



The Supreme Court of South Carolina

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1231 GERVAIS STREET
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TELEPHONE: (803) 734-1080
FAX: (803) 734-1499
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May 5, 2017

The Honorable Virginia L. Crocker
SC Workers' Compensation Commission
Post Office Box 1715
Columbia SC 29202

REMITTITUR

Re: LeAndra Lewis v. L.B. Dynasty
Lower Court Case No. 2008WC0421881
Appellate Case No. 2015-002397

Dear Clerk of Court:

The above referenced matter is hereby remitted to the lower court or tribunal. A copy of the judgment of this Court along with the earlier decision of the South Carolina Court of Appeals is enclosed.

Very truly yours,



CHIEF DEPUTY CLERK

cc: Charles B. Burnette, III, Esquire
Blake A. Hewitt, Esquire
Lisa C. Glover, Esquire
John S. Nichols, Esquire

**THE STATE OF SOUTH CAROLINA
In The Supreme Court**

LeAndra Lewis, Petitioner,

v.

L.B. Dynasty, Inc., d/b/a Boom Boom Room Studio 54
and S.C. Uninsured Employers' Fund, Defendants,

Of Whom S.C. Uninsured Employers' Fund is the
Respondent.

Appellate Case No. 2015-002397

ON WRIT OF CERTIORARI TO THE COURT OF APPEALS

Appeal From The Workers' Compensation Commission

Opinion No. 27711

Heard December 15, 2016 – Filed April 19, 2017

REVERSED

Charles B. Burnette, III, of Burnette & Payne, PA, of
Rock Hill, and John S. Nichols and Blake A. Hewitt,
both of Bluestein Nichols Thompson & Delgado, LLC,
of Columbia, for Petitioner.

Lisa C. Glover, of South Carolina Uninsured Employers'
Fund, of Columbia, for Respondent.

JUSTICE HEARN: In this case we review the decision of the court of appeals affirming the Workers' Compensation Commission's award of benefits to a dancer who was shot while performing at a nightclub. We find the commission's decision to award \$75 per week is not supported by substantial evidence and therefore reverse and remand.

FACTUAL BACKGROUND

Petitioner LeAndra Lewis sought workers' compensation benefits for injuries she suffered following a shooting in a night club operated by L.B. Dynasty. In a previous opinion, this Court held Lewis was an employee—not an independent contractor—of L.B. Dynasty, entitling her to workers' compensation benefits. *Lewis v. L.B. Dynasty*, 411 S.C. 637, 770 S.E.2d 393 (2015). We remanded the matter to the court of appeals to review the commission's order awarding benefits to Lewis. Ultimately, the court of appeals affirmed the commission's award of \$75 per week.

In the order, which first delved into a lengthy analysis of Lewis's status as an independent contractor and precluded her from collecting workers' compensation benefits, the commission found that even if she had established herself as an employee, her compensation rate would be \$75.00 per week. Specifically, the commission found, "There is no evidence whatsoever as to the amount of money [Lewis] earned, hours worked, etc. The only evidence is [Lewis's] testimony, which is self-serving. [Lewis] is bound by the wages earned from [L.B. Dynasty] only." The commission then went on to state Lewis was required by Regulation 67-1603(H)¹ to submit a Form 20 to the claims department and her purported employer outlining her wages earned from other employers before any additional wages could be considered.

On remand, the court of appeals affirmed the commission's award,² holding "[Lewis's] average weekly wage was a factual determination supported by the evidence, and the single commissioner made no legal errors in its determination

¹ 8 S.C. Code Ann. Regs. 67-1603(H) (2012).

² In affirming Lewis's award, the court of appeals was limited to reviewing the original order issued by the commission which primarily analyzed whether Lewis was an employee or an independent contractor. The majority of both Lewis's hearing and the commission's order was devoted to determining her employment status and the issue of her compensation was addressed only summarily.

that she failed to meet her burden to prove her wages earned from other employers." *Lewis v. L.B. Dynasty*, Op. No. 2015-UP-339 (S.C. Ct. App. July 8, 2015). This Court granted Lewis a writ of certiorari to review the award.

STANDARD OF REVIEW

An appellate court may reverse or modify a decision by the Workers' Compensation Commission if the decision is not supported by substantial evidence or is affected by an error of law. S.C. Code Ann. § 1-23-380(5) (Supp. 2016); *Jones v. Ga.-Pac. Corp.*, 355 S.C. 413, 416, 586 S.E.2d 111, 113 (2003). Substantial evidence is "not a mere scintilla of evidence nor the evidence viewed blindly from one side of the case, but is evidence which, considering the record as a whole, would allow reasonable minds to reach the conclusion that [the commission] reached or must have reached" to support its orders. *Lark v. Bi-Lo, Inc.*, 276 S.C. 130, 135, 276 S.E.2d 304, 306 (1981).

ANALYSIS

Lewis argues the court of appeals erred in holding the commission's findings were supported by substantial evidence. We agree.

We defer to the commission as the finder of fact and do not engage in weighing the evidence before it. *See, e.g., Pierre v. Seaside Farms, Inc.*, 386 S.C. 534, 540, 689 S.E.2d 615, 618 (2010). Accordingly, we make no comment on the sufficiency of the evidence presented by Lewis. However, the commission's order was devoid of any specific and detailed findings of fact to substantiate the award. *See* S.C. Code Ann. § 42-9-5 (2015) ("Any award made pursuant to this title must be based upon specific and written detailed findings of fact substantiating the award."). The commission summarily concluded Lewis was entitled to an award of \$75 per week, without indicating what total it assigned to her average weekly wages, or how it reached that figure. Moreover, the commission's finding that Lewis presented "no evidence whatsoever" as to the amount of money she earned is plainly wrong. Therefore, we find the commission's order was not supported by substantial evidence and remand the matter of Lewis's award to the commission for a de novo hearing.³

³ In her brief, Lewis further argued the commission erred by considering her failure to file a Form 20 documenting her wages to be fatal to her case. We note that while the commission is entitled to consider the presence or absence of the form

CONCLUSION

Based on the foregoing, we find the court of appeals erred in upholding the commission's order. In light of this case's procedural history and in fairness to both parties, we remand to the commission for a de novo hearing to determine the amount of benefits to which Lewis is entitled. The court of appeals' opinion is

REVERSED.

**BEATTY, C.J., KITTREDGE, J. and Acting Justice James E. Moore, concur.
Acting Justice Costa M. Pleicones, concurring in result only.**

while weighing the evidence presented, the unique nature of Lewis's employment makes a Form 20 effectively useless in determining her average weekly wage. L.B. Dynasty never paid Lewis any wages—her earnings were solely dependent on tips given to her directly by patrons. Lewis testified that the other clubs where she performed operated in a similar manner. Accordingly, even if Lewis were to have obtained a Form 20 from L.B. Dynasty, the club had no knowledge of her earnings while she worked there, and the form would be of little use in aiding the commission to determine average weekly wages. Thus, an alternative method of wage calculation, such as the short-term employee provision of Section 42-1-40 of the South Carolina Code (2015), would have been necessary even if Lewis produced the form. Therefore, because the statutory scheme is designed to allow for alternative wage calculation methods when fairness requires, we hold the determination of Lewis's wages does not demand rigid adherence to the Form 20.

**THIS OPINION HAS NO PRECEDENTIAL VALUE. IT SHOULD NOT BE
CITED OR RELIED ON AS PRECEDENT IN ANY PROCEEDING
EXCEPT AS PROVIDED BY RULE 268(D)(2), SCACR.**

**THE STATE OF SOUTH CAROLINA
In The Court of Appeals**

LeAndra Lewis, Appellant,

v.

L.B. Dynasty d/b/a Boom Boom Room Studio 54 and
S.C. Uninsured Employers' Fund, Defendants,

Of Whom S.C. Uninsured Employers' Fund is the
Respondent.

Appellate Case No. 2010-165646

Appeal From The Workers' Compensation Commission

Opinion No. 2015-UP-339
Submitted March 18, 2015 – Filed July 8, 2015

AFFIRMED

Charles B. Burnette, III, of Burnette & Payne, PA, of
Rock Hill; John S. Nichols and Blake Alexander Hewitt,
both of Bluestein, Nichols, Thompson & Delgado, LLC,
of Columbia, for Appellant.

Lisa C. Glover, of Columbia, for Respondent.

PER CURIAM: In *Lewis v. L.B. Dynasty*, 411 S.C. 637, 770 S.E.2d 393 (2015), our supreme court held that Lewis was an employee rather than an independent contractor; thus, she was entitled to benefits. Accordingly, the supreme court remanded the case to this court to determine Lewis' compensation rate, as this court did not reach the issue in *Lewis v. L.B. Dynasty, Inc.*, 400 S.C. 129, 732 S.E.2d 662 (Ct. App. 2012).

On appeal to this court, Lewis argued the Appellate Panel of the Workers' Compensation Commission (Appellate Panel) erred in determining that if she was an employee, her compensation rate would be \$75 per week. We disagree.

"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). "[T]he 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. Regulation 67-1603(H) 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 Forms 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.

S.C. Code Ann. Regs. 67-1603(H) (2012).

Lewis argued her compensation rate should be \$661.29, based on an average weekly wage of \$1,650, which consisted largely of wages earned from other employers. The single commissioner found Lewis failed to prove her claimed average weekly wage and credited Lewis for wages earned from the L.B. Dynasty

d/b/a Boom Boom Room Studio 54 (the Club) only.¹ The single commissioner based this finding on the fact that Lewis failed to submit a Form 20, as required by Regulation 67-1603(H), outlining the wages she received from other employers and on the lack of any evidence except her and her witnesses' testimony regarding the wages she earned from other employers.

Lewis cited *Steele v. Self Serve, Inc.* in support of her argument that she was not required to file a Form 20 documenting her wages earned from other employers, and her testimony regarding her wages was sufficient to meet her burden of proof. However, *Steele* was decided under a former version of Regulation 67-1603, that stated "the claimant *may* obtain a completed Form 20 for each additional job." *Steele*, 335 S.C. at 327, 516 S.E.2d at 676 (emphasis added). The current regulation, which was amended before Lewis filed her claim, states "the claimant *shall* obtain a completed Form 20 from each of the other employers and file the Forms 20 with the Claims Department." S.C. Code Ann. Regs. § 67-1603(H) (2012) (emphasis added).² Further, in *Steele*, the claimants submitted a tax return reflecting wages earned from another employer in support of their oral testimony. *Steele*, 335 S.C. at 326, 516 S.E.2d at 676. In the instant case, Lewis presented no evidence regarding the wages she earned from other employers except for her and her sister's testimony regarding the number of nights Lewis normally worked.

We find Lewis' average weekly wage was a factual determination supported by the evidence, and the single commissioner made no legal errors in its determination that she failed to meet her burden to prove her wages earned from other employers. Therefore, we affirm the Appellate Panel's determination that Lewis' compensation rate is \$75 per week.

AFFIRMED.³

FEW, C.J., and HUFF and SHORT, JJ., concur.

¹ The Appellate Panel affirmed the entirety of the single commissioner's decision without specifically discussing the compensation rate issue.

² S.C. Code Ann. Regs. § 67-1603 was amended in 1997.

³ We decide this case without oral argument pursuant to Rule 215, SCACR.