

APPELLATE PANEL
DECISION AND ORDER
OF THE
SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION

WCC File No.: 1505359

Adrian Adame Salgado
Claimant/Appellant,

v.

Patterson Construction, Inc.,
Defendant/Respondent.

FULL REVERSAL

Appellate Panel Review held in Columbia,
South Carolina on January 12, 2016 per notices
timely and properly served on all parties of interest.

Appellate Panel Decision and Order filed:

February 23rd, 2016

APPEARANCES:

Claimant/Appellant represented by Joseph DuBois, Esquire and
Zachary S. Naert, Esquire of Naert and DuBois, LLC

Defendant/Respondent represented by William T. Littlejohn, Esquire of
Holder, Padgett, Littlejohn and Prickett, LLC

STATEMENT OF THE CASE

Adrian Adame Salgado (Claimant/Appellant) suffered serious injuries to his back and legs while working for Patterson Construction, Inc. (Employer/Respondent) on May 4, 2015. Claimant, a carpenter, suffered the injuries in an automobile accident while driving a work van

RECEIVED
MAR 09 2016
SC Court of Appeals

owned by Employer. As requested by the Employer, Claimant was driving a coworker to the work site. The Employer also required that Claimant be responsible for maintaining the tools and equipment stored in the work van, take the work van home overnight, and bring the work van and tools and equipment therein to the work sites.

At the time of the accident, Claimant was driving his normal route on Joe Frazier Road to the work site. Claimant's son was sick that day and missed the school bus. Claimant's son's school was on the way to the work site, so Claimant gave his son a ride. When Claimant attempted to turn off of his normal work route of Joe Frazier Road, another vehicle passing illegally struck the work van being driven by Claimant on the driver's side. Claimant deviated his work route by a few feet, partially leaving the lane of traffic in which Claimant was driving the work van to the work sites each day.

Claimant sought compensability for the injuries to his back and legs and benefits under the South Carolina Workers' Compensation Act, including but not limited to causally-related medical treatment for his back and legs and temporary total disability benefits (TTD) from the date of injury, and continuing until Claimant reaches maximum medical improvement (MMI).

Defendant/Appellant (Defendant) denied Claimant's claim in its entirety. Defendant argued that Claimant's injuries to his back and legs did not arise out of and in the course and scope of Claimant's employment. Defendant argued that Claimant's deviation from his normal work route on Joe Frazier Road was an identifiable deviation from Claimant's normal route to work that was a substantial deviation taking Claimant out of his course and scope of employment and that claimant's accident was therefore not compensable under the South Carolina Workers' Compensation Act.

At the hearing before the Single Commissioner, the parties stipulated to an average weekly wage of \$600.00, resulting in a compensation rate of \$400.00. The Single Commissioner issued an

Decision and Order filed on October 27, 2015, finding that Claimant's personal deviation to take his son to school while *en route* to work was a substantial deviation taking Claimant outside of the course and scope of his employment, that Claimant's injuries sustained in the motor vehicle accident were not compensable, and that Claimant was not entitled to benefits under the South Carolina Workers' Compensation Act.

The undersigned Commissioners' written directives for preparing the Order herein were emailed to the parties on January 29, 2016.

FINDINGS OF FACT OF THE SINGLE COMMISSIONER

A record such as was necessary for a decision was made of the proceeding and after careful consideration and study of all the evidence, the following findings of fact are accordingly made.

IT IS FOUND AS A FACT THAT:

1. That Employee, Employer, and Carrier are subject to and bound by the terms and provisions of the South Carolina Workers' Compensation Act, as amended, with Adrian Adame Salgado as Employee-Claimant and Patterson Construction, Inc. as Employer and Builders Mutual Insurance Company as Carrier, Defendants.
2. That the average weekly wage of Employee at the time of the above-described accident was \$600.00, and his compensation rate was \$400.00.
3. That Claimant admits he turned off Joe Frazier Road and onto Possum Hill Road exclusively to complete the personal task of dropping off his son at Battery Creek High School.
4. That Claimant admits if his son had not been in the vehicle, he would not have made the turn onto Possum Hill Road and the accident would not have occurred.
5. That Claimant admits his employer neither told him to turn onto Possum Hill Road, nor sent him to Battery Creek High School for any reason.

6. That Claimant admits the only reason he turned left onto Possum Hill Road was because he needed to drop off his son at school.

7. That it is uncontroverted that Claimant deviated from the course and scope of his employment when the motor vehicle accident took place.

8. That Claimant's personal deviation from his normal route to work in order to drop his son at school rendered Claimant outside the course and scope of his employment.

9. That as a result of Claimant's deviation, the injuries he sustained in the motor vehicle accident are not compensable, and Claimant is not entitled to benefits under the Act.

CONCLUSIONS OF LAW OF THE SINGLE COMMISSIONER

Accordingly, as provided in § 42-17-40, SC Code Ann. (1976), as amended, it is the determination of this Commission that:

1. For a workers' compensation claim to be compensable, the injury must have occurred in the course and scope of the employee's employment. S.C. Ann. § 42-1-160 (2014). "[A]n injury occurs within the course of employment when it occurs within the period of employment, a place where the employee reasonably may be in performance of his duties, and while fulfilling those duties or engaged in something incidental thereto." *Nicholson v. S.C. Dep't of Soc. Servs.*, 405 S.C. 537, 748 S.E.2d 256 (Ct. App. 2013).

Here, Claimant admits he was involved in a motor vehicle accident during a personal deviation to take his son to school. Claimant was making a left hand turn onto Possum Hill Road from Joe Frazier Boulevard to drop his son off at Battery Creek High School, when he was struck by a third party. He admits the left hand turn onto Possum Hill Road was made for personal reasons and not in furtherance of his job duties.¹ Claimant admits this was a deviation

¹ Moreover, it was not "reasonably expected" that Claimant would be taking his son to school on the way to work. The employer provided the work van for Claimant to drive to and from work. He was expected to transport

from his path to work. As such, the facts demonstrating Claimant was on a personal deviation at the time of the accident is uncontroverted.

Claimant argues that taking his son to school was an insignificant deviation that did not remove him from the course of his employment. He asserts that making a personal trip in a motor vehicle that is less than a mile round trip does not remove an employee from the course and scope of employment. In other words, Claimant is asking the Commission to conclude an employee is in the course of employment while on a personal deviation (driving a child to school), which would greatly increase the course and scope of employment for employers across the state. It should be noted that our State Legislature has made no provision that supports the contention that an employer should be responsible for personal trips outside the course of an employee's employment. As such, Claimant is asking the Commission to liberally expand the scope of employment, an action limited to legislative authority.

In support of his position, Claimant points to a Court of Appeals case, *Gibson v. Spartanburg Sch. Dist. #3*, 338 S.C. 510, 526 S.E.2d 725 (Ct. App. 2000). In that case, the Court states, "an identifiable deviation from a business trip for personal reasons takes the employee out of the course of employment until the employee returns to the route of the business trip, unless the deviation is so small as to be disregarded as insubstantial." *Id.* Again, it is admitted Claimant's turn onto Possum Hill Road was for a non-work related purpose and he had not returned to his route to work when the motor vehicle accident occurred. Accordingly, even under the analysis of *Gibson*, the only remaining question is whether, "the deviation was so small as to be disregarded as insubstantial." *Id.* (emphasis added).

Leonardo Salgado to the work site in downtown Beaufort, South Carolina. The van only has a driver seat and a passenger seat. The back of the van has no seat and merely has storage for equipment/tools. There was not a seat or seat belt for the son to use. Consequently, the employer would have expected Claimant to follow State law and not permit a third person to ride in the vehicle without a seat or seatbelt.

In *Gibson*, the Court of Appeals found the employee's deviation was so small that it disregarded it as insubstantial (in other words, there was no deviation). However, that case is easily distinguishable from the facts of this claim. In *Gibson*, the employer sent the employee to Wal-Mart for the employer's supplies. While in Wal-Mart, the employee saw an item she wanted to buy for her child. As she reached for the item, it fell causing injuries. The Court concluded that while the item the employee was reaching for was not related to her work, that action was so small and insubstantial that it did not remove the employee from the course and scope of her employment. The employee was working on the clock, charged with going to Wal-Mart, and purchasing supplies; therefore, the attempted purchase of the personal item was merely an incidental action while the employee was engaged in work activities.

In contrast, to *Gibson*, here, Claimant was not on the clock; the employer did not direct Claimant to go to Battery Creek High School; the employer did not direct Claimant to turn onto Possum Hill Road; and the employer did not direct Claimant to take his son to school. Nothing in the record suggests Claimant's taking his son to school was in anyway incidental to his work activities. Claimant had one purpose when he turned off of his route to work and that was to take his son to school (non-work related). Additionally, there is a substantial difference between purchasing a personal item at a store (while purchasing items for an employer) and driving a vehicle for the personal task of taking a child to school in a van not even equipped for the undertaking. Moreover, from a risk standpoint, Claimant is asking this Commission to require an employer to be responsible for a far riskier mission (driving a vehicle for personal use) than merely grabbing an item for personal consumption, while shopping for items for the employer. There is nothing "so small" and "insubstantial" about driving a motor vehicle for the personal undertaking of delivering a child at school. Accordingly, deviating from a business trip for the

purpose of transporting a child to school is outside the course and scope of employment. Given the motor vehicle accident occurred during an identifiable deviation, which was not insubstantial, Claimant was outside the course and scope of employment when he was involved in a motor vehicle accident on May 4, 2015, rendering this claim not compensable.

2. Under South Carolina Code § 42-1-160, Claimant has failed to meet his burden that his injuries occurred within the course and scope of his employment, and therefore, Claimant is not entitled to any benefits under the South Carolina Workers' Compensation Act.

ORDER OF THE SINGLE COMMISSIONER

IT IS HEREBY ORDERED that given the motor vehicle accident occurred during an identifiable deviation, which was not insubstantial, Claimant was outside the course and scope of employment when he was involved in a motor vehicle accident on May 4, 2015, rendering this claim not compensable.

IT IS FURTHER ORDERED Claimant's injuries are not compensable, and Claimant is not entitled to benefits under the South Carolina Workers' Compensation Act.

No hearing costs are assessed in this instance.

IT IS SO ORDERED.

APPLICATION FOR REVIEW

Claimant/Appellant filed a Form 30 Application for Review and Addendum thereto on November 2, 2015, setting forth the following grounds for review:

CONCLUSIONS OF LAW THAT ARE CLEARLY ERRONEOUS

1. Did the Hearing Commissioner err in concluding as a matter of law that [u]nder South Carolina Code Section 42-1-160, Claimant has failed to meet his burden that his injuries occurred within the course and scope of his employment, and therefore, Claimant is not entitled to any benefits under the South Carolina Workers' Compensation Act" (Paragraph 2, VI. Conclusions of Law), the error being that this Conclusion of Law is clearly erroneous in consideration of the facts.

2. Did the Hearing Commissioner err in concluding as a matter of law that “[g]iven the motor vehicle accident occurred during an identifiable deviation, which was not insubstantial, Claimant was outside the course and scope of employment when he was involved in a motor vehicle accident on May 4, 2015, rendering this claim not compensable,” (Paragraph 1, VI. Conclusions of Law, unnumbered paragraph 6), the error being that this Conclusion of Law is clearly erroneous in consideration of the facts.
3. Did the Hearing Commissioner err in concluding as a matter of law that “[u]nder South Carolina Code Section 42-1-160, Claimant has failed to meet his burden that his injuries occurred within the course and scope of his employment, and therefore, Claimant is not entitled to any benefits under the South Carolina Workers’ Compensation Act” (Paragraph 2, VI. Conclusions of Law), the error being that this Conclusion of Law is clearly erroneous in consideration of the facts.

CONCLUSIONS OF LAW CONTROLLED BY AN ERROR OF LAW

4. Did the Hearing Commissioner err in concluding as a matter of law that “Claimant is asking the Commission to conclude an employee is in the course of employment while on a personal deviation (driving a child to school), which would greatly increase the course and scope of employment for employers across the state” (Paragraph 1, VI. Conclusions of Law, paragraph 3), the error being that this Conclusion of Law is controlled by an error of law.
5. Did the Hearing Commissioner err in concluding as a matter of law that “[i]t should be noted that our State Legislature has made no provision that supports the contention that an employer should be responsible for personal trips outside the course of an employee’s employment” (Paragraph 1, VI. Conclusions of Law, unnumbered paragraph 3), the error being that this Conclusion of Law is controlled by an error of law.
6. Did the Hearing Commissioner err in concluding as a matter of law that [u]nder South Carolina Code Section 42-1-160, Claimant has failed to meet his burden that his injuries occurred within the course and scope of his employment, and therefore, Claimant is not entitled to any benefits under the South Carolina Workers’ Compensation Act” (Paragraph 2, VI. Conclusions of Law,), the error being that this Conclusion of Law is controlled by an error of law.

CONCLUSIONS OF LAW THAT ARE BASED UPON ERRONEOUS FINDINGS OF FACT

7. Did the Hearing Commissioner err in concluding as a matter of law that “[m]oreover, it was not ‘reasonably expected’ that Claimant would be taking his son to school on the way to work” (Paragraph 1, VI. Conclusions of Law, Footnote 1), the error being that this Conclusion of Law is based upon erroneous findings of fact.

8. Did the Hearing Commissioner err in concluding as a matter of law that “[g]iven the motor vehicle accident occurred during an identifiable deviation, which was not insubstantial, Claimant was outside the course and scope of employment when he was involved in a motor vehicle accident on May 4, 2015, rendering this claim not compensable,” (Paragraph 1, VI. Conclusions of Law, unnumbered paragraph 6), the error being that this Conclusion of Law is based upon erroneous findings of fact.
9. Did the Hearing Commissioner err in concluding as a matter of law that, “[a]s such, Claimant is asking the Commission to liberally expand the scope of employment, an action limited to legislative authority” (Paragraph 1, VI. Conclusions of Law, unnumbered paragraph 3), the error being that this Conclusion of Law is based upon erroneous findings of fact.
10. Did the Hearing Commissioner err in concluding as a matter of law that, “[t]here is nothing ‘so small’ and ‘insubstantial’ about driving a motor vehicle for the personal undertaking of delivering a child at school” (Paragraph 1, VI. Conclusions of Law, unnumbered paragraph 6), the error being that this Conclusion of Law is based upon erroneous findings of fact.
11. Did the Hearing Commissioner err in concluding as a matter of law that, “[a]ccordingly, deviating from a business trip for the purpose of transporting a child to school is outside the course and scope of employment” (Paragraph 1, VI. Conclusions of Law, unnumbered paragraph 6), the error being that this Conclusion of Law is based upon erroneous findings of fact.
12. Did the Hearing Commissioner err in concluding as a matter of law that “[u]nder South Carolina Code Section 42-1-160, Claimant has failed to meet his burden that his injuries occurred within the course and scope of his employment, and therefore, Claimant is not entitled to any benefits under the South Carolina Workers’ Compensation Act” (Paragraph 2, VI. Conclusions of Law), the error being that this Conclusion of Law is based upon erroneous findings of fact.

**FINDINGS OF FACT THAT ARE
ACTUALLY CONCLUSIONS OF LAW**

13. Did the Hearing Commissioner err in finding as a fact that the “Claimant [was] outside the course and scope of his employment” (Paragraph 8, V. Findings of Fact), the error being that this Finding of Fact is actually a conclusion of law. Moreover, the same is not supported by a preponderance of the evidence.
14. Did the Hearing Commissioner err in finding as a fact “[t]hat as a result of Claimant’s deviation, the injuries he sustained in the motor vehicle accident are not compensable, and Claimant is not entitled to benefits under the Act” (Paragraph 9, V. Findings of Fact), the error being that this Finding of Fact is actually a conclusion of law. Moreover, the same is not supported by a preponderance of the evidence.

FINDINGS OF FACT THAT, IF CONSIDERED CONCLUSIONS OF LAW, ARE
CONTROLLED BY AN ERROR OF LAW

15. Did the Hearing Commissioner err in finding as a fact “[t]hat as a result of Claimant’s deviation, the injuries he sustained in the motor vehicle accident are not compensable, and Claimant is not entitled to benefits under the Act” (Paragraph 9, V. Findings of Fact), the error being that this Finding of Fact is actually a conclusion of law. Moreover, the same is controlled by an error of law.

FINDINGS OF FACT THAT, IF CONSIDERED CONCLUSIONS OF LAW, ARE
BASED UPON ERRONEOUS FINDINGS OF FACT

16. Did the Hearing Commissioner err in finding as a fact that the “Claimant [was] outside the course and scope of his employment” (Paragraph 8, V. Findings of Fact), the error being that this Finding of Fact is actually a conclusion of law. Moreover, the same is based upon erroneous findings of fact.
17. Did the Hearing Commissioner err in finding as a fact “[t]hat as a result of Claimant’s deviation, the injuries he sustained in the motor vehicle accident are not compensable, and Claimant is not entitled to benefits under the Act” (Paragraph 9, V. Findings of Fact), the error being that this Finding of Fact is actually a conclusion of law. Moreover, the same is based upon erroneous findings of fact.

FINDINGS OF FACT NOT SUPPORTED BY A
PREPONDERANCE OF THE EVIDENCE

18. Did the Hearing Commissioner err in finding as a fact that “Claimant admits he turned off Joe Frazier Road and onto Possum Hill Road” (Paragraph 3, V. Findings of Fact), the error being that this Finding of Fact is not supported by a preponderance of the evidence.

CONCLUSIONS OF LAW THAT ARE
ACTUALLY FACTUAL FINDINGS OR ARGUMENTATIVE

19. The following are listed in Paragraph 1, VI. Conclusions of Law, but appear to be findings of fact or argumentative, not conclusions of law:
- a. “Here, Claimant admits he was involved in a motor vehicle accident during a personal deviation to take his son to school. Claimant was making a left hand turn onto Possum Hill Road from Joe Frazier Boulevard to drop his son off at Battery Creek High School, when he was struck by a third party. He admits the left hand turn onto Possum Hill Road was made for personal reasons and not in furtherance of his job duties.² Claimant admits this was a deviation from his

path to work. As such, the facts demonstrating Claimant was on a personal deviation at the time of the accident is uncontroverted.”

- b. ¹ Moreover, it was not “reasonably expected” that Claimant would be taking his son to school on the way to work. The employer provided the work van for Claimant to drive to and from work. He was expected to transport Leonardo Salgado to the work site in downtown Beaufort, South Carolina. The van only has a driver seat and a passenger seat. The back of the van has no seat and merely has storage for equipment/tools. There was not a seat or seat belt for the son to use. Consequently, the employer would have expected Claimant to follow State law and not permit a third person to ride in the vehicle without a seat or seatbelt.
- c. “Claimant argues that taking his son to school was an insignificant deviation that did not remove him from the course of his employment. He asserts that making a personal trip in a motor vehicle that is less than a mile round trip does not remove an employee from the course and scope of employment. In other words, Claimant is asking the Commission to conclude an employee is in the course of employment while on a personal deviation (driving a child to school), which would greatly increase the course and scope of employment for employers across the state. It should be noted that our State Legislature has made no provision that supports the contention that an employer should be responsible for personal trips outside the course of an employee’s employment. As such, Claimant is asking the Commission to liberally expand the scope of employment, an action limited to legislative authority.”
- d. “Again, it is admitted Claimant’s turn onto Possum Hill Road was for a non-work related purpose and he had not returned to his route to work when the motor vehicle accident occurred.”
- e. “In contrast, to *Gibson*, here, Claimant was not on the clock; the employer did not direct Claimant to go to Battery Creek High School; the employer did not direct Claimant to turn onto Possum Hill Road; and the employer did not direct Claimant to take his son to school. Nothing in the record suggests Claimant’s taking his son to school was in anyway incidental to his work activities. Claimant had one purpose when he turned off of his route to work and that was to take his son to school (non-work related). Additionally, there is a substantial difference between purchasing a personal item at a store (while purchasing items for an employer) and driving a vehicle for the personal task of taking a child to school in a van not even equipped for the undertaking. Moreover, from a risk standpoint, Claimant is asking this Commission to require an employer to be responsible for a far riskier mission (driving a vehicle for personal use) than merely grabbing an item for personal consumption, while shopping for items for the employer.”

**CONCLUSIONS OF LAW THAT, IF CONSIDERED FINDINGS OF FACT, ARE
NOT SUPPORTED BY A PREPONDERANCE OF THE EVIDENCE**

20. Did the Hearing Commissioner err in concluding as a matter of law that “[m]oreover, it was not ‘reasonably expected’ that Claimant would be taking his son to school on the way to work” (Paragraph 1, VI. Conclusions of Law, Footnote 1), the error being that this Conclusion of Law is a finding of fact. Moreover, the same is not supported by a preponderance of the evidence.
21. Did the Hearing Commissioner err in concluding as a matter of law that “[c]onsequently, the employer would have expected Claimant to follow State law and not permit a third person to ride in the vehicle without a seat or seatbelt” (Paragraph 1, VI. Conclusions of Law, Footnote 1), the error being that this Conclusion of Law is a finding of fact. Moreover, the same is not supported by a preponderance of the evidence.
22. Did the Hearing Commissioner err in concluding as a matter of law that “Claimant is asking the Commission to conclude an employee is in the course of employment while on a personal deviation (driving a child to school), which would greatly increase the course and scope of employment for employers across the state. It should be noted that our State Legislature has made no provision that supports the contention that an employer should be responsible for personal trips outside the course of an employee’s employment. As such, Claimant is asking the Commission to liberally expand the scope of employment, an action limited to legislative authority” (Paragraph 1, VI. Conclusions of Law, unnumbered paragraph 3), the error being that this Conclusion of Law is a finding of fact. Moreover, the same is not supported by a preponderance of the evidence.”
23. Did the Hearing Commissioner err in concluding as a matter of law that “[a]gain, it is admitted Claimant’s turn onto Possum Hill Road was for a non-work related purpose and he had not returned to his route to work when the motor vehicle accident occurred” (Paragraph 1, VI. Conclusions of Law, unnumbered paragraph 4), the error being that this Conclusion of Law is a finding of fact. Moreover, the same is not supported by a preponderance of the evidence.”
24. Did the Hearing Commissioner err in concluding as a matter of law that “[i]n contrast, to *Gibson*, here, Claimant was not on the clock; the employer did not direct Claimant to go to Battery Creek High School; the employer did not direct Claimant to turn onto Possum Hill Road; and the employer did not direct Claimant to take his son to school. Nothing in the record suggests Claimant’s taking his son to school was in anyway incidental to his work activities. Claimant had one purpose when he turned off of his route to work and that was to take his son to school (non-work related). Additionally, there is a substantial difference between purchasing a personal item at a store (while purchasing items for an employer) and driving a vehicle for the personal task of taking a child to school in a van not even equipped for the undertaking. Moreover, from a risk standpoint, Claimant is asking this Commission to require an employer to be responsible for a far riskier mission (driving a vehicle for personal use) than merely grabbing an item for personal consumption, while shopping for items for the employer” (Paragraph 1, VI. Conclusions

of Law, unnumbered paragraph 6), the error being that this Conclusion of Law is a finding of fact. Moreover, the same is not supported by a preponderance of the evidence

GROUND FOR REVIEW

In an appellate review, the Appellate Panel shall, pursuant to S.C. Code Ann. Section 42-17-50, review the award, weigh the evidence as presented at the initial hearing and, if good grounds be shown therefor, make its own Findings of Fact and reach its own Conclusions of Law, consistent with, or inconsistent with, those of the Single Commissioner. After a careful review of the instant case, the Appellate Panel, by unanimous vote, has fully reversed the Order of the Single Commissioner.

FULL COMMISSION APPELLATE PANEL'S FINDINGS OF FACT

Based upon the stipulations of the parties, testimony, and evidence received and produced at the hearing, we find the following facts based upon the preponderance of the evidence:

1. Each party is subject to and bound by the terms and provisions of the South Carolina Workers' Compensation Act, S.C. Code Ann. §§ 42-1-10 *et. seq.*
2. The Full Commission Appellate Panel's directives were e-mailed to the parties on January 29, 2016.
3. Claimant is a 42-year-old male who works as a carpenter for Patterson Construction, Inc.
4. Claimant's average weekly wage is \$600.00, resulting in a compensation rate of \$400.00.
5. Claimant injured his back and legs on May 4, 2015, in a motor vehicle accident while he was driving an Employer-owned van.
6. Claimant was involved in a motor vehicle accident on Joe Frazier Road, the same being Claimant's regular route to the Employer's work site.

7. Claimant had two other passengers in the Employer-owned van, a co-worker whom Claimant was instructed to drive to the work site each morning of work and Claimant's minor child.

8. Claimant was required to drive the Employer-owned van home each night and to Employer's work site each morning of work.

9. Claimant was transporting Employer-owned tools and items necessary for completion of work at the Employer's work site when the motor vehicle accident occurred.

10. Claimant was on the normal route to work and transporting a co-worker to the Employer's work-site, transporting Employer-owned tools, and driving the Employer-owned van that Claimant was required to drive to the work-site each morning.

11. On the morning of the subject motor vehicle accident, Claimant's minor child missed the school bus.

12. On the morning of the subject motor vehicle accident, Claimant gave his son a ride, as Claimant's son's school was on the way and on the same route as Claimant's normal work route to Employer's work site.

13. When Claimant was involved in the subject motor vehicle accident, he had just begun to attempt a left hand turn off of Joe Frazier Road and onto Possum Hill Road.

14. When the subject motor vehicle accident occurred, Claimant had not substantially deviated from Joe Frazier Road, Claimant's normal route to Employer's work site.

15. Claimant's accounts of the accident are consistent.

16. Claimant's accounts of the accident are consistent with the documentation of the work accident and the medical records.

17. The accident report and statements given contemporaneous to the accident support the medical evidence indicating an injury to Claimant's back and legs, injuries for which a causal connection to Claimant's employment is established.

18. Claimant has offered credible medical evidence to establish that his back and leg injuries on May 4, 2015, were proximately caused by his employment.

19. Claimant suffered a compensable injury to his back and legs on May 4, 2015, and is therefore entitled to workers' compensation benefits.

20. Claimant has been unable to work since the date of the injury on May 4, 2015, due to the work accident to his back and legs.

21. Claimant is entitled to causally-related medical treatment.

22. Claimant is entitled to receive temporary total disability benefits from May 4, 2015, to date and continuing until claimant reaches maximum medical improvement or by motion of either party.

FULL COMMISSION APPELLATE PANEL'S CONCLUSIONS OF LAW

Based upon the above statement of the case, evidence of the case, and the findings of fact, the following conclusions of law are made, setting forth the provisions of the South Carolina Workers' Compensation Act, S.C. Code Ann. §§ 42-1-10 *et. seq.* (1985 & Supp.), and the applicable case law:

1. "Workers' compensation law is to be liberally construed in favor of coverage in order to serve the beneficent purpose of the Workers' Compensation Act." *Nicholson v. S.C. Dept. of Soc. Servs.*, Opinion No. 27478 (Jan. 14, 2015) (citing *James v. Anne's Inc.*, 390 S.C. 188, 198 (2010)).

2. S.C. Code Ann. § 42-1-160 (1985 & Supp. 2008) provides that injuries resulting from an accident that arises out of and occurs in the course of employment are compensable.

3. An injury arises out of the employment when there is apparent to the rational mind, upon consideration of all circumstances, a causal relationship between conditions under which the work is to be performed and the resulting injury. *Jennings v. Chambers Dev. Co.*, 335 S.C. 249, 516 S.E.2d 453 (Ct. App. 1999).

4. An injury occurs within the course of employment when it occurs within the period of employment, at a place where the employee reasonably may be in the performance of his duties, and while fulfilling those duties or engaged in something incidental thereto. *Nicholson v. S.C. Dep't of Soc. Servs.*, 405 S.C. 537, 748 S.E.2d 256 (S.C. App. 2013).

5. An identifiable deviation from a business trip for personal reasons takes the employee out of the course of employment until the employee returns to the route of the business trip, unless the deviation is so small as to be disregarded as insubstantial." *Gibson v. Spartanburg Sch. Dist. # 3*, 338 S.C. 510, 522-23 (Ct. App. 2000).

6. Any deviation by Claimant was so small that it is to be disregarded as insubstantial, such that Claimant's accident and injuries occurred within the course and scope of employment and, as such, are compensable under the South Carolina Workers' Compensation Act.

7. Injuries to Claimant's back and legs are causally related to the May 4, 2015 motor vehicle accident, and Claimant is entitled to all causally-related medical treatment related thereto.

8. S.C. Code Ann. § 42-1-40 outlines the method for computing a claimant's average weekly wage. "The statute provides an elasticity or flexibility with a view toward always

achieving the ultimate objective of reflecting fairly a claimant's probable future earning loss. The objective of wage calculation is to arrive at a fair approximation of the claimant's probable future earning capacity. *Sellers v. Pinedale Residential Ctr.*, 350 S.C. 183, 191, 564 S.E.2d 694, 698 (Ct. App. 2002).

9. S.C. Code Ann. § 42-9-10 provides for the calculation and payment of temporary total disability benefits based on a claimant's average weekly wage during the time the claimant's incapacity for work resulting from an injury is total.

10. Worker's compensation benefits accrue along a time continuum wherein temporary disability benefits are available from the date of injury through the date of maximum medical improvement. *Hendricks v. Pickens County*, 335 S.C. 405, 517 S.E.2d 698 (Ct. App. 1999).

11. Maximum medical improvement is a term used to indicate that a person has reached such a plateau that in the physician's opinion there is no further medical treatment that will lessen the degree of impairment. *Bass v. Kenco Group*, 366 S.C. 450, 622 S.E.2d 577 (Ct. App. 2005).

12. Claimant is entitled to temporary total disability benefits in the amount of the stipulated compensation rate of \$400.00 per week from the date of injury of May 4, 2015, to date and continuing until Claimant reaches maximum medical improvement, or by motion of either party.

ORDER

Based upon the above Statement of the Case, Findings of Fact of the Full Commission, and Conclusions of Law of the Full Commission, the following order is made. It is hereby:

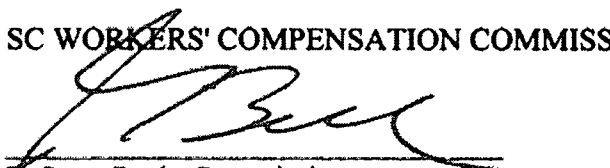
ORDERED that the Decision and Order of the Single Commissioner filed in the above-captioned matter on October 27, 2015, be, and hereby is, **FULLY REVERSED** in its entirety by the Appellate Panel and the same shall constitute the Decision and Order of the Appellate Panel such that Claimant's claim is deemed compensable and Claimant is entitled to benefits under the South Carolina Workers' Compensation Act; it is further

ORDERED that the Claimant is entitled to temporary total disability benefits in the amount of the stipulated compensation rate of \$400.00 per week from the date of injury of May 4, 2015, to date and continuing until Claimant reaches maximum medical improvement, or by motion of either party; and it is further

ORDERED that the Claimant is entitled to all casually-related medical treatment.

IT IS SO ORDERED.

SC WORKERS' COMPENSATION COMMISSION



T. Scott Beck, Commissioner

FULL REVERSAL:

WE CONCUR:



Aisha Taylor, Commissioner



Gene McCaskill, 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 February 23, 2016