

THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

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SC Court of Appeals

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

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Appellate Case No. 2016-000181  
Trial Court Case No. 1320600

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Kevin M. Todd.....Appellant

v.

Michael Roberts d/b/a Michael Roberts Home Repair,  
and the South Carolina Uninsured Employer's  
Fund.....Respondent

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INITIAL BRIEF OF RESPONDENT

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## STATEMENT OF ISSUES ON APPEAL

1. DID THE FULL COMMISSION ERR IN FINDING THE EMPLOYEE WAS ENGAGED IN A PERSONAL VENTURE WITH HIS EMPLOYER WHEN HE WAS INJURED?
2. DID THE FULL COMMISSION ERR IN FINDING THE EMPLOYEE FAILED TO PROVE HE WAS WORKING FOR THE EMPLOYER'S HOME REPAIR BUSINESS AT THE TIME OF THE ACCIDENT; AND THAT WHAT HE WAS DOING AT THE TIME OF THE EXPLOSION WAS WITHIN THE COURSE AND SCOPE OF HIS EMPLOYMENT

## STATEMENT OF THE CASE

This workers' compensation appeal arises out of alleged work-related injuries sustained by the Appellant, Kevin M. Todd, on August 9, 2013 (herein referred to as Todd). Todd was employed by Michael Roberts dba Michael Roberts Home Repairs (herein after referred to as Roberts). Todd was injured when a boat exploded while engaged in a personal venture with Roberts.

Todd filed a claim for workers' compensation benefits [Form 50, 2/28/2014]. As his direct Employer, Roberts, was insured the South Carolina Uninsured Employers' Fund was made a party to the claim. On September 25, 2014, a hearing was held before Commissioner Gene McCaskill. Commissioner McCaskill issued a Decision and Order dated March 24, 2015, wherein he found:

1. The Claimant alleges that he suffered severe burns arising out of and within the course and scope of his employment on August 9, 2013.
2. The Defendant/Employer asserts that the Claimant's injuries were not the result of a work-related accident.
3. The Defendant/Employer, who was advised of his right to counsel, represented himself.
4. There is no dispute in the case as to the mechanism of the injury. The Claimant was severely burned working on a boat belonging to the Defendant on August 9, 2013.
5. The Claimant was air-lifted to and treated at the University of North Carolina

Burn Center where he spent a number of week recovering

6. The question at bar at this hearing was whether the work on the boat was in the course and scope of the Claimant's employment by the Defendant/Employer
7. The Claimant's position was that he was paid a salary of \$500.00 per week by the Defendant/Employer and anything the Defendant/Employer asked him to do could be considered work because he paid him a salary.
8. The exchange between the Claimant and the Defendant/Employer when the Defendant Employer cross-examined the Claimant is illustrative of that point.

Q: What about on the-now, you say that just because I paid you \$500.00 a week, that Monday through Friday anytime you were with me you were on the clock; right?

A: After certain hours.

Q: Do you think you were still on the clock on them days we knocked off at 12:00 o'clock, went to the river and rode down there and drank beer before we got home from work?

A: That's up to you.

Q: Were you on the clock?

A: Yeah, because you paid me.

(Transcript, page 60, lines 2-12)

9. Based on the testimony the Claimant, the Claimant's girlfriend-Michelle Bratcher Holmes Adams, and the Defendant, it is clear that the Claimant not only worked for the Defendant/Employer, the two interacted socially outside of work. The extent of that interaction is subject to interpretation, but they clearly were interacting socially before this accident.
10. 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.
11. The Claimant and Defendant/Employer took at least one boat trip-on a different boat-with their mates. If the Defendant/Employer is to be believed-and I do as to this fact-the Claimant and the Defendant spent additional time together on and around boats that was not work time.
12. The Defendant/Employer's business is Mike Robert's Home Repair. Work related to that business has nexus to home repair and maintenance, not working on boats.
13. The houses that the business worked on were owned by financial institutions. The Defendant/Employer personally owned this boat.
14. The Defendant/Employer paid Holmes Adams and Anthony Williams to work on the boat that exploded. Mr. Adams is a subcontractor who also works on houses for the Defendant/Employer. Mr. Williams was contracted for an electrical job on the boat and was present and injured in the explosion. That was the first time he had worked for the Defendant/Employer. He testified that he was never paid for that work. (The Claimant, Defendant/Employer and Mr. Williams were all injured in the explosion. The Claimant's injuries were the most serious). It is interesting to note that Mr. Williams and the Claimant both now work for the same employer.
15. There is no testimony in this case that anyone other than the Claimant was paid a salary by the Defendant/Employer.

16. There is a note in the record from Monika C. Atansesian who is a social worker at UNC Medical Center which reads in part, "Pt. is a 35yo Caucasian male admitted to burn surgery service on 8/9/13 for treatment of 10% second degree flash burns to his bilateral upper and lower extremities (L>R) sustained when he was working on his boats' engine and there was a gas fire followed by an explosion that injured pt. Pt. stated that they been salvaging the boat from the bottom of the river and were drying off the engine etc, and so the explosion was completely unexpected. Pt. stated he was doing this on his personal time and was not working..."
17. The Claimant contends he was on some much medication, he could not remember what he said.
18. This case comes down to who and what to believe.
19. While I do not believe everything the Defendant said, his account is the more believable as to the facts of this case.
20. The Claimant has the burden of proof since this is a denied claim. When I consider the evidence as a whole, the Claimant simply has not met his burden. The Claimant failed to prove that he was working for the Defendant/Employer's home repair business at the time of the accident; and that what he was doing at the time of the explosion was in the course and scope of his employment.
21. These finding are based on the testimony and the record when reviewed as a whole.
22. All benefits under the South Carolina Workers' Compensation Act are hereby denied.

Appellant timely filed a Form 30 (Notice of Appeal) to the Full Commission. On January 12, 2016, the Appellate Panel issued an Order affirming Commissioner McCaskill's conclusion denying benefits to Todd.

### STANDARD OF REVIEW

The standard of review for decisions of the South Carolina Workers' Compensation Commission is established in the South Carolina Administrative Procedures Act. Hargrove v. Titan Textile Co., 360 S.C. 276, 599 S.E.2d 604 (Ct. App. 2004). A reviewing court must not disturb the Workers' Compensation Commission's findings if those findings are supported by substantial evidence in the record. Pearson v. JPS Converter & Indus. Corp., 327 S.C. 393, 489 S.E.2d 219 (S.C. App. 1997). The fact

that reasonable minds may differ or that there is the possibility of drawing inconsistent conclusions does not prevent an agency's findings from being supported by substantial evidence. Grant v. South Carolina Coastal Council, 319 S.C. 348, 461 S.E. 2d 388 (S.C. 1995).

### ARGUMENT

1. THE FULL COMMISSION DID NOT ERR IN FINDING THE APPELLANT WAS ENGAGED IN A PERSONAL VENTURE WHEN HE WAS INJURED.

Todd submitted various documents and medical records into evidence pursuant to the APA. Todd called three witnesses to testify on his behalf before testifying himself. Todd first witness was Holmes Adams. Adams testified that he worked for Roberts as a subcontractor for seven to eight months. He testified that the Roberts did work cleaning up houses that were bank foreclosures. (Tr. p. 11, lines 9-10). Adams testified that he and Roberts negotiated a price for each job before the work commenced. (Tr. p. 14, lines 24-25). Adams testified that Roberts assigned him a task and he would complete it. He further testified that Roberts did not supervise his work but inspected it upon completion.(tr. p.14, lines 19-21).

Adams also testified that the Roberts had three other employees besides the Todd. Adams testified that Bobby Day, Ryan Harrelson and James Flawn worked for the Roberts. (Tr. p. 11, lines 16-18). Adams testified that he was not present on the date of accident but previously did some mechanical work on the boat in question. (Tr. p.11-12,

lines 23-6). Adams currently works for Chevrolet Cadillac in Myrtle Beach.

Michelle Bratcher testified next. She is the girlfriend of Todd. Bratcher testified that the Todd worked for the Roberts along with Bobby Day, Ryan Harrelson and James Flawn. Bratcher admitted on cross examination that she did not personally know the employment relationship between these persons and Roberts. (Tr. p. 31, lines 16-25). Bratcher testified that Todd's job duties were mainly home repairs but did anything the employer asked of him. For example, Todd went on service calls after hours if there was a problem at one of the properties. (Tr. p. 25, lines 17-20). He also took the Roberts' son to school. (Tr. p.25, lines 7-9).

Bratcher testified that Todd helped Roberts work on boats but that was not his regular job. She further testified that she and Todd socialized with Roberts and his family outside of work to include taking boat trips. (Tr. p. 32, lines 1-5). Bratcher further testified the Roberts gave Todd \$1700.00 after the accident. Finally, Bratcher testified that Todd was out of work from the date of accident until July 28, 2014. She testified that the Todd is currently working for Reliable Electric. (Tr. p. 27, lines 13-18).

Anthony Renard Williams testified next. Williams testified that he was called by Todd and told that Roberts needed help doing some electrical work on his boat. Williams testified that he is an electrician. Williams testified that he was to be paid for working on the date of accident and if things worked out he would possibly do more work for Roberts as he was unemployed. Williams testified that he was present when the explosion occurred and was injured.

Kevin Todd testified on his behalf. Todd is thirty-six (36) years old. Todd resides with girlfriend Michelle Bratcher and their son. Todd's work history work is an

electrician.

Todd testified that Roberts was his boss/supervisor. He testified that they were personal friends as well. Claimant testified that there were at least four (4) employees working for the Roberts. Todd testified that his job duties included painting, roofing, plumbing and anything else he was asked to do. Claimant also testified that he was always on the clock when he was with Roberts. This included while working on boats with Roberts. Todd also testified that he paid his co-workers on several occasions at the behest of Mr. Roberts.

Todd testified he was hurt while working for Roberts on Friday, August 9, 2013. Todd testified that he along with Anthony Williams and Roberts were trying to clean up a boat owned by Roberts. The boat was pulled out of the river and had gas in the tank. The boat was located in the river behind Roberts' father's home and not on a jobsite. Todd testified they were trying to pump the gas out of the tank when the explosion occurred. Todd testified that he was burned on his left arm just above the elbow down to his fingertips and on the right arm just above the elbow down to his wrist.

Todd testified that he was hospitalized at the University of North Carolina Hospital from the date of accident until August 23, 2013. Todd underwent several skin grafts. Todd testified that while he was hospitalized and out of work Roberts paid him a total of \$1,700.00.

Todd testified that he returned to work for two days but could not do the work. Todd further testified that he is currently working as an electrician with Reliable Electric. He started this job on July 28, 2014. Claimant testified that he did not seek other employment between the time he tried to return to work with the Roberts and securing

this job.

Todd testified that he is currently having problems with pain and skin tightness

On cross-examination, the Todd testified that he worked on boats with Roberts on five (5) occasions. (Tr. p.52, lines 18-20) He also testified that he took boat trips with Roberts along with their spouses.

Mike Roberts, owner of Mike Roberts's dba Mike Roberts Home Repair, testified on his behalf. Roberts testified that he has been in business for about five years. He further testified that the primary function of the business is to do repair and/or maintenance work on homes and rental properties owned by financial institutions. The business does not do any repairs to boats.

Roberts testified that Todd worked for him in the home repair business. Roberts testified that he and Todd became personal friends as they worked together. Roberts further testified that he and the Todd worked on boats owned by both parties as personal ventures. Roberts testified that they took trips together on the boats once they were repaired.

Roberts testified that he paid the Todd a salary of Five Hundred dollars (\$500.00) per week. Roberts further testified that Todd was the only employee who was on salary. He paid everyone else an hourly wage. Roberts also testified that he paid Todd his weekly salary even if they finished work early or if the Claimant was out sick.

Roberts testified that Bobby Days was an hourly employee at the time of the accident. He further testified that James Flawn was not employed on the date of accident. Flawn quit several weeks before the date of accident due to a confrontation with Bobby Days. Roberts testified that Anthony Holmes and Ryan Harrelson were subcontractors.

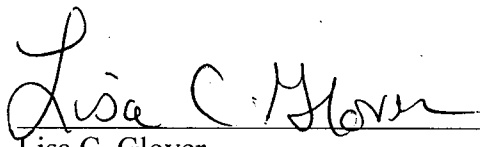
Roberts testified that on the date of accident he and Todd were on the way to a job when they decided to stop by his (Roberts) father's house and work on the boat. Roberts contends they were not engaged in any work for Mike Robert's Home Repair. Roberts testified that while he was trying to pump gas from the tank of the boat into a metal drum an explosion occurred. Roberts testified that he suffered burns to his arms and hands.

Roberts testified that he gave Todd at least Four Thousand dollars (\$4,000.00) while he was hospitalized and out of work. Roberts testified that he gave Todd or other family members Five Hundred dollars (\$500.00) per week for eight (8) weeks.

### CONCLUSION

For reasons cited herein, the South Carolina Workers' Compensation Uninsured Employers' Fund requests that this Honorable Court affirm the decision below as supported by substantial evidence in the record and deny Appellant's request for benefits.

Respectfully Submitted

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PROOF OF SERVICE

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I certify that I have served the Initial Brief of the Respondent on all parties by depositing a copy of it in the United States Mail, postage prepaid, on August 30, 2016, addressed to the following:

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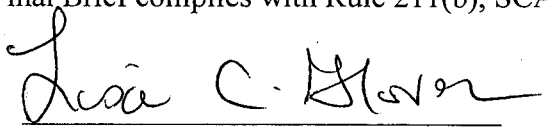
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CERTIFICATE OF COUNSEL

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The undersigned certified that this Final Brief complies with Rule 211(b), SCAR.

August 30, 2016



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