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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.: 1520441

Christopher Burnell

EMPLOYEE,
CLAIMANT/RESPONDENT

VS

Custom Communications, Inc.

EMPLOYER,

AND

Builders Mutual Ins. Co.

CARRIER,
DEFENDANTS/APPELLANTS,

Appellate Panel Review held in Columbia, South
Carolina, on November 15, 2016 per notices timely
and properly served upon all parties of interest.

Appellate Panel Decision and Order
Majority Affirmation with Amendment

Filed: .

February 23, 2017

APPEARANCES: Claimant/Appellant represented by Car H. Jacobson, Esquire
Defendants/Respondents represented by George A. Taylor, Esquire

STATEMENT OF THE CASE

A hearing was scheduled pursuant to a Form 50 filed by Claimant's attorney on January 12, 2016. The Claimant maintained that he sustained a compensable injury to his left elbow/arm while in the course and scope of his employment with the Employer on December 20, 2015. Furthermore, the Claimant maintained that he was entitled to medical treatment, temporary total disability benefits from December 20, 2015 through March 28, 2016 at the weekly compensation rate of \$574.09 and temporary partial disability benefits from March 28, 2016 and continuing in accordance with the applicable provisions of the Act.

In response, Defendants contended that the Claimant was an independent contractor and, as such, the Commission lacks jurisdiction over this claim. Additionally, the Claimant would therefore would not be entitled to medical or disability compensation. Additionally, even if the claim were deemed to be compensable, the parties did not agree on the applicable average weekly wage and compensation rate.

The hearing was conducted before Commissioner Mike Campbell on April 28, 2016. At the conclusion of the hearing, Commissioner Campbell issued a Decision and Order making the following Findings of Fact and Conclusions of Law:

FINDINGS OF FACT

IT IS FOUND AS A FACT:

1. The Claimant sustained a compensable accidental injury to his left elbow and arm on December 20, 2015 when he fell off a customer's roof arising out of and in the course of his employment with the Employer.
2. At the time of his accident, the Claimant was an employee and Custom Communications, Inc., was an employer that had four (4) or more regular employees in South Carolina and was subject to the South Carolina Workers' Compensation Act. As such, the Commission has jurisdiction over this claim.
3. The Claimant was not an independent contractor; he was an employee as defined by the Act. I find that at the time of his accident, not only did the Employer exercise the requisite actual control over the employees activities, , there also existed the right to control and direct the Claimant's work, as to the manner or means of this accomplishment.
4. I find that although the Employer contends that it exercised little control over the Claimant's determination of when and where he was to work for the Employer, the evidence demonstrates that when the Claimant did use the application device that had been provided for him to sign on and get his

assignments, the Employer had the right to control the method and means of his doing his work and monitor his work as he performed it.

5. I find that the "Independent Contractor" agreement (EX 4) paragraph 13 provides that "Contractor agrees that the services to be provided and performed by Contractor will be performed by Contractor in a careful and efficient manner and in strict conformity with any applicable regulations or technical specifications...the Contractor does, however, agree to adhere to the general policies, procedures and specifications established by the Company, including those which relate to record keeping and administrative functions. Further, the Contractor acknowledges and agrees to adhere to any standards and conditions imposed upon the performance of the services by the customers or clients of the Company."
6. I find that Exhibit A attached to the Independent Contractor Agreement provides "Contractor must wear a company polo shirt and a company issued ID badge and maintain a neat appearance at all times during the performance of services rendered pursuant to the Independent Contractor Agreement." "Contractor will provide the Company with the Contractor's 24 hour a day contact person who shall have a mobile phone." "Contractor should be fully prepared to perform and complete all accepted, scheduled service appointments on the scheduled date and within the scheduled appointment window, even if the Contractor is unable to confirm such appointment with a customer."
7. I find that the Employer required the Claimant to wear a shirt and badge identifying him as being associated with the Employer. Once the Claimant signed onto work, and accepted calls, he was subject to his supervisor's control as to the places that he would go to perform services. He was required to use the rates that were provided to him by the Employer. The Employer provided the satellite dishes and receivers to the Claimant to provide service to the customer. Although there is some dispute as to whether the Claimant was required to come to work and the hours that he was supposed to work, I find that when the Claimant worked as a service man for the Employer, he was subject to the substantial right of control as to the method and manner in which he did his work. As such, I find that the evidence leans heavily in favor of finding that the Employer exercised the right of control over the Claimant.
8. I find that the Employer provided the essential equipment to the Claimant to perform his services in that the Employer required that the Claimant use the satellite dish and receiver provided.
9. I find that the Employer retained the right to terminate the Claimant's services and the right to fire him. This right was specifically stated in the "Independent Contractor" agreement, paragraph 10 (EX 4). Said paragraph

provided that "the Company may, for reasons sufficient and satisfactory to it alone, terminate this Agreement at anytime in whole or in part, by providing written or verbal notice of termination to Contractor."

10. I find that the Claimant was required to go through a training process for CCI before he was able to perform services on his own. (Tr. 22, Line 23-Tr. 23, Line 1). The training was performed by a co-technician who presumably showed Claimant how to do the work in accordance with standards that CCI had. (Tr. 24, Lines 1-4).
11. I find that based on Claimant's supervisor's testimony, CCI had the right to basically fire the Claimant for any reason what-so-ever at any time. (Tr. 26, Lines 3-20).
12. I find that if the Claimant failed to wear a company polo shirt with a company Dish ID and maintain a proper appearance during the performance of his services that would be could be grounds for termination. (Tr. 28, Lines 9-14).
13. I find that if the Claimant did not perform his services and failed to adhere to the Company's standards and conditions, that would be grounds for firing him. (Tr. 30, Lines 2-18).
14. I find that the greater weight of the evidence shows that the Defendant had the right to or the actual exercise of control over the Claimants employment.
15. I find that the greater weight of the evidence is that the Defendants furnished the Plaintiff with the essential equipment to perform his services and to fulfill the duties of his employment.
16. I find that the greater weight of the evidence is that the Defendant reserved and did retain the right to fire the Claimant if he did not perform in accordance with the expectations of the Defendant.
17. I find that the greater weight of the evidence is that the Defendant exercised control over the method of payment of wages to the Claimant. The Defendant, through its association with Dish, implemented a "score card" that dictated the amount that the Claimant would be paid for his services. Although the Claimant was issued a 1099, he had no control over whether the Employer would provide him with a W-2 or a 1099. The amount that the Claimant was paid for his specific services, was dictated by a system created by Dish and implemented by the Employer. (Tr. 70, Line 18-Tr. 73, Line 3). The Employer paid the Claimant wages through direct deposit; he was not paid for services by the customer who received the benefit of his service.

18. I find that the Employer provided the Claimant with a \$1,000.00 sign up bonus in order to defray some of his initial expenses to purchase materials.
19. I find that although the Claimant signed an "Independent Contractor" agreement, this agreement was an adhesion contract in that the Claimant had no right to change any of its terms and the agreement was not negotiated at arms length. Essentially, the Claimant was instructed to either sign the agreement or he would not be able to work for the Employer. Notwithstanding the title "Independent Contractor" agreement, there are numerous provisions, including the right to terminate the Claimant for any reason, and the duty to wear a company polo shirt and badge which are inconsistent with the status of an independent contractor.
20. I find that the Claimant fractured his left elbow when he fell from a roof while performing services that were assigned to him to perform by the Employer on December 20, 2015.
21. I find that the Claimant required medical treatment, including, but not limited to surgery and follow-up medical treatment.
22. I find that the Claimant was disabled from the date of accident until he went back to work as an Uber driver on March 28, 2016.
23. I find that the Claimant tried to go back to work for the Employer on light duty restrictions but the Employer did not offer him any work within his restrictions.
24. I find that the Claimant's average weekly wage is as provided in the Form 20 in the sum of \$837.99, but based upon the Claimant's testimony approximately 15% of his weekly wages include his expenses associated with fuel and other business expenses (Tr. 123, Lines 2-14), I reduce his average weekly wage to the sum of \$712.29 with a compensation rate of \$474.89.
25. I find that the Claimant is entitled to temporary total disability compensation at the weekly rate of \$474.89 from December 21, 2015 through March 28, 2016.
26. I find that the Claimant is not at maximum medical improvement and he has claimed and is entitled to receive temporary partial disability compensation, based upon 2/3 rds of the difference between his discounted average weekly wage because his business expenses and a similarly discounted wage while employed by Uber (reduced by 15%).
27. While Defendants took measures to distinguish Claimant as an independent contractor, Claimant presented enough sufficient evidence that Defendants

exercised significant control over the Claimant in the performance of his job duties for Claimant to be legally defined as an employee. Therefore, I find that Claimant was an employee of CCI.

28. Claimant sustained a compensable injury by accident to his left elbow arising out of and in the course and scope of his employment.
29. Claimant is entitled to all past and future causally related medical treatment.
30. Claimant is entitled to an award of temporary total disability from December 21, 2015 until March 28, 2016. The present sum due for TTD benefits is the sum of \$6,648.46.
31. Claimant is entitled to temporary partial disability from March 28, 2016 and continuing.
32. Claimant's expenses for performing his job are not part of his average weekly wage; therefore, the average weekly wage of both his earnings at the time of his accident as well as post accident must be reduced by 15% to reflect the adjusted average weekly wage for his business expenses.
33. I find that the services that the Claimant performed were essential to the business of CCI. There was no way for CCI to operate as a satellite dish company without the services provided by the Claimant. The Claimant's services were certainly within the trade and course of business for CCI. This finding also supports the finding of employee as opposed to independent contractor.
34. I find that the Claimant may be entitled to additional compensation for post-Hearing temporary partial disability benefits, upon further presentation of wage earnings. The present amount due for temporary partial disability compensation up to the date of the Hearing is the sum of \$1,379.01.

CONCLUSIONS OF LAW

Accordingly, as provided in Section 42-17-40 of the South Carolina Worker's Compensation Act, it is the determination of this Commissioner that:

1. §42-1-130 defines Employee.
2. SC Code §42-1-610 provides that "no contract or agreement...shall in any manner operate to relieve any employer, in whole or in part, of any obligation created by this title."

3. SC Code §42-1-620 provides that “no agreement by an employee to waive his rights to compensation under this title shall be valid.”
4. The determination as to whether an individual is an independent contractor or an employee is the purported employer’s right to control the claimant in the performance of his work. In analyzing the nature of a work relationship the Court examines four factors: 1) direct evidence of the right or exercise of control; 2) furnishing of equipment; 3) method of payment; 4) right to fire. Each factor is considered with equal force and the mere presence of one factor indicating an employment relationship is not dispositive of the inquiry. *Lewis v. Dynasty*, 770 S.E. 2d 393 (2015).
5. §42-9-10 provides the payment of temporary total disability benefits.
6. SC Code §42-9-20 provides for the payment of temporary partial disability compensation benefits.
7. §42-15-60 governs the payments of medical benefits.

Based upon the Findings of Fact and the Conclusions of Law, the Single Commissioner issued the following Order and Award:

ORDER AND AWARD

IT IS THEREFORE ORDERED that the Defendants shall pay for all causally related medical treatment, to date and continuing and also reimburse the Claimant for any out-of-pocket medical expenses that he may have paid, including mileage. The medical treatment to date includes, but is not limited to the Roper Northwoods Emergency Department, Charleston Hand Group (Dr. Brooker) and Roper Mt. Pleasant. The Claimant’s cost for surgery and hospitalization and related costs are specifically covered.

IT IS FURTHER ORDERED that the Defendants shall authorize additional medical treatment for the Claimant’s left arm as needed in order to obtain maximum medical improvement.

IT IS FURTHER ORDERED that the Defendants shall pay the Claimant temporary total disability compensation benefits at the weekly rate of \$474.89 from December 20, 2015 through March 28, 2016 in the sum of \$6,648.46, and temporary partial disability benefits from March 28, 2016 and continuing in accordance with the applicable provisions of the Act. The amount of TPD payments due at the time of the Hearing was \$1,379.01.

IT IS FURTHER ORDERED that the Claimant’s entitlement to compensation for permanent disability is reserved as the Claimant has not reached maximum medical improvement.

Following the receipt of the Decision and Order, Defendants/Appellants promptly filed a Form 30 and asserted the following exceptions to the Decision and Order:

- 1. The Commissioner erred in finding as a fact that, "The Claimant sustained a compensable accidental injury to his left elbow and arm on December 20, 2015 when he fell off a customer's roof arising out of and in the course of his employment with the Employer," the error being that this Finding of Fact is not supported by the applicable law or the record in this case. (Finding of Fact No. 1.)**
- 2. The Commissioner erred in finding as a fact that, "At the time of his accident, the Claimant was an employee and Custom Communications, Inc., was an employer that had four (4) or more regular employees in South Carolina and was subject to the South Carolina Workers' Compensation Act. As such, the Commission has jurisdiction over this claim," the error being that this Finding of Fact is not supported by the applicable law or the record in this case. (Finding of Fact No. 2.)**
- 3. The Commissioner erred in finding as a fact that, "The Claimant was not an independent contractor; he was an employee as defined by the Act. I find that at the time of his accident, not only did the Employer exercise the requisite actual control over the employees activities, there also existed the right to control and direct the Claimant's work, as to the manner or means of this accomplishment," the error being that this Finding of Fact is not supported by the applicable law or the record in this case. (Finding of Fact No. 3.)**
- 4. The Commissioner erred in finding as a fact that, "Although the Employer contends that it exercised little control over the Claimant's determination of when and where he was to work for the Employer, the evidence demonstrates that when the Claimant did use the application device that had been provided for him to sign on and get his assignments, the Employer had the right to control the method and means of his doing his work and monitor his work as he performed it," the error being that this Finding of Fact is not supported by the applicable law or the record in this case. (Finding of Fact No. 4).**
- 5. The Commissioner erred in finding as a fact that, "The "Independent Contractor" agreement (EX 4) paragraph 13 provides that "Contractor agrees that the services to be provided and performed by Contractor will be performed by Contractor in a careful and efficient manner and in strict conformity with any applicable regulations or technical specifications...the Contractor do specifications...the Contractor does, however, agree to adhere to the general policies, procedures and specifications established by the Company, including those which relate to record keeping and administrative functions. Further, the Contractor acknowledges and agrees to adhere to any standards and conditions imposed upon the performance of the services by the customers or clients of the Company," the error being that this Finding of**

**Fact is not supported by the applicable law or the record in this case.
(Finding of Fact No. 5.)**

- 6. The Commissioner erred in finding as a fact that, "Exhibit A attached to the Independent Contractor Agreement provides "Contractor must wear a company polo shirt and a company issued ID badge and maintain a neat appearance at all times during the performance of services rendered pursuant to the Independent Contractor Agreement." "Contractor will provide the Company with the Contractor's 24 hour a day contact person who shall have a mobile phone." "Contractor should be fully prepared to perform and complete all accepted, scheduled service appointments on the scheduled date and within the scheduled appointment window, even if the Contractor is unable to confirm such appointment with a customer," the error being that this Finding of Fact is not supported by the applicable law or the record in this case. (Finding of Fact No. 6.)**
- 7. The Commissioner erred in finding as a fact that, "The Employer required the Claimant to wear a shirt and badge identifying him as being associated with the Employer. Once the Claimant signed onto work, and accepted calls, he was subject to his supervisor's control as to the places that he would go to perform services. He was required to use the rates that were provided to him by the Employer. The Employer provided the satellite dishes and receivers to the Claimant to provide service to the customer. Although there is some dispute as to whether the Claimant was required to come to work and the hours that he was supposed to work, I find that when the Claimant worked as a service man for the Employer, he was subject to the substantial right of control as to the method and manner in which he did his work. As such, I find that the evidence leans heavily in favor of finding that the Employer exercised the right of control over the Claimant," the error being that this Finding of Fact is not supported by the applicable law or the record in this case. (Finding of Fact No. 7.)**
- 8. The Commissioner erred in finding as a fact that, "The Employer provided the essential equipment to the Claimant to perform his services in that the Employer required that the Claimant use the satellite dish and receiver provided," the error being that this Finding of Fact is not supported by the applicable law or the record in this case. (Finding of Fact No. 8.)**
- 9. The Commissioner erred in finding as a fact that, "The Employer retained the right to terminate the Claimant's services and the right to fire him. This right was specifically stated in the "Independent Contractor" agreement, paragraph 10 (EX 4). Said paragraph provided that "the Company may, for reasons sufficient and satisfactory to it alone, terminate this Agreement at anytime in whole or in part, by providing written or verbal notice of termination to Contractor," the error being that this Finding of Fact is not**

supported by the applicable law or the record in this case. (Finding of Fact No. 9.)

10. The Commissioner erred in finding as a fact that, "The Claimant was required to go through a training process for CCI before he was able to perform services on his own. (Tr. 22, Line 23-Tr. 23, Line 1). The training was performed by a co-technician who presumably showed Claimant how to do the work in accordance with standards that CCI had. (Tr. 24, Lines 1-4)," the error being that this Finding of Fact is not supported by the applicable law or the record in this case. (Finding of Fact No. 10.)
11. The Commissioner erred in finding as a fact that, "Based on Claimant's supervisor's testimony, CCI had the right to basically fire the Claimant for any reason what-so-ever at any time. (Tr. 26, Lines 3-20)," the error being that this Finding of Fact is not supported by the applicable law or the record in this case. (Finding of Fact No. 11.)
12. The Commissioner erred in finding as a fact that, "If the Claimant failed to wear a company polo shirt with a company Dish ID and maintain a proper appearance during the performance of his services that would be could be grounds for termination. (Tr. 28, Lines 9-14)," the error being that this Finding of Fact is not supported by the applicable law or the record in this case. (Finding of Fact No. 12.)
13. The Commissioner erred in finding as a fact that, "If the Claimant did not perform his services and failed to adhere to the Company's standards and conditions, that would be grounds for firing him. (Tr. 30, Lines 2-18)," the error being that this Finding of Fact is not supported by the applicable law or the record in this case. (Finding of Fact No. 13.)
14. The Commissioner erred in finding as a fact that, "The greater weight of the evidence shows that the Defendant had the right to or the actual exercise of control over the Plaintiffs employment," the error being that this Finding of Fact is not supported by the applicable law or the record in this case. (Finding of Fact No. 14.)
15. The Commissioner erred in finding as a fact that, "The greater weight of the evidence is that the Defendants furnished the Plaintiff with the essential equipment to perform his services and to fulfill the duties of his employment," the error being that this Finding of Fact is not supported by the applicable law or the record in this case. (Finding of Fact No. 15.)
16. The Commissioner erred in finding as a fact that, "The greater weight of the evidence is that the Defendant reserved and did retain the right to fire the Claimant if he did not perform in accordance with the expectations of the

Defendant," the error being that this Finding of Fact is not supported by the applicable law or the record in this case. (Finding of Fact No. 16.)

- 17. The Commissioner erred in finding as a fact that, "The greater weight of the evidence is that the Defendant exercised control over the method of payment of wages to the Claimant. The Defendant, through its association with Dish, implemented a "score card" that dictated the amount that the Claimant would be paid for his services. Although the Claimant was issued a 1099, he had no control over whether the Employer would provide him with a W-2 or a 1099. The amount that the Claimant was paid for his specific services, was dictated by a system created by Dish and implemented by the Employer. (Tr. 70, Lin el S-Tr. 73, Line 3). The Employer paid the Claimant wages through direct deposit; he was not paid for services by the customer who received the benefit of his service," the error being that this Finding of Fact is not supported by the applicable law or the record in this case. (Finding of Fact No. 17.)**
- 18. The Commissioner erred in finding as a fact that, "The Employer provided the Claimant with a \$1,000.00 sign up bonus in order to defray some of his initial expenses to purchase materials," the error being that this Finding of Fact is not supported by the applicable law or the record in this case. (Finding of Fact No. 18.)**
- 19. The Commissioner erred in finding as a fact that, "Although the Claimant signed an "Independent Contractor" agreement, this agreement was an adhesion contract in that the Claimant had no right to change any of its terms and the agreement was not negotiated at arms length. Essentially, the Claimant was instructed to either sign the agreement or he would not be able to work for the Employer. Notwithstanding the title "Independent Contractor" agreement, there are numerous provisions, including the right to terminate the Claimant for any reason, and the duty to wear a company polo shirt and badge which are inconsistent with the status of an independent contractor," the error being that this Finding of Fact is not supported by the applicable law or the record in this case. (Finding of Fact No. 19.)**
- 20. The Commissioner erred in finding as a fact that, "The Claimant fractured his left elbow when he fell from a roof while performing services that were assigned to him to perform by the Employer on December 20, 2015," the error being that this Finding of Fact is not supported by the applicable law or the record in this case. (Finding of Fact No. 20.)**
- 21. The Commissioner erred in finding as a fact that, "The Claimant required medical treatment, including, but not limited to surgery and follow-up medical treatment," the error being that this Finding of Fact is not supported by the applicable law or the record in this case. (Finding of Fact No. 21.)**

22. The Commissioner erred in finding as a fact that, "The Claimant was disabled from the date of accident until he went back to work as an Uber driver on March 28, 2016," the error being that this Finding of Fact is not supported by the applicable law or the record in this case. (Finding of Fact No. 22.)
23. The Commissioner erred in finding as a fact that, "The Claimant tried to go back to work for the Employer on light duty restrictions but the Employer did not offer him any work within his restrictions," the error being that this Finding of Fact is not supported by the applicable law or the record in this case. (Finding of Fact No. 23.)
24. The Commissioner erred in finding as a fact that, "The Claimant's average weekly wage is as provided in the Form 20 in the sum of \$837.99, but based upon the Claimant's testimony approximately 15% of his weekly wages include his expenses associated with fuel and other business expenses (Tr. 123, Lines 2-14), I reduce his average weekly wage to the sum of \$712.29 with a compensation rate of \$474.89," the error being that this Finding of Fact is not supported by the applicable law or the record in this case. (Finding of Fact No. 24.)
25. The Commissioner erred in finding as a fact that, "The Claimant is entitled to temporary total disability compensation at the weekly rate of \$474.89 from December 21, 2015 through March 28, 2016," the error being that this Finding of Fact is not supported by the applicable law or the record in this case. (Finding of Fact No. 25.)
26. The Commissioner erred in finding as a fact that, "The Claimant is not at maximum medical improvement and he has claimed and is entitled to receive temporary partial disability compensation, based upon 2/3 of the difference between his discounted average weekly wage because his business expenses and a similarly discounted wage while employed by Uber (reduced by 15%)," the error being that this Finding of Fact is not supported by the applicable law or the record in this case. (Finding of Fact No. 26.)
27. The Commissioner erred in finding as a fact that, "While Defendants took measures to distinguish Claimant as an independent contractor, Claimant presented enough sufficient evidence that Defendants exercised significant control over the Claimant in the performance of his job duties for Claimant to be legally defined as an employee. Therefore, I find that Claimant was an employee of CCI," the error being that this Finding of Fact is not supported by the applicable law or the record in this case. (Finding of Fact No. 27.)

28. **The Commissioner erred in finding as a fact that, "Claimant sustained a compensable injury by accident to his left elbow arising out of and in the course and scope of his employment," the error being that this Finding of Fact is not supported by the applicable law or the record in this case. (Finding of Fact No. 28.)**
29. **The Commissioner erred in finding as a fact that, "Claimant is entitled to all past and future causally related medical treatment," the error being that this Finding of Fact is not supported by the applicable law or the record in this case. (Finding of Fact No. 29.)**
30. **The Commissioner erred in finding as a fact that, "Claimant is entitled to an award of temporary total disability from December 21, 2015 until March 28, 2016. The present sum due for TTD benefits is the sum of \$6,648.46," the error being that this Finding of Fact is not supported by the applicable law or the record in this case. (Finding of Fact No. 30.)**
31. **The Commissioner erred in finding as a fact that, "Claimant is entitled to temporary partial disability from March 28, 2016 and continuing," the error being that this Finding of Fact is not supported by the applicable law or the record in this case. (Finding of Fact No. 31.)**
32. **The Commissioner erred in finding as a fact that, "Claimant's expenses for performing his job are not part of his average weekly wage; therefore, the average weekly wage of both his earnings at the time of his accident as well as post-accident must be reduced by 15% to reflect the adjusted average weekly wage for his business expenses," the error being that this Finding of Fact is not supported by the applicable law or the record in this case. (Finding of Fact No. 32.)**
33. **The Commissioner erred in finding as a fact that, "The services that the Claimant performed were essential to the business of CCI. There was no way for CCI to operate as a satellite dish company without the services provided by the Claimant. The Claimant's services were certainly within the trade and course of business for CCI. This finding also supports the finding of employee as opposed to independent contractor," the error being that this Finding of Fact is not supported by the applicable law or the record in this case. (Finding of Fact No. 33.)**
34. **The Hearing Commissioner erred in concluding or awarding that, "The Defendants shall pay for all causally related medical treatment, to date and continuing and also reimburse the Claimant for any out-of-pocket medical expenses that he may have paid, including mileage. The medical treatment to date includes, but is not limited to the Roper Northwoods Emergency Department, Charleston Hand Group (Dr. Brooker) and Roper Mt. Pleasant.**

The Claimant's cost for surgery and hospitalization and related costs are specifically covered," the error being that this conclusion or award is not supported by the applicable law or the record in this case.

- 35. The Hearing Commissioner erred in concluding or awarding that, "The Defendants shall pay for all causally related medical treatment, to date and continuing and also reimburse the Claimant for any out-of-pocket medical expenses that he may have paid, including mileage. The medical treatment to date includes, but is not limited to the Roper Northwoods Emergency Department, Charleston Hand Group (Dr. Brooker) and Roper Mt. Pleasant. The Claimant's cost for surgery and hospitalization and related costs are specifically covered," the error being that this conclusion or award is not supported by the applicable law or the record in this case.**
- 36. The Hearing Commissioner erred in concluding or awarding that, "The Defendants shall authorize additional medical treatment for the Claimant's left arm as needed in order to obtain maximum medical improvement," the error being that this conclusion or award is not supported by the applicable law or the record in this case.**
- 37. The Hearing Commissioner erred in concluding or awarding that, "The Defendants shall pay the Claimant temporary total disability compensation benefits at the weekly rate of \$474.89 from December 20, 2015 through March 28, 2016 in the sum of \$6,648.46, and temporary partial disability benefits from March 28, 2016 and continuing in accordance with the applicable provisions of the Act. The amount of TPD payments due at the time of the Hearing was \$1379.01," the error being that this conclusion or award is not supported by the applicable law or the record in this case.**
- 38. The Hearing Commissioner erred in concluding or awarding that, "The Claimant's entitlement to compensation for permanent disability is reserved as the Claimant has not reached maximum medical improvement," the error being that this conclusion or award is not supported by the applicable law or the record in this case.**

This appeal was heard by the undersigned panel on November 15, 2016.

After a detailed review of the record and oral arguments of the parties, as set forth below, we issue a MAJORITY AFFIRMATION with Amendment of the Single Commissioner's Decision and Order.

EVIDENCE OF THE CASE

Review of Testimony

The first witness that testified was Keith Hill who is the field service manager for CCI. He testified that he did not consider Mr. Burnell to be an employee. Instead, he was a "contractor." (Tr. 11, Lines 4-5). He conceded that CCI had more than four (4) technicians or contractors who perform services in South Carolina. (Tr. 11, Lines 1-5). He testified that as a field service manager, part of his job is to make sure that the contractors are doing their work in conformity with CCI's policies and regulations. (Tr. 14, Lines 14-18). Mr. Hill also agreed that as a field service manager one of his responsibilities is to oversee the contractors to make sure that they are compliant with their contract and that work is being done properly. (Tr. 16, Line 23 - Tr. 17, Line 4). He also stated that he does quality control over the work that is performed by the technicians under the micro management rule if their numbers are falling downward. (Tr. 17, Lines 5-9).

Mr. Hill further testified that CCI contracts with Dish, Incorporated (hereinafter "Dish") to install Dish satellites and receivers in customers' homes. The customer pays Dish a certain amount of money for the services performed by CCI and for the product. The installation services are performed by CCI's technicians/contractors and CCI then pays the technician/contractor for the services that he performs for the customer. (Tr. 18, Lines 12-Tr. 19, Line 6). Additionally, there is no way that CCI could do the jobs that they were expected to perform for Dish without having technicians such as Mr. Burnell do the services. (Tr. 17, Line 25-Tr. 18, Line 4).

Mr. Hill also testified about the manner in which Mr. Burnell gets paid. He stated that as Mr. Burnell's supervisor, he determines and assesses Mr. Burnell's performance and that level of performance dictates the amount of money that Mr. Burnell would get paid for services. (Tr. 20, Lines 17-23). The factors that are used to determine the pay scale are

promulgated by Dish and CCI. (Tr. 21, Lines 7-10).

Mr. Hill testified that based on everything that he knew about this case, he agreed that Mr. Burnell was injured while performing services as a technician for CCI on December 20, 2015 when he fell off the roof installing a dish. (Tr. 22, Lines 3-8).

According to Mr. Hill, CCI provided Mr. Burnell the satellite dishes and receivers to give to the customers. And, the dishes and receivers are essential ingredients of having satellite services. (Tr. 22, Lines 15-22).

Before working for CCI, Mr. Burnell was required to go through a training process for CCI. (Tr. 22, Line 23- Tr. 23, Line 1). The training was performed by a co-technician who presumably showed Mr. Burnell how to do the work in accordance with standards that CCI had. (Tr. 24, Lines 1-4).

Mr. Hill also testified that before Mr. Burnell could work as a technician, he had to be given an application that he could install on his mobile phone so that he could receive work through the company. The app was through Dish Network but before Mr. Burnell could do work or services for CCI he would have to have access to this application. He also testified that in order for Mr. Burnell to get work, he would be required to log into this application at approximately 6:00 or 6:15 in the morning and then the supervisor in charge would give him his assignment for the day. (Tr. 24, Line 5-Tr. 25, Line 8).

Claimant's Exhibit #4 is the Independent Contractor Agreement that Mr. Burnell was required to sign before he could work for CCI. According to Mr. Hill, if an individual wanted to work for CCI, he would either have to sign the agreement or he would not be hired. The individual technician had no right to negotiate the terms of this agreement. (Tr. 25, Line 9-Tr. 26, Line 2). The agreement contains a specific termination clause that provides "the company may, for reasons sufficient and satisfactory to it alone, terminate this Agreement at any time,

in whole or in part, by providing written or verbal notice of termination to Contractor.” Mr. Hill testified that he agreed that this provision gave the company, CCI, the right to basically fire the contractor for any reason whatsoever at anytime. (Tr. 26, Lines 3-20).

Mr. Hill also testified that if a contractor did not wear a company polo shirt with a company Dish ID and maintain a neat appearance during the performance of his services, that would be grounds for termination. (Tr. 28, Lines 9-14).

Mr. Hill testified that if the contractor did not perform his services in adherence with the company’s standards and conditions, that would be grounds for firing the contractor. (Tr. 30, Lines 2-18).

Mr. Hill testified that when a technician is fired he is not allowed to go out and hire any technicians away from the company for at least one (1) year. (Tr. 33, Lines 8-13). Mr. Hill also testified that with respect to a technician doing the work on the job, the company absolutely prohibited him from having any unauthorized people on the job with him. And, if the contractor took an unauthorized person to the job, he could be terminated. (Tr. 36, Line 6-Tr. 37, Line 4).

Mr. Hill confirmed that once a contractor logged in with the app, at that point he is under his direct supervision and control. “That tells me that he is ready to complete his work for the day.” (Tr. 39, Lines 18-23).

With respect to the parts that Mr. Burnell had to buy from the company in order to do his job, the company provided him a \$1,000.00 sign up bonus in order defray some of these initial expenses. (Tr. 39, Line 24- Tr. 40, Line 3).

CCI provided and required an identification badge for Mr. Burnell to wear when he called on customers that identified his association with CCI. Mr. Burnell was also expected to wear a polo shirt that had a CCI logo on it when he called on a customer. (Tr. 45, Lines 5-24).

According to Mr. Hill, once Mr. Burnell signed in with the app, CCI could monitor the route that he took from job to job and the company expected him to perform jobs that were assigned to him in a careful and efficient manner in strict conformity to applicable regulations and technical specifications. Additionally, the company reserved the right to terminate Mr. Burnell's services in the event that he did not perform services within the specifications or if he refused to take assignments. One of the reasons Mr. Burnell's route was monitored was "to make sure he wasn't blowing off jobs." If he did blow off a job, his services could be terminated. (Tr. 48, Line 2- Tr. 50, Line 6).

According to Mr. Hill, before the date of accident, he had no reason to question Mr. Burnell's trustworthiness as a technician for the company. (Tr. 50, Line 17-21).

On cross examination, Mr. Hill testified that Mr. Burnell paid for his gas, owned his van, bought his liability insurance, paid for his hand tools, and paid for the wires and ladder that he had to use to work everyday. He did not get reimbursed by the company for any of these items. (Tr. 60, Line 17-Tr. 61, Line 17).

Mr. Burnell was required to come into the office once a week to get equipment and to be subject to an audit. The audit was to make sure that the inventory was accounted for. (Tr. 67, Lines 6-15). As far as payment for services, Mr. Burnell was paid by "piece rate." There are five different pay levels based on performance. There is a different dollar amount for each service activity. The pay is also dependent on grade levels. The grades come from the analytic department from Dish Network. CCI "exports the file from their website at that level" and uploads it to their servers. (Tr. 70, Line 18- Tr. 73, Line 3).

Mr. Burnell was paid on a 1099 and CCI did not withhold taxes. (Tr. 77, Lines 7-12)

On cross examination, Mr. Hill also testified that Mr. Burnell was an independent contractor; the company did not tell Mr. Burnell how to do his work; the company did not

dictate his hours; the company did not provide him the equipment to do his job; and the company could not terminate the services of a contractor without paying him for work performed. (Tr. 80-86).

On redirect examination, Mr. Hill testified at the point that Mr. Burnell signed on with the app, he was under partial control of CCI and the app was used to monitor his activities. The essential equipment of his job, the dish and the receiver were provided to him by CCI. And, the company reserved the exclusive right to fire Mr. Burnell for any reasons at any time. (Tr. 93-96). Additionally, the method of Mr. Burnell's payment, the amount that he got paid, was based on multi-factors that were promulgated by Dish and implemented by CCI. (Tr. 98, Line 23- Tr. 99, Line 2).

Mr. Burnell testified that he is thirty-six years old, completed the 10th grade and then obtained a GED. He then went to Trident Technical College for one year but did not receive a certificate. Other than working for CCI, most of his background work has involved installing and cleaning carpet.

The Claimant testified that when he applied for work with CCI, he met with Mr. Buskirk, the assistant manager to Mr. Keith. He was never told that he was applying for work as an independent contractor as opposed to an employee. Mr. Buskirk did not review the contract with him before he was asked to sign it. The Claimant believed that signing the agreement "was just the process to getting a job" and he had been told that he "could make a lot of money." (Tr. 108, Lines 7-25).

In order to begin working, he had to go through a training period. He was instructed that he was expected to work six days, Tuesday was his day off. He was instructed to log in at 6:00 a.m. in the morning and by 7:00-7:15, he would have a route and would be on that until 5:00 p.m. in the evening. (Tr. 109, Line 7-Tr. 110, Line 5). The Claimant didn't feel that he had

a choice in the matter and that he was told by Mr. Hill to work six days a week. Additionally, once he logged in on the app in order to get his assignments, he would be subject to call and had to be available until 5:00 p.m. In order to perform his job, the Employer provided him the satellite dish and the receiver that had to be used by the customer in order to have service. Once logged in, he could be monitored by his supervisor. (Tr. 110-Tr. 112).

With respect to payment, the Claimant's work was subject to "score cards" and the standards were set by CCI. His pay was dependent on how well he performed on the score cards for the standards that were set by CCI. (Tr. 113, Line 16-Tr. 114, Line 16).

According to the Claimant, he was expected to wear the Dish polo shirt and khaki pants. He was not allowed to take unauthorized persons onto the job sites with him. He was also required to wear a company badge. (Tr. 116, Line 3-Tr. 117, Line 4).

The Claimant testified that he fractured his left elbow when he fell from a customer's roof. He had surgery performed by Dr. Brooker. He still has hardware in his elbow. After his injury, he was asked to download his app and he has not worked for the Employer since his accident.

With respect to wages, he was paid by direct deposit by CCI. He estimated that the average percentage of his wages that were used for expenses was 10-15%. (Tr. 123, Lines 2-14).

The Claimant testified that his elbow is still sore and that pain comes and goes. "There is no strength in the elbow" and that affects the use of his arm. He is restricted as far as lifting and pulling. (Tr. 124, Lines 2-15).

The Claimant testified that he went back to work on March 28, 2016 as an Uber driver. He tried to go back to work for CCI but CCI did not offer him any work within his restrictions. He is not required to lift any packages, bags, or heavy weights in the performance

of his job for Uber. (Tr. 124, Line 19-Tr. 125, Line 15).

On cross examination, the Claimant testified that his pay was dependent on the grade level from the score card issued by CCI. He was graded at a lesser grade level because he did not purchase a white van. He had been issued a 1099 but had not completely filed his income tax returns. He acknowledged several paragraphs from the Independent Contractor Agreement which indicated that he was not subject to the control of CCI. He conceded that CCI did not have anybody ride with him in order to supervise his work and that he was responsible for directing his own work. However, he also testified that once he was logged in he was subject to Mr. Hill's supervision. (Tr. 149, Line 23- Tr. 150, Line 4).

Review of APA Exhibits

There were numerous documents submitted as APA exhibits. The CCI Agreement for Independent Contractor Services (EX 4) provides that the Claimant was an independent contractor, the document sets out specific terms of engagement and the terms of time for the services to be performed. Under paragraph 10, "termination," the document specifically provides that "the Company may, for reasons sufficient and satisfactory to it alone, terminate this Agreement at any time in whole or in part, by providing written or verbal notice of termination to Contractor."

Paragraph 13 provides that "Contractor agrees that the services to be provided and performed by Contractor will be performed by Contractor in a careful and efficient manner and in strict conformity with any applicable regulations or technical specifications...the Contractor does, however, agree to adhere to the general policies, procedures and specifications established by the Company, including those which relate to record keeping and administrative functions. Further, the Contractor acknowledges and agrees to adhere to any standards and conditions imposed upon the performance of the services by the customers or

clients of the Company.”

Exhibit A attached to the Independent Contractor Agreement provides that “Contractor must wear a company polo shirt and company issued ID badge and maintain a neat appearance at all times during the performance of services rendered pursuant to the Independent Contractor Agreement.” “Contractor will provide the Company with the Contractor’s 24 hour a day contact person who shall have a mobile phone.” “Contractor shall be fully prepared to perform and complete all accepted, scheduled service appointments on the scheduled date and within the scheduled appointment window, even if Contractor is unable to confirm such appointment with the customer.”

The ID badge that the Claimant was assigned identifies him as being associated with CCI, and there is nothing to indicate that he is an “independent contractor.” To the contrary, it was indicated that he was an “authorized” contractor. (Claimant’s EX 5).

Review of Medical Records

The relevant medical records provide the Claimant was initially treated on December 20, 2015 at the Roper North Emergency Department. He complained of a left elbow injury after falling from a roof approximately 15 feet and striking a concrete service.

The Claimant was then referred to Dr. Christopher Brooker and gave a similar history and was diagnosed with a closed displaced fracture of his left elbow. The Claimant was initially taken out of work for 6-8 weeks and had left elbow surgery on December 22, 2015. The Claimant had a comminuted olecranon fracture and had an open reduction and internal fixation of the left olecranon. Hardware remains in his left arm. Occupational therapy was also prescribed for 4 weeks.

FULL COMMISSION FINDINGS OF FACT AND CONCLUSIONS OF LAW

FINDINGS OF FACTS

1. Based upon the substantial evidence presented by the Claimant and the greater weight of the evidence, we find the Claimant sustained a compensable accidental injury to his left elbow and arm on December 20, 2015, when he fell off a customer's roof, arising out of and in the course of his employment with the Employer.
2. At the time of his accident, the Claimant was an employee and Custom Communications, Inc., was an employer that had four (4) or more regular employees in South Carolina and was subject to the South Carolina Workers' Compensation Act. As such, the Commission has jurisdiction over this claim.
3. The Claimant was not an independent contractor; he was an employee as defined by the Act. We find that at the time of his accident not only did the Employer exercise the requisite actual control over the Claimant's activities, there also existed the right to control and direct the Claimant's work, as to the manner or means of this accomplishment.
4. We find that although the Employer contends that it exercised little control over the Claimant's determination of when and where he was to work for the Employer, the greater weight of the evidence demonstrates that when the Claimant did use the application device that had been provided for him to sign on and get his assignments, the Employer had the right to control the method and means of his doing his work and monitor his work as he performed it.
5. We find that the "Independent Contractor" agreement (EX 4) paragraph 13 provides that "Contractor agrees that the services to be provided and performed by Contractor will be performed by Contractor in a careful and

efficient manner and in strict conformity with any applicable regulations or technical specifications...the Contractor does, however, agree to adhere to the general policies, procedures and specifications established by the Company, including those which relate to record keeping and administrative functions. Further, the Contractor acknowledges and agrees to adhere to any standards and conditions imposed upon the performance of the services by the customers or clients of the Company.”

6. We find that Exhibit A attached to the Independent Contractor Agreement provides “Contractor must wear a company polo shirt and a company issued ID badge and maintain a neat appearance at all times during the performance of services rendered pursuant to the Independent Contractor Agreement.” “Contractor will provide the Company with the Contractor’s 24 hour a day contact person who shall have a mobile phone.” “Contractor should be fully prepared to perform and complete all accepted, scheduled service appointments on the scheduled date and within the scheduled appointment window, even if the Contractor is unable to confirm such appointment with a customer.”
7. We find that the Employer required the Claimant to wear a shirt and badge identifying him as being associated with the Employer. Once the Claimant signed onto work, and accepted calls, he was subject to his supervisor’s control as to the places that he would go to perform services. He was required to use the rates that were provided to him by the Employer. The Employer provided the satellite dishes and receivers to the Claimant to provide service to the customer. Although there is some dispute as to whether the Claimant

was required to come to work and the hours that he was supposed to work, we find that when the Claimant worked as a service man for the Employer, he was subject to the substantial right of control as to the method and manner in which he did his work. As such, we find that the evidence leans heavily in favor of finding that the Employer exercised the right of control over the Claimant.

8. We find that the Employer provided the essential equipment to the Claimant to perform his services in that the Employer required that the Claimant use the satellite dish and receiver provided.
9. We find that the Employer retained the right to terminate the Claimant's services and the right to fire him. This right was specifically stated in the "Independent Contractor" agreement, paragraph 10 (EX 4). Said paragraph provided that "the Company may, for reasons sufficient and satisfactory to it alone, terminate this Agreement at anytime in whole or in part, by providing written or verbal notice of termination to Contractor."
10. We find that the Claimant was required to go through a training process for CCI before he was able to perform services on his own. (Tr. 22, Line 23-Tr. 23, Line 1). The training was performed by a co-technician who presumably showed Claimant how to do the work in accordance with standards that CCI had. (Tr. 24, Lines 1-4).
11. We find that based on Claimant's supervisor's testimony, CCI had the right to basically fire the Claimant for any reason whatsoever at any time. (Tr. 26, Lines 3-20).

12. We find that the Claimant's failure to wear a company polo shirt with a company Dish ID and failure to maintain a proper appearance during the performance of his services would be grounds for termination. (Tr. 28, Lines 9-14).
13. We find that if the Claimant did not perform his services and failed to adhere to the Company's standards and conditions, that would be grounds for firing him. (Tr. 30, Lines 2-18).
14. We find that the greater weight of the evidence shows that the Defendant reserved the right to exercise control over the Claimant's employment, and in fact, did so.
15. We find that the greater weight of the evidence is that the Employer furnished the Claimant with the essential equipment to perform his services and to fulfill the duties of his employment.
16. We find that the greater weight of the evidence is that the Employer reserved and did retain the right to fire the Claimant if he did not perform in accordance with the expectations of the Employer.
17. We find that the greater weight of the evidence is that the Employer exercised control over the method of payment of wages to the Claimant. The Employer, through its association with Dish, implemented a "score card" that dictated the amount that the Claimant would be paid for his services. Although the Claimant was issued a 1099, he had no control over whether the Employer would provide him with a W-2 or a 1099. The amount that the Claimant was paid for his specific services was dictated by a system created by Dish and implemented by the Employer. (Tr. 70, Line18-Tr. 73, Line 3). The Employer

paid the Claimant wages through direct deposit; he was not paid for services by the customer who received the benefit of his service.

18. We find that the Employer provided the Claimant with a \$1,000.00 sign up bonus in order to defray some of his initial expenses to purchase materials.
19. We find that although the Claimant signed an "Independent Contractor" agreement, this agreement was an adhesion contract in that the Claimant had no right to change any of its terms and the agreement was not negotiated at arms length. Essentially, the Claimant was instructed to either sign the agreement or he would not be able to work for the Employer.
Notwithstanding the title "Independent Contractor" agreement, there are numerous provisions, including the right to terminate the Claimant for any reason, and the duty to wear a company polo shirt and badge which are inconsistent with the status of an independent contractor.
20. We find that the Claimant fractured his left elbow when he fell from a roof while performing services that were assigned to him to perform by the Employer on December 20, 2015.
21. We find that the Claimant required medical treatment, including, but not limited to surgery and follow-up medical treatment.
22. We find that the Claimant was disabled from the date of accident until he went back to work as an Uber driver on March 28, 2016.
23. We find that the Claimant tried to go back to work for the Employer on light duty restrictions but the Employer did not offer him any work within his restrictions.

24. We find that the Claimant's average weekly wage is as provided in the Form 20 in the sum of \$837.99, but based upon the Claimant's testimony approximately 15% of his weekly wages include his expenses associated with fuel and other business expenses (Tr. 123, Lines 2-14), We reduce his average weekly wage to the sum of \$712.29 with a compensation rate of \$474.89.
25. We find that the Claimant is entitled to temporary total disability compensation at the weekly rate of \$474.89 from December 21, 2015 through March 28, 2016.
26. We find that the Claimant is not at maximum medical improvement and he has claimed and is entitled to receive temporary partial disability compensation, based upon 2/3 rds of the difference between his discounted average weekly wage because of his business expenses and a similarly discounted wage while employed by Uber (reduced by 15%).
27. While Defendants took measures to distinguish Claimant as an independent contractor, Claimant presented sufficient evidence to prove that Employer exercised significant control over the Claimant in the performance of his job duties for Claimant to be legally defined as an employee. Therefore, we find that Claimant was an employee of CCI.
28. Claimant sustained a compensable injury by accident to his left elbow arising out of and in the course and scope of his employment.
29. Claimant is entitled to all past and future causally related medical treatment.
30. Claimant is entitled to an award of temporary total disability from December 21, 2015 until March 28, 2016. The present sum due for TTD benefits is the sum of \$6,648.46.

31. Claimant is entitled to temporary partial disability from March 28, 2016 and continuing.
32. Claimant's expenses for performing his job are not part of his average weekly wage; therefore, the average weekly wage of both his earnings at the time of his accident as well as post accident must be reduced by 15% to reflect the adjusted average weekly wage for his business expenses.
33. We find that the services that the Claimant performed were essential to the business of CCI. There was no way for CCI to operate as a satellite dish company without the services provided by the Claimant. The Claimant's services were certainly within the trade and course of business for CCI. This finding also supports the finding of employee as opposed to independent contractor.
34. We find that the Claimant may be entitled to additional compensation for post-Hearing temporary partial disability benefits, upon further presentation of wage earnings. The present amount due for temporary partial disability compensation up to the date of the Hearing is the sum of \$1,379.01.
35. Based on the substantial and greater weight of the evidence including the testimony presented and the APA Exhibits that were submitted and the oral argument of Counsel, a majority of the Panel finds that the Single Commissioner's Findings of Fact, Conclusions of Law and Order and Award should be and are hereby AFFIRMED.

CONCLUSIONS OF LAW

Accordingly, as provided in Section 42-17-40 of the South Carolina Worker's Compensation Act, it is the determination of this Appellate Panel that:

1. §42-1-130 defines Employee.
2. SC Code §42-1-610 provides that “no contract or agreement...shall in any manner operate to relieve any employer, in whole or in part, of any obligation created by this title.”
3. SC Code §42-1-620 provides that “no agreement by an employee to waive his rights to compensation under this title shall be valid.”
4. The determination as to whether an individual is an independent contractor or an employee is the purported employer’s right to control the claimant in the performance of his work. In analyzing the nature of a work relationship the Court examines four factors: 1) direct evidence of the right or exercise of control; 2) furnishing of equipment; 3) method of payment; 4) right to fire. Each factor is considered with equal force and the mere presence of one factor indicating an employment relationship is not dispositive of the inquiry. *Lewis v. Dynasty*, 770 S.E. 2d 393 (2015).
5. §42-9-10 provides the payment of temporary total disability benefits.
6. SC Code §42-9-20 provides for the payment of temporary partial disability compensation benefits.
7. §42-15-60 governs the payments of medical benefits.

ORDER AND AWARD

IT IS HEREBY ORDERED that the greater weight of the evidence and the substantial evidence presented supports a finding that the Decision and Order of the Single Commissioner be and is hereby **AFFIRMED** and **AMENDED**.

IT IS THEREFORE ORDERED that the Defendants shall pay for all causally related medical treatment, to date and continuing and also reimburse the Claimant for any out-of-

pocket medical expenses that he may have paid, including mileage. The medical treatment to date includes, but is not limited to the Roper Northwoods Emergency Department, Charleston Hand Group (Dr. Brooker) and Roper Mt. Pleasant. The Claimant's cost for surgery and hospitalization and related costs are specifically covered.

IT IS FURTHER ORDERED that the Defendants shall authorize additional medical treatment for the Claimant's left arm as needed in order to obtain maximum medical improvement.

IT IS FURTHER ORDERED that the Defendants shall pay the Claimant temporary total disability compensation benefits at the weekly rate of \$474.89 from December 20, 2015 through March 28, 2016 in the sum of \$6,648.46, and temporary partial disability benefits from March 28, 2016 and continuing in accordance with the applicable provisions of the Act. The amount of TPD payments due at the time of the Hearing was \$1,379.01.

IT IS FURTHER ORDERED that the Claimant's entitlement to compensation for permanent disability is reserved as the Claimant has not reached maximum medical improvement.

AND IT IS SO ORDERED.

**SOUTH CAROLINA WORKERS' COMPENSATION
COMMISSION**



Commissioner Susan Barden
For the Appellate Panel

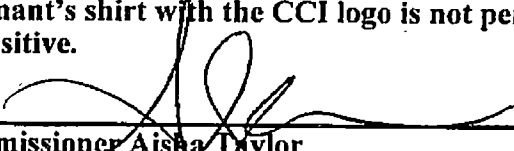
I CONCUR:



Commissioner Gene McCaskill

I DISSENT:

I find Claimant was an independent contractor per the performance of the contract both parties signed. Claimant's shirt with the CCI logo is not persuasive or dispositive.



Commissioner Aisha Taylor

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 February 23, 2017