

DECISION AND ORDER
OF THE
SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION

W.C.C. FILE NO. 1514060

JAYESHKUMAR K. PATEL and MEHULBHAI PATEL,
Dependents Claimants/Respondents,
For
HANSABEN PATEL,
Deceased Employee

vs.

BVM MOTEL, LLC D/B/A BEST WESTERN POINT SOUTH, Employer, AND
AUTO-OWNERS INSURANCE COMPANY, Carrier, Defendants/Appellants,

Appellate Panel Review held in Columbia, South
Carolina, on March 21, 2017 per notices timely
and properly served upon all parties of interest.

Appellate Panel Decision and Order Filed:

August 9, 2017

RECEIVED

AUG 15 2017

SC Court of Appeals

APPEARANCES: Claimants/Respondents represented by Warren P. Johnson, Esquire, of
Law Offices of Darrell Thomas Johnson

Defendants/Appellants represented by Allison C. Nussbaum, Esquire, of
McAngus, Goudelock & Courie, LLC

This matter was before the Single Commissioner on September 26, 2016 in Walterboro,
South Carolina pursuant to Claimant's Form 52 and Defendant's Form 53. The Single
Commissioner issued her Decision and Order on December 30, 2016, from which this appeal
originates.

APA SUBMISSIONS

Under the Administrative Procedures Act, the following records were submitted into evidence at the time of the hearing:

Claimant's Submissions

APA No. 1.	Death Certificate	P. 1
APA No. 2.	MUSC Department of Pathology Autopsy Report	P. 2-10
APA No. 3.	Funeral and Burial Expenses	P. 11-15
APA No. 4.	T/C Deposition of Ray Vyas	P. 16-33
APA No. 5.	Marriage Certificate	P. 34-35
APA No. 6.	USA Passport	P. 36
APA No. 7.	Online Court Index	P. 37
APA No. 8.	Police/Prosecution Documents to be Supplemented	

Defendant's Submissions

APA No. 9.	Tuten Insurance Services Corporation Dependency Investigation	P. 38-54
APA No. 10.	SC Department of Employment and Workforce	P. 55-57
APA No. 11.	Jasper County Sheriff's Office Report	P. 58

STIPULATIONS

This case was initially heard before Commissioner Susan S. Barden on September 26, 2016, in Walterboro, South Carolina. Prior to the hearing, both parties agreed to the below:

1. That the purpose of the Hearing was to determine the issues set forth in the Hearing Notice and Forms 52 and 53 and any other matters which may have timely come before the undersigned Commissioner.
2. That Notice of the hearing was timely and properly served upon all parties of interest.

3. That venue is proper.
4. That the South Carolina Workers' Compensation Commission has jurisdiction over this matter.
5. That the Decedent was an employee of BVM Motel d/b/a Best Western Point South (hereinafter, "Best Western Hotel").
6. That Decedent's payroll wages for the 52 weeks immediately preceding the date of injury and death were as set forth by Defendants in APA #10.
7. That the parties are seeking a finding of compensability and that a determination of beneficiaries and dependency is to be held in abeyance.

STATEMENT OF THE CASE

This matter came before the Single Commissioner for a determination as to the Claimant's entitlement to compensation and other benefits under the Act. The Claimants in this case contend that their decedent was an employee of Best Western Hotel who died from injuries arising out of an (sic) in the course of her employment as a housekeeper on the premises on August 16, 2015.

The Defendants contend that the Claimants' decedent did not sustain an injury on or about August 16, 2015, as a result of an accident arising out of and in the course of her employment and that the Claimants are not entitled to relief under the Act.

EVIDENCE IN THE CASE

The Claimants presented evidence that the Decedent-Employee and her husband Kantibhai Patel, were shot to death by a non-guest intruder during an armed robbery at the Best Western Hotel in Jasper County, South Carolina, where they lived. Decedent-Employee was employed by Best Western Hotel as a housekeeper on the date of the incident. Claimants contend that as a condition of her employment, Decedent-Employee was required to live and stay in one of the

rooms at the hotel. The Claimants further contend that as part of her employment Decedent-Employee was required to be on duty at all hours of the day and night. While living at the hotel, Decedent-Employee and Kantibhai were shot and killed by a non-guest intruder during an armed robbery. According to the Employer's representative, Mr. Raj Vyas, their bodies were discovered after Decedent-Employee did not report for her shift at 8:00 A.M. on August 16, 2015. According to the autopsy, both Decedent-Employee and Kantibhai died as a result of gunshot wounds at approximately 8:00 A.M. in their room on Employer's premises.

The owner and manager of BVM Motel, Mr. Raj Vyas, was produced by the Defendants as the person most knowledgeable regarding the employment relationship with the Decedent-Employee. Mr. Vyas testified that Decedent-Employee had been a long-time employee of the company, and was required to live in Employer's motel room as a condition of that employment. Mr. Vyas further explained that he needed Decedent-Employee to live on the premises so that he could utilize her services at any time, and that the fair market value for the room was eighty dollars (\$80.00) per day.

SINGLE COMMISSIONER'S FINDINGS OF FACT

1. Decedent-Employee died of gunshot wounds on August 16, 2015, at approximately 8:01 a.m. during an armed robbery on Employer's premises (Deposition of Vyas, pages 7-8; Claimants' APA, pages 1-2, 5, and 35; Defendants' APA #9, page 52; Defendants' APA #12; Defendants' APA #13).
2. Defendants admit that Decedent was an employee who received W-2 forms documenting her wages. See Deposition of Vyas, pages 5-6 and 13-14; Defendants' APA #10.
3. Decedent-Employee was 67 years of age (Claimants' APA, pages 2 and 34).
4. Decedent-Employee's job with Employer was housekeeper at Employers' motel

(Deposition of Vyas, page 10).

5. Employer's motel is in close proximity to Interstate 95. I base this finding on the address of the motel.
6. Decedent-Employee was a 10-year employee (Deposition of Vyas, page 8).
7. Vyas was the General Manager and owner/partner of the motel on the date of the homicide (Deposition of Vyas, page 4).
8. As part of Decedent-Employee's compensation, Employer provided a room in which Decedent-Employee lived (Deposition of Vyas, pages 5-6 and 11).
9. As a condition of Decedent-Employee's employment, she was required to live in the room provided by Employer on Employer's premises (Deposition of Vyas, page 6).
10. The "going rate" on regular rate/value of the room was \$80 per night (Deposition of Vyas, page 6).
11. Although Decedent-Employee's regular day began at 8:30 a.m., she was required to provide services "at any time of the day or night" (even in "the middle of the night"), including cleaning and changing/replacing linens. According to Vyas, as long as Decedent-Employee was on the premises, she was charged with doing whatever was necessary (Deposition of Vyas, pages 6-12).
12. Decedent-Employee was on call 24/7 (Deposition of Vyas, pages 6-7).
13. Decedent-Employee did not clock in/clock out; nor was she required to (Deposition of Vyas, page 11).
14. The homicide occurred in Decedent-Employee's motel room on Employer's premises

(Deposition of Vyas, pages 7 and 13).

15. Decedent-Employee was found wearing (a) her name badge affixed to the shirt she was wearing, and (b) black pants. I find that she was dressed for work (Claimants' APA, page 3).
16. I considered the fact that the perpetrator of the homicide was not a guest. However, that factor does not serve to defeat this claim (Deposition of Vyas, pages 7-8).
17. I find the cases cited in Defendants' Memorandum of Law are distinguishable from the case sub judice. Further, the Memorandum's statements that Decedent-Employee (a) "chose" to live at the motel, and (b) was murdered "during the middle of the night" while "presumably asleep" are erroneous. Living at the hotel and being on call 24/7 were in fact conditions of Decedent-Employee's employment. Second, the Autopsy report states that the approximate time of death was 8:01 a.m., and further states that **Decedent-Employee's body was received as clad in a tan shirt (name badge affixed to the shirt) and black pants – not pajamas or other sleepwear.**
18. Decedent-Employee's beneficiaries are entitled to receive 500 weeks of compensation as well as the statutory benefit of \$2500, pursuant to Section 42-9-290.
19. Decedent-Employee's average weekly wage is \$408.38, yielding a compensation rate of \$272.25. I base this finding on her actual payroll earnings, plus half of the value of the hotel room provided to Decedent-Employee and her husband.
20. I further find that the arrangement between the bartender and Employer as to the charge for the bartender's room is irrelevant. I base this on the testimony of Vyas, particularly page 10 of his deposition. The financial arrangement between another housekeeper and

Employer would, however, be relevant. No such evidence is in existence. See Deposition of Vyas, pages 9-10.

SINGLE COMMISSIONER'S CONCLUSIONS OF LAW

1. Decedent-employee was an employee of BVM Motel d/b/a Best Western Point South, as defined under S.C. Code Ann. § 42-1-130.
2. Pursuant to S.C. Code Ann. § 42-1-160, and other applicable law, the Claimants' decedent sustained an injury resulting in her death on August 16, 2015 as a result of an accident arising out of and in the course of her employment.
3. Pursuant to S.C. Code Ann. § 42-15-20, the Claimant gave proper notice of the accident to the Defendants.
4. Pursuant to S.C. Code Ann. § 42-9-290, the employee's death resulted proximately from her workplace accident, and accordingly, the Decedent's statutory beneficiaries are entitled to five hundred weeks of compensation and funeral benefits of two thousand five hundred dollars (\$2,500.00).

APPEAL TO THE FULL COMMISSION

Within the statutory period, Defendants filed an Application for Review (Form 30) in this case, appealing the Single Commissioner's Ruling. On appeal, Defendants appeal the entirety of the Single Commissioner's Findings. Specifically, Defendant appeal the following:

APPELLATE BRIEF ISSUES

1. Defendants contend the Hearing Commissioner erred as a matter of law and fact, by finding and concluding that the South Carolina Workers' Compensation Commission has jurisdiction over this matter as this finding and conclusion is against the greater weight and

preponderance of the substantial evidence in the record and is based upon erroneous legal conclusions.

2. Defendants contend the Hearing Commissioner erred as a matter of law and fact, by finding and concluding that Hansaben Patel died at approximately 8:01 a.m. during an armed robbery on Employer's premises, as this finding and conclusion is against the greater weight and preponderance of the substantial evidence in the record and is based upon erroneous legal conclusions. Additionally, this finding and ruling is based on surmise, speculation, and assumes facts not in evidence.
3. Defendants contend the Hearing Commissioner erred as a matter of law and fact, by finding and concluding that Employer's motel is in close proximity to Interstate 95 as this finding assumes facts not in evidence and indicates the fact finder performed independent research of facts not presented by the parties.
4. Defendants contend the Hearing Commissioner erred as a matter of law and fact, by finding and concluding that Hansaben Patel was required to live in the room provided by Employer on Employer's premises, as this finding and conclusion is against the greater weight and preponderance of the substantial evidence in the record and is based upon erroneous legal conclusions.
5. Defendants contend the Hearing Commissioner erred as a matter of law and fact, by finding and concluding that the regular rate/value of the room was \$80 per night, as this finding and conclusion is against the greater weight and preponderance of the substantial evidence in the record and is based upon erroneous legal conclusions.
6. Defendants contend the Hearing Commissioner erred as a matter of law and fact, by finding and concluding that Hansaben Patel was on call 24/7, as this finding and

conclusion is against the greater weight and preponderance of the substantial evidence in the record and is based upon erroneous legal conclusions.

7. Defendants contend the Hearing Commissioner erred as a matter of law and fact, by finding and concluding that Hansaben Patel's homicide occurred in Decedent-Employee's motel room on Employer's premises, as this finding and conclusion is against the greater weight and preponderance of the substantial evidence in the record and is based upon erroneous legal conclusions.
8. Defendants contend the Hearing Commissioner erred as a matter of law and fact, by finding and concluding that Hansaben Patel was dressed for work, as this finding and conclusion is against the greater weight and preponderance of the substantial evidence in the record and is based upon erroneous legal conclusions. Furthermore, this finding is based on surmise and speculation.
9. Defendants contend the Hearing Commissioner erred as a matter of law and fact, by finding and concluding that the fact that the perpetrator of the homicide was not a guest does not serve to defeat this claim, as this finding and conclusion is against the greater weight and preponderance of the substantial evidence in the record and is based upon erroneous legal conclusions.
10. Defendants contend the Hearing Commissioner erred as a matter of law and fact, by finding and concluding that Decedent-Employee's beneficiaries are entitled to receive 500 weeks of compensation as well as the statutory benefit of \$2500, pursuant to S.C. Code Ann. Section 42-9-290, as this finding and conclusion is against the greater weight and preponderance of the substantial evidence in the record and is based upon erroneous legal conclusions.

11. Defendants contend the Hearing Commissioner erred as a matter of law and fact, by finding and concluding that Hansaben Patel's average weekly wage is \$408.38, yielding a compensation rate of \$272.25, as this finding and conclusion is against the greater weight and preponderance of the substantial evidence in the record and is based upon erroneous legal conclusions.
12. Defendants contend the Hearing Commissioner erred as a matter of law and fact by finding and concluding that a co-worker's payment for a room was irrelevant to determining the correct average weekly wage and compensation rate, as this evidence was directly relevant to the issues being decided.
13. Defendants contend the Hearing Commissioner erred as a matter of law and fact, by finding and concluding that Decedent-Employee sustained an injury pursuant to S.C. Code Ann. Section 42-1-160, resulting in death on August 16, 2015, as a result of an accident arising out of and in the course of her employment, as this finding and conclusion is against the greater weight and preponderance of the substantial evidence in the record and is based upon erroneous legal conclusions.
14. Defendants contend the Hearing Commissioner erred as a matter of law and fact, by finding and concluding that pursuant to S.C. Code Ann. Section 42-9-290, the Decedent-Employee's death resulted proximately from her workplace accident, and accordingly, Decedent-Employee's statutory beneficiaries are entitled to five hundred weeks of compensation and funeral benefits of \$2500.
15. Defendants contend the Hearing Commissioner erred as a matter of law and fact by failing to commute all future installments of compensation to one-half pursuant to S.C. Code Section 42-9-290.

16. Defendants contend the Hearing Commissioner erred as a matter of law and fact by ordering Defendants to pay 500 weeks of compensation to Decedent-Employee's beneficiaries, as this finding and conclusion is against the greater weight and preponderance of the substantial evidence in the record and is based upon erroneous legal conclusions.

APPELLATE PANEL FINDINGS OF FACT

The Appellate Panel shall, pursuant to S.C. Code Ann. § 42-17-50, review the decision, weigh the evidence 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 findings. After careful review of the instant case, the Commission has determined that the Single Commissioner's Findings of Fact and Conclusions of Law are to be Affirmed in Part and Reversed in Part.

Based upon the 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. Pursuant to our order in *Kantibhai Patel v. BVM Motel d/b/a Best Western Point South*, Decedent-Employee's husband was not an employee of BVM Motel. The Single Commissioner erred in attributing half of the value of the motel room as earnings of her husband. Based on the greater weight of the evidence, the motel room provided by Decedent's employer was compensation solely to the Decedent-employee; accordingly the full value of the motel room is part of her average weekly wage.
2. Based on the greater weight of the evidence, we find that Decedent-Employee's average weekly wage is \$688.38, yielding a compensation rate of \$458.92. We base this finding

on her actual payroll earnings, plus the value of the motel room, which was \$80.00 per night.¹

3. Based on the greater weight of the evidence, we find that Decedent-Employee died of gunshot wounds on August 16, 2015, at approximately 8:01 a.m. during an armed robbery on Employer's premises (Deposition of Vyas, pages 7-8; Claimants' APA, pages 1-2, 5, and 35; Defendants' APA #9, page 52; Defendants' APA #12; Defendants' APA #13).
4. Based on the greater weight of the evidence, we find that Defendants admit that Decedent was an employee who received W-2 forms documenting her wages. See Deposition of Vyas, pages 5-6 and 13-14; Defendants' APA #10.
5. Based on the greater weight of the evidence, we find that Decedent-Employee was 67 years of age (Claimants' APA, pages 2 and 34).
6. Based on the greater weight of the evidence, we find that Decedent-Employee's job with Employer was housekeeper at Employers' motel (Deposition of Vyas, page 10).
7. Based on the greater weight of the evidence, we find that Employer's motel is in close proximity to Interstate 95. We base this finding on the address of the motel.
8. Based on the greater weight of the evidence, we find that Decedent-Employee was a 10-year employee (Deposition of Vyas, page 8).

¹ The handwritten Full Commission Vote Sheets executed on March 31st, 2017 contained a scrivener's error that listed the Average Weekly Wage as \$968.38 and the corresponding Compensation Rate as \$645.91. At the time the vote sheets were signed, the drafters had inadvertently added the full value of the room, \$80.00 per night or \$560.00 a week, to the single Commissioner's Average Weekly Wage of \$408.38, without taking into account that the single Commissioner's number already included ½ value of the room, \$40.00 per night or \$280.00 per week, plus the actual payroll earnings. This was a mathematical error only, as our finding on review is that the Average Weekly Wage shall be determined by adding the full value of the room for one week to the actual payroll earnings. The evidence in the record clearly indicates that the full value of the room equals \$80.00 per night, or \$560.00 per week, and the actual payroll earnings equal \$128.38. $\$560.00 + \$128.38 = \$688.38$.

9. Based on the greater weight of the evidence, we find that Vyas was the General Manager and owner/partner of the motel on the date of the homicide (Deposition of Vyas, page 4).
10. Based on the greater weight of the evidence, we find that as part of Decedent-Employee's compensation, Employer provided a room in which Decedent-Employee lived (Deposition of Vyas, pages 5-6 and 11).
11. Based on the greater weight of the evidence, we find that as a condition of Decedent-Employee's employment, she was required to live in the room provided by Employer on Employer's premises (Deposition of Vyas, page 6).
12. Based on the greater weight of the evidence, we find that the "going rate" on regular rate/value of the room was \$80 per night (Deposition of Vyas, page 6).
13. Based on the greater weight of the evidence, we find that although Decedent-Employee's regular day began at 8:30 a.m., she was required to provide services "at any time of the day or night" (even in "the middle of the night"), including cleaning and changing/replacing linens. According to Vyas, as long as Decedent-Employee was on the premises, she was charged with doing whatever was necessary (Deposition of Vyas, pages 6-12).
14. Based on the greater weight of the evidence, we find that Decedent-Employee was on call twenty-four hours a day, seven days per week. (Deposition of Vyas, pages 6-7).
15. Based on the greater weight of the evidence, we find that Decedent-Employee did not clock in/clock out; nor was she required to (Deposition of Vyas, page 11).
16. Based on the greater weight of the evidence, we find that the homicide occurred in Decedent-Employee's motel room on Employer's premises (Deposition of Vyas, pages 7 and 13).

17. Based on the greater weight of the evidence, we find that Decedent-Employee was found wearing (a) her name badge affixed to the shirt she was wearing, and (b) black pants. We find that she was dressed for work (Claimants' APA, page 3).
18. Based on the greater weight of the evidence, we considered the fact that the perpetrator of the homicide was not a guest. However, that factor does not serve to defeat this claim (Deposition of Vyas, pages 7-8).
19. Based on the greater weight of the evidence, we find that the cases cited in Defendants' Memorandum of Law are distinguishable from the case sub judice. Further, the Memorandum's statements that Decedent-Employee (a) "chose" to live at the motel, and (b) was murdered "during the middle of the night" while "presumably asleep" are erroneous. Living at the hotel and being on call 24/7 were in fact conditions of Decedent-Employee's employment. Second, the Autopsy report states that the approximate time of death was 8:01 a.m., and further states that **Decedent-Employee's body was received as clad in a tan shirt (name badge affixed to the shirt) and black pants – not pajamas or other sleepwear.**
20. Based on the greater weight of the evidence, we find that Decedent-Employee's beneficiaries are entitled to receive 500 weeks of compensation as well as the statutory benefit of \$2500, pursuant to Section 42-9-290.
21. Based on the greater weight of the evidence, we further find that the arrangement between the bartender and Employer as to the charge for the bartender's room is irrelevant. I base this on the testimony of Vyas, particularly page 10 of his deposition. The financial arrangement between another housekeeper and Employer would, however, be relevant. No such evidence is in existence. See Deposition of Vyas, pages 9-10.

FULL PANEL'S CONCLUSIONS OF LAW

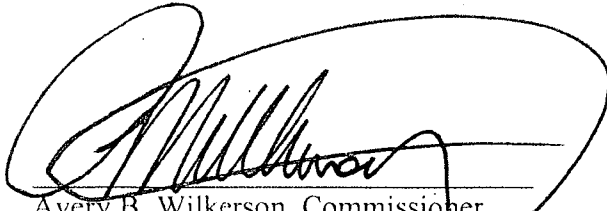
1. Decedent-employee was an employee of BVM Motel d/b/a Best Western Point South, as defined under S.C. Code Ann. § 42-1-130.
2. Pursuant to S.C. Code Ann. § 42-1-160, there is sufficient evidence which establishes that the Claimants' decedent sustained an injury resulting in her death on August 16, 2015 as a result of an injury by accident arising out of and in the course of her employment.
3. Pursuant to S.C. Code Ann. § 42-15-20, the Claimant gave proper notice of the accident to the Defendants.
4. Pursuant to S.C. Code Ann. § 42-9-290, the employee's death resulted proximately from her workplace accident, and accordingly, the Decedent's statutory beneficiaries are entitled to five hundred weeks of compensation and funeral benefits of two thousand five hundred dollars (\$2,500.00).

ORDER


IT IS THEREFORE ORDERED by the Appellate Panel of the Full Commission that the Decision and Order of the Single Commissioner is Affirmed in Part and Reversed in Part as set forth above and

IT IS HEREBY ORDERED THAT an employer/employee relationship existed between the parties on the date of the Decedent-Employee's injury resulting in death; that the Decedent-employee sustained a compensable injury by accident resulting in her death on August 16, 2015; the Decedent's statutory beneficiaries are entitled to five hundred weeks of compensation and funeral benefits of two thousand five hundred dollars (\$2,500.00).


AND IT IS SO ORDERED.



Avery B. Wilkerson, Commissioner



T. Scott Beck, Commissioner



R. Michael Campbell, II, Commissioner

Dated: 8-4-17
Columbia, South Carolina

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 Valerie Deller on August 4, 2017