THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM APPELLATE PANEL OF THE SOUTH CAROLINA
WORKERS' COMPENSATION COMMISSION

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SC Court of Appeals

WCC NO. 1320600

Kevin M. Todd ..... Appellant

vs.

Michael Roberts d/b/a Michael Roberts Home Repair
and S.C. Uninsured Employers' Fund ..... Respondents

INITIAL BRIEF OF APPELLANT

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STATEMENT OF ISSUES ON APPEAL

I. The Full Commission erred in finding the Claimant was engaged in a personal venture with his employer when the Claimant was directed by the Employer to work on the boat which exploded causing the Claimant's injuries.

II. The Full Commission erred in affirming the Single Commissioner's ruling found in Finding of Fact No. 10 which states: "For me to believe the Claimant, I have to believe that all the times he spent with the Defendant/Employer was time for which he was paid. That conclusion is simply not supported by the facts." The error being that the Employee was performing the work during normal business hours at the direction of the Employer when he was injured.

III. The Full Commission erred in holding the Employee could only be on the job if he worked in the home repair service when in fact the evidence shows that he was ordered by the Employer to do many other tasks for the Employer and his family during his workday.

IV. The Full Commission erred in finding that because the Employer owned the boat personally that the Claimant was not on the job at the time of the explosion which severely injured him

V. The Full Commission erred in finding that this case comes down as to who and what to believe. The error being all the evidence points to only one conclusion -- that the Claimant was in the Employer's vehicle and that he was told by the Employer that they were going to fix the Employer's boat and that it was during working hours and he was injured in the course and scope of his employment.

VI. The Full Commission erred in not finding that the Claimant had been directed by his Employer to go on a personal errand consistent with *Hicks v. Piedmont Cold Storage Inc.* 324 S.C. 628, 479 S.E.2d 831 (Ct.App. 1996)(reversed on other grounds, 335 S.C. 46, 515 S.E.2d 532 (1999).

VII. The Full Commission erred in not applying the rule recognized by the South Carolina Supreme Court in *Howell v. Cash & Karry*, 264 S.C. 298, 214 S.E.2d 821 (1975)

VIII. The Full Commission erred in holding that the Claimant had not established by a preponderance of the evidence that he was entitled to an award under the South Carolina Workers' Compensation Act. The error being that all the facts show that the Claimant was entitled to an award because he was working. It was a normal workday (Friday, August 9, 2013) during normal work hours (the morning) and the Claimant/Employee was directed by his Employer to go to the Employer's personal boat where the injury occurred.

STATEMENT OF THE CASE

This matter is before this Court based on an appeal filed by the Employee after the Full Commission of the South Carolina Workers' Compensation Commission issued an Order affirming denial of the claim by the single Commissioner. Briefly stated, Kevin Todd, the Employee, worked for Mike Roberts Home Repair, a sole proprietorship that was uninsured, when on August 9, 2013, he was severely burned when a boat he was working on for Roberts exploded. (Roberts had told Todd to work on the boat.) While Roberts was improperly draining the gas tank, a spark ignited the fire. Todd was flown by helicopter to the University of North Carolina Burn Center as an emergency patient and stayed for two weeks. The single Commissioner held that the injury and the claim were not in the course and scope of employment despite the unconverted fact the Employer had ordered the Employee to work on the Employer's boat in the morning of a normal weekday workday. This appeal was timely perfected by Todd after the Full Commission denied the claim.

STANDARD OF REVIEW

The South Carolina Administrative Procedures Act (APA) S.C. Code Ann. § 1-23-350 (2005) establishes the standard of review for decisions by the Appellate Panel of the Workers' Compensation Commission. See *Carolinas Recycling Group v. S.C. Second Injury Fund*, 398 S.C. 480, 730 S.E. 2d 324, 326 (Ct.App. 2012). Under the scope of review established in the APA, this Court may not substitute its judgment for that of the Appellate Panel of the Workers' Compensation Commission as to the weight of the evidence on questions of fact, but may reverse or modify the Appellate Panel's decision if substantial rights have been prejudiced or the decision is affected by an error law or is "clearly erroneous in view of the reliable, probative and substantial evidence on the whole record." See S.C. Code Ann. § 1-23-380(5)(e) (Sup. 2012). Our Supreme Court has defined

substantial evidence as evidence that, in viewing the record as a whole, would allow reasonable minds to reach the same conclusion the Full Commission reached. *Lark v. BiLo, Inc.*, 276 S.C. 130, 135, 276 S.E.2d 304, 306 (1981) ("the possibility of drawing two inconsistent conclusions from the evidence does not prevent an administrative agency's finding from being supported by substantial evidence.") *Palmetto Alliance, Inc. v. S.C. Public Service Commission*, 282 S.C. 430, 432, 319 S.E.2d 695, 696 (1984).

Further, any decision of the Full Commission must include specific findings and conclusions of law to comport with S.C. Code Ann. § 1-23-350. See *Martinez v. Spartanburg County*, 394 S.C. 224, 230, 715 S.E.2d 339 (Ct. App. 2011). It is respectfully submitted this decision of the Full Commission does not comply with this standard of review and is an error of law.

It is respectfully submitted that the Order of the Full Commission erred in the following particulars:

(1) The Order does not address the Claimant's request for a ruling on the personal errand rule and thus is an error of law;

(2) The Commission Order does not address the evidence that the Claimant was told by the Employer to work on the Employer's boat which was clearly substantial evidence that the claim was covered;

(3) The Commission Order does not cite specific facts in denying the claim specifically that the Claimant was on the job during normal hours acting on behalf of the Employer; and

(4) The Commission's ruling is clearly erroneous based on the facts presented at the hearing.

ARGUMENT

I. THE FULL COMMISSION ERRED IN FINDING THE CLAIMANT WAS ENGAGED IN A PERSONAL VENTURE. (ISSUES: I, II, III, IV, V, VI, VII, VIII)

The Full Commission, in their Order, found that the Claimant was engaged in a personal venture; however, the facts and inferences from the evidence show exactly the opposite conclusion. The Claimant now details the facts regarding this case which show that Todd was an Employee and was on the job and in the course and scope of employment at the time of the incident because he was on a personal errand directed by Roberts, his Employer, who had directed him to perform numerous personal errands in the past including taking his kids to school and generally doing whatever Roberts told him to do.

A. Testimony of Holmes Adams.

The Claimant first called Holmes Adams to testify. Holmes Adams was a subcontractor for Mike Roberts and did work for Mike Roberts for seven or eight months. (Tr. p. 11, lines 9-10). He further testified Kevin Todd, Bobby Days, Ryan Harrelson and James Flawn all drew weekly paychecks from Roberts. (Tr. p. 11, lines 15-7). He also testified that he (Kevin) did anything Mike Roberts asked (Tr. p. 12, lines 17,19) and that he did whatever needs to be done (Tr. p. 12, lines 20-21). He commented: "poor people got to eat and he (Kevin) did what was asked of him." (Tr. p. 12, lines 23-24).

Holmes also testified that Kevin Todd worked for Mike Roberts and received a weekly paycheck (Tr. p. 13, lines 10-13) and that if Mike Roberts barked, Kevin jumped. (Tr. p. 13, lines 13-15). He further stated whatever Mike needed, Kevin handled. (Tr. p. 13, lines 16-19).

On cross examination, Holmes testified that he saw checks handed out to Kevin and Bobby on Fridays. (Tr. p. 17, lines 15-16).

B. Testimony of Michelle Bratcher.

The second witness offered was Michelle Bratcher who testified that she had lived with Kevin Todd for fourteen years (Tr. p. 21, lines 7-8); that Kevin worked for Mike Roberts (Tr. p. 21, line 15); that she worked for him for two years (Tr. p. 21, lines 18-19); that Kevin did everything for Mike (Tr. p. 21, lines 21-22); that anything Mike wanted Kevin did (Tr. p. 21, line 25); that other people worked there including Bobby Days, James Flawn and Ryan Harrelson (Tr. p. 22, lines 5-12); and she came to the scene of the accident and saw the accident as she was coming over the Waccamaw Bridge (Tr. p. 23, lines 1-25). She further testified that Kevin worked five or six days a week for Mike Roberts (Tr. p. 28, lines 8-12); that he was working for Mike Roberts on the day of the accident (Tr. p. 24, lines 11-12); and that Kevin repaired homes and also did many other things for Mike (Tr. p. 24, lines 23-25).

She further stated that Kevin took Mike Roberts' child to school and even laid brick pavers at his pool (Tr. p. 25, lines 2-7). She testified Kevin was called after hours by Mike to work (Tr. p. 25, lines 15-20). Also, Mike Roberts paid wages to Kevin after the accident (Tr. p. 26, lines 1-2) and paid him when he was in the hospital (Tr. p. 26, lines 1-2). She said Mike was "going to pay us the whole time that Kevin was recouping" (Tr. p. 27, lines 1-5).

She testified the day of the accident was a Friday (Tr. p. 29, line 20) and that it was "a normal work day" (Tr. p. 29, lines 23-28). She stated Kevin always got paid at the end of the day on Friday (Tr. p. 30, lines 1-19).

On cross examination, she testified that she had worked on a boat for Roberts (Tr. p. 30, lines 19-20). She again reiterated Kevin and the others she had named were employees but Kevin was assigned to pay them weekly (Tr. p. 31, lines 20-23). She also noted Roberts

gave Kevin's dad money while he was in the hospital (Tr. p. 33, lines 1-10) and that she was paid $100.00 for cleaning the boat (Tr. p. 34, lines 6-7).

On redirect, she noted that the boat had been given to Mike Roberts and had been sunk in the river prior to the fire which caused Todd's injuries (Tr. p. 36, lines 20-25).

C. Testimony of Anthony Williams.

Also at the scene of the accident was Anthony Williams (Tr. p. 38, lines 1-15) and he stated that he had been hired to do electrical work (Tr. p. 38, line 1). He testified he was paid to work on the boat that day (Tr. p. 38, lines 20-23).

On cross examination he said he needed the work and Kevin told him that Mike needed helpers. (Tr. p. 39, line 25; p. 40, lines 1-5). He further testified that he thought Mike would hire him for more electrical work if he came and worked on the boat (Tr. p. 41, lines 12-15).

D. Testimony of Kevin Todd.

Kevin Todd was called to testify. He stated that he had been employed for one and a half years with Mike Roberts (Tr. p. 44, lines 1-10); that he did anything for him (Tr. p. 44, lines 7-8); that he was on the clock and he took Roberts son to school (Tr. p. 44, lines 16-18); that Roberts paid him for that time (Tr. p. 44, line 18); that he paid the other employees for Roberts including Ryan Harrelson, James Flawn and Bobby Days (Tr. 44, lines 22-25); that he did "anything" (Tr. p. 44, lines 8-9); that he worked for Roberts on weekends (Tr. p. 44, lines 6-7); that he worked after hours (Tr. p. 45, line 10); that he was cleaning Roberts' boat on the clock (Tr. p. 46, lines 6-8); and that every minute he worked he got paid (Tr. p. 46, lines 9-11);.

On the day of the accident Todd stated he was on his way to the job at Quail Creek and Roberts told him to stop by to pick up Anthony Williams who was going to be working

on Roberts' boat (Tr. p. 46, lines 18-20). He further stated he was supposed to "get Tony started on working on the boat" (Tr. p. 46, lines 18-19). He further said that before the explosion he was helping Williams drain the gas at Roberts' directions who was also there supervising the work. (Tr. p. 46, lines 21-24). He also testified he was not a partner in the boat (Tr. p. 49, line 4). He said he was in the hospital after the accident and Roberts paid him for being out (Tr. p. 49 lines 15-17).

On cross examination he said he was paid every Friday (Tr. p. 53, lines 1-2) and he was paid extra on Saturday (Tr. p. 53, lines 10-15). He also noted that while he was in the hospital he was taking numerous drugs and was not in his right mind (Tr. p. 54, lines 1-15). He reiterated on cross examination that he was on the way to a foreclosed home in Quail Creek when he was called by Mike Roberts to get the guys "started on the boat job" (Tr. p. 55, lines 10-16). Todd further stated that the other guys needed work and they were out there at the boat job because he had brought them to work on the boat (Tr. p. 55, lines 22-25; p. 56, lines 1-2).

On redirect, Todd stated it happened on Friday, August 9th and he worked for Roberts Monday through Friday. (Tr. p. 61, lines 20-23);

E. Testimony of Michael Roberts.

Roberts took the stand and indicated he worked on foreclosed homes and that was his business (Tr. p. 63, lines 1-25); that Todd did a lot for him and he trusted him (Tr. p. 66, lines 20-21); that on the day of the accident we were working on a house like Todd said (Tr. p. 67, lines 7-8) and that Todd had guys who needed work so they were working at the boat for Roberts (Tr. p. 67, lines 21-25).

He further noted that Kevin was on salary of $500 a week (Tr. p. 72, lines 4-6); that he paid Kevin even if he was sick (Tr. p. 72, lines 8-14); and that after the accident, he paid

Kevin for eight weeks which was about $5,000 (Tr. p. 74, line 18). He further said he paid two people Kevin knew to work on the boat that day (Tr. p. 75, lines 9-11).

On cross examination he said the accident happened on a Friday (Tr. p. 75, lines 17-20) and that Todd was on salary (Tr. p. 75, lines 17-20). He further stated Todd came by between 7:00 to 7:15 and picked up his child to take him to school (Tr. p. 76, lines 1-8). Roberts also sated he authorized Todd to get other people to work on the boat (Tr. p. 77, lines 24-25; p. 78, line 1). Roberts said he would pay them (Tr. p. 78, lines 4-5).

On the day of the accident, Roberts and Todd left Roberts' house on the way to the job together (Tr. p. 79, lines 22-25); that he wanted to make sure the men got to the boat job and got started (Tr. p. 80, lines 2-5). Roberts further stated it was his boat (Tr. p. 80, lines 23-34) and stated "I'm telling you in my own words, I paid him for working on the job" (Tr. p. 83, lines 4-5).

He again reiterated on cross examination that he met Todd at his home at 7:15 and they went and worked on the boat until the accident (Tr. p. 84, lines 1-20).

F. No evidence supports the Full Commission ruling.

The Employee takes issue with the finding in the Order that Claimant was "on his personal time and was not working." (Order of Full Commission (R.)). This is found nowhere in the evidence and has no basis. (See testimony of Roberts, Todd, Adams and Bratcher). (R. pp. ___)

It should also be noted that in the discharge summary of the University of North Carolina Burn Center hospital, the attending doctor wrote:

> I supervised care provided by the resident. We have discussed the case. I have reviewed the note and agree with the plan of treatment. I personally interviewed the patient and examined the patient and was present during the exam by the resident. I have personally reviewed the x-rays and agree with the resident's interpretation of the x-rays. (Patient presents with head, B UE and B LE burns. Was

transferring fuel on a boat when it caught fire. Yellow trauma. Burn consult.).

The summary further states:

> The injury was due to a fire (flash burn from gasoline). It occurred at work.
>
> The patient complains of severe pain. Fell (to his knees). There was no smoke inhalation.

The note was electronically signed by Marin E. Darsie, Resident M.D., 08/13/2013 at 21:39. (ED Notes Final Report) (APA Bates #508-510). (R. ___).

The Claimant's APA Submissions further show the Claimant also received copious amounts of pain medication for his severe burns from the date of his arrival, August 9, 2013, until his release on August 16, 2013.

- Claimant had two doses of oxycodone on August 9, 2013 (Bates #13), additional doses on August 9, 2013 (Bates #649), doses of morphine (Bates #651), and additional doses of morphine (Bates #652).
- On August 10, 2013, Claimant received oxycodone (Bates #34), morphine (Bates #35) and more morphine (Bates #36). He also received oxycodone and morphine prn (Bates #25, 53, 60 and 64). Further, at least three additional doses of oxycontin were administered on August 10, 2013 (See Bates # 649 through 650) and at least five total doses of morphine (Bates #651 and 652).
- On August 11, 2013, Claimant was administered oxycodone (Bates #72, 68 and 84) and at least five total doses of ocycodone were administered on August 11, 2013 (Bates #650 and 653). Further, he received at least two doses of morphine (Bates #651 and 642).

- On August 12, 2013, the Claimant received oxycodone (Bates #116 and 118) and at least five total doses of oxycodone (Bates #645 and 650) with a dose of morphine (Bates #651).
- On August 13, 2013, the Claimant received oxycodone (Bates #121), morphine (Bates #150) and additional oxycodone prn (Bates #154, 136 and 144) for a total of at least four doses of oxycodone (Bates #645 and 650) and at least three total doses of morphine (Bates #651 and 652).
- On August 14, 2013, the Claimant received oxycodone (Bates #186) and oxycodone prn (Bates #166, 167, 174, 181) for a total of at least three doses of oxycodone (Bates #645)and at least two doses of morphine (Bates #651 and 652).
- On August 15, 2013 the Claimant received oxycodone prn (Bates #192, 203) and morphine (Bates #205, 213 and 223). Further, Claimant received at least three total doses of oxycodone on August 15, 2013 (See Bates #637).
- On August 16, 2013, Claimant received both oxycodone and morphine for a total of three doses of oxycontin (See Bates #227, 251, 637, 641, 640 and 645).
- On August 17, 2013 the Claimant received both morphine and oxycodone (Bates #258, 262, 264, 272, 273, 278, 284, 293) for at least four total doses oxycodone (Bates #637).
- On August 18, 2013, the Claimant received oxycodone (Bates #300, 309, 314, 322) for a total of at least four total doses of oxycodone (Bates #637 and at least three total doses of morphine (Bates #644, 640).

- On August 19, 2013, the Claimant received oxycodone (Bates #331 and at least three total doses of morphine (Bates #636 and 640) at least five total doses of oxycodone (Bates #637).
- On August 20, 2013, the Claimant received oxycodone and morphine (Bates #360, 362, 367, 636, 375, 378, 392, 401).
- On August 21, 2013, the Claimant received at least four total doses of oxycodone (Bates #420, 427, 436, 442, 636 and 638).
- On August 22, 2013, the Claimant received at least two total doses of oxycodone (Bates #638, 631).
- On August 23, 2013, the Claimant received at least four doses of oxycodone (Bates #474, 478, 631 and 638).

Accordingly, it is without dispute that the employee Todd was under the heavy influence of narcotics during his hospital stay from August 9, 2013 to August 23, 2013 because of his severe burns.

Thus, the Claimant points out that with all this pain medication in his system, the single Commissioner should not have pulled a single entry by a social worker (Bates #501) out of the 653 pages of medical records to base his decision.[1] This is especially true in light of the overwhelming evidence that Claimant was on various mind altering medications such as oxycodone and morphine during his stay from August 9, 2013 through August 23, 2013 for serious burns. Further, the day that the Full Commission cites the Claimant talked to the

[1] In the interest of brevity and in compliance with the rules, counsel has not provided or made a part of the record all of these medical records. Suffice it to say the Claimant suffered severe injuries. See SCAR 209(c). (The Designation shall be accompanied by a certificate signed by the party's counsel of record that the Designation contains no matter which is irrelevant to the appeal.)

social worker, August 13, 2013, he had had at least four total doses of, oxycodone and at least three total doses of morphine. (See Bates #645, 650, 651 and 652).

Finally, all this begs the substantial evidence that the Claimant was working and was told by his employer, Roberts, to go to the boat. Accordingly, the Full Commission erred in looking at the times when the claimant might have used a boat with the employer since the record is clear it happened on a regular workday (Friday morning) while the claimant was about the business of the Employer. (Roberts Tr. p. 79, lines 22-25; p. 80, lines 2-5; p. 80, lines 23-24- p. 83, lines 4-5).

On the date of the injury the Claimant was working and was explicitly told by his Employer Roberts to go to the boat and repair it. (Roberts. Tr. p. 83, lines 4-5). The Claimant was on a normal working day (Friday) during his normal work time (8:30 a.m.). Accordingly, the Full Commission erred as a matter of law in finding that the Claimant was not on the job at the time of this accident because the testimony does not support this finding.

II. THE FULL COMMISSION ERRED IN NOT FINDING THIS WAS A PRIVATE ERRAND DIRECTED BY THE EMPLOYER, AND AS A RESULT A COMPENSABLE INJURY. (ISSUES: I, II, III, IV, VI, VII)

It is well settled in South Carolina that when an employee is directed to go on a private errand by the employer it is compensable in this state. Larson on Workers Compensation, which is frequently cited in the appellate courts of this state, holds that when a person in authority directs an employee to run some private errand or do some work outside his normal duty for the private benefit of the employer or supervisor, the injury in the course of that work is compensable. *See Freeman Mechanical, Inc. v. J.W. Bateson, Inc.*, 316 S.C. 95, 447 S.E.2d 197, 199 (1994); *Peay v. U.S. Silica Co.,* 313 S.C. 91, 93-94,

433 S.E.2d 64, 65-66) (1993). (In this case, the Commission does not address this issue despite the request of counsel (See Brief of Appellant to the Full Commission) (R. pp.___).

The authorities, including Larson, have noted "the reason for this rule" is that, whatever the normal course of employment may be, the employer and his supervisory staff shall have it within their power to enlarge that course by assigning tasks outside the usual area. The practical reason for the rule is that any other view placed the employee in an intolerable dilemma. If he complies with the order, he forfeits compensation protection; if he does not comply, he gets fired. 1A Arthur Larson Workers' Compensation Law Section 27.41, 27.44 (1996). See, also, *Hicks v. Piedmont Cold Storage*, 479 S.E. 2d 831, 324 S.C. 628 (1997).

The Employee also notes that this is the law in various other states which have similar workers' compensation laws to South Carolina. See *Stewart v. North Carolina Dept. of Corrections,* 29 N.C. App. 735, 225 S.E.2d 336 (1976). In *Stewart*, one of the Appellant's superiors asked him if he would come the following day during his off hours to build a picnic shelter. Although the task was not one of his regular work duties, the Appellant agreed to help because his supervisor asked him. After work began, the Appellant was injured. The Court found the injury compensable stating:

> ...when a superior directs a subordinate employee to go on an errand or to perform some duty beyond his normal activities, the scope of the Workmen's Compensation Act expands to encompass injuries maintained in the course of such labor. Were the rule otherwise, employees would be compelled to determine in each instance and no doubt at their peril, whether a requested activity was beyond the ambit of the act. See 1A. Larson, Law of Workers' Compensation Section 27.40 (1972).
>
> The Opinion further held:
>
> The order or request need not be couched in the imperative. It is sufficient for compensation purposes that the suggestion, request or even employee's mere perception of what is expected of him under his job classification, serves to motivate undertaking and injury producing activity. So long as

> ordered to perform by a superior, acts beneficial to the employer which result in injury to performing employees are within the ambient of the act.

See also *Pollock v. Reeves Brothers, Inc.* 313 N.C. 287, 328 S.E.2d 282 (1985) (holding compensable injury sustained when a superior directs a subordinate to go on an errand or perform some duty beyond his normal activity).

These North Carolina cases are entitled to great respect because the South Carolina Workers' Compensation Act is fashioned after North Carolina's. See *Nolan v. Dailey*, 222 S.C. 407, 73 S.E.2d 449, 451 (1952) quoting *McDowell v. Stilley Plywood Co.*, 210 S.C. 173, 181 41 S.E.2d 872 (876) (1947).

The large majority of cases in other jurisdictions favors compensability on similar facts and demonstrates the wide parameters within which the rule favoring compensability operates. See *Wilson and Company v. Curry*, 259 Alabama 685, 68 S.2d 548 (1953) (awarding compensation to employee for injury sustained while building barbecue pit for superior's personal use*); Edwards v. State*, 173 Ga.App. 87 325 S.E.2d 437 (1984), cert den'd Order dated Jan. 24, 1985 (finding compensable secretary's injury sustained while picking up manager's lunch at nearby restaurant); *Pollock v. Reed Brothers Inc.*, 313 N.C. 287 (328 S.E.2d 282 (1985) (granting compensation to employees injured while flying in another employee's airplane maintained by employer); *Brown v. Jim Brown Service Station* 45 N.C.App. 255, 262 S.C. 2d 700 (1980) (holding death arose out of and in course of employment where employee-son was electrocuted while installing radio antenna at employer-mother's home.)

Claimant asserts the personal errand rule has been adopted in South Carolina and adopted by this Court. *See Hicks v. Piedmont Cold Storage Inc.* 324 S.C. 628, 479 S.E.2d 831 (Ct.App. 1996)(reversed on other grounds, 335 S.C. 46, 515 S.E.2d 532 (1999). In this case, the work performed by Todd benefited Roberts who was the owner of the boat and

also the employer and owner of the sole proprietorship which Todd worked for at the time of the accident. Roberts ordered Todd to go to the boat for him. Todd did what he was told to do and should not be penalized -- he was doing the master's bidding.

The Employee also cites other South Carolina cases which are applicable in this matter. In *Howell v. Cash & Karry*, 264 S.C. 298, 214 S.E.2d 821 (1975) the South Carolina Supreme Court recognized the following general rule:

> An act outside an employee's regular duties which is undertaken in good faith to advance the employer's interest, whether or not the employee's own assigned work is thereby furthered, is within the course of employment. 214 S.E.2d at 822 (quoting 1A. Larson, Law of Workers' Compensation Section 27.00); see also *Lomax v. City of Greenville*, 225 S.C. 289, 82 S.E.2d 191 (1954).

In *Howell*, the claimant broke his arm while chasing two young boys who snatched the purse of a prospective customer a few feet from the entrance to the employer's store. Although protecting customers was not a part of the employee's regular duties, the court felt he nevertheless was advancing the employer's interest in trying to save the very money the customer was intending to spend in employer's store and by creating customer good will. The court noted that "awards have been upheld for injuries occurring in the course of miscellaneous good Samaritan activities by employees, on the theory that the employer ultimately profited as a result of the good will thus created...." 214 S.E.2d at 822.

In *Gibson v. Spartanburg School District No. 3*, 338 S.C. 510, 526 S.E.2d 725 (Ct.App. 2000), the claimant was at Wal-Mart purchasing school supplies for employer, which was one of her duties. While at Wal-Mart, the claimant reached for a lunchbox for her son, when a box cutter fell off the shelf severely cutting her right eye. The court held that the claimant's trip to Wal-Mart was a dual purpose in that it served both a business and personal purpose.

In sum, when an employee is obligated to make or perform service at times other than his regular work hours or because of a special errand or mission for the employer, he is entitled to the protection of the compensation laws from the time he leaves home until his return thereto. It is thus logical that when an employee is on this type of special errand and it results in injury or death and such arises out of and in the course of his employment, the employee is thus covered within the meaning of the workers' compensation act.

III. THE FULL COMMISSION ERRED IN NOT RULING THAT THE CLAIMANT HAD BEEN DIRECTED BY HIS EMPLOYER TO GO ON A PERSONAL ERRAND. (ISSUES: I, II, III, IV, V, VI, VII).

The Full Commission in its Order does not address the Employee's legal position that he was on a personal errand for the Employer. The facts are undisputed that the Employee was told by his Employer to go to the Employer's boat on Friday morning and help repair it. There is no dispute in the record that this is what the Employer (Roberts) requested the Employee (Todd) do. This is a personal errand for the Employer. The Employee raised this issue before the Workers' Compensation Commission and it was ignored. (See Brief of Appellant to Full Commission) (R. pp. ___). This is not an issue of first impression in this state in that South Carolina recognizes the personal errand rule. The Full Commission of the Workers' Compensation Commission refuses to address this legal issue in its Order which is an error of law. It is well settled that when an issue is raised, the Full Commission, just like any other court or tribunal, must address that issue – not ignore it. Here, Todd was on a special personal errand or mission for his Employer and was injured. The injury arose out of the course and scope of his employment within the meaning of the Workers' Compensation Act. The Full Commission ignores this legal principle in finding against the Employee. In fact, all the substantial evidence and the law supports this was a special/personal errand as seen from the previous testimony of the witnesses.

IV. THE COMMISSION'S FINDINGS ARE IRRELEVANT AND ERRONEOUS TO THE ISSUE IN THIS CASE. (ISSUES: I, II, III, IV, V, VI).

Further, the Full Commission got side tracked on factual issues which are not germane to this case. See Finding of Fact Nos. 6, 8 and 10 as examples. In Finding of Fact No. 8, the cross examination between the Claimant and the Defendant Employer is not relevant to the issue at hand which is whether or not the Employee was on the job and was directed by the Employer to go repair the boat when he was injured. Further, affirming Finding of Fact No. 10 is simply erroneous and is beside the point. In Finding of Fact No. 10, the Full Commission affirmed the single Commissioner who said "I have to believe that all the times he spent with the Defendant/Employer was time for which he was paid. That conclusion is simply not supported by the facts." Finding of Fact No. 10 is disingenuous and simply begs the only relevant question which is: On the day of the explosion, was the Employee on the job? The answer from the testimony and established evidence is a resounding "yes" in that the Employee was on a regular work day (Friday) and was on his regular work shift (about 8:30 a.m.) and was told by the Employer to go to the Employer's boat and work on it. (Roberts Tr. p. 79, lines 22-25; p. 80, lines 2-5; p. 80, lines 23-24; p. 83, lines 4-5). All these facts are not discussed by the Full Commission which simply dodges the seminal question: On the day of the accident at that time was the Employee on the job? As indicated previously, the only answer to this question can be a resounding "yes" based on the testimony and evidence presented at the trial.

Claimant likens this decision to any other decision when an employer directs an employee to go on a personal errand for that employer. The employee can either agree to go on the personal errand and not be covered (under the Commission's view) or he can refuse to go on the personal errand and be fired. Appellant asserts personal errands are covered as

a matter of law in South Carolina and that the Employee in this circumstance is covered as a matter of law.

CONCLUSION

This case is very troubling for employees and a matter of great public importance in this state. Here Todd was told by his Employer to go work on the Employer's boat. While the Employer was in the home repair business, Todd still did whatever the Employer asked of him for fear of losing his job. This is what thousands of South Carolinians must do each day when they go to work and this Court should rectify cases such as this one and hold as a matter of law that when an employee is directed to go on a personal errand for the employer it is covered under the Workers' Compensation Act.[2] On the day of this accident, Todd acted in good faith and was told while he was on his way to work on a foreclosed house to go and work on the Employer's boat. Todd had no choice in the matter. If he said "no" he would be fired. He was given a Hobson's choice and this Court should not find the act non-compensable because it was an act outside of his regular duties because it was required by the Employer. The law in the United States on this issue is that Todd was on a special or personal errand for the Employer at the time of this accident and should be compensated. Todd was carrying out the Employer's instructions and should not be penalized for following the instruction of the Employer.

As an example, Appellant's counsel would offer the following scenario: A member of this Court asks an administrative assistant or law clerk to stop off on the way to work and pick up his or her dry cleaning. The employee obliges and falls while picking up the dry cleaning on a foreign substance and is injured. Under the private and/or personal errand

[2] Counsel notes that the personal errand rule is currently based on a case reversed on other grounds and thus this court should settle this issue once and for all. *Hicks v. Piedmont Cold Storage, Inc.*, 324 S.C. 628, 479 S.E.2d 831 (Ct.App. 1996) reversed on other grounds, 335 S.C. 46, 515 S.E.2d 532 (1999)

rule, that member of the court staff is covered, as he or she should be, since he or she was doing an act requested by his employer. In this case, Todd was doing nothing more than being a good employee and obeying his employer. He should not be penalized because he obeyed his employer and went to work as requested. The risk of loss should fall not on Todd, but on the Employer since the Employer required Todd to work on the boat which exploded and burned Todd severely. To hold otherwise leaves good hard working South Carolinians unprotected under the Workers' Compensation laws of this state. This court would never do that and accordingly should reverse the Full Commission and find that the Employee is entitled to judgment as a matter of law. See *Pierre v. Seaside Farms, Inc.*, 386 S.C. 534, 680 S.E.2d 615 (S.C. 2010). (In that case, the Supreme Court noted that a reviewing court must determine if the Commission's findings of fact are supported by the substantial evidence and the law. The Court held that an appellate court can reverse or modify the Workers' Compensation Commission's decision if it is affected by an error of law or is clearly erroneous in view of the reliable, probative and substantial evidence in the record. *Pierre*, 680 S.E.2d at 616.)

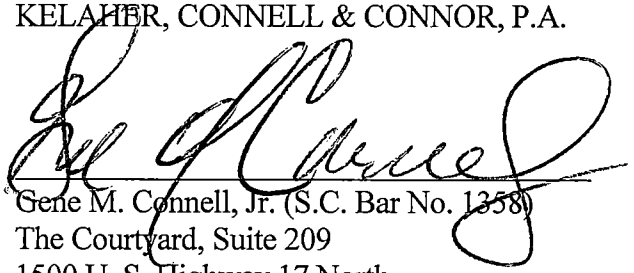
Since there is no evidence in the record to support the Full Commission's findings in this case, this Court must as a matter of law find that Todd is entitled to compensation. See *Burnette v. City of Greenville*, 401 S.C. 417 737 S.E.2d 200 (Ct.App. 2012) ("we conclude the Commission's findings holding Burnette neither injured or aggravated a prior injury to her lower back in the 2007 incident are not supported by substantial evidence"). In this case, the facts are undisputed. The Full Commission should have applied the personal errand doctrine. In failing to do so, the Full Commission's decision was affected by an error of law and prejudiced the Claimant. See *Grant v. Grant Textiles*, 372 S.C. 196, 641 S.E.2d

869 (2007) (when the facts are undisputed we must examine whether the Commission's decision...was affected by an error of law).

In sum, Appellant's rights were prejudiced (including an error of law) and this Court should modify the Full Commission's decision and find this is a compensable injury to Todd as a matter of law. *Bazen v. Badger R. Bazen Company, Inc.*, 388 S.C. 48, 693 S.E.2d 436 (S.C. App. 2002).

Respectfully submitted,

KELAHER, CONNELL & CONNOR, P.A.



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May 24, 2016
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