

THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

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OCT 17 2016

S.C. SUPREME COURT

APPEAL FROM RICHLAND COUNTY
Appellate Panel, Workers' Compensation Commission

OPINION NO. 2015-UP-339 (S.C. Ct. App. Filed July 8, 2015
Appellate Case No. 2015-002397

LeAndra Lewis, Claimant,

Petitioner

v.

L.B. Dynasty, dba Boom Boom Room Studio 54 and
S.C. Uninsured Employers' Fund, Defendants,

Of Whom S.C. Uninsured Employers' Fund is,

Respondent

BRIEF OF RESPONDENT

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Attorney for Respondent

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QUESTION PRESENTED

Whether the Workers' Compensation Commission's Appellate Panels calculation of LeAndra Lewis's Compensation Rate was erroneous?

STATEMENT OF THE CASE

This case comes before this Court based upon the Court's granting Appellant petition for a writ of certiorari to review the Court of Appeals' decision in *Lewis v. L.B. Dynasty*, Op. No. 2015-UP-339 (S.C. Ct. App. July 8, 2015). The issue for determination is Lewis' compensation rate.

Lewis contends that she earned One Thousand Six Hundred fifty dollars (\$1650.00) (App.p. 187) per week as a dancer in clubs. This figure is based on Lewis earning \$300.00 per night working six days per week. (App.p. 181). This figure yields the maximum Compensation Rate for the year 2008, which is Six Hundred sixty-one dollars and twenty-one cents (\$661.29) Lewis testified that she worked at the club where the injury occurred on three occasions during the year of 2008. Otherwise she worked at other clubs in South Carolina and North Carolina. (App.p.300-301). Claimant testified that she could not remember the dates of the first and second time she danced at the Club but did recall that she earned Five Hundred dollars (\$500.00) each time. Claimant further testified that she earned Three Hundred fifty-seven dollars (\$357.00) on the night she was injured. The Claimant contends her Average Weekly Wage and Compensation Rate should be based upon this concurrent employment.

The Fund argues that Lewis is required by Regulation 67-1603(H) to submit a

Form 20 to the Claim's department and the employer outlining wages earned from other employers. Lewis testified that she did not have any Form 20 to present as evidence of additional wages to be considered. "The Claimant has the burden of proving wages earned from jobs other than the one where the accident occurred." Steele v. Self Serve, 335 S.C. 232, 516 S.E.2d 674 (Ct. App. 1999). The only evidence in the record of Lewis' earning is her testimony, which was found to be self-serving. The Appellate Panel found that Lewis' compensation rate should be Seventy-five dollars (\$75.00).

For the reasons stated above, the Fund contends Lewis is not entitled to a finding that she is entitled to the maximum Compensation Rate for the year 2008. Lewis failed to meet her burden of proof by not providing a Form 20 outlining wages earned from another employer as required by Regulation 67-1603(H).

ARGUMENT

This Court should affirm the Court of Appeals decision that Lewis' compensation rate is \$75.00 per week. A compensation rate of \$75.00 is the minimum compensation rate per S.C. Code Ann. § 42-9-10 (A). The single commissioner found that Lewis failed to establish her claimed average weekly wage.

Lewis testified that she did not have any Form 20s to submit in support of her contention that she earned \$1,650.00 per week working as a dancer concurrently in clubs here in South Carolina and North Carolina. "Generally, when an employee works

at concurrent jobs, the employee's wages from his multiple jobs may be combined to compute his average weekly wages." *Steele v. Self Serve, Inc.*, 335 S.C. 323, 326, 516 S.E.2d 674, 676 (Ct. App. 1999). Further, "the claimant has the burden of proving wages earned from jobs other than the one where the accident occurred." *Id* at 327, 516 S.E.2d at 676. Lewis further testified that she did not file an income tax return.

The Form 20 is governed by Regulation 67-1603(H) regarding concurrent employment. It provides:

If the claimant alleges he or she worked for two or more employers when the injury occurred, the claimant may request the additional wages be included as part of his or her average weekly wage. The claimant shall obtain a completed Form 20 from each of the other employers and file the Form 20 with the Claims Department. The Claimant shall provide a copy of each Form 20 to the employer's representative. The Commission will calculate the new compensation rate and notify the parties. If the employer's representative does not agree to pay the new compensation rate, the claimant may request a hearing to determine the proper compensation rate by filing a Form 50 pursuant to R.67-207.

Lewis presented two other witnesses in support of contention that she is entitled to the maximum compensation rate for the year 2008. The first witness was Dequanna Jerae Cooper. Cooper testified that she previously worked as a dancer at the club in question two years prior to Lewis' injury. (App.p.229). Her testimony regarding the number of dancers, management, operation of the club and monies earned were based on her experience when she worked at the club two years prior to Lewis' injury (App.p.230, 242).

The other witness to testify on behalf of Lewis was her sister Clarnicki Lewis. She testified that she went to the club with her sister on the night that she was injured. She


did not offer any testimony as to how much money L. Lewis earned.

CONCLUSION

For the reasons stated above, the Fund contends Lewis is not entitled to a finding that she is entitled to the maximum compensation rate for the year 2008, which is \$661.29. Lewis failed to meet her burden of proof by not providing a Form 20 outlining wages earned from another employer as required by Regulation 67-1603(H).

Respectfully submitted,

By:


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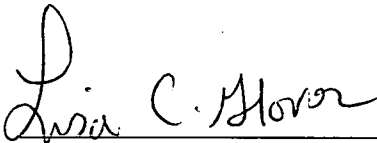
PROOF OF SERVICE

The undersigned hereby certifies that on the date indicated below she served counsel for the Petitioner with a copy of the *Brief of Respondent* by mailing copies of the same by United States Mail with first class postage prepaid to the following addresses:

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October 14, 2016



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