything that gave her pause to believe that it was not a valid Certificate of Insurance. (W. Henson deposition p. 13, lines 4-8). Instead, Ms. Henson relied upon the Certificates of Insurance provided by Contreras in making the decision to allow Contreras do work on the York High project. (W. Henson deposition p. 13, lines 9—12). This testimony is corroborated by the testimony of Kenneth Henson, as well as his sworn affidavit.

therefore, satisfied all of the statutory and regulatory requirements for a transfer of liability.

Therefore, based upon the undisputed evidence and the plain and unambiguous language of S.C. Code Ann. § 42-1-415, the greater weight of the evidence shows that Henson & Associates fully complied with the requirements of the Statute and therefore the Appellants are entitled to transfer liability to, and are further entitled to reimbursement from, the Uninsured Employers Fund.

Order

FINDINGS OF FACT

1. The job on which the Claimant, Almazan, was injured began in April 2009. (Smith APA #2, p. 35; H.T. p. 100, l. 22).

2. Prior beginning work, Almazan's employer, Contreras Paneling, was required to provide a Certificate of Insurance to Henson & Associates. (H.T. p. 100, l. 22; Killen APA #2, p. 20; Killen APA #2, p. 26).

3. Contreras Paneling provided Henson & Associates with an Acord Form Certificate of Insurance dated April 23, 2009. (Smith APA #3, p. 38).

4. The Certificate of Insurance dated April 23, 2009 was provided before the work by Contreras Paneling for Henson & Associates began and was issued directly by Associates Benefits to Henson. (H.T. p. 101, l. 13).

5. Prior to the expiration of the April 23, 2009 Certificate of Insurance, a second certificate dated May 8, 2009 was collected by Henson & Associates. (H.T. p. 102, l. 21; APA #8, p. 88).

6. The May 8, 2009 Certificate of Insurance lists the Insurance Company of Penn-

sylvania as the workers' compensation carrier. (H.T. p. 102, l. 21; APA #8, p. 88).

7. Henson & Associates reasonably believed that Contreras Paneling had workers' compensation coverage in South Carolina and reasonably relied upon the Certificates of Insurance collected from Contreras Paneling in allowing them to commence work at the York High School Project where the Claimant, Almazan, was injured. Kenneth Henson, President of Henson & Associates, testified that the Certificate specifies the York High School project in the description of operations. (H.T. p. 103, l.15). Kenneth Henson also testified that he obtained a separate Certificate of Insurance for each job. (H.T. p. 99, l. 6). Wendy Henson, office manager of Henson & Associates, clearly stated that when she receives a Certificate of Insurance, she reads it, records that it was received and records the dates of coverage. (W. Henson deposition p.18, lines 13—18; p.25, lines 8—10). Ms. Henson further testified that, looking at the face of the Certificate of Insurance she collected from Contreras Paneling, there was not anything that gave her pause to believe that it was not a valid Certificate of Insurance. (W. Henson deposition p. 13, lines 4-8). Instead, Ms. Henson testified that she relied upon the Certificates of Insurance provided by Contreras in making the decision to allow Contreras do work on their project. (W. Henson deposition p. 13, lines 9—12).

8. Both the April 23, 2009 and the May 8, 2009 Certificates of Insurance were signed and dated by an individual purporting to be the authorized representative of the insurance carrier. Both Certificates were fully completed. There was nothing odd or unusual about either of these Certificates of Insurance and, on their face, gave Henson & Associates no reason to doubt the veracity of the information contained therein. Therefore, Henson & Associates rea-

sonably relied upon these Certificates of Insurance as documenting valid workers' compensation coverage for their subcontractor.

9. Based upon the greater weight of the evidence, Contreras Paneling represented itself as having workers' compensation insurance at the time it was engaged to perform work for Henson & Associates. There is no requirement that there actually be insurance for Henson & Associates to rely on this representation when, as here, the Certificates of Insurance are complete and appear reasonable on their face.

CONCLUSIONS OF LAW

1. Pursuant to S.C. Code Ann. § 42-1-415, Henson & Associates collected documentation of insurance at the time its subcontractor, Contreras Paneling, was engaged to perform work.

2. Pursuant to S.C. Code Ann. § 42-1-415 and S.C. Code Reg. 67-415, the documentation of insurance collected by Henson & Associates was on a standard form acceptable to the Commission, namely a complete Acord Form Certificate of Insurance, which was dated, signed, and issued by a purportedly authorized representative of the insurance carrier for Contreras Paneling.

3. Pursuant to S.C. Code Ann. § 42-1-415, the documentation of insurance collected by Henson & Associates from Contreras Paneling was turned over to the Commission at the time the claim was filed by the Claimant Almazan.

4. Pursuant to S.C. Code Ann. § 42-1-415, because Contreras Paneling represented

4. Pursuant to S.C. Code Ann. § 42-1-415, because Contreras Paneling represented itself as having workers' compensation insurance to its higher tier contractor, Henson & Associates.

5. Having met all requirements of S.C. Code Ann. § 42-1-415 and S.C. Code Reg. 67-415, Henson & Associates and its carrier, Auto Owners Insurance, is relieved of any and all liability under the Workers' Compensation Act and liability is hereby transferred to the South Carolina Uninsured Employers Fund.

6. Further pursuant to S.C. Code Ann. § 42-1-415, the Uninsured Employers Fund shall reimburse Henson & Associates and its carrier, Auto Owners Insurance, for any and all benefits paid to or on behalf of the Claimant Almazan under the Workers' Compensation Act.

ORDER

ITS IS, THEREFORE, HEREBY ORDERED that the Decision and Order of Hearing Commissioner Roche dated July 8, 2014 is reversed.

IT IS FURTHER ORDERED that Henson & Associates and its carrier, Auto Owners Insurance, is relieved of any and all liability under the Workers' Compensation Act and liability is hereby transferred to the South Carolina Uninsured Employers Fund.

IT IS FURTHER ORDERED that Henson & Associates and its carrier, Auto Owners Insurance, shall be reimbursed by the South Carolina Uninsured Employer's Fund for any and all

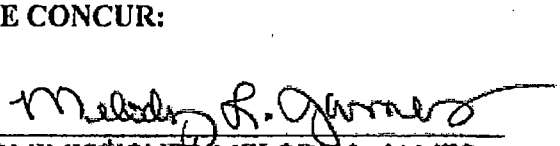
arising out of the accident of September 26, 2009, including any temporary disability, permanent disability, and/or any causal medical expenses.

IT IS SO ORDERED!

COMMISSIONER GENE McCASKILL

DATE:_____

WE CONCUR:



COMIMISSIONER MELODY L. JAMES

COMMISSIONER AISHA TAYLOR

1262/328\APPELLATE PANEL ORDER

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 Eugenia Hollmon on June 17, 2015