

APPELLATE PANEL  
DECISION AND ORDER  
OF THE  
SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION  
WCC FILE NO. 1202328

RECEIVED  
JUL 11 2017  
SC Court of Appeals

James Smith Harrison, Jr.,

APPELLANT,  
CLAIMANT,

vs.

SC Wind and Hail Underwriting Assn.,

EMPLOYER,

AND

Liberty Mutual Fire Insurance Company,

CARRIER,  
DEFENDANTS/RESPONDENTS

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Appellate Panel Review held in Columbia, South Carolina,  
on November 10, 2015 per notices timely and properly served  
upon all parties of interest.

Appellate Panel Decision and Order filed

June 13, 2017

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APPEARANCES:

Appellant James Smith Harrison, Jr., Claimant of Columbia,  
South Carolina represented by William Smith, Esquire of  
Chappell, Smith, & Arden, P.A.

Defendants/Respondents represented by W. Strat Stavrou,  
Jr., Esquire of Willson Jones Carter & Baxley, P.A. in  
Columbia, South Carolina.

## STATEMENT OF THE CASE

The parties were heard by Commissioner Aisha G. Taylor, on November 15, 2015, in Columbia, South Carolina. On August 22, 2016, she issued the following Order:

**IT IS, HEREBY, ORDERED** that Claimant's request for modifications to his retirement home is denied.

**IT IS SO ORDERED.**

In her Decision and Order, dated August 22, 2016, Commissioner Taylor made the following specific Findings of Fact and Conclusions of Law:

### Findings of Fact

IT IS FOUND AS A FACT:

1. That Employee, Employer, and Carrier are subject to and bound by the terms and provisions of the South Carolina Workers' Compensation Act, as amended, with James Smith Harrison, Jr. as Employee-Claimant and SC Wind and Hail Underwriting Assn. as Employer and Liberty Mutual Fire Insurance Company as Carrier, Defendants.

2. That the present case is distinguishable from Thompson v. South Carolina Steel Erectors, 369 S.C. 606, 632 S.E.2d 874 (ct. App. 2006). In Thompson, Claimant received modifications to a rental home that was temporary and was then awarded modifications to a new permanent primary home that he was going to build. The Thompson court noted Defendants knew at the time of the uplift to the rental home that the Claimant and his family "could not be expected to remain there for the rest of their lives."

3. In the present case, Claimant currently resides in his permanent primary home, which he has owned for several years.

4. At the time of the hearing, Defendants had already agreed to the recommended uplift and modifications of his primary residence as requested by the Claimant.

5. Claimant testified he plans to retire in a few years and move to his retirement home,

which will need to be uplifted and modified to accommodate his restrictions.

6. Modifications to Claimant's retirement home would be unfair and unduly burdensome on defendants when Claimant currently has a permanent primary residence in which he resides.

#### Conclusions of Law

Accordingly, as provided in § 42-17-40, SC Code Ann. (1976), as amended, it is the determination of this Commission that:

1. Under § 42-1-130, Claimant was a covered employee at the time in question; and under § 42-1-140, Defendant/Employer was a covered employer under the Act.

2. Under §42-15-60, modifications to Claimant's retirement home is not a reasonable and necessary medical cost.

On August 23, 2016, within the statutory period, Counsel for Claimant filed an application for review in the case setting forth his grounds for review, copies of which were furnished to all interested parties prior to oral arguments presented to the Appellate Panel on November 15, 2016. By appeal, counsel for Claimant submitted the following grounds for review:

1. Did the Single Commissioner err in her finding of Fact No. 2 in finding that the present case was distinguishable from Thomas v. SC Steel Erectors when the greater weight and preponderance of the evidence showed that this case was not distinguishable and Claimant was entitled to modifications to his second home?

2. Did the Single Commissioner err in her Finding of Fact No. 6 in finding that modifications to Claimant's retirement home would be unfair and unduly burdensome on Defendants when the greater weight and preponderance of evidence showed that Claimant had two homes prior to his

accident and disability prevents him from using the second home and Claimant is entitled to modifications to that home?

3. Did the Single Commissioner err in her Conclusion of Law No. 2 in finding that Claimant was not entitled to modification of a second home as a reasonable and necessary medical cost when the greater weight and preponderance of evidence showed that Claimant used both of his homes prior to his accident and his accident prevents him from being able to use his second home?

4. Did the Single Commissioner err in her Order in denying Claimant's request for modification to his retirement/second home when the greater weight and preponderance of evidence showed that Claimant was entitled to modifications to this home?

In an appellate review, the Appellate Panel shall, pursuant to S.C. Code Ann. Section 42-17-50 (1985), review the Award, weigh the evidence as presented at the initial hearing, and, if good grounds be shown therefore, make its own Findings of Fact and reach its own conclusions of Law consistent with or inconsistent with those of the Single Commissioner.

All proffered testimony has been taken. Such, together with all documentary evidence, has been delivered by oral argument to the individual members of the Appellate Panel and has since been under study and consideration. After careful review in the instant case, the Appellate Panel, by unanimous vote, has determined that the Single Commissioner's Findings of Fact and Conclusions of Law are Affirmed with Amendments.

#### **FINDINGS OF FACT**

Based upon the documentary evidence submitted by the respective parties, pursuant to the Administrative Procedures Act, and the Commission's file relative to this claim, WE, THE APPELLATE PANEL, FIND THE FOLLOWING AS FACT:

1. That Employee, Employer, and Carrier are subject to and bound by the terms and provisions of the South Carolina Workers' Compensation Act, as amended, with James Smith

Harrison, Jr. as Employee-Claimant and SC Wind and Hail Underwriting Assn. as Employer and Liberty Mutual Fire Insurance Company as Carrier, Defendants.

2. That the present case is distinguishable from Thompson v. South Carolina Steel Erectors, 369 S.C. 606, 632 S.E.2d 874 (ct. App. 2006). In Thompson, Claimant received modifications to a rental home that was temporary and was then awarded modifications to a new permanent primary home that he was going to build. The Thompson court noted Defendants knew at the time of the uplift to the rental home that the Claimant and his family “could not be expected to remain there for the rest of their lives.”

3. In the present case, Claimant currently resides in his permanent primary home, which he has owned for several years.

4. At the time of the hearing, Defendants had already agreed to the recommended uplift and modifications of his primary residence as requested by the Claimant.

5. Claimant testified he plans to retire in a few years and move to his retirement home, which will need to be uplifted and modified to accommodate his restrictions.

6. Modifications to Claimant’s retirement home would be unfair and unduly burdensome on Defendants when Claimant currently has a permanent primary residence in which he resides.

7. Claimant’s request for modifications to his vacation home is speculative.

8. At such time as Claimant converts the vacation home into his primary residence, nothing in this Order precludes Claimant from seeking benefits to up fit the residence at that time.

#### **CONCLUSIONS OF LAW**

In view of those Findings of Fact, and as provided in the South Carolina Code of Laws, WE, THE APPELLATE PANEL, CONCLUDE THE FOLLOWING AS MATTERS OF LAW:

1. Under § 42-1-130, Claimant was a covered employee at the time in question; and

under § 42-1-140, Defendant/Employer was a covered employer under the Act.

2. Under §42-15-60, modifications to Claimant's retirement home is not a reasonable and necessary medical cost.

**ORDER**

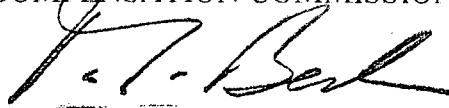
Based upon the foregoing Findings of Fact and Conclusions of Law,

**IT IS, THEREFORE, ORDERED** that Claimant's request for modifications to his retirement home is denied.

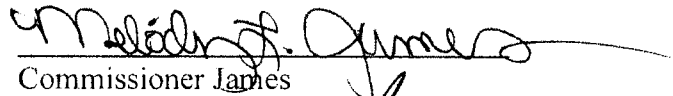
**AND IT IS SO ORDERED.**

**AFFIRMED WITH  
AMENDMENT:**

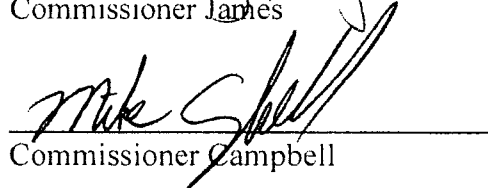
SOUTH CAROLINA WORKERS'  
COMPENSATION COMMISSION



Commissioner Beck



Commissioner James



Commissioner Campbell

**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 June 13, 2017***