

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM THE SOUTH CAROLINA WORKERS' COMPENSATION
COMMISSION
T. Scott Beck, Commissioner

W.C.C. 0922546

Richard A. Hartzell, Employee,,.....Respondent,

v.

Palmetto Collision, LLC, Employer,.....Appellant,

and

the S.C. Uninsured Employers Fund.....Respondent.

NOTICE OF APPEAL

Palmetto Collision, LLC appeals the Order of the South Carolina Workers' Compensation Commission dated March 26, 2012. The Appellant received written notice of entry of this Order on March 26, 2012. In accordance with S.C. Code Ann. § 42-17-60, the grounds for appeal and alleged errors of law are as follows:

1. The Commission erred in finding and concluding that "the employer regularly employed four (4) or more employees during the relevant period and was therefore subject to the Act," as this finding and conclusion is not supported by substantial evidence in the record or the applicable law and is otherwise arbitrary, capricious, impermissibly vague, and constitutes an unwarranted abuse of discretion.
2. The Commission erred in finding and concluding that the Claimant sustained "an injury by accident to his back on or about February 25, 2009," as this finding and conclusion is not supported by substantial evidence in the record or the applicable law and is otherwise arbitrary, capricious, impermissibly vague, and constitutes an unwarranted abuse of discretion.

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SC COURT OF APPEALS

3. The Commission erred in finding and concluding that “the Claimant timely reported the injury to the owner of the employer, Mike Stallings, and was advised to seek treatment on his own from the Medical University of South Carolina,” as this finding and conclusion is not supported by substantial evidence in the record or the applicable law and is otherwise arbitrary, capricious, impermissibly vague, and constitutes an unwarranted abuse of discretion.
4. The Commission erred in finding and concluding that “the Claimant is entitled to an evaluation to determine whether he is at MMI and whether he is in need of any additional medical treatment,” as this finding and conclusion is not supported by substantial evidence in the record or the applicable law and is otherwise arbitrary, capricious, impermissibly vague, and constitutes an unwarranted abuse of discretion.
5. The Commission erred in finding and concluding that the Claimant was a “covered employee at the time in question,” as this finding and conclusion is not supported by substantial evidence in the record or the applicable law and is otherwise arbitrary, capricious, impermissibly vague, and constitutes an unwarranted abuse of discretion.
6. The Commission erred in finding and concluding that the Employer “was a covered employer, “as this finding and conclusion is not supported by substantial evidence in the record or the applicable law and is otherwise arbitrary, capricious, impermissibly vague, and constitutes an unwarranted abuse of discretion.
7. The Commission erred in finding and concluding that the SCUEF “is initially responsible for the expense of compliance with this Order and any subsequent award,” as this finding and conclusion is not supported by substantial evidence in the record or the applicable law and is otherwise arbitrary, capricious, impermissibly vague, and constitutes an unwarranted abuse of discretion.
8. The Commission erred in finding and concluding that the “Claimant is entitled to medical, surgical, hospital and other authorized treatment, as this finding and conclusion is contrary to the greater weight of the evidence and the applicable law and is otherwise impermissibly vague.
9. The Hearing Commissioner erred in finding and concluding that “[s]ince treatment was not provided for a period of ten (10) weeks in compliance with [§ 42-15-60], the employer is not entitled to the benefit of any defense based upon the lack of an expert medical opinion,” as this finding and conclusion is not supported by substantial evidence in the record or the applicable law and is otherwise arbitrary, capricious, impermissibly vague, and constitutes an unwarranted abuse of discretion.

SC Court of Appeals

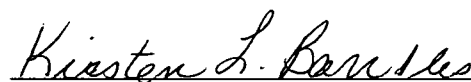
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10. The Commission erred in finding and concluding that § 42-15-60 “is not intended to disadvantage or burden a claimant with a requirement to provide an expert opinion that initial treatment is necessary,” as this finding and conclusion is not supported by substantial evidence in the record or the applicable law and is otherwise arbitrary, capricious, impermissibly vague, and constitutes an unwarranted abuse of discretion.
11. The Commission erred in finding and concluding that it “would be expensive and difficult to obtain” the expert medical opinion required by § 42-15-60, as this finding and conclusion is not supported by substantial evidence in the record or the applicable law and is otherwise arbitrary, capricious, impermissibly vague, and constitutes an unwarranted abuse of discretion..
12. The Commission erred in finding and concluding that the Claimant is entitled to “an evaluation to determine whether he is at MMI and whether he is in need of any additional medical treatment together with any benefits under the Act necessarily resulting from such evaluation and determination, “as this finding and conclusion is not supported by substantial evidence in the record or the applicable law and is otherwise arbitrary, capricious, impermissibly vague, and constitutes an unwarranted abuse of discretion.
13. The Commission erred in finding and concluding that the SCUEF “may choose the provider,” as this finding and conclusion is not supported by substantial evidence in the record or the applicable law and is otherwise arbitrary, capricious, impermissibly vague, and constitutes an unwarranted abuse of discretion.
14. The Commission erred as a matter of law in implicitly finding and concluding that the South Carolina Workers’ Compensation Commission has jurisdiction over this claim, as such an implicit finding and conclusion is not supported by substantial evidence in the record or the applicable law and is otherwise arbitrary, capricious, impermissibly vague, and constitutes an unwarranted abuse of discretion.
15. The Commission erred as a matter of law in failing to find and conclude that the Employer is not subject to the Workers’ Compensation Act because it does not and has not at any time regularly employed four or more employees and has never voluntarily become subject to the Act by contracting for workers’ compensation insurance, based upon the undisputed evidence in the record that is capable of but one inference.
16. The Commission erred in failing to find and conclude that the Claimant did not sustain any injury by accident arising out of or in the course of his employment as required by § 42-1-160, based upon the undisputed evidence in the record that is capable of but one inference.

17. The Commission erred as a matter of law in failing to find and conclude that the Claimant failed to meet his statutory burden of proof by “expert medical evidence stated to a reasonable degree of medical certainty” that he requires any additional medical care or treatment to lessen the period of alleged disability associated with the alleged accident on or about February 25, 2009, as clearly and unequivocally required by § 42-15-60 and based upon the undisputed evidence in the record that is capable of but one inference.
18. The Commission erred as a matter of law in failing to find and conclude that the present claim is barred due to the Claimant’s failure to timely or properly give notice of the alleged accident on or about February 25, 2009 without reasonable excuse pursuant to S.C. Code Ann. § 42-15-60, based upon the undisputed evidence in the record that is capable of but one inference and the applicable law.
19. The Commission erred as a matter of law in failing to find and conclude that the Claimant bears the burden of proving his entitlement to medical and compensation benefits under the Act and that his failure to meet his burden of proof does not place a burden of disproof upon the Employer and the Commission’s failure in this regard was arbitrary, capricious, and constitutes a clear abuse of discretion..
20. The Commission erred as a matter of law in failing to find and conclude that the Claimant cannot meet his burden of proof by resorting to mere surmise, conjecture, or speculation and the Commission’s failure in this regard was arbitrary, capricious, and constitutes a clear abuse of discretion

Respectfully submitted,



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Attorneys for Appellant

April 24, 2012

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM THE SOUTH CAROLINA WORKERS' COMPENSATION
COMMISSION
T. Scott Beck, Commissioner

W.C.C. 0922546

Richard A. Hartzell, Employee,,.....Respondent,

v.

Palmetto Collision, LLC, Employer,.....Appellant,

and

the S.C. Uninsured Employers Fund.....Respondent.

PROOF OF SERVICE

The undersigned hereby certifies that the above-named Respondents, Richard A. Hartzell and the S.C. Uninsured Employers Fund along with the S.C. Workers' Compensation Commission, were served with a copy of the attached Notice of Appeal this 24th day of April 2012, by depositing a copy of the same in the United States Mail, first class postage prepaid, addressed to the parties of record, as follows:

Kerry W. Koon, Esq.
147 Wappoo Creek Drive, Suite 203
Charleston, SC 29412

Lisa Glover, Esq.
S.C. Uninsured Employers Fund
Santee Building
100 Executive Center Dr., Ste. 101
Columbia, SC 29210

Ms. Virginia Crocker
Judicial Director
S. C. Workers' Compensation Commission
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April 24, 2012

The Honorable Jenny Abbott Kitchings
Clerk, South Carolina Court of Appeals
P. O. Box 11629
Columbia, SC 29211

Re: Richard A. Hartzell v. Palmetto Collision, LLC
W.C.C. File No.: 0922546
Carrier File No.:
Date of Accident: February 25, 2009

Dear Ms. Kitchings:

Enclosed for filing, please find a Notice of Appeal in the above-referenced case. Also enclosed are the following:

1. Proof of Service of the Notice of Appeal on the Respondent
2. A copy of the Order that is being challenged on appeal
3. Filing fee in the amount of \$100

Thank you for your time and attention to this matter. Should you have any questions or concerns, please do not hesitate to contact me.

Yours very truly,


Kirsten L. Barr

KLB/czw/les
Enc.

cc: Mike Stallings, Palmetto Collision, LLC (w/enc.)
Kerry W. Koon, Esq. (w/enc.)
Lisa Glover, Esq. (w/enc.)
Ms. Virginia Crocker, SCWCC (w/enc.)

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SC Court of Appeals
APR 25 2012
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DECISION AND ORDER OF
THE SOUTH CAROLINA
WORKER'S COMPENSATION COMMISSION APPELLATE PANEL
WCC FILE NO.: 0922546

RICHARD A. HARTZELL,)
)
 Employee/Claimant,)
)
 vs.)
)
 PALMETTO COLLISION, LLC,)
)
 Employer,)
)
 And)
)
 SOUTH CAROLINA WORKER'S)
 COMPENSATION UNINSURED)
 EMPLOYER'S FUND)
)
)
 Defendants,)
)
 _____)

HEARING: Held in Columbia, South Carolina on December 20, 2011.

APPEARANCES: Claimant was represented by Kerry W. Koon, Esquire of Charleston, South Carolina; Palmetto Collision represented by Kirsten L. Barr, Esquire, Charleston, South Carolina; South Carolina Worker's Compensation Uninsured Employer's Fund represented by Lisa C. Glover, Esquire of Columbia, South Carolina, appearance by Tim Killen of Columbia, South Carolina.

PURPOSE OF HEARING: To determine the issues set forth in Form 30, Application for Review filed by employer, Palmetto Collision, LLC.

DECISION AND ORDER: By a majority of the Commission Appellate Panel, Commissioners T. Scott Beck and Susan S. Barden, Chair, voting to Affirm, Commissioner Avery B. Wilkerson, Jr. voting to Reverse.

ELECTRONICALLY FILED:

I. APA SUBMISSIONS

Under the Administrative Procedures Act, the following records were submitted into evidence before the hearing Commissioner:

For Claimant:

- APA #1: Records of Dr. Austin H. Murray, pages 1-12.
- APA #2: ESC Quarterly Contribution and Wage Report for Palmetto Collision, LLC, pages 13-31.
- APA #3: Worker's Compensation Policy Application of Palmetto Collision, LLC, pages 32-35.
- APA #4: POC online inquiry regarding coverage and cancellation for Palmetto Collision, LLC, pages 36-39.
- APA #5: Denial letter/No coverage of Accident Fund Insurance Company of America, page 40.
- APA #6: Claimant's weekly records, page 41-43.

For Employer:

- APA #7: S.C. Employment Security Commission Unemployment Records, pages 44-54.
- APA #8: S.C. Department of Employment and Workforce – Wage Records, pages 55-58.
- APA #9: Subpoena (F27) and Proof of Service to Accident Fund Insurance Co., page 59-60.
- APA #10: Letter to Michael Felton, Compliance Officer, S. C. Worker's Compensation Commission, Compliance Division, pages 61-62.
- APA #11: Statement of Mary Beth Hammond, page 63.

For Uninsured Employers' Fund:

No submissions.

II. STIPULATIONS

Counsel for the respective parties stipulated before the Hearing Commissioner to the following issues:

1. The purpose of the hearing was to determine the issues set forth in Forms 50 and 51 and any other issues which may timely come before the Commission;

2. That the Claimant's average weekly wage was \$561.39 with a corresponding compensation rate of \$374.28;
3. Notices were timely and properly served upon all parties in interest;
4. Venue was properly set in Charleston County.

Without objection, the Commission's file was made a part of the record in this matter with the exception of any self-serving declarations or unstipulated medical reports.

III. STATEMENT OF THE CASE

This case was heard by Commissioner Andrea C. Roche on July 12, 2011, in North Charleston, South Carolina. Commissioner Roche issued her Decision and Order on September 8, 2011, ordering that the Claimant be provided an evaluation to determine whether he is at MMI and whether he is in need of any additional medical treatment, together with any benefits under the Act necessarily resulting from such evaluation and determination. Her Order further provided that the employer may choose the provider and that no hearing costs be assessed. Her Findings of Fact and Conclusion of Law were as follows:

Findings of Fact:

1. That the employer regularly employed four (4) or more employees during the relevant time period and was therefore subject to the Act.
2. Based upon the medical records and testimony, that the Claimant sustained an injury by accident to his back on or about February 25, 2009, while moving a heavy frame machine while cleaning up the employer's shop.
3. That the Claimant timely reported the injury to the owner of the employer, Mike Stallings, and was advised to seek treatment on his own from the Medical University of South Carolina.
4. That the Plaintiff has had the ability to continue working.
5. That the Claimant is entitled to an evaluation to determine whether he is at MMI and whether he is in need of any additional medical treatment.
6. That the employer shall choose the provider.

Conclusions 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. Since the employer did not have a Worker's Compensation Insurance policy in effect as of the date of the accident, the South Carolina Worker's Compensation Uninsured Fund is initially responsible for the expense of compliance with this Order and any subsequent award.

3. Under § 42-15-60, Claimant is entitled to medical, surgical, hospital and other authorized treatment. Since treatment was not provided for a period of ten (10) weeks in compliance with this section, the employer is not entitled to the benefit of any defense based upon the lack of an expert medical opinion to extend treatment beyond the ten (10) week period. This statute provides the requirement of an expert opinion to **extend** treatment beyond the ten (10) week period. Since initial treatment was not provided, the question of extension of treatment is not before the Commission. This section is not intended to disadvantage or burden a Claimant with a requirement to provide an expert opinion that **initial** treatment is necessary, which the Commission notes would be expensive and difficult to obtain in circumstances when no treatment has been provided by the employer.

The employer timely served a Form 30 Request for Commission Review on September 19, 2011. Both Appellant and Respondent timely filed briefs, and the matter was heard by the Appellate Panel on December 20, 2011.

IV. QUESTIONS PRESENTED

The employer raised three (3) questions for appellate review:

1. Employer contends that it regularly employed less than four (4) employees and therefore was not subject to the South Carolina Worker's Compensation Act;
2. Employer contends that the hearing Commissioner erred in finding that the Claimant sustained an injury to his back by accident on or about February 25, 2009, and in finding that the Claimant timely reported the injury; and
3. The Claimant failed to meet his burden of proof that he is entitled to medical treatment for an alleged back injury.

V. STANDARD OF REVIEW

In Worker's Compensation cases, the Appellate panel of the Worker's Compensation Commission is the ultimate finder of fact. The Appellate panel is reserved the task of assessing the credibility of witnesses and the weight to be accorded to the evidence. Robbins v. Walgreens and Broadspire Services, Inc. 652 S.E. 2nd 90 (Ct. App. 2007).

VI. EVIDENCE IN THE CASE

1. As to the threshold issue of the employer's coverage under the Act, the records of the South Carolina Employment Security Commission for the first quarter of 2009, in which the injury occurred (Claimant's APA Submissions p. 20) indicates that Palmetto Collision, LLC, had four (4) regular employees on the date of injury. On page 99 - 100 of the hearing transcript, Mike Stallings, the owner of Palmetto Collision, LLC, testified that during the first quarter of 2009 the company employed the Claimant, Jamie Alexander, Harold Brock and Douglas Alexander and that all were employed at the same time.

The regularity of employment is demonstrated by the South Carolina Employment Security Commission reports, and by Mr. Stallings' testimony. Those records show that Claimant was employed in the 2nd and 3rd quarters of 2008 (Claimants APA Submission pps.17-18). Mr. Stallings testified that Claimant was also employed in the 4th quarter, but that he was not reported (Transcript p. 96, l. 4- p. 97, l. 15). Jamie and Douglas Alexander and Harold Brock continued to be reported during the second quarter of 2009. The Alexanders and Mr. Brock are listed on several other quarterly reports as well (Claimant's APA Submissions p. 16-23). Another worker, Jimmy Morris was also regularly working as a heavy collision specialist during the relevant time period. Mr. Stallings testified that Morris was an independent contractor (Transcript p. 76, l. 8 – p. 77, l. 8 and p. 100, l. 5- p. 103, l. 11). The Claimant contested Mr. Morris' status as an independent contractor, but this question is not necessary for the determination as the above summarized evidence proves that the jurisdictional requirement of at least four (4) regular employees during the relevant period was satisfied.

A Worker's Compensation Insurance Application was submitted for a policy with an effective date of May 27, 2008, and to expire on May 27, 2009. The coverage went into effect for Palmetto Collision, LLC, on May 27, 2008 (Claimant's APA Submissions p. 33-36). Coverage lapsed due to non-payment of premium on August 5, 2008 (Claimant's APA Submissions p. 36-37). The record reflects that no Form 38 was filed by the employer to withdraw from the Act (Claimant's APA Submissions p. 28).

2. As to the fact of injury and reporting, the evidence comes primarily from the Claimant's testimony. The Claimant testified that on or about February 25, 2009, while engaged in cleaning up the

employer's shop so that Claimant could access his toolbox more easily, he moved tires, rims and a heavy frame machine with steel posts and chains weighing approximately two to three hundred pounds. In order to move the machine it must be tilted back and set on wheels in the manner of tilting a hand truck.

Claimant testified that after moving the frame machine he began having pain in his lower back which got progressively worse. The following day he reported to Mr. Stallings that he hurt himself and Mr. Stallings suggested that he go to the emergency room if he was having problems (Transcript p. 12, l. 4- p. 14, l.

12).

Claimant was unsure of the exact day of the injury but testified that it was at the end of February, which the panel determines as most likely accurate since he only worked another couple of weeks at Palmetto Collision, LLC.

Claimant sought treatment at his own expense with Dr. Austin Murray, and on his intake form indicated the onset of the problem as February 30, 2009. This is an obvious error, but generally corroborative of his approximate date of onset of February 25, 2009. On the intake form he checked a box stating that his condition was job related (Claimant's APA Submission p. 2). Claimant testified that he discontinued treatment with Dr. Murray for financial reasons (Transcript p. 21, l. 23- p. 22, l. 1).

In his testimony, Mr. Stallings acknowledged that he could not testify with certainty that Claimant did not report the injury to him, but only that "It doesn't ring a bell." (Transcript p. 86, l. 20- p. 87, l. 18).

One balance, the Claimant's testimony is more credible on the issue of the fact, and reporting, of the injury.

3. As to the contention that § 42-15-60 requires that the Claimant provide expert medical testimony prior to the award of treatment, it is important to note that it is not contended by either side that the employer has provided any care.

The question before the panel is whether or not § 42-15-60 (A) requires an expert medical opinion under the circumstances of this case, where the employer has not provided initial treatment. That section provides:

The employer shall provide medical, surgical, hospital, and other treatment including medical and surgical supplies as reasonably may be required, for a period not exceeding ten (10) weeks from the date of an injury, to effect a cure or give relief and for an additional time as in the judgment of the Commission will tend to lessen the period of disability as evidenced by expert medical evidence stated to a reasonable degree of medical certainty.... (Emphasis added).

The answer to this question is reached by an exercise in ordinary statutory construction. At the threshold, the panel is guided by cases such as Yeomans v. Anheuser-Busch Inc. 15 S.E. 2nd 833 (1941) wherein the South Carolina Supreme Court stated "...the basic purpose of the Compensation Act is inclusion of employers and employees and not their exclusion." Id. at 835, and Caughman v. Columbia YMCA 47 S.E. 2nd 788 (1948) in which the Supreme Court citing prior case law, stated "To great extent the whole scheme of workman's compensation is to place the economic burden of industrial accidents upon industry rather than upon the workers and their dependents, and as to the latter thereby rendered indigent, upon the state." Id. at 789-780. The panel is also mindful of Elliot v. S.C. Department of Transportation 607 S.E. 2nd 90 (Ct. App. 2004), wherein the Court of Appeals held that "The Workman's Compensation Act is remedial legislation enacted to protect the worker and therefore the law is given a broad construction in order to accomplish that end." Id. at 92.

With those principals in mind, the Panel concludes that the requirement of expert medical evidence stated to a reasonable degree of medical certainty is not triggered unless the employer has complied with the Act by providing medical treatment for the initial ten (10) week period after the date of injury. To construe otherwise would be to shift the burden, not only of the presentation of medical evidence to the claimant, but also that of providing initial treatment to effect a cure or give relief. This is clearly inconsistent with the purposes of the Worker's Compensation statutory scheme as reflected by the cases above cited.

This interpretation is consistent with the many well settled rules of statutory construction. In Smith v. South Carolina Insurance Company 564 S.E. 2nd 358 (Ct. App. 2002) the Court of Appeals stated: "Words used in a statute must be giving their plain and ordinary meaning without resort to subtle or forced construction to limit or expand its operation (citation omitted). The language must also be read

in a sense which harmonizes with its subject matter and accords with its general purpose.” Id. at 361. In State v. Woody 545 S.E. 2nd 521 (Ct. App. 2001) the Court held: “The Court should not consider a particular clause in isolation but should read it in conjunction with the purpose of the whole statute and the policy of the law.” Id. at 522, and in Heape v. Heape 517 S.E. 2nd 1 (Ct. App. 1999) the Court stated “A statute must, as a whole, be interpreted practically, fairly, and reasonably such that the interpretation harmonizes with the purpose, design, and policy of the lawmakers.” Id. at 2.

These cases make it clear that in order to comport with the mandate of liberal construction of the Worker’s Compensation statutory scheme, to place the economic burden of workers’ accidents upon industry, and favor inclusion rather than exclusion of employees, § 42-15-60 (A) should not be interpreted to exclude an employee from the right to employer provided medical treatment by the employer’s failure to provide such treatment during the initial ten (10) week period.

The construction urged by the employer would make the statutory phrase “...and for additional time as in the judgment of the Commission will tend to lessen the period of disability.....” meaningless by eliminating the distinction between the employer’s responsibility to provide treatment during the initial ten (10) week period following the injury and, the claimant’s responsibility to demonstrate by expert opinion, the need for additional treatment. Such would be violative of the rule laid down in Barnhill v. Bank of America, NA 318 F. Supp., 2nd 696 (D.S.C, 2005) where Judge Herlong of the United States District Court observed: “It is a cardinal principal of statutory construction that statutes, ought, upon the whole to be construed that, if it can be prevented, no clause, sentence or word shall be superfluous, void or insignificant.” Id. at 700.

VII. FINDINGS OF FACT

A majority of the Appellate Panel finds as follows:

1. That the employer regularly employed four (4) or more employees during the relevant time period and was therefore subject to the Act.

2. That a Worker's Compensation insurance policy was procured for the employer effective May 27, 2008, and was cancelled on August 5, 2008. No Form 38 was filed by employer seeking to withdraw from coverage.

3. Based upon the medical records and the testimony, that the Claimant sustained an injury by accident to his back on or about February 25, 2009, while moving a heavy frame machine while cleaning up the employer's shop.

4. That on the day of after the injury, the Claimant timely reported the injury to the owner of the employer, Mike Stallings, and was advised to seek treatment on his own from the Medical University of South Carolina.

5. That the Plaintiff has had the ability to continue working.

6. That the Claimant is entitled to an evaluation to determine whether he is at MMI and whether he is in need of any additional medical treatment.

7. That the employer may choose the provider.

VIII. CONCLUSIONS OF LAW

Accordingly, it is the determination of a majority of the Appellate Panel 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. Since the employer did not have a Worker's Compensation Insurance policy in effect as of the date of the accident, the South Carolina Worker's Compensation Uninsured Fund is initially responsible for the expense of compliance with this Order and any subsequent award.

3. Under § 42-15-60, Claimant is entitled to medical, surgical, hospital and other authorized treatment. Since treatment was not provided for a period of ten (10) weeks in compliance with this section, the employer is not entitled to the benefit of any defense based upon the lack of an expert medical opinion. The statute requires an expert opinion to **extend** treatment beyond the ten (10) week period. Since initial treatment was not provided, the question of extension of treatment is not before the Panel. This section is not intended to disadvantage or burden a Claimant with a requirement to provide an expert

opinion that initial treatment for an injury is necessary, which the Panel notes would be expensive and difficult to obtain in circumstances when no treatment has been provided by the employer, and is contrary to the intent of the Worker's Compensation Act statutory scheme as interpreted by the Court.

The Appellate Panel therefore Affirms the Decision and Order of Commissioner Roche dated September 19, 2001.

IX. ORDER/AWARD

IT IS HEREBY ORDERED that the Claimant be provided an evaluation to determine whether he is at MMI and whether he is need of any additional medical treatment together with any benefits under the Act necessarily resulting from such evaluation and determination. It is further,

ORDERED that the employer and South Carolina Worker's Compensation Uninsured Fund may choose the provider:

No hearing costs are assessed in this instance.

IT IS SO ORDERED.

CERTIFICATE OF SERVICE

This is to certify that the undersigned has this date served this order in the above entitled action upon all parties to this cause by depositing a copy heretofore, postage paid, in the United State mail addressed to the attorney or attorneys for said parties.

This 26 day of March, 2012
By Valerie D. Decker
Administrative Assistant to the Commissioner

Lisa C. Glover
Kristen L. Barr
Kerry W. Koen
Timothy B. Kallen

**SOUTH CAROLINA WORKER'S COMPENSATION
COMMISSION APPELLATE PANEL**

VOTING TO AFFIRM

T. Scott Beck
T. Scott Beck, Commissioner

Susan S. Barden
Susan S. Barden, Commissioner, Chair

VOTING TO REVERSE

Avery B. Wilkerson
Avery B. Wilkerson, Commissioner

At Columbia, South Carolina.
This 26 day of March, 2012.