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SC Court of Appeals

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

W.C.C. FILE NO.: 1410131

Danny Faulk

EMPLOYEE,  
CLAIMANT/APPELLANT

VS.

Northcon, Inc.

EMPLOYER,

AND

CNA Insurance Company

CARRIER,  
DEFENDANTS/RESPONDENTS,

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Appellate Panel Review held in Columbia, South  
Carolina, on February 22, 2016 per notices timely  
And properly served upon all parties of interest.

Appellate Panel Decision and Order Filed:

April 20, 2016

APPEARANCES: Claimant/Appellant represented by Reese M. Stidham, IV of Howell &  
Christmas, LLC in Mt. Pleasant, South Carolina

Defendants/Respondents represented J. Stuart Moore, Esquire, of  
McAngus Goudelock and Courie in Columbia, South Carolina

## STATEMENT OF THE CASE

A hearing was originally held before the Single Commissioner on August 12, 2015, in Goose Creek, South Carolina to determine the issues as set forth on Claimant's Form 50 and Defendants' Form 51. Claimant alleged an injury by accident arising out of and in the course and scope of his employment with the Employer, Northcon, Inc., on July 11, 2014. Claimant specifically alleged related injuries to the right shoulder (rotator cuff tear, biceps tendon tear, and aggravation of degenerative joint disease), the right hip and the right leg. Claimant maintained that he was assaulted by a third party while delivering documents at the direction of Employer and, therefore, his resulting injuries are compensable for workers' compensation purposes.

Claimant contended that he sustained these injuries within a period of employment and in a place where he was reasonably expected to be in the performance of his job duties. Accordingly, Claimant requested a finding of compensability from the Hearing Commissioner pursuant to S.C. Code §42-1-160 and payment of medical treatment pursuant to S.C. Code §42-15-60.

From the outset of this claim, Defendants denied Claimant sustained a compensable injury by accident under S.C. Code §42-1-160 and applicable case law. As a preliminary matter, Defendants admitted to the Single Commissioner that Claimant was involved in an incident on July 11, 2014. Defendants, however, disputed the causal relation between Claimant's employment with Northcon, Inc., and any injuries stemming from the July 11, 2014, incident.

Defendants specifically denied that Claimant sustained an injury by accident arising out of or within the course and scope of his employment for workers' compensation purposes. Defendants requested the Single Commissioner find that Claimant was involved in a personal altercation while driving from the primary Northcon office to a secondary Northcon office

(Dixon Avenue office) and, therefore, requested the Commissioner deny the claim due to a lack of required nexus between any injuries sustained and Claimant's job duties. Additionally, Defendants took the position that Claimant was not performing duties in furtherance of Employer's business at the time of his injury, and, thus, the incident at issue did not arise out of and in the course of employment as both a matter of fact and as a matter of law.

By Order dated November 23, 2015, the Single Commissioner made the following Findings of Fact: Claimant was not in the course and scope of his employment when he was involved in an altercation causing his injuries; Claimant's altercation was not related to his employment, but was personal in nature and stemmed from a road rage incident over a turn signal; the location where the altercation occurred was not technically in the Employer's parking lot, but was rather in a gravel area between Claimant's place of employment and the road; Claimant was actually in the street when he was hit by the car (causing his injuries); and Stone v. Trailer Brothers, Inc., 360 S.C. 271, 600 S.E.2d 551 (Ct. App. 2004) is controlling in this matter.

Accordingly, the Hearing Commissioner held as a matter of law that, pursuant to S.C. Code §42-1-160, Claimant did not carry his requisite burden of proof as required under the South Carolina Workers' Compensation Act of proving a compensable injury by accident arising out of and in the course and scope of his employment with the Defendants on July 11, 2014 to either the right shoulder, right hip, or right leg. Accordingly, Claimant was denied medical treatment as related to the present claim under §42-15-60 and was not awarded any compensation or benefits under the South Carolina Worker's Compensation Act as related to the alleged incident of July 11, 2014. This appeal was timely filed thereafter.

## EVIDENCE OF THE CASE

Claimant was the first individual to testify at the August 12, 2015, Single Commissioner Hearing. Of relevance to the issues in dispute, Claimant testified that on July 11, 2014, he was working at the primary Northcon office when a supervisor, Bill Thomas, requested Claimant bring the "daily reports" to the secondary Northcon office located on Dickson Avenue. (H. Tr. pp. 12-13). Claimant testified that he then got in his truck and traveled in the direction of the Dickson Avenue office; as he was turning into the parking lot on Dickson Avenue, he claims "...a car drove up behind me just blowing the horn . . . so, I got out of the truck to see what he wanted." (Id.) Claimant testified to being "halfway in the parking space and halfway out when...he (a third party individual, later identified as Richard Hawkins) came out of his car . . . and he's cussing me, and all of a sudden he spits on me." (H. Tr. pp. 13-14).

Claimant testified that then, as he was walking to the back of the third party's vehicle to identify his license plate number, the vehicle struck Claimant in the right hip, causing him to fall backward. (H. Tr. p. 14). Claimant testified that when Mr. Hawkins' car struck Claimant, he was "probably about 20 feet behind toward Remount . . . sitting halfway in Dickson and halfway out of the driveway." (H. Tr. pp. 16-17). Claimant testified that when the car struck him, "It drove my hips – my legs were under the car. My arm was stuck to the car, and he was dragging me." (H. Tr. p. 18).

Claimant testified that Northcon employees eventually intervened and called the police. (H. Tr. p. 15). On direct examination by his attorney, Claimant denied telling a responding Hanahan Police Officer that the incident was caused by "a fit of road rage that began on Remount Road." (Id).

Claimant testified that he first became aware of Mr. Hawkins, when his (Hawkins') horn

was blowing behind Claimant's truck; Claimant further denied knowledge of any "incident at Remount Road" that would have caused Mr. Hawkins to become upset. (H. Tr. p. 16). Claimant testified that he was unaware as to the origin of the third party individual's anger. (Id.) He also denied touching Mr. Hawkins and denied threatening Mr. Hawkins, but admitted to "talking ugly." (H. Tr. p. 17).

Claimant did not seek immediate medical treatment on July 11, 2014, and acknowledged that after speaking to the police, he declined to press charges against Mr. Hawkins. (H. Tr. pp 18-19).

Upon cross-examination by counsel for Defendants, Claimant testified that the secondary Northcon office is located at 1253 Dickson Avenue, and Remount Road is approximately 100-120 yards away from said office. Claimant denied any incident on Remount Road prior to arriving at the Dickson Avenue office. (H. Tr. p. 24). Claimant admitted that he did not know Mr. Hawkins personally, had never seen him before and that Mr. Hawkins is not, nor has he ever been, an employee of Northcon. (H. Tr. p. 25). Claimant testified that he was in his personal truck when this incident began and that his truck does not have any Northcon insignia or logos on it. (H. Tr. pp. 25-26).

Claimant testified that Northcon does not own the parking lot at the Dickson Avenue office, and Mr. Hawkins' car was not fully in the parking lot for the Dickson Avenue office at the time of the incident. (H. Tr. pp. 26-27). Claimant testified at length regarding the characteristics of the Dickson Avenue roadway and the parking lot for the Dickson Avenue Northcon office; specifically he noted that there is "a little area right off the – it's not paved, just a bunch of rocks comes off the street." (H. Tr. p. 28). Claimant admitted that at the time he was allegedly struck by Mr. Hawkins' vehicle, he was standing in the unpaved area of rocks and that

he "...was (driven) backward about 8 feet." Claimant estimated that being struck caused him to end up further away from the Dickson Avenue office. (Id.)

Claimant testified to pre-existing issues with his right shoulder prior to July 11, 2014, which stem from a high school injury. (H. Tr. p. 29). He also acknowledged a second, ongoing workers' compensation claim against Northcon for an injury dated January 10, 2015, and for which Claimant is currently out of work pending back surgery." (H. Tr. p. 30). Claimant admitted to receiving a running award of temporary total disability benefits as related to the January 2015 low back claim which, again, is admitted by Northcon. (Id.).

Jody Brocius, a Northcon employee, also testified at the Hearing. (H. Tr. p. 33). Ms. Brocius testified that she had been working for Northcon approximately five months on July 11, 2014 and that she knew the Claimant. (Id.) Ms. Brocius testified that she was working in the Dickson Avenue Northcon office on July 11, 2014, and came outside on that date to find Claimant and Mr. Hawkins "...yelling at each other." (H. Tr. p. 35). Ms. Brocius testified that "(Claimant) walked around the side of the car. more yelling...(Claimant) went to the back of the car, and the car backed up," apparently striking Claimant. (H. Tr. p. 35). Ms. Brocius testified that she did not see the car strike Claimant, and later spoke to the responding officer from the Hanahan Police Department and told them that she witnessed at least part of the altercation. (H. Tr. p. 36). Upon cross-examination by Defense Counsel, Ms. Brocius testified that Northcon does not own the parking lot in which this altercation took place. (H. Tr. p. 38).

Officer Ronnie Scheetz of the Hanahan Police Department responded to the scene on July 11, 2014, and completed a written report on that date. (Def. APA p. 6). In his report, Officer Scheetz notes he was called to the parking lot of 1253 Dickson Avenue, "in reference to a fight in progress." Officer Scheetz also indicates that, upon his arrival, he "met with William Faulk

(Claimant) and James Hawkins; both parties stated that they engaged in a 'fit of road rage which began on Remount Road over a turn signal.'" (Id). Officer Scheetz also notes in his report that Claimant told him that, after pulling into the parking lot at 1253 Dickson Avenue, "Hawkins pulled in next to him and got out of his vehicle yelling and cursing." which led to Hawkins spitting in Claimant's face and later striking Claimant with his vehicle while Claimant was "standing behind Hawkins's vehicle blocking him in the parking lot." (Id). The report further indicates "Hawkins stated that he confronted Faulk about the road rage and while both parties were yelling and cursing, Faulk struck Hawkins in the chest," and that "Hawkins claims he did not strike Faulk with his vehicle and does not remember spitting in Faulk's face." (Id.)

Northcon supervisors also completed a preliminary accident investigation form on July 11, 2014, which was signed by Claimant and which indicates "no further action taken." (Def. APA pp.1-5).

#### **STANDARD OF REVIEW**

Under S.C. Code Ann. §42-17-50, an Appellate Panel is in power to review an appealed award, weigh the evidence as presented at the initial hearing, and, if good grounds are shown, make its own factual findings and legal conclusions consistent with or inconsistent with the hearing Commissioner.

Based upon its review of all the evidence on the record in this case, the panel hereby affirms the Order of the Hearing Commissioner in full, by majority decision. Accordingly, the Panel makes the following Findings of Fact and Rulings of Law:

### **FINDINGS OF FACT**

1. The parties hereto are subject to and bound by the South Carolina Workers' Compensation Act.
2. The Claimant was not in the course and scope of his employment when he was involved in an altercation causing his injuries.
3. The Claimant's altercation was not related to his employment, but was personal in nature and that it stemmed from a road rage incident over a turn signal (See Police Report, page 6).
4. The location where the altercation occurred was not technically in the Employer's parking lot, but was rather in a gravel area between Claimant's place of employment and the road.
5. The Claimant was actually in the street when he was hit by the car. I base this finding on the evidence as a whole, including Claimant's own testimony.
6. Stone v. Trailer Brothers, Inc., 360 S.C. 271, 600 S.E.2d 551 (Ct. App. 2004) is controlling in this matter.
7. All claims for benefits are denied.
8. No hearing costs are assessed.

### **RULINGS OF LAW**

Accordingly, as provided in S.C. Code Ann. §42-17-50 and pursuant to other applicable law, it is the determination of this Panel that:

1. §42-1-160 governs injuries and includes injuries by accident arising out of and in the course of employment.

2. Pursuant to §42-1-160, the Claimant did not sustain a compensable injury by accident arising out of and in the course and scope of his employment with the Defendants on July 11, 2014.
3. The Claimant's injuries were not the product of an accident arising out and in the course and scope of his employment with the Defendants on July 11, 2014.
4. The Claimant has not carried his requisite burden of proof, required under the South Carolina Workers' Compensation Act, to establish that an injury arose out of and occurred in the course of his employment with the Defendants on July 11, 2014. See Clade v. Champion Laboratories, 330 S.C. 8, 496 S.E.2D 856 (1998). The workers' compensation Claimant has the burden of proving the facts that show the injury arose out of employment, and the award of benefits must not rest on surmise, conjecture, or speculation.
5. The Claimant did not sustain a compensable injury to his right shoulder, right hip, or right leg arising out of and in the course and scope of his employment with the Defendants on July 11, 2014.
6. The Claimant is not entitled to medical treatment and/or supplies pursuant to S.C. Code §42-15-60.
7. The Claimant is not entitled to any compensation or benefits under the South Carolina Workers' Compensation Act.
8. Stone v. Trailer Brothers, Inc., 360 S.C. 271, 600 SE2d 551 (Ct. App. 2004) is controlling in this matter as the origin of the dispute was personal in nature and not work-related.

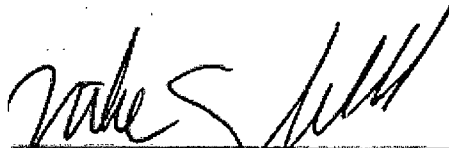
**ORDER**

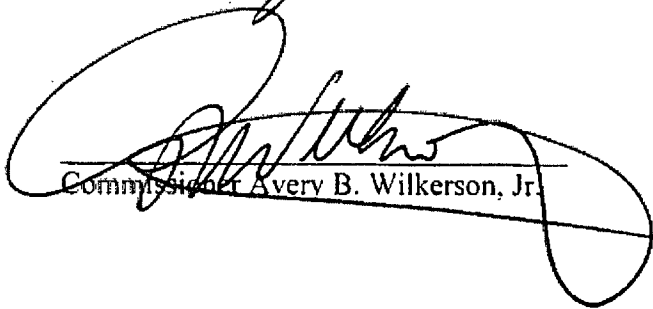
**IT IS HEREBY ORDERED ADJUDGED AND DECREED** that the Order of the Single Commissioner is **AFFIRMED BY A MAJORITY**.

**AND IT IS SO ORDERED.**

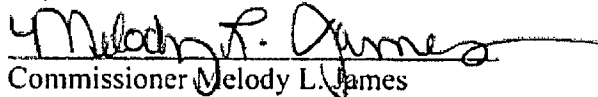
**SO ORDERED.**

**MAJORITY AFFIRMATION:**

  
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Commissioner R. Michael Campbell, II

  
\_\_\_\_\_  
Commissioner Avery B. Wilkerson, Jr.

**I RESPECTFULLY DISSENT AND WOULD VOTE TO REVERSE:**

  
\_\_\_\_\_  
Commissioner Melody L. James

**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 April 20, 2016***