

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

**RECEIVED**  
MAR 23 2016  
SC Court of Appeals

**W.C.C. FILE NO.: 1316470**

**ELIAS REYNA, CLAIMANT**

**V.**

**FENERLY INC./TONYS PLACE OF SUMTER LLC, EMPLOYER**

**AND**

**FOREMOST SIGNATURE INSURANCE CO., CARRIER**

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Appellate Panel Review held in Columbia,  
South Carolina, on September 22, 2015, per notices  
timely and properly served upon all parties  
of Interest.

Appellate Panel Decision and Order filed:

*January 12th, 2016*

**APPEARANCES:**

Appellant-Defendant represented by  
MGC Insurance Defense with  
C. Barrett Burley appearing.

Respondent-Claimant represented by Calhoun  
Law Firm PA with Mark R. Calhoun appearing.

Within the statutory period, counsel for the Defendant filed Application for Review in the case setting forth the grounds of appeal, copies of which were furnished to all interested parties prior to oral arguments presented before the Appellate Panel on September 22, 2015.

By appeal, Appellant-Defendants respectfully submitted:

1. Did the Hearing Commissioner err in Finding of Fact #2 by determining Claimant was a statutory employee of Tonys Place of Sumter, LLC pursuant to S.C. Code Ann. §42-1-130?
2. Did the Hearing Commissioner err by failing to make any conclusion of law that Claimant was, or was not, a statutory employee pursuant to S.C. Code Ann. §42-1-130?
3. Did the Hearing Commissioner err by failing to issue any findings of fact related to the credibility of Claimant?
4. Did the Hearing Commissioner err in Finding of Fact #5 and #6 and Conclusions of Law #1 and #5 that Claimant sustained injuries in the course and scope of his employment?
5. Did the Hearing Commissioner err in Finding of Fact #9 and Conclusions of Law #3, #6 and #7 that Claimant is entitled to medical treatment?
6. Did the Hearing Commissioner err in Finding of Fact #11 and #13 and Conclusions of Law #4 that Claimant is entitled to back temporary total disability benefits?
7. Did the Hearing Commissioner err in Finding of Fact #12 and Conclusions of Law #4 and #6 that Claimant is entitled to temporary total disability benefits?
8. Did the Hearing Commissioner err in Finding of Fact #3 that Claimant did not sign the Corporate Officer Notice to Reject Form?

## **STATEMENT OF THE CASE**

The parties were heard by Commissioner Aisha Taylor on December 18, 2014, in Yemmessee, South Carolina. Under date of June 15, 2015 the Hearing Commissioner issued the following Findings of Fact, Conclusions of Law and Order which we concur with:

Based upon the stipulations of both parties and the evidence produced at this hearing, the undersigned Commissioner makes the following Findings of Fact:

1. It is undisputed that the Claimant was a minority shareholder in Tony's Place of Sumter, LLC. As per the Business Purchase Agreement, the Claimant's only condition of minority ownership was payment of \$42,000.00 pursuant to the terms set forth therein, which was satisfied.
2. I find that in addition to owning a minority share of Tony's Place of Sumter LLC, Mr. Reyna was also an employee of Tony's Place of Sumter, LLC pursuant to S.C. Code Annotated Section §42-1-130. The Claimant continued to work as a cook in the kitchen at Tony's Place of Sumter, LLC and also to make nightly bank deposits, which was not a condition of his minority ownership status. The Claimant also received weekly paychecks from which federal and state taxes were withheld. I find these paychecks were paid to the Claimant for the work he performed as an employee of Tony's Place of Sumter, LLC and not the result of profit from the minority ownership business purchase agreement. I find the Employer, Peter Peidis controlled the Claimants means of employment, hours, income, and all other conditions of employment.

3. I find Mr. Reyna did not waive entitlement to workers compensation benefits as I find he did not sign the Corporate Officer Notice to Reject Form. This finding is based on the preponderance of the evidence as a whole including the following:
- a. Only Peter Peidis signed the Corporate Officer Notice to Reject Form in insurance agent Byron Kinney's office. (Deposition of Peter Peidis and Byron Kinney).
  - b. Peter Peidis took the notice to reject form from his insurance agent Byron Kinney to "talk with his business partner and then decide whether he (Mr. Reyna) wanted to be excluded or not". (Deposition of Byron Kinney p.10 ll. 8-19).
  - c. Insurance agent by Byron Kinney testified in his deposition that the form bearing the name of Elias Reyna was returned to his office, but he did not know who returned the form. Mr. Kinney also stated by affidavit that Peter Peidis returned the form bearing the name of Elias Reyna to his office. (Claimants Exhibit No. 3).
  - d. Neither the majority owner Peter Peidis nor his insurance agent Byron McKinney saw the Claimant sign or deliver the Corporate Officer Notice to Reject Form to Mr. Kinney's office.
  - e. Mr. Reyna testified credibly that he did not sign the form, that the form was written in english and he would have needed a third party to translate it for him. Peter Peidis also testified by deposition and affidavit that the Claimant could not read the form and Mr. Peidis did not read it to him when he allegedly delivered it. (Deposition and Affidavit of Peter Peidis).
  - f. I have reviewed the reports from each parties handwriting experts, Marvin Dawson Jr. and Verle Truman. I have also reviewed the deposition testimony of Marvin Dawson Jr.. I give greater weight to the expert opinion of Marvin Dawson

Jr., who is the only Board Certified Forensic Document Examiner in private practice here in the state of South Carolina. In his deposition testimony, Mr. Dawson goes into great detail and analysis in explaining why he ultimately concluded the signature on the Corporate Officer Notice to Reject Form does not belong to the Claimant. I find that Mr. Dawson's report is the only report that focuses on the major differences in the letter structure form of the signatures. In contrast, Mr. Truman's report appears to only look for generic similarities. Verle Truman's report noted there was "no persuasive evidence of authorship". (See Report and Deposition of Marvin Dawson Jr dated March 4, 2015 and Report of Verle Truman dated February 6, 2015).

4. A SLED report bearing the Claimant's name and date of birth only was admitted into the record as the Defendants supplemental APA submissions over the Claimant's objection. I find the information contained in the SLED report is not relevant to the issues of coverage or compensability in the instant case. I further find that whether or not the Claimant has ever been convicted of disorderly conduct would not be relevant to any issues in this case. As such very little weight was given to the submitted SLED report.
5. I find the Claimant sustained multiple compensable injuries to his brain, head, right eye, right ear, psyche, resulting psychological, and left leg within the course and scope of his employment with Tony's Place of Sumter, LLC.
6. The Claimant alleges psychological overlay as a result of his injury which I find is supported by a preponderance of the evidence in this claim.

7. The Claimant also alleges physical brain damage as a result of his injury. I find additional medical examination is necessary to determine whether Claimant has sustained physical brain damage to the degree required in order to be awarded benefits under the Act. Dr. Waid opines that the Claimant should be reevaluated after a period of at least one year from the date of injury. As such the Undersigned declines to make a finding of physical brain damage at this time as the Claimant is not at maximum medical improvement and said finding is premature.
8. The Claimant has not reached maximum medical improvement.
9. The Claimant is entitled to causally related medical treatment at the direction of the Defendants until he is placed at maximum medical improvement. This includes transportation and interpretation for all medical treatment.
10. The Claimant's average weekly wage is \$751.92. This yields a compensation rate of \$501.31. This finding is based on the evidence as a whole including the wage information provided in Claimant's Exhibit No. 1, from which the payroll information from the 52 weeks immediately preceding the injury (September 24, 2012 to September 23, 2013) was used. I find this method of calculation was the most appropriate method to use given the wage information admitted into evidence. It yields a compensation rate that is most fair to each party.
11. I find the Claimant is entitled to a lump-sum payment of back temporary partial disability benefits from the October 7, 2013 paycheck through the December 9, 2013 paycheck.
12. I find the Claimant is entitled to temporary total disability benefits from December 10, 2013 through the present and continuing until he is placed at

maximum medical improvement or is otherwise released to return to work and a form 17 is signed and filed with the Commission.

13. The Claimant is entitled to a lump sum payment of any back owed temporary benefits.

14. No hearing costs are assessed.

All proffered testimony has been taken. Such, together with all documentary evidence has been delivered by argument to the individual members of the Panel and has since been under study and consideration. We find:

### **FINDINGS OF FACT**

Based upon the stipulations of the parties, the evidence submitted pursuant to the Administrative Procedures Act, and the testimony and exhibits presented at the hearing, we hereby make the following Findings of Fact:

1. It is undisputed that the Claimant was a minority shareholder in Tony's Place of Sumter, LLC. As per the Business Purchase Agreement, the Claimant's only condition of minority ownership was payment of \$42,000.00 pursuant to the terms set forth therein, which was satisfied.

2. We find that in addition to owning a minority share of Tony's Place of Sumter LLC, Mr. Reyna was also an employee of Tony's Place of Sumter, LLC pursuant to S.C. Code Annotated Section §42-1-130. The Claimant continued to work as a cook in the kitchen at Tony's Place of Sumter, LLC and also to make nightly bank deposits, which was not a condition of his minority ownership status. The Claimant also received weekly paychecks from which federal and state taxes were withheld. We find these paychecks were paid to the Claimant for the work he performed as an employee of Tony's Place of Sumter, LLC and not the result of profit

from the minority ownership business purchase agreement. We find the Employer, Peter Peidis controlled the Claimants means of employment, hours, income, and all other conditions of employment.

3. We find Mr. Reyna did not waive entitlement to workers compensation benefits as we find he did not sign the Corporate Officer Notice to Reject Form. This finding is based on the preponderance of the evidence as a whole including the following:

- g. Only Peter Peidis signed the Corporate Officer Notice to Reject Form in insurance agent Byron Kinney's office. (Deposition of Peter Peidis and Byron Kinney).
- h. Peter Peidis took the notice to reject form from his insurance agent Byron Kinney to "talk with his business partner and then decide whether he (Mr. Reyna) wanted to be excluded or not". (Deposition of Byron Kinney p.10 ll. 8-19).
- i. Insurance agent by Byron Kinney testified in his deposition that the form bearing the name of Elias Reyna was returned to his office, but he did not know who returned the form. Mr. Kinney also stated by affidavit that Peter Peidis returned the form bearing the name of Elias Reyna to his office. (Claimants Exhibit No. 3).
- j. Neither the majority owner Peter Peidis nor his insurance agent Byron McKinney saw the Claimant sign or deliver the Corporate Officer Notice to Reject Form to Mr. Kinney's office.
- k. Mr. Reyna testified credibly that he did not sign the form, that the form was written in english and he would have needed a third party to translate it for him. Peter Peidis also testified by deposition and affidavit that the Claimant could not read the form and Mr. Peidis did not read it to him when he allegedly delivered it. (Deposition and Affidavit of Peter Peidis).

1. We have reviewed the reports from each parties handwriting experts, Marvin Dawson Jr. and Verle Truman. We have also reviewed the deposition testimony of Marvin Dawson Jr.. We give greater weight to the expert opinion of South Carolinas only private Board Certified Forensic Document Examiner Marvin Dawson Jr.. In his deposition testimony, Mr. Dawson goes into great detail and analysis in explaining why he ultimately concluded the signature on the Corporate Officer Notice to Reject Form does not belong to the Claimant. We find that Mr. Dawson's report is the only report that focuses on the major differences in the letter structure form of the signatures. In contrast, Mr. Truman's report appears to only look for generic similarities. Verle Truman's report noted there was "no persuasive evidence of authorship". (See Report and Deposition of Marvin Dawson Jr dated March 4, 2015 and Report of Verle Truman dated February 6, 2015).

4. A SLED report bearing the Claimant's name and date of birth only was admitted into the record as the Defendants supplemental APA submissions over the Claimant's objection. We find the information contained in the SLED report is not relevant to the issues of coverage or compensability in the instant case. We further find that whether or not the Claimant has ever been convicted of disorderly conduct would not be relevant to any issues in this case. As such very little weight was given to the submitted SLED report.

5. We find the Claimant sustained multiple compensable injuries to his brain, head, right eye, right ear, psyche, resulting psychological, and left leg within the course and scope of his employment with Tony's Place of Sumter, LLC.

6. The Claimant alleges psychological overlay as a result of his injury which we find is supported by a preponderance of the evidence in this claim.

7. The Claimant also alleges physical brain damage as a result of his injury. We find additional medical examination is necessary to determine whether Claimant has sustained physical brain damage to the degree required in order to be awarded benefits under the Act. Dr. Waid opines that the Claimant should be reevaluated after a period of at least one year from the date of injury. As such the Undersigned declines to make a finding of physical brain damage at this time as the Claimant is not at maximum medical improvement and said finding is premature.

8. The Claimant has not reached maximum medical improvement.

9. The Claimant is entitled to causally related medical treatment at the direction of the Defendants until he is placed at maximum medical improvement. This includes transportation and interpretation for all medical treatment.

10. The Claimant's average weekly wage is \$751.92. This yields a compensation rate of \$501.31. This finding is based on the evidence as a whole including the wage information provided in Claimant's Exhibit No. 1, from which the payroll information from the 52 weeks immediately preceding the injury (September 24, 2012 to September 23, 2013) was used. We find this method of calculation was the most appropriate method to use given the wage information admitted into evidence. It yields a compensation rate that is most fair to each party.

11. We find the Claimant is entitled to a lump-sum payment of back temporary partial disability benefits from the October 7, 2013 paycheck through the December 9, 2013 paycheck.

12. We find the Claimant is entitled to temporary total disability benefits from December 10, 2013 through the present and continuing until he is placed at maximum medical

improvement or is otherwise released to return to work and a form 17 is signed and filed with the Commission.

13. The Claimant is entitled to a lump sum payment of any back owed temporary benefits.

14. No hearing costs are assessed.

### **CONCLUSIONS OF LAW**

Accordingly, as provided in the South Carolina Code of Laws 1976, as amended, §42-17-140, it is the determination of this Commission that:

1. Under §42-1-130 Tonys Place of Sumter LLC is a corporation and the Claimant was an employee of this corporation.
2. Under §42-1-160, the Claimant sustained a compensable injury by accident arising out of and in the course of his employment.
3. Under §42-1-40 the Claimant's average weekly wage is \$751.92 with the compensation rate of \$501.31.
4. Under §42-15-60 the Defendants are responsible for all causally related medical treatment allowed under the Act, including transportation and interpretation.
5. Under §42-9-10 the Claimant is entitled to temporary total disability benefits until the date of maximum medical improvement, which is premature at this time. He is entitled to temporary total disability benefits in a lump sum from October 7, 2013 to the present and continuing thereafter weekly in the amount of \$501.31.
6. Under S.C. Code Ann. §42-1-160 and §42-9-30, Claimant sustained a compensable injury to his brain, head, psyche, resulting psychological, right eye, right ear, on September 27, 2013.

7. The Claimant's average weekly wage is \$751.92 with a compensation rate of \$501.31, pursuant to S.C. Code Ann. §42-9-10 and §42-9-200. The Claimant is entitled to weekly compensation benefits in the amount of \$501.31 beginning October 7, 2013 to the present and continuing. (The Claimant is entitled to temporary total disability benefits in a lump-sum from October 7, 2013 to the present).
8. Under S.C. Code Ann §42-15-60, the Employer is financially responsible for all medical treatment, evaluations, testing, transportation, interpretation, etc. as a result of Claimants compensable injuries as these are reasonable and necessary to lessen the period of disability.

### **ORDER**

The Findings of Fact and Conclusions of Law are incorporated herein as if set forth verbatim, and that the Employer should provide the following benefits:

IT IS THEREFORE ORDERED THAT the Defendant shall pay with regard to injuries sustained on September 27, 2013, for all causally related medical, surgical, hospital, nursing, physical therapy, diagnostic testing, transportation, interpretation, and any other treatment, to the present and continuing.

IT IS THEREFORE ORDERED THAT the Claimant is not at maximum medical improvement and a determination of physical brain damage is premature as alleged by the Employer and is held in abeyance and preserved for a finding regarding the same in the future.

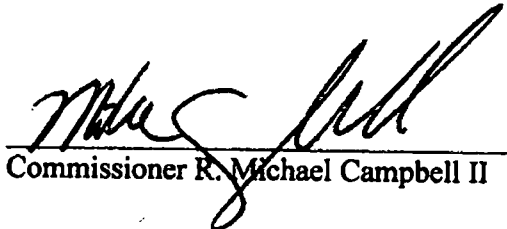
IT IS THEREFORE ORDERED THAT the Defendant shall pay the Claimant all past due temporary total benefits from October 7, 2013 to the present and continuing.

**ORDER**

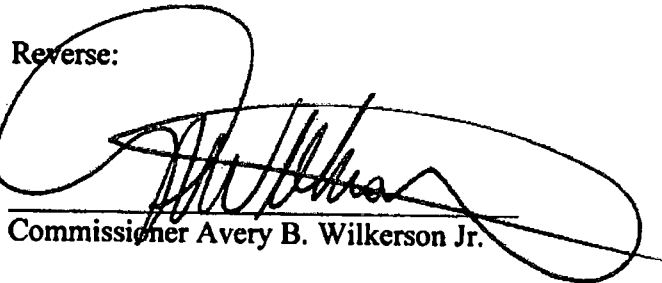
The Order of the Single Commissioner filed in the above titled matter on June 15, 2015, is hereby affirmed by a majority of the panel and the same shall constitute the Decision and Order of the Appellate Panel.

SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION

  
Commissioner Melody L. James

  
Commissioner R. Michael Campbell II

Reverse:

  
Commissioner Avery B. Wilkerson Jr.

Date: January 12<sup>th</sup>, 2016

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 January 12, 2016**

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MAR 23 2016

SC Court of Appeals