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THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM THE SOUTH CAROLINA
WORKERS' COMPENSATION COMMISSION

Appellate Panel

W.C.C. No. 1514060

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SC Court of Appeals

Jayeshkumar K. Patel and Mehulbhai Patel, Dependents Claimants
for Hansaben Patel, Deceased Employee..... Respondents,

v.

BVM Motel, LLC d/b/a Best Western Point South, Employer,
and Auto-Owners Insurance Company, Carrier, ... Appellants.

RECORD ON APPEAL

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Owners Insurance Company*

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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

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

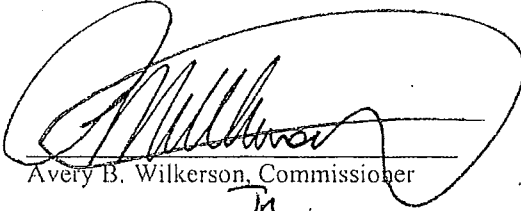
1. Decedent-employee was an employee of BVM Motel d/b/a Best Western Point South, as defined under S.C. Code Ann. § 42-1-130.
2. Pursuant to S.C. Code Ann. § 42-1-160, there is sufficient evidence which establishes that the Claimants' decedent sustained an injury resulting in her death on August 16, 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).

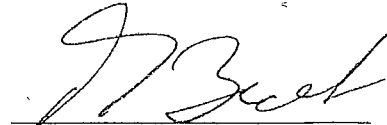
ORDER

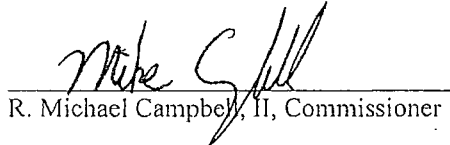
IT IS THEREFORE ORDERED by the Appellate Panel of the Full Commission that the Decision and Order of the Single Commissioner is Affirmed in Part and Reversed in Part as set forth above and

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

DECISION AND ORDER
OF THE
SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION

W.C.C. FILE NO.: 1514060

Jayeshhumar Patel
And Mehulbhai Patel,
Claimants,

Hansaben Patel,
Deceased Employee,

-vs-

BVM Motel d/b/a Best Western,
Point South
Employer,

and

Auto Owners Insurance,
Carrier,
Defendants.

Hearing:

Held in Walterboro, South Carolina on September
26, 2016.

Appearances:

Claimant represented by Warren Paul Johnson,
Esquire of Hardeeville, South Carolina

Defendants represented by Allison Nussbaum,
Esquire, of McAngus, Goudelock, and Courie of
Charleston, South Carolina.

Purpose of Hearing:

To determine those issues as set forth on the Forms
52 and 53

Decision and Order:

By Susan S. Barden, Commissioner

Filed:

December 28, 2016

APA SUBMISSIONS

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

Claimants' 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	

Defendants' Submissions

APA No. 9.	Tuten Insurance Services Corporation Dependency Investigation	P. 36-53
APA No. 10.	Decedent-Employee's pay records	P. 54-57
APA No. 11.	SC Department of Employment and Workforce	P. 58-60
APA No. 11.	Jasper County Sheriff's Office Report	P. 58

STIPULATIONS

1. That the purpose of the Hearing was to determine the issues set forth in the Hearing Notice and Forms 52 and 53.
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"), but Defendants maintain their denial that Decedent-Employee was working at the time of the murder.

6. That Decedent-Employee's payroll wages for the 52 weeks immediately preceding the date of injury and death were as set forth by Defendants' APA #10.

7. That the Claimants seek a finding of compensability, and that a determination of beneficiaries and dependency is to be held in abeyance.

STATEMENT OF THE CASE

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

The Defendants contend that the Decedent-Employee 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 the 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.

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 Employer's 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" or 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 be relevant; however, no such evidence is in existence. *See* Deposition of Vyas, pages 9-10.

CONCLUSIONS OF LAW

1. Decedent-Employee was an employee of BVM Motel d/b/a Best Western Point South, as defined pursuant to S.C. Code Ann. § 42-1-130.
2. Pursuant to S.C. Code Ann. § 42-1-160, and other applicable law, Decedent-Employee 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, Defendants had timely notice of the accident.
4. Pursuant to S.C. Code Ann. § 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 two thousand five hundred dollars (\$2,500.00).

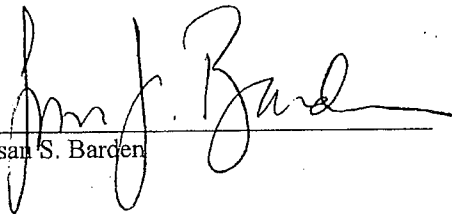
ORDER

IT IS HEREOFRE ORDERED that the Defendants shall pay five hundred weeks of compensation to the Decedent-Employee's beneficiaries, the identity of which shall be determined at a future hearing.

IT IS FURTHER ORDERED that the Defendants shall pay funeral benefits in the amount of two thousand five hundred dollars (\$2,500.00) pursuant to S.C. Code § 42-9-290.

SO ORDERED.

Columbia, South Carolina



Susan S. Barden

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).
January 3, 2017

By: Anita G. East, Administrative Assistant to Commissioner Barden

South Carolina Workers' Compensation Commission
1333 Main Street, Suite 500 • Post Office Box 1715
Columbia, South Carolina 29202-1715
(803) 737-5723 www.wcc.sc.gov



WCC File #: _____
Carrier File #: _____
Carrier Code #: _____
Employer FEIN #: _____

Claimant's Name: Jayeshkumar K. Patel SSN: _____ Employer's Name: BMV Motel LLC
Address: P.O. Box 1125 Address: P.O. Box 1050
City: Hardeeville State: SC Zip: 29927 City: Ridgeland State: SC Zip: 2933
Home Phone: _____ Work Phone: _____ Insurance Carrier: Owners Insurance Company
Preparer's Name: Warren P. Johnson Law Firm: Darrell Thomas Johnson Jr. Preparer's Phone #: 843-764-2142

A claim for workers' compensation death benefits is made based on the following grounds:

The Claimant is Son (relationship to employee) of Hosaben K. Patel (employee's name)

1. The employee sustained an accidental injury to the Gunshot wound resulting in death. (Part of Body Hurt)
on 8/16/2015 (m/d/yyyy) in Jasper County, State of SC.
2. Both the employee and the employer were subject to the South Carolina Workers' Compensation Act at the time of injury.
3. The relationship of employer and employee existed at the time of injury.
4. At the time of the injury the employee was performing services arising out of and in the course of employment.
5. Notice of the accidental injury was given to the employer on 8/16/2015 (m/d/yyyy) in the following manner:
Employer was notified by police.
- ☐ 6. Due to injury, the employee received medical examination and treatment which remains unpaid by the employer.
- ☐ 7. Due to injury, the employee lost compensable time from work and wages for the periods of:
Decedent was required to live on property and was on call 24/7. Employee was murdered by a guess when answering the door.
- ☐ 8. The employee died on 8/16/2015 (m/d/yyyy) as a result of the accidental injury, and death compensation is claimed.
9. At the time of the injury, the employee was paid weekly wages of \$_____. The claimant demands an accounting of days worked and wages earned as provided by law.
10. Further grounds of claim:
Decedent was required to live on property and was "on call" 24/7. Employee was murdered when answering the door.
11. Appropriate benefits as provided in the Act for the above grounds and other relief as the Workers' Compensation Commission may direct as just and proper.
- ☐ 12a. I am filing a claim. I am not requesting a hearing at this time.
- ☒ 12b. I am requesting a hearing. A \$25 fee is required.
- ☐ Mediation
 - ☒ a. Mediation is requested to be ordered pursuant to Reg. 67-1801 B.
 - ☐ b. Mediation is required pursuant to Reg. 67-1802.
 - ☐ c. Mediation is requested by consent of the Parties pursuant to Reg. 67-1803.
 - ☐ d. Mediation has been conducted by a duly qualified mediator and resulted in an impasse.

Questions regarding mediation may be submitted to mediation@wcc.sc.gov.

I certify I have served this document pursuant to Reg. 67-211 by delivering a copy to See Certificate of Service
address _____ on the _____ day of _____, 20____.
by ☐ first class postage ☐ certified mail ☐ personal service.

I verify the contents of this form are accurate and true to the best of my knowledge.

Preparer's Signature: _____ Attorney for Claimant: _____ Email: ldjohnson1@hergray.com Date: September 29, 2015

Questions about the use of this form should be directed to the Judicial Department at 803.757.5675 or judicial@wcc.sc.gov or mediation@wcc.sc.gov. Refer to Regulations 67-205 through 67-211, 67-216, Regulations 67-601 through 67-615 and; Regulations 67-901 through 67-905 well as Reg. 67-1801.

WCC Form # 52
Revised 7/13

52

Employee's Notice of Claim and/or
Request for Hearing, Death Case

South Carolina Workers' Compensation Commission
1333 Main Street, Suite 500
P.O. Box 1715
Columbia, SC 29202-1715
(803) 737-5700 www.wcc.sc.gov



WCC File # 1514060
Carrier File # 236-204-2015
Carrier Code #
Employer FEIN #

Claimant's Name: Hansaben K. Patel SSN: _____ Employer's Name: BVM Motel, LLC d/b/a Best Western Point South
Address: 3536 Point South Drive Address: 3536 Point South Drive
Yemassee, South Carolina 29945 Address: Yemassee, South Carolina 29945
Home Phone: _____ Work Phone: _____ Insurance Carrier: Auto Owners Insurance
Preparer's Name: Allison C. Nussbaum Law Firm: McAngus Goudelock & Courie Phone Number: (843) 576-2925
Date of Injury or Illness: August 16, 2015

Complete each information blank. Clearly specify when contentions are admitted in part or denied in part.
The Employer-Insurance Carrier in answer to the claim due to the death of Hansaben K. Patel (employee's name) respectfully shows:

1. It is ☐ Admitted ☒ Denied the employee sustained an injury on or about the date set forth in the application.
2. It is ☐ Admitted ☒ Denied both the employer and employee were subject to the Workers' Compensation Act at the time in question. The reasons for denial are:
Pending Investigation.
3. It is ☐ Admitted ☒ Denied the relationship of employer and employee existed at the time in question. The reasons for denial are:
Pending Investigation.
4. It is ☐ Admitted ☒ Denied at the time in question the employee was performing services arising out of and in the course of employment.
5. It is ☒ Admitted ☐ Denied notice of injury was given the employer as specified in the application.
6. It is ☐ Admitted ☒ Denied the employee was entitled to medical care as a result of the injury.
7. It is ☐ Admitted ☒ Denied the employee lost compensable time from work and wages for period(s) of:
Pending Investigation; death claim.
8. It is ☐ Admitted ☒ Denied the employee's death resulted proximately from accidental injury arising out of and in the course of employment on August 16, 2015.
9. It is contended that an average weekly wage of \$ TBD applies, according to the attached accounting of employee's earnings, as provided by law.
10. Further grounds of claim:
Defendants are currently in the investigation stages of Claimant's alleged death claim; issues include dependency/causation/arising out of employment; S.C. Code Ann. Section 42-9-140; Section 42-9-290; Regulation 67-901.

☒ Mediation

- ☐ a. Mediation is requested to be ordered pursuant to Reg. 67-1801 B.
☒ b. Mediation is requested pursuant to Reg. 67-1802.
☐ c. Mediation is requested by consent of the Parties pursuant to Reg. 67-1803.
☐ d. Mediation has been conducted by a duly qualified mediator and resulted in an impasse.

Questions regarding mediation may be submitted to mediation@wcc.sc.gov.

Darrell Thomas Johnson, Jr., Esquire
Law Offices of Darrell Thomas Johnson, Jr.,

I certify I have served this document pursuant to Reg. 67-211 by delivering a copy to LLC

Post Office Box 1125
address Hardenville, South Carolina 29927 on the 29th day of October 20 15
by ☒ first class postage ☐ certified mail ☐ personal service.

Preparer's Signature _____ Attorney for Employer/Carrier _____ allison.nussbaum@mgclaw.com _____ October 29, 2015
Title _____ Email _____ Date _____

Questions about the use of this form should be directed to the Judicial Department at 803.737.5675 or jud@wcc.sc.gov or mediation@wcc.sc.gov. Refer to Regulations 67-205 through 67-211, 67-215, Regulations 67-601 through 67-615; and Regulations 67-901-905 as well as Reg. 67-1801.

WCC FORM # 53
Revised 7/13

53

Employer's Answer to Request for Hearing,
Death Case.

South Carolina Workers' Compensation Commission
1333 Main Street, Suite 500
P.O. BOX 1715
Columbia, SC 29202-1715
(803) 737-5675 www.wcc.sc.gov



PRE-HEARING BRIEF

WCC File No: 1514060

Claimant's Name: Hansaben Patel(deceased)

Employer's Name: BVM Motel, LLC d/b/a Best Western Point South

Address: P.O Box 1125

Address: P.O Box 1050

City: Hardeeville State: SC Zip: 29927

City: Ridgeland State: SC Zip: 29936

Home Phone: _____ Work Phone: _____

Carrier: Auto-Owners Insurance Company

Preparer's Name: Warren P. Johnson

Preparer's Phone #: 843-784-2142

A claim for workers' compensation benefits is made based on the following grounds:

☒ Injury ☐ Illness ☐ Repetitive Trauma

1. Compensation Rate: TBD 2. AWW: \$ TBD Date of Injury: 8/16/2015

3. Type of Injury and body part(s): Gunshot wound resulting in death

4. Facts in controversy:

Whether claimant's statutory Dependent's are is entitled to benefits under the Act; AWW/CR; whether claimant's murder arose out of in the course of her employment when she was killed on the premises and was required to live on the premises of the Best Western Hotel and be available at all times.

5. Legal issues involved:

See No.4

6. Unusual aspects:

7. Witnesses (designate if expert):*

8. Exhibits:

See APA's

9. Medical evidence (Indicate report pursuant to R.67-612; deposition or appearance):

See APA's

10. Name, address, and specialty, if any, of the treating physician:

11. Impairment rating(s); body part(s); physician and date of opinion:

12. I am amending my Form 50/51 in the following manner:

☐ Mediation

- ☐ a. Mediation is requested to be ordered pursuant to Reg. 67-1801 B.
☐ b. Mediation is required pursuant to Reg. 67-1802.
☐ c. Mediation is requested by consent of the Parties pursuant to Reg. 67-1803.
☐ d. Mediation has been conducted by a duly qualified mediator and resulted in an impasse.

Questions regarding mediation may be submitted to mediation@wcc.sc.gov.

I certify I have served this document pursuant to Reg. 67-211 by delivering a copy to Allison C Nussbaum, Esquire
address P.O Box 650007, Mt. Pleasant, SC 29465 on the 12 day of September 20 16

by ☒ first class postage ☐ certified mail ☐ personal service ☐ electronic service

I verify the contents of this form are accurate and true to the best of my knowledge.

Signature: _____

Email: tdjohnson1@hargray.com

Date of hearing: September 26, 2016

Time needed for hearing: 1 hr

Questions about the use of this form should be directed to the Jurisdictional Commissioner. Refer to Regulations 67-204 through 67-211 and Regulations 67-601 through 67-615; as well as Regulation 67- 1801. File this form and proof of service on the opposing party according to R.67-611 and R.67-212. Do not send medical reports. * Commissioners reserve the right to admit expert witnesses at hearings.

WCC Form # 58
Revised 7/15

58

PRE-HEARING BRIEF

000028

PRE-HEARDING
WCC FILE NO.

BEFORE THE SOUTH CAROLINA
WORKERS' COMPENSATION COMMISSION
WCC FILE NO.: 1514060

Hansaben Patel (deceased),
Employee/Claimant,
vs.
BVM Motel, LLC d/b/a
Best Western Point South
Employer,
and
Auto-Owners Insurance Co.,
Carrier,
Defendants.

NOTICE OF WITNESSES AND
WRITTEN REPORT(S)/PHYSICIAN
OR OTHER EVIDENCE TO BE
INTRODUCED ON BEHALF OF
CLAIMANT

TO: South Carolina Workers' Compensation Commission and Allison C. Nussbaum,
Esq.

YOU ARE HEREBY NOTIFIED that the Claimant, pursuant to the provisions of the South Carolina Workers' Compensation Act and South Carolina Code Ann. §1-23-330, (Cum. Supp. 1988), herewith submits the following reports/physician or other evidence on behalf of the Claimant, to wit:

APA#	DOCTOR	PRACTICE	DATES	PAGES
1		Death Certificate	08/16/2015	01
2		MUSC Department of Pathology Autopsy Report	08/18/2015	02-08
3		Funeral and Burial Expenses	08/16/15-08/23/15	09-13
4		T/C Deposition of Raj Vyas	08/16/2016	14- 31
5		Marriage Certificate		32- 33
6		USA Passport		34
7		Online Court Index		35
8		Police/Prosecution Documents to be Supplemented		

The Claimant reserves the right to submit any additional medical records upon receipt.

Exhibits: See above.

YOU ARE FURTHER HEREBY NOTIFIED that you have the right of cross-examination ; and, should you desire to exercise said right, you are to forthwith schedule the deposition(s) of any of the physician(s) or other person(s) whose reports are submitted, for the purpose of cross-examination.

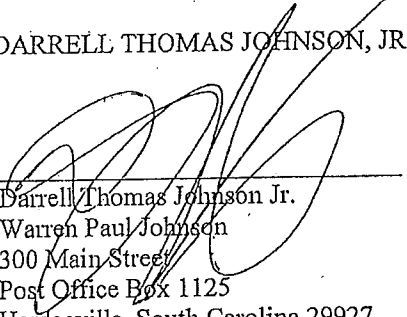
YOU ARE FURTHER HEREBY NOTIFIED that the originals of the documents referred to herein, or photocopies received from said physicians/others, will be submitted at the Hearing before the South Carolina Workers' Compensation Commission, for insertion in the file of the South Carolina Workers' Compensation Commission and inclusion into evidence on behalf of the Claimant.

YOU ARE FURTHER HEREBY NOTIFIED that the following witnesses may be called on behalf of the Claimants.

Raj Vyas by Deposition, and any other witnesses identified by the Employer.

LAW OFFICES OF

DARRELL THOMAS JOHNSON, JR., LLC



Darrell Thomas Johnson Jr.
Warren Paul Johnson
300 Main Street
Post Office Box 1125
Hardeeville, South Carolina 29927
(843)784-2142/843-784-5770 (facsimile)

September 12th, 2016

STATE OF SOUTH CAROLINA
CERTIFICATION OF VITAL RECORD

DEATH CERTIFICATION

STATE FILE NUMBER: 139-15-029220

DECEDENT'S NAME: *HANSABEN KANTIBHAI PATEL*

AKA's: NA

ARMED FORCES: NO

DATE OF BIRTH: FEBRUARY 21, 1948

TYPE OF PLACE OF DEATH: DECEDENT'S HOME

NAME AND ADDRESS OF PLACE OF DEATH: 3536 POINT SOUTH DRIVE, YEMASSEE, SC 29945

PLACE OF DISPOSITION: CHAPEL OF THE CHIMES CREMATORY

DISPOSITION LOCATION: HAYWARD, CALIFORNIA

METHOD OF DISPOSITION: CREMATION

DECEDENT'S RESIDENCE: 3536 POINT SOUTH DRIVE APT. 265, YEMASSEE, JASPER COUNTY, SC, 29945

PLACE OF BIRTH: INDIA

SURVIVING SPOUSE'S NAME: KANTIBHAI AMBALAL PATEL

FATHER'S NAME: PUNAMBHAI PATEL

MOTHER'S NAME PRIOR TO FIRST MARRIAGE: SHARDABEN P PATEL

INFORMANT'S NAME: VAISHALI VYAS

MAILING ADDRESS: 3536 POINT SOUTH DRIVE, YEMASSEE, SC, 29945

FUNERAL HOME: GAMBLE FUNERAL SERVICE, INC., 410 STEPHENSON AVE, SAVANNAH, GA: 31405

FUNERAL DIRECTOR: J EDWARD GAMBLE III

EMBALMER'S NAME: J EDWARD GAMBLE III

ACTUAL OR PRESUMED DATE OF DEATH: AUGUST 16, 2015

ACTUAL OR PRESUMED TIME OF DEATH: 0801

CAUSE OF DEATH - PART I

GUNSHOT WOUNDS OF THE TRUNK

SEX: FEMALE

SOCIAL SECURITY NUMBER:

AGE: 67 YEARS

COUNTY OF DEATH: JASPER

YEMASSEE, SC 29945

MARITAL STATUS: MARRIED

RELATIONSHIP: FAMILY FRIEND

LICENSE NUMBER: 1551 SC

LICENSE NUMBER: 1551

MANNER OF DEATH: HOMICIDE

OTHER SIGNIFICANT CONDITIONS - PART II:

NA

CORONER CONTACTED? YES

AUTOPSY PERFORMED? YES

AUTOPSY AVAILABLE? YES

DATE OF INJURY: AUGUST 16, 2015

TIME OF INJURY: 0801

INJURY AT WORK? NO

PLACE OF INJURY: DECEDENT'S HOME

LOCATION OF INJURY: 3536 POINT SOUTH DRIVE, YEMASSEE, JASPER COUNTY, SC, 29945

HOW THE INJURY OCCURRED?

SHOT BY SOMEONE

CERTIFIER NAME AND TITLE: CORONER LINIOUS MARTIN SAULS III

LICENSE NUMBER: NA

CERTIFIER'S ADDRESS: 310 W ADAMS AVE, RIDGE LAND, SC, 29936

DATE FILED: AUGUST 21, 2015

DATE OF ISSUANCE: AUGUST 21, 2015

SPECIAL INSTRUCTIONS:

NA

SC04479370

This is a true certification of the facts on file in the Division of Vital Records, SC Department of Health and Environmental Control.

Catherine Templeton

Catherine Templeton
Director and State Registrar

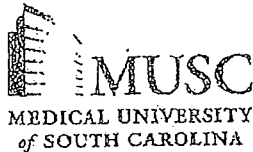
Barbara E. Derrick
Barbara E. Derrick
Assistant State Registrar

This copy is not valid unless prepared on an engraved border displaying the state seal and issuing agency logo.

Revision Date: 09/10/2014



Hansaben Patel 1



Department of Pathology and Lab Medicine
165 Ashley Avenue, Suite 309
MSC 908
Charleston, SC 29425-9080

Req.: xAutopsy, For Coroner
Add.: xAutopsy, For Coroner
Loc: AJAS
Client: AJAS-Jasper County Coroner

Patient: PATEL, HANSABEN K.
Med Rec: PATHAN081815
DOB: 2/21/1948 (Age: 67)
Sex: F Race: Asian or Pacific

Autopsy Final Report

Date and Time of Autopsy: 8/18/2015 09:00

Accession Number: FA15-548

Hospital/County: AJAS-Jasper County Coroner
Service: Laboratory
Submitting Physician: xAutopsy, For Coroner
Attending Pathologist: Nicholas Batellis, M.D. (1-4621)
Date/Time of Death: 8/16/2015 ~08:00
Autopsy Reason: Requested by Coroner
Authorized By: L. Martin Sauls, III, Coroner
Autopsy Restrictions: None

(If Injury) How occurred: Shot by someone
Date of Injury: 8/16/15 Time: ~08:00
Place of Injury: Motel At Work: Yes

Diagnosis

1. Gunshot wounds of the left shoulder (#1-3)
 - a. Entrance: Left shoulder
 - b. Range: No soot or stippling on the skin
 - c. Injuries: Perforations of skin, subcutaneous tissues, musculature and right humerus
 - d. Recovery: A medium to large caliber, jacked, minimally deformed bullet is recovered from the right arm
 - e. Exits: One exit wound is on the left side of the chest and one exit wound is on the posterior aspect of the right arm
 - f. Pathways: Predominantly left to right and very slightly downward with no significant deviation to the front or back
2. Gunshot wound of the back (#4)
 - a. Entrance: Left side of the back
 - b. Range: No soot or stippling on the skin
 - c. Injuries: Perforations of skin, subcutaneous tissue, rib, lung, and aorta; left hemothorax; soft tissue hemorrhage within the neck
 - d. Exit: Mid neck
 - e. Pathway: Back to front, upward, and very slightly left to right
3. History that the decedent was shot, along with her husband (FA-15-547), by another individual

Cause of Death

Gunshot wounds of the trunk

Manner of Death

Homicide

Case History

According to the Jasper County Coroner, Mr. Martin Sauls, the decedent is a 67-year-old female who was shot along with her husband (FA-15-547) at a hotel on the morning of 8/16/15. Authorities were notified and death was pronounced at the scene.

Department of Pathology and Laboratory Medicine
Chair: Steven L. Carroll, M.D., Ph.D.

Anatomic Pathology
Phone: 843-792-3821
Fax: 843-792-8974

Autopsy Pathology
Phone: 843-792-3556
Fax: 843-792-8974

Client Services
Phone: 843-792-0707
Fax: 843-792-4896

Clinical Pathology
Phone: 843-792-0707
Fax: 843-792-4896

Patient: PATEL, HANSABEN K.

Med Rec: PATHAN081815

Location: AJAS

PATEL, HANSABEN K.

FA15-548

Gross DescriptionEXTERNAL EXAMINATION

The body is identified by a band around the left wrist. Photographs are taken. Radiographs of the neck, chest, abdomen, and shoulders are taken.

The body is received wearing black pants, a tan shirt with a name badge, two purple bracelets on the wrists, a beaded necklace around the neck, two earrings with clear stones, a string bracelet around the right wrist, two anklets around the ankles, a white bra, and white panties. A plastic bag is recovered from the shirt. All items are retained and submitted to authorities.

The body is that of a normally developed adult Indian female which appears consistent with the stated age of 67 years. When nude, the body measures 67 inches in length and weighs 142 pounds. There is good preservation in the absence of embalming. Rigor mortis is absent and pink-purple lividity is fixed on the posterior surfaces. The body is cool subsequent to refrigeration.

The scalp hair is long, brown-gray, and in braids. The irides appear brown and there are no petechiae of the bulbar or palpebral surfaces of the conjunctivae. The corneas are slightly cloudy. The ears, nose, and lips are unremarkable. The mouth has natural dentition in fair condition. The neck is without masses or unusual mobility. The chest, breasts, and back are normally developed. The abdomen is slightly protuberant. The extremities are symmetric. The external genitalia are those of an adult female and are without trauma.

IDENTIFYING MARKS AND SCARS

A 1 1/4 inch circular scar is on the left thigh. Nonspecific scars and pigmented areas up to 1 1/2 inches are on the trunk and extremities. Striae are on the abdomen.

EVIDENCE OF TREATMENT

None are present.

EVIDENCE OF INJURY

The following gunshot wounds are ordered for the purpose of description without regard to the chronology or severity of injuries.

GUNSHOT WOUNDS OF THE LEFT SHOULDER (#1-3): Three gunshot entrance wounds are in a 3 inch area on the lateral aspect of the left shoulder centered 10 1/2 inches below the top of the head and 9 inches left of midline. The three entrance wounds are all round with a 1/4 inch diameter and circumferential marginal abrasions up to 1/8 inch. There is no soot or stippling on the skin. After extending into the deep soft tissues of the left shoulder, the paths cross and become indistinguishable but three distinct pathways emerge.

One bullet passes through skin and subcutaneous tissues of the left side of the chest before exiting the upper left side of the chest in an exit wound centered 10 inches below the top of the head and 2 3/4 inches left of midline. This somewhat irregular wound measures 3/4 x 3/8 inch in size.

The second bullet passes through the subcutaneous tissues of the left shoulder and chest before exiting then reentering the mid chest in a complex bridged by an abrasion and centered 12 inches below the top of the head in the midline. The exit and re-entry wounds are both approximately 1/4 inch in size and are bridged by a 1 inch abrasion. Once reentering the chest this bullet then extends through the right side of the chest before exiting through a 3/8 x 1/4 inch irregular wound on the lateral aspect of the right breast 13 inches below the top of the head and 6 1/2 inches right of midline. The bullet then apparently reenters the medial aspect of the right arm in a circular wound with a 3/8 inch diameter centered 15 inches below the top of the head and 1 3/4 inches medial to the anterior extremity midline. The bullet then continues through the tissues of the arm, with a palpable fracture of the right humerus, before exiting the posterior surface in a 3/8 inch exit wound centered 16 inches below the top of the head in the posterior extremity midline.

Department of Pathology and Laboratory Medicine
Chair: Steven L. Carroll, M.D., Ph.D.

Anatomic Pathology
Phone: 843-792-3821
Fax: 843-792-8974

Autopsy Pathology
Phone: 843-792-3556
Fax: 843-792-8974

Client Services
Phone: 843-792-0707
Fax: 843-792-4896

Clinical Pathology
Phone: 843-792-0707
Fax: 843-792-4896

Patient: PATEL, HANSABEN K.

Med Rec: PATHAN081815

Location: AJAS

PATEL, HANSABEN K.

FA15-548

The third bullet from the cluster tunnels through the subcutaneous tissues of the chest before exiting the mid chest at a $\frac{1}{4} \times \frac{1}{4}$ inch wound centered 11 inches below the top of the head and $\frac{1}{2}$ inch right of midline. The bullet then appears to reenter the chest in a nearby, irregular $\frac{3}{8} \times \frac{1}{4}$ inch wound centered 11 $\frac{1}{4}$ inches below the top of the head and 3 $\frac{1}{4}$ inches right of midline. This irregular wound has an abrasion up to $\frac{3}{8}$ inch from the 2 to 5 o'clock positions. The bullet then extends through the subcutaneous tissues of the right side of the chest before exiting in a $\frac{1}{2} \times \frac{3}{8}$ inch wound centered on the lateral aspect of the right breast 12 inches below the top of the head and 6 inches right of midline. The bullet then appears to reenter the right arm in a $\frac{1}{4} \times \frac{1}{2}$ inch wound centered 13 inches below the top of the head and 2 inches medial to the anterior extremity midline. The bullet then continues through the tissues of the right arm with resultant right humerus fracture before terminating in the soft tissues of the posterior aspect of the right arm where it is recovered. A medium to large caliber jacketed, minimally deformed bullet is recovered within the tissues of the right arm. The bullet is photographed, sealed in an appropriately labeled envelope and submitted to authorities.

The predominant pathway of the three bullets is from left to right and very slightly downward with no significant deviation to the front or back.

GUNSHOT WOUND OF THE BACK (#4): A gunshot entrance wound is on the left side of the back centered 15 inches below the top of the head and 2 $\frac{3}{4}$ inches left of midline. The oval wound is $\frac{3}{8} \times \frac{1}{4}$ inch in diameter and has a circumferential marginal abrasion up to $\frac{1}{8}$ inch from the 2 to 10 o'clock positions. There is no soot or stippling on the skin.

After perforating through the skin and subcutaneous tissues of the left side of the back, the bullet penetrates into the chest wall through the posterior aspect of the left 8th rib and continues through the lower lobe of the left lung, the hilum of the left lung, aorta, and soft tissues of the neck before exiting (no projectile recovered). Associated injuries include at least 300 ml of blood and clot within the left pleural cavity and extensive soft tissue hemorrhage within the neck.

A gunshot exit wound is centered on the mid neck 10 inches below the top of the head and $\frac{3}{4}$ inches right of midline. The irregular wound measures up to $\frac{3}{8}$ inch in greatest dimension.

The pathway is from back to front, upward, and very slightly left to right.

OTHER INJURIES: Scattered ecchymoses up to 1 inch are on the arms.

EVIDENCE SUBMITTED

The following items are collected, sealed within appropriately labeled containers, and submitted to Tiffany Hezel of SLED:

- Clothing and personal effects
- Bullet
- Right and left fingernail clippings
- Pulled head hair
- Blood spot
- CD with autopsy photos

INTERNAL EXAMINATION

BODY CAVITIES: See "Evidence of Injury." The thoracic and abdominal organs are in their normal anatomic positions. There are bilateral pleural adhesions.

HEAD: The brain weighs 1120 grams. The scalp, subscalpular area, and skull are unremarkable. The dura and dural sinuses are unremarkable. There are no epidural, subdural or subarachnoid hemorrhages. The leptomeninges are thin and delicate. The cerebral hemispheres are symmetrical, with an unremarkable gyral pattern. The cranial nerves and blood vessels are unremarkable. Sections through the cerebral hemispheres, brainstem, and cerebellum are unremarkable. There are no hemorrhages within the deep white matter or the basal ganglia. The cerebral ventricles contain no blood. The spinal cord as viewed from the cranial cavity is unremarkable.

NECK: See "Evidence of Injury." The large vessels and prevertebral fascia are unremarkable. The hyoid bone and laryngeal cartilages are intact. The lumen of the larynx is not obstructed. The lingual mucosa is intact and there is no hemorrhage within the underlying musculature.

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PATEL, HANSABEN K.

FA15-548

CARDIOVASCULAR SYSTEM: See "Evidence of Injury." The heart weighs 280 grams. The intimal surface of the abdominal aorta is free of significant atherosclerosis. The aorta and its major branches and the great veins are normally distributed. The pulmonary arteries contain no thromboemboli. The pericardium, epicardium, and endocardium are smooth, glistening, and unremarkable. There are no thrombi in the atria or ventricles. The coronary arterial system is free of significant atherosclerosis. The atrial and ventricular septa are intact. The cardiac valves are unremarkable. The myocardium is dark red-brown and firm, without focal abnormalities.

RESPIRATORY SYSTEM: See "Evidence of Injury." The right and left lungs weigh 270 grams each. The upper airway is not obstructed. The laryngeal mucosa is smooth and unremarkable, without petechiae. The pleural surfaces contain abundant anthracotic pigment but are otherwise smooth and glistening. The major bronchi are unremarkable. Sectioning of the lungs discloses a dark red-blue, moderately congested parenchyma.

HEPATOBIILIARY SYSTEM: The liver weighs 1340 grams. The liver is covered by a smooth, glistening capsule. The parenchyma is dark red-brown and moderately congested. The gallbladder contains approximately 5 ml of dark green bile, with no calculi. There is cholesterosis of the gallbladder mucosa.

GASTROINTESTINAL SYSTEM: The esophageal mucosa is gray, smooth, and unremarkable. The stomach contains approximately 50 ml of tan fluid. There are no tablets or capsules. The gastric mucosa has normal rugal folds, and there are no ulcers. The small and large intestines are unremarkable. The appendix is present. The pancreas is unremarkable externally and upon sectioning.

GENITOURINARY SYSTEM: The right and left kidneys weigh 90 and 80 grams, respectively. The capsules of both kidneys strip with ease to reveal smooth and slightly lobulated surfaces. The cortices are of normal thickness, with well-demarcated corticomedullary junctions. The calyces, pelves, and ureters are unremarkable. The urinary bladder is empty. The mucosa is gray, smooth, and unremarkable. The uterus, fallopian tubes, and ovaries are unremarkable externally and upon sectioning.

LYMPHORETICULAR SYSTEM: The spleen weighs 80 grams. The spleen is covered by a smooth, blue-gray, intact capsule. The parenchyma is dark red. The cervical, hilar, and peritoneal lymph nodes are not enlarged.

ENDOCRINE SYSTEM: The pituitary, thyroid, and adrenal glands are unremarkable externally and upon sectioning.

MUSCULOSKELETAL SYSTEM: See "Evidence of Injury." The clavicles, sternum, pelvis, and vertebral column have no fractures. The diaphragm is intact.

NIB:jwm
8/20/15
8/31/15

Case Summary

A complete autopsy was performed on the body of Hanseban K. Patel at the Medical University of South Carolina Autopsy Suite on 8/18/15. The postmortem examination began at 9:00 a.m. The prosecutor was Dr. Nicholas I. Batalis. The autopsy was authorized by the Jasper County Coroner, Mr. Martin Sauls.

Samples of cavity blood were sent to AIT Laboratory for toxicology testing. Results are positive only for amlodipine and caffeine.

In light of the history provided and autopsy findings, it is my opinion that the decedent died as the result of gunshot wounds of the trunk. Furthermore, the manner of death is best deemed homicide.

Certification Statement

I certify that I personally conducted the diagnostic evaluation of the above specimen(s) and have rendered the above diagnosis(es).

Nicholas Batalis, M.D. (1-4621)
(Electronically signed by)
Verified: 08/31/2015 14:21
MR/8/21/2015

Department of Pathology and Laboratory Medicine Chair: Steven L. Carroll, M.D., Ph.D.

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Patient: PATEL, HANSABEN K.

Med Rec: PATHAN081815

Location: AJAS

Oct 22 15:05:12p

Sauls Funeral Home

8438157131

p.2


AIT Laboratories
 A HIGHER STANDARD OF SERVICE

 2265 Executive Drive, Indianapolis, IN 46241
 Telephone: (800)875-3894 / Fax: (317)243-2789
 Toxicology: (317)381-5678

Laboratory Case Number: 2990446	Subject's Name: PATEL, HANSABEN K
Client Account: 17813 / jasc01 Physician: Report To: Jasper County Coroner's Office ATTN: Martin Sauls P.O. Box 1630 Ridgeland, SC 29936 FX: 843-726-5678	Agency Case #: FA15-548 Date of Death: 08/16/2015 Test Reason: Other Investigator: L. Martin Sauls III Date Received: 08/19/2015 Date Reported: 08/31/2015

Laboratory Specimen No: 40514836	Date Collected: 08/18/2015 10:30
Container(s): 01:GRT Blood,CAVITY	Test(s): 70510 Comprehensive Drug Panel

Analyte Name	Result	Concentration	Units	Therapeutic Range	Loc
AMPHETAMINES	Negative				
BARBITURATES	Negative				
BENZODIAZEPINES	Negative				
CANNABINOIDS	Negative				
COCAINE/METABOLITES	Negative				
FENTANYL	Negative				
METHADONE/METABOLITE	Negative				
OPIATES	Negative				
OXYCODONE/METABOLITE	Negative				
PHENCYCLIDINE	Negative				
PROPOXYPHENE/METABOLITE	Negative				
ALCOHOL	Negative				
Methanol	Negative				
Ethanol	Negative				
Acetone	Negative				
Isopropanol	Negative				
ANALGESICS	Negative				
ANESTHETICS	Negative				
ANTIBIOTICS	Negative				
ANTICONVULSANTS	Negative				
ANTIDEPRESSANTS	Negative				
ANTIHISTAMINES	Negative				
ANTIPSYCHOTICS	Negative				

 PATEL, HANSABEN K
 Laboratory Case #: 2990446
 Printed Date/Time: 08/31/2015, 10:29

Page: 1 of 3

OCT-22-2015 05:14

From:8438157131

ID:FAX

Page:002

R:93%

Hansaben Patel 6

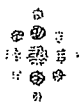
000036

Oct 22 15:05:12p

Sauls Funeral Home

8438157131

p.3

**AIT Laboratories**

A HIGH STANDARD OF SERVICE

2265 Executive Drive, Indianapolis, IN 46241

Telephone: (800)875-3894 / Fax: (317)243-2789

Toxicology: (317)381-5678

Laboratory Specimen No: 40514836

Continued..

Analyte Name	Result	Concentration	Units	Therapeutic Range	Loc
CARDIOVASCULAR AGENTS	POSITIVE				
Amlodipine (Norvasc®)	POSITIVE				
Amlodipine, Quant		27.8	ng/mL		
ENDOCRINE AGENTS	Negative				
GASTROENTEROLOGY AGENTS	Negative				
NARCOTICS	Negative				
NEUROLOGY AGENTS	Negative				
SEDATIVES/HYPNOTICS	Negative				
STIMULANTS	POSITIVE				
Caffeine	POSITIVE				
Analyte is qualitatively POSITIVE, but has not been confirmed by an alternate analytical method.					
UROLOGY AGENTS	Negative				

Specimens will be kept for at least one year from the date of initial report.

PATEL, HANSABEN K

Laboratory Case #: 2990446

Printed Date/Time: 08/31/2015, 10:29

Page: 2 of 3

OCT-22-2015 05:15

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Page:003

R:94%

Hansaben Patel 7

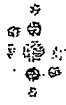
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Oct 22 15:05:12p

Sauls Funeral Home

8438157131

p.4



AIT Laboratories
A HIGHER STANDARD OF SERVICE

2265 Executive Drive, Indianapolis, IN 46241
Telephone: (800)875-3894 / Fax: (317)243-2789
Toxicology: (317)381-5678

Laboratory Specimen No:	40514837	Date Collected:	08/18/2015 10:30
Container(s):	01:GRT Blood,CAVITY	Test(s):	49900 Not Tested

Analyte Name	Result	Concentration	Units	Therapeutic Range	Loc
< No Testing Performed	>				

The Specimen identified by the Laboratory Specimen Number has been handled and analyzed in accordance with all applicable requirements.

Laboratory Director

PATEL, HANSABEN K

Case Reviewer

Andrea Terrell, Ph.D., DABCC

Laboratory Case #:2990446

Print Date/Time:08/31/2015, 10:29

Page: 3 of 3

This individual may not have performed any of the analytical work.

OCT-22-2015 05:15

From:8438157131

ID:FAX

Page:004

R:93%

Hansaben Patel 8

000038

Claudia Cartier

From: Claudia Cartier <claudia@johnsonslawoffice.com>
Sent: Tuesday, February 02, 2016 10:33 AM
To: Leanne Eddy
Subject: FW: Travel expenses updated-ref: Kantibhal A. Patel & Hansaben K. Patel.
Attachments: Greyhound travel.pdf

SentFromSession: CLAUDIA.Claudia.2/2/2016 10:27:26 AM

From: dp37811@yahoo.com [mailto:dp37811@yahoo.com]
Sent: Thursday, January 28, 2016 5:27 PM
To: Claudia Cartier <claudia@johnsonslawoffice.com>
Cc: Jayesh Patel <jayeshpatel2003@gmail.com>
Subject: Travel expenses updated-ref: Kantibhal A. Patel & Hansaben K. Patel.

Hi Claudia,
I have had missed \$118.00 for the travel by Greyhound. Copy of the tickets is included. Updated total is now \$14,554.46.
Dinesh Patel 510-378-4983

#	Description	Amount
1	US visa fees	325.64
2	Nairobi to San Francisco-Air Fare	4410.00
3	San Francisco to Atlanta -Air Fair	627.82
4	Gamble Funeral Services-Savannah	4000.00
5	Cremation and funeral expenses-Hayward-California	5073.00
6	Atlanta to Savannah by Greyhound-	118.00
	Total	14,554.46

Hansaben Patel 9

Gamble Funeral Service, Inc.

410 Stephenson Avenue
Savannah, GA 31405-5972

Statement

Date
8/16/2015

Phone #	912/354-1616
---------	--------------

Bill To
Dinesh K. Patel 37811 Cherry Blossom Court Fremont, California 94536

Service for Kanti bhul Ambalal Patel Service for Hansaben Kanti bhul Patel

Description	Amount
Forwarding of Remains to another Funeral Home/Mortuary (Our charge includes: removal (local), basic services of staff; a proportionate share of overhead costs; care of remains; embalming preparation; transportation to airport (local). It does not include services of staff or the use of facilities for viewing/visitation/wake and/or funeral ceremony/rites.) (Kanti bhul Ambalal Patel)	1,689.00
Forwarding of Remains to another Funeral Home/Mortuary (Our charge includes: removal (local), basic services of staff; a proportionate share of overhead costs; care of remains; embalming preparation; transportation to airport (local). It does not include services of staff or the use of facilities for viewing/visitation/wake and/or funeral ceremony/rites.) (Hansaben Kanti bhul Patel)	1,689.00
Air Freight as charged by Delta Air Lines (Kanti bhul Ambalal Patel)	654.00
Air Freight as charged by Delta Air Lines (Hansaben Kanti bhul Patel)	654.00
Six (6) certified copies of death certificate as charged by South Carolina Department of Health (Kanti bhul Ambalal Patel)	27.00
Six (6) certified copies of death certificate as charged by South Carolina Department of Health (Hansaben Kanti bhul Patel)	27.00
Less Personal Discount	-740.00
Thank you again for your confidence.	
Subtotal	\$4,000.00
Sales Tax	\$0.00
Total	\$4,000.00
Payments/Credits	-\$4,000.00
Balance Due	\$0.00

Hansaben Patel 10

Contract No: 182005216841

ED1240

32992 Mission Boulevard
Hayward, CA 94544
(510) 471-3383

Chapel of the Chimes FH-Hayward

Decesed: Hansaben K Patel	Buyer's Name: Dinesh Patel
Date of Death: 08/18/2015	Buyer's Address: 37811 Cherry Blossom Ct
Date of Birth: 02/21/1948	Buyer's City, State and ZIP: Fremont, CA 94538
Date of Service: 08/23/2015	Buyer's Phone: (510) 797-6427

Statement of Funeral Goods and Services Selected/Purchase Agreement

FOR MORE INFORMATION ON FUNERAL, CEMETERY AND CREMATION MATTERS, CONTACT: Department of Consumer Affairs, Cemetery and Funeral Bureau, 1625 North Market Blvd., Suite 5-200, Sacramento CA 95834; Telephone 916-574-7070

Goods / Services / Cash Advances	Retail	Total
Transfer to or from Airport	190.00	190.00
Chapel Funeral Ceremony	720.00	720.00
Cremation Service In-House	295.00	295.00
Deluxe Memorial Package	300.00	300.00
Burial or Cremation Permit	12.00	12.00
CA Hayward Tax Rate Funeral	99.50	99.50
Union, White Interior	895.00	895.00

8/20/2016 https://www.myvirtualmerchant.com/VirtualMerchant/transaction.do?dispatchMethod=printTransaction&txnId_transactionId=200815A15-043A04A7-347...

Chapel of the Chimes Mem Pk Hayward
32992 Mission Blvd.
Hayward, CA 94544

COC MEM PK FH HAYWARD
001056000018310808000

Date: 08/20/2015 11:04:07 AM

CREDIT CARD SALE

CARD NUMBER: *****1253 K
TRAN AMOUNT: \$2,316.50
APPROVAL CD: 02251C
RECORD #: 000
CLERK ID: millere
Contract Number: 182005215841

Customer Copy

Total	\$2,316.50	\$2,316.50
The above list may include estimated amounts for Cash Advance items such as death certificate, permits and obituaries.		
Total Goods and Services	2,205.00	
Total Cash Advances - See Page 4 for Terms and Conditions	12.00	
Total Retail, before Sales Tax	2,217.00	
Less Total Discount	0.00	
	2,217.00	
Sales Tax	99.50	
Total Purchase Price	2316.50	

Hansaben Patel 11

AR 510105.15.11

000041



Chapel of the
Chimes

Surrey of
Marked Distinction

MEMORIAL PARK & FUNERAL HOME

32902 MISSION BOULEVARD HAYWARD, CA 94544
TEL: 510-471-3163 FAX: 510-479-9574

Date 8/20/2015 66615

Received From Dinesh Patel

Owner _____
(if different)

	Cash	Credit Card	Check
# <u>1920</u> ^{Contract} <u>85215841</u>	\$ _____	\$ <u>2316.50</u>	\$ _____
		Type <u>SW Visa</u>	# _____

# <u>1820</u> ^{Contract} <u>85215842</u>	\$ _____	\$ <u>2756.50</u>	\$ _____
		Type <u>SW Visa</u>	# _____

Contract	Cash	Credit Card
# _____	\$ _____	\$ _____
		Type _____ # _____

Contract	Cash	Credit Card
# _____	\$ _____	\$ _____
		Type _____ # _____

Total Amount Paid \$ 5,073.00 By: [Signature]

White-Customer Yellow-Accounting Pink-File

Hansaben Patel 12

ROYA 0043

GREYHOUND LINES, INC.

RECEIPT & ITINERARY

** NOT GOOD FOR TRAVEL **

FROM: ATLANTA GA
TO: SAVANNAH GA

DEPART: Tue 018op15
PATEL JAYESH

CONF: 0200020201
ONE WAY/ADULT

*** CITY ***	ARRIVAL	LAYOVER	DEPARTURE	DEPART
ATLANTA GA	04:00p 018op15	0:15	02:15p 018op15	GA 3052
SAVANNAH GA	08:15op 018op15		04:15p 018op15	GA 3052

\$159.00 Patel JAYESH

FARE PAID: 000.00
TAX: 04.72
FEE: 05.00
EXCESS BAG: 00.00
EXCESS VOL: 00.00

VISA
VI/V1
XXXXXXXXXXXXXXXXXXXX2405
AUTH CODE: 160002 072140
ROAD REWARD
001 00 20 16040000 1

00110 NORCROSS GA
018op15 11:00a 0700
NCRT001
** VOID IF DETACHED **

Hansaben Patel 13

9/12/2016

RAJ VYAS

RAJ VYAS
--- [P 1] ---

BEFORE THE SOUTH CAROLINA
WORKERS' COMPENSATION COMMISSION

WCC FILE #1515021

KANTIBHAI PATEL, (deceased))
)
EMPLOYEE/)
CLAIMANT,)
)
-VS-)
)
BVM MOTEL, LLC, D/B/A/ BEST)
WESTERN POINT SOUTH,)
)
EMPLOYER,)
)
AND)
)
AUTO-OWNERS INSURANCE,)
COMPANY,)
)
CARRIER/)
DEFENDANTS.)
)

TELEPHONIC DEPOSITION OF RAJ VYAS

The Telephonic Deposition of RAJ VYAS
is taken before Carolyn S. Kelly, a Notary Public in and
for the State of South Carolina, at the Law Office of Darrell
Thomas Johnson, Jr., 300 Main Street, Hardeeville, South
Carolina, on Tuesday, August 16, 2016; commencing at
11:00 a.m.

9/12/2016

RAJ VYAS
ISLAND COURT REPORTING P.O. BOX 1655, RIDGELAND,

S.C. 29936

1

9/12/2016

RAJ VYAS

---[P 2]---

APPEARANCES:

FOR THE CLAIMANT: LAW OFFICE OF DARRELL T. JOHNSON, JR.
300 Main Street
Post Office Box 1125
Hardeeville, South Carolina 29927
BY: WARREN P. JOHNSON, ESQUIRE

FOR THE DEFENDANT, MCANGUS, GOUDELOCK & COURIE
VIA TELEPHONE: 735 Johnnie Dodds Boulevard
Post Office Box 650007
Mt. Pleasant, South Carolina 29465
BY: ALLISON NUSSBAUM, ESQUIRE

* * * * *

INDEX TO EXAMINATION

DIRECT EXAMINATION BY ATTORNEY JOHNSON - - - - -PAGE 4
CROSS EXAMINATION BY ATTORNEY NUSSBAUM - - - - - PAGE 9
CERTIFICATE OF REPORTER - - - - -PAGE 15

* * * * *

ISLAND COURT REPORTING P.O. BOX 1655, RIDGELAND,

S.C. 29936

2

file://sbs2011/RedirectedFolders/audia/Desktop/Deposition%20RAJ%20VYAS.html

Hansaben Patel 16

3/18

000046

9/12/2016

RAJ VYAS

file:///sbs2011/RedirectedFolders/claudia/Desktop/Deposition%20RAJ%20VYAS.html

Hansaben Patel 17

4/18

000047

9/12/2016

RAJ VYAS

---[P 3]---

The Telephonic Deposition of RAJ VYAS
is taken pursuant to Section 42-3-160 of The Code of Laws
of 1976, and Rule 30 of the South Carolina Rules of
Civil Procedure.

It is stipulated by and between
counsel that all objections shall be reserved until the time
of trial, with the exception of objections as to the form of
the question.

Reading and signing of the
deposition is waived by the witness.

* * * * *

ISLAND COURT REPORTING P.O. BOX 1655, RIDGELAND,

S.C. 29936

3

file://sbs2011/RedirectedFolders/audia/Desktop/Deposition%20RAJ%20VYAS.html

Hansaben Patel 18

5/18

000048

9/12/2016

RAJ VYAS

9/12/2016

RAJ VYAS

---[P 4]---

1 RAJ VYAS, HAVING BEEN FIRST DULY SWORN, TESTIFIED:

2 ON DIRECT EXAMINATION BY WARREN P. JOHNSON, ESQUIRE:

3 Q Please give us your full name?

4 A Rajesh Vyas.

5 Q Good Morning, Mr. Vyas. My name is
6 Warren Johnson, I represent Mr. and Mrs. Kantibhai Patel
7 or the family of. You've been designated as the person
8 most knowledgeable on behalf of BVM Motel regarding
9 their employment and the incident that occurred on the
10 premises. Is that a fair statement?

11 A Yes, sir.

12 Q All right, sir. I just got a couple of
13 quick questions for you, I don't think we're going to be
14 particularly long. If you don't understand a question,
15 please let me know and I'll be happy to try and clarify.

16 A Yes, sir.

17 Q Now, backing up a little bit, back in
18 August of 2015, were you involved with the BVM Motel at
19 Point South?

20 A Yes, sir.

21 Q And what was your role?

22 A I was the General Manager and the
23 owner/partner.

24 Q All right, sir. And what size hotel is
25 that, how many rooms?

ISLAND COURT REPORTING P.O. BOX 1655, RIDGELAND,

S.C. 29936

4

---[P 5]---

1 A It was 110 rooms functional.

2 Q All right, sir. And as part of the hotel
3 business, did you have occasion to know Mr. and
4 Mrs. Patel, Kantibhai and I'm going to butcher the
5 pronunciation but Jayesh Patel?

6 A Jayesh Patel is the son of Kantibhai and
7 Hansaben Patel.

8 Q I'm sorry, Hansaben.

9 A Hansaben, yes.

10 Q All right, sir. And how did you know
11 them?

12 A Okay. They were, Kantibhai and Hansaben
13 Patel were my employees, were working at the time when
14 she started working there for me and Kantibhai was
15 helping her out.

16 Q All right, sir. And where did they live?

17 A They lived in Room 265 in the hotel.

18 Q All right, sir. And what all were they -

19 - well, let me back up. Hansaben was a, as I
20 understand, you have payroll records where you paid
21 Hansaben?

22 A Correct.

23 Q Did you recall what she was paid?

24 A I don't recall right now exactly, but I

25 don't have records in front of me right now, you know,

---[P 6]---

1 but I have submitted the records to you guys, you know.

2 Q All right, sir. And are those an

3 accurate reflection of what she was paid?

4 A Correct.

5 Q All right, sir. And in addition to her

6 payment, she was also, part of her compensation was also

7 a free room at the hotel?

8 A Correct.

9 Q All right, sir. Now, what's the going

10 rate for one of your rooms at that time?

11 A It was \$80.00 a night, the regular rate.

12 Q All right, sir. And as I understand it,

13 as a condition of her employment at your hotel, she was

14 required to stay in that room, to live there?

15 A Yes. Yes.

16 Q All right, sir. And is that partly

17 because you didn't?

18 A No. Because I wanted them to stay there

19 so that I can utilize their services at any time of the

20 day or night.

21 Q All right, sir. And so, when she was off

22 the clock, she was, in a sense, on call if something

23 occurred?

24 A Yes, sir.

25 Q All right, sir. So, as long as she was

---[P 7]---

1 on the premises, she was charged with doing whatever was
2 necessary?

3 A Correct.

4 Q All right, sir. Now, you mentioned
5 Mr. Patel, Kantibhai, did he perform services on the
6 hotel, as well?

7 A He was working and helping out there, but
8 at the time of the incident he was not on the payroll,
9 but he was also using the room services, you know, so it
10 was understood that he would help, was helping out, you
11 know, whenever it's necessary.

12 Q All right, sir. So, he was required to
13 assist his wife on working at the hotel in exchange for
14 the free room and board, is that correct?

15 ATTORNEY NUSSBAUM: Object to the
16 form.

17 A I did not tell Hansaben, you know, that,
18 "Okay, since you're using the room, you know, you have
19 to help with something," but he understood the
20 arrangement and he was helping us, you know.

21 Q All right, sir. And on the night of
22 their murder, this occurred in the hotel?

23 A In the hotel, yes, sir.

24 Q All right, sir. And was this, based on
25 your understanding, were they murdered by a guest?

---[P 8]---

1 A It was not a guest, it was an outsider.

2 Q Okay. All right, sir. How long had the
3 Patels been assisting you at the Best Western?

4 A Again, I'm guessing, I don't have the
5 exact records in front of me but it was about 10 years.

6 Q All right, sir. Now, were they sponsored
7 or did you have any role in bringing them to your hotel?

8 A Yes. Hansaben's brother was in
9 California and he called us and he said that, "Do you
10 have any openings, you know, at that time?" And we
11 said, "Yes, we do." And so, he sent them here and then
12 since then they were living in the hotel.

13 Q All right, sir. And so, they had been
14 working and living in the hotel for approximately 10
15 years?

16 ATTORNEY NUSSEBAUM: Object to
17 the form. You can answer, Raj.

18 A Okay. Yes, since then they were living
19 in the hotel.

20 Q All right, sir. And if something arose
21 in the middle of the night or some service was to be
22 performed or something needed to be done at the hotel in
23 the middle of the night, it was Hansaben's
24 responsibility to take care of it at all times, is that
25 correct?

---[P 9]---

1 A Correct.

2 Q All right, sir. I believe that's all the
3 questions I have.

4 CROSS EXAMINATION BY ALLISON NUSSBAUM, ESQUIRE:

5 Q Raj, I have a few questions for you. This
6 is Allison Nussbaum, we met once before. Going back to
7 where you were asked about the daily rate for a room,
8 did you have somebody else named Terry, a bartender,
9 that lived at the hotel, as well?

10 A Yes.

11 Q And how much did he pay you to live at
12 the hotel?

13 A I can't remember exactly, but he wasn't
14 paying \$80.00. We had an agreement, you know, there,
15 but it wasn't \$80.00.

16 Q Okay. I believe we met previously and
17 you had told me it was in the range of \$120.00 for every
18 two weeks, does that sound correct to you?

19 A Yes. That would be right. You know, I
20 don't remember exactly, but that could be right, yeah.

21 Q Okay. So, instead of it being a part of
22 his compensation package, he didn't live for free, he
23 paid you that set amount every two weeks, is that the
24 arrangement you had with him?

25 ATTORNEY JOHNSON: Object to

---[P 10]---

1 the form.

2 A That wasn't the arrangement because, you
3 know, I could get the housekeepers, you know, from the
4 area, but I could not get a bartender, so his
5 arrangement was a little bit different than what we had
6 with Hansaben because the bartending was kind of, you
7 know, such a big job and I couldn't find employees in
8 that area, but the housekeepers I could find, you know,
9 in the area. So, this was kind of a different
10 arrangement, but, I mean, you can compare that, you
11 know.

12 Q You know, just to figure out how much
13 that value is is what I'm looking at for the room. Did
14 he live in a single room or was that a suite?

15 A It was a suite, you know, but he was by
16 himself. And I gave him the suite because that was
17 close to the bar, so.

18 Q Okay.

19 A And Hansaben's job was typically laundry
20 in the supply room back there, you know.

21 Q Was she classified as a housekeeper?

22 A No, he was a bartender.

23 Q I know. Was Hansaben a housekeeper?

24 A Hansaben was a housekeeper, yes.

25 Q Okay. And if she received any calls in

---[P 11]---

1 the middle of the night, would they be for housekeeping
2 duties?

3 A Yeah, just for housekeeping duties, yes.

4 Q What are some examples of things that
5 might require her to work after hours at all?

6 A Well, mostly if guests rented a room and
7 their bathroom overflowed at 11:30 in the night, so they
8 would call the front desk and the front desk would call
9 265 and tell Hansaben, you know, "We need you to go and
10 clean that bathroom that overflowed." Or a bed that had
11 a dirty sheet and it had to be changed, you know, then
12 she would go and change the sheets, you know, in the
13 middle of the night. Or if the person checked out and
14 we had a full night, then they would go the clean,
15 Hansaben would go clean room. Hansaben would go clean
16 the room in the middle of the night, and sometimes the
17 housekeepers left the room dirty, but I need this room
18 for reservation, and we found out later, you know, then
19 she would go and clean the room.

20 Q Okay. Did Hansaben clock in or clock out?

21 A No, ma'am.

22 Q Okay. And in addition to the payroll
23 records, the only other benefit she received was the
24 free Room 265 to live in?

25 A That's correct.

---[P 12]---

1 Q Okay. What time would she normally get
2 started with her day? Was it a certain time that she
3 would show up if she wasn't on call?

4 A Yeah. At 8:30 in the morning she would
5 show up at the front desk to get the room assignments of
6 which rooms she was supposed to clean that day.

7 Q Okay. On the morning in question of the
8 murder, had she shown up for work that morning?

9 A No, ma'am.

10 Q Was it before 8:30 when she was murdered,
11 do you know that information?

12 A Yes. She was - - actually, what happened
13 was we recheck the hotel at 9:00, and the person at the
14 front desk said, you know, "Hansaben hasn't showed up
15 yet." So, we went to find out and that's when we found
16 out that they were murdered.

17 Q Okay. So, it sounds like the front desk
18 told you at 9:00 a.m. that she hadn't showed up for work
19 yet?

20 A Right.

21 Q Okay. And at the time of the murder, was
22 Hansaben the only employee, I mean, the only employee
23 between her and her husband, Kantibhaia?

24 A I didn't understand the question.

25 Q Sure. I'm not sure if I'm saying this

---[P 13]---

1 name correct, but Kantibhai, was he an employee of the
2 hotel at the time of the murders?

3 A No.

4 Q Were you paying him at all?

5 A No, ma'am. Well, before, yes, before he
6 retired.

7 Q Okay. When did he retire, do you know?

8 A I don't. I don't know exactly what date,
9 but I guess it's about a year or a year and a half, you
10 know, and I'm guessing again, you know.

11 Q Okay. And was he collecting social
12 security at the time of the murders?

13 A Yes, ma'am.

14 Q Okay. What was his job before he retired
15 from the hotel?

16 A Housekeeping.

17 Q Okay. Was Hansaben a W-2 employee?

18 A Yes, ma'am.

19 Q Okay. That might be all my questions.

20 Let me just check real quick. At the time of the
21 murders, were those murders in Room 265?

22 A Yes, ma'am.

23 Q Was she working at the time of the
24 murder?

25 A No, ma'am.

---[P 14]---

1 Q Okay. And do you know if she had been
2 called in that night before to do anything? Do you
3 track that?

4 A I don't think so. Again, I could be
5 wrong, but anytime a worker is called to come in, it's
6 not recorded. If they are called, we would not record
7 that, you know. Sometimes it would be logged in the log
8 book, sometimes it don't, you know, if it's just a small
9 thing, it might not be recorded.

10 Q Got you. Okay. And only the payroll
11 records that you provided to me that I then provided to
12 Warren, those are the only pay that you had provided to
13 Hansaben, monetary pay?

14 A Yes.

15 Q Okay. That's all the questions I have
16 for you, Raj. Thank you for your time.

17 A Thank you.

18 ATTORNEY WARREN: No further
19 questions. Thank you, Raj.

20 (WHEREUPON, THE DEPOSITION WAS CONCLUDED AT 11:25 A.M.)

9/12/2016

RAJ VYAS

---[P 15]---

STATE OF SOUTH CAROLINA)
COUNTY OF JASPER)

CERTIFICATE OF REPORTER

I, Carolyn S. Kelly, do hereby
certify that the foregoing fourteen (14) pages
constitute a true, accurate and complete transcript of
the Telephonic Deposition of Raj Vyas, who was first
duly sworn by me at the Law Office of Darrell T.
Johnson, Jr., 300 Main Street, Hardeeville, South
Carolina, on Tuesday, August 16, 2016, commencing at
11:00 a.m.

I FURTHER CERTIFY that I am
neither of counsel nor kin to any of the parties to this
cause of action, nor am I interested in any manner in
its outcome.

I HEREBY CERTIFY that I have
set my Hand and Seal, this the 18th day of August, 2016.

CAROLYN S. KELLY, VCR
NOTARY PUBLIC FOR SOUTH CAROLINA
MY COMMISSION EXPIRES 12/14/22

J. B. Pottol
MARRAG' D' GISTRAR.
TARAPUR.

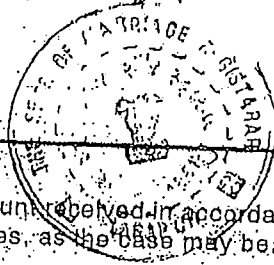
17-9-2003

- Deputy Executive Engineer
R & B (P) Sub Division

000062

The memorandum and the fee of 5/- Five Rupees only were received by me on 17-9-2003 and the memorandum is filled at Serial No. 112 of 17-9-2003 on page 32 of volume 2 of the register of Marriages maintained under the Bombay Registration of Marriages Act 1953 (Bom. V 1954).

Date 17-9-2003

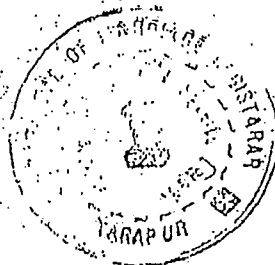


Sd. (H.B. Patil)
[Signature] MARRIAGE REGISTRAR,
TARAPUR,
Registrar of Marriages

Here insert the amount received in accordance with the provision of section 5 [3] of the Act or rule 3-A these Rules, as the case may be.

- Instructions -
- [1] The form should be filled in duplicate.
 - [2] In Item 4 (a) of the form, bride's maiden name should be written (vide Govt. Letter LGS & PHD No. SMA Govt. 1958/40653-E, dated 13th December, 1958).
 - [3] Item 5/6 may be left blank when the bridegroom / bride is not minor.
 - [4] Erasures alterations should be initialled by the party concerned.

True copy



H.B. Patil
MARRIAGE REGISTRAR,
TARAPUR,

17-9-2003

TRUE COPY

Chandra
Deputy Executive Engineer
R & P (P) Sub Division
Pune

Hansaben Patel 33

Patel
34





Jasper County Fourteenth Judicial Circuit Public Index



Jasper County Home Page South Carolina Judicial Department Home Page SC.GOV Home Page

Switch View

The State of South Carolina VS Joshua Lenard Poacher

Case Number:	JAS0251	Court Agency:	General Sessions	Filed Date:	12/17/2015
Case Type:	Criminal-Clerk	Case Sub Type:			
Status:	Pending	Assigned Judge:	Clerk Of Court C P, G S, And Family Court	Disposition Judge:	
Disposition:					
Disposition Date:		Date Received:	12/17/2015	Arrest Date:	08/17/2015
Law Enf. Case:		True Bill Date:	12/17/2015	No Bill Date:	
Prosecutor Case:		Indictment Number:	2015GS2700490	Waiver Date:	
Probation Case:					

Case Parties

Click the ☒ icon to show associated parties.

Name	Address	Race	Sex	Year Of Birth	Party Type	Party Status	Last Updated
Johnson, Richard	P. O. Box 21398 Columbia SC 29221				Officer		12/17/2015
☒ Plexico, Stephen T.	PO Box 1114 Varnville SC 29944				Defendant Attorney		12/18/2015
☒ Poacher, Joshua Lenard	10951 Frontage Rd Yemassee SC 29945	Black	M	1994	Defendant		06/30/2016

Charges

Name	Charge Code - Charge Description	Original Charge Code - Original Charge	Disposition Date
Poacher, Joshua Lenard	0139-Robbery / Armed Robbery, robbery while armed or allegedly armed with a deadly weapon	0139-Robbery / Armed Robbery, robbery while armed or allegedly armed with a deadly weapon	

Actions

Name	Description	Type	Motion Roster	Begin Date	Completion Date	Documents
Poacher, Joshua Lenard	Motion/Amending Bond	Filing		08/18/2016-16:26		
Poacher, Joshua Lenard	Filing/Case File	Filing		12/17/2015-16:20		
Poacher, Joshua Lenard	Direct Indictment	Filing		12/17/2015-16:20		

Bonds

Bond Information								
Bond Id	Set Date	Amend Date	Set By	Type	Amount	Type	Amount	Condition
2016BD2700100017	02/08/2016		Nettles		\$0.00		\$0.00	
Post Information								
None								



PRE-HEARING BRIEF
WCC File No: 1514060

Claimant's Name: <u>Hansaben K. Patel</u> SSN: _____	Employer's Name: <u>BVM Motel, LLC d/b/a Best Western Point South</u>
Address: <u>3536 Point South Drive</u>	Address: <u>3536 Point S Drive, Ridgeland, SC 29936</u>
Home Phone: _____ Work Phone: _____	Carrier: <u>Auto-Owners Insurance Company</u>
Preparer's Name: <u>Allison C. Nussbaum</u>	Preparer's Phone #: <u>(843) 576-2925</u>

A claim for workers' compensation benefits is made based on the following grounds:

☒ Injury ☐ Illness ☐ Repetitive Trauma

1. Comp. Rate: \$TBD 2. AWW: \$TBD Date of Injury: 08/16/15
3. Type of injury and body part(s): Death
4. Facts in controversy: Defendants deny that Claimant's death arose out of or occurred in the course and scope of her employment with BVM Motel, LLC. Defendants contend Claimant's murder was not related to her employment and request an Order from the Commission denying benefits as a result thereof.
5. Legal issues involved: See No. 4 above.
6. Unusual aspects: N/A
7. Witnesses (designate if expert): * Raj Vyas.
8. Exhibits: Tuten Insurance Services Corporation Dependency Investigation dated 2/18/16, 18 pages (Exhibit 9); Claimant's pay records, 4 pages (Exhibit 10); S.C. Department of Employment and Workforce wage records dated 10/19/15, 3 pages (Exhibit 11); Correspondence from Jasper County Coroner dated 8/17/15, 1 page (Exhibit 12); Jasper County Sheriff's Office Report dated 8/17/15, 1 page (Exhibit 13).
9. Medical evidence (Indicate report pursuant to R.67-612; deposition or appearance): N/A
10. Name, address, and specialty, if any, of the treating physician: N/A
11. Impairment rating(s); body part(s); physician and date of opinion: N/A
12. I am amending my Form 50/51 in the following manner: N/A

☒ **Mediation**

- ☐ a. Mediation is requested to be ordered pursuant to Reg. 67-1801 B.
☐ b. Mediation is required pursuant to Reg. 67-1802.
☐ c. Mediation is requested by consent of the Parties pursuant to Reg. 67-4803.
☒ d. Mediation has been conducted by a duly qualified mediator and resulted in an impasse.

Questions regarding mediation may be submitted to mediation@wcc.sc.gov.

I verify the contents of this form are accurate and true to the best of my knowledge.

I certify I have served this document pursuant to Reg. 67-211 by delivering a copy to Darrell Thomas Johnson, Jr., Esquire, Law Offices of Darrell Thomas Johnson, Jr., LLC
Post Office Box 1125
address Hardeeville, South Carolina 29927 on the 16th day of September 20 16.
by ☒ first class postage ☐ certified mail ☐ personal service.

Signature: _____ Email: allison.nussbaum@mgclaw.com
Date of Hearing: September 26, 2016 Time needed for hearing: 1 hour

Questions about the use of this form should be directed to the Jurisdictional Commissioner. Refer to Regulations 67-204 through 67-211, 67-211, and Regulations 67-601 through 67-615; as well as Reg. 67-1801. File this form and proof of service on the opposing party according to R.67-611 and R.67-212. Do not send medical reports. *Commissioners reserve the right to admit expert witnesses at hearings.

WCC FORM # 58
Revised 7/13

58

PRE-HEARING BRIEF

SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION

W.C.C. FILE NO: 1514060

HANSABEN K. PATEL,

Employee,

Claimant,

vs.

BVM MOTEL, LLC D/B/A BEST
WESTERN POINT SOUTH,

Employer,

AND

AUTO-OWNERS INSURANCE
COMPANY,

Carrier,

Defendants.

**NOTICE OF WITNESSES AND
WRITTEN MEDICAL REPORTS
TO BE INTRODUCED AS
DIRECT EVIDENCE ON BEHALF
OF DEFENDANT**

TO: SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION AND
DARRELL THOMAS JOHNSON, JR., ESQUIRE:

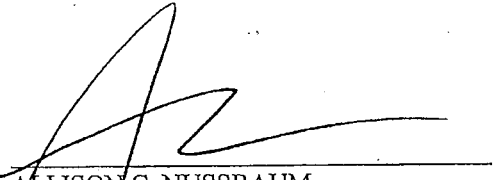
YOU ARE NOTIFIED that the Defendants, pursuant to the provisions of the South
Carolina Workers' Compensation Act and Section 1-23-330 of the South Carolina Code of Laws
(Cum. Supp. 1988) submit the following medical records and other documents as evidence:

APA#	DOCTOR	PRACTICE	DATES	PAGES
9.		Tuten Insurance Services Corporation Dependency Investigation	2/18/16	36-53
10.		Claimant's pay records		54-57
11.		S.C. Department of Employment and Workforce wage records	10/19/15	58-60
12.		Correspondence from Jasper County Coroner	8/17/15	61
13.		Jasper County Sheriff's Office report	8/17/15	62

YOU ARE FURTHER NOTIFIED that you have the right to cross-examine or otherwise oppose this evidence and, should you desire to exercise this right, you are to promptly schedule the deposition of any provider whose records are submitted, for the purposes of cross-examination, or otherwise promptly submit opposing medical records into evidence.

YOU ARE FURTHER NOTIFIED that these records, or photocopies of the same, will be provided to the South Carolina Workers' Compensation Commission for insertion in their file and for consideration as evidence on behalf of the Defendants.

YOU ARE FURTHER NOTIFIED that the following witnesses may be called on behalf of the Defendants: Raj Vyas.



ALLISON C. NUSSBAUM
MCANGUS GOUDELOCK & COURIE, L.L.C.
Post Office Box 650007
735 Johnnie Dodds Blvd, Suite 200
Mt. Pleasant, South Carolina 29465
(843) 534-0101
Attorney for the Employer/Carrier

Charleston, South Carolina
September 16, 2016



Walter A. Tuten
Senior Consultant

Christopher L. Tuten
President

February 18, 2016

Ms. Allison Nussbaum
Attorney at Law
McAngus, Goudelock & Courie
Post Office Box 650007
Mount Pleasant, South Carolina 29465

Re: Claim Number: 236-204-2015
Employer: Best Western Point South
Employees: Hansaben Kantibhai Patel (deceased)
Kantibhai Ambalal Patel (deceased)
Date of Accident: August 16, 2015
Our File Number: SC012216XX3-4

Dear Allison:

This will acknowledge receipt of this assignment we received from you requesting that we conduct a dependency investigation regarding the above referenced worker's compensation claim. When we received the assignment, we understood that the claimant, Hansaben Patel, and her husband, Kantibhai Patel, were both victims of a shooting at the hotel where Hansaben Patel was employed. Since there was possibly a question regarding whether her husband, Kantibhai Patel, was an employee of the hotel, we also included his information in this dependency report.

When we received the assignment, we also learned that the claimant's sons, Jayeshkumar Kantibhai Patel, and Mehulbhai Patel, were represented by Attorney Warren Johnson in Hardeeville, South Carolina.

Contact Attorney Darrell Thomas Johnson, Jr.:

We began our investigation on January 24, 2016 by contacting Attorney Darrell Thomas "Warren" Johnson in Hardeeville, South Carolina. Attorney Johnson can be reached by telephone at (843) 784-2142. We spoke with Attorney Johnson's paralegal and were able to set up an appointment on February 2, 2016 where we could secure a statement from the claimant's son, Jayeshkumar Patel, who lives in the country of Kenya via a conference call and with the assistance of an interpreter.

Ms. Allison Nussbaum
File Number: SC012216XX3-4
February 18, 2016
Page Two

Recorded Statement – Jayeshkumar Kantibhai Patel (Son):

With the assistance of a certified translator, Leena Karambelkar, we secured the attached recorded statement from the claimant's son, Jayeshkumar Kantibhai Patel. Jayeshkumar is represented by Attorney Warren Johnson in Hardeeville, South Carolina and secured Jayeshkumar's statement with Attorney Johnson's permission. He was also present during the conference call for the statement.

Jayeshkumar Kantibhai Patel was born on January 17, 1972. His current mailing address is Post Office Box 7925, Eldoret, Kenya, EA. Jayesh can be reached by telephone at 254721535255. Jayesh stated that his mother, Hansaben Patel, and his father, Kantibhai Patel, were born in the state of Gujarat, India. Jayesh confirmed that Hansaben is his mother and Kantibhai Patel is his father. Jayesh was not certain exactly when his parents were married, and did not know the date. He did believe, however, that they were married in India in the town of Tarapur. Jayesh stated that his mother and father never separated or divorced at any time prior to their deaths. Jayesh confirmed that his mother and father had two children born as a result of their marriage. Those two children are Jayesh and his brother, Mehul Kantibhai Patel. Jayesh stated that neither his mother nor his father, Kantibhai, had any other children at any point during their lives. Jayesh's brother, Mehul, is either thirty-eight or thirty-nine years old and his birthday is on December 14th. Mehul lives in India and his telephone number is 917575024011. Mehul lives in Tarapur, which is the same city where his parents once lived in the state of Gujarat, India.

Jayesh's father, Kantibhai Patel, was the son of Ambalal Patel and Shantaden Patel. Both of Kantibhai's parents are deceased. Jayesh's maternal grandparents, the parents of his mother, Hansaben Patel, are Punambhai Patel and Shardaden Patel. Punambhai Patel is deceased, but Hansaben's mother, Sharaden Patel, is living and resides with Jayesh's uncle, Dinesh Patel, in the state of California in the United States. Dinesh Patel, the brother of Hansaben Patel, can be reached by telephone at home at (510) 797-6427 or on his cell phone at (510) 378-4983.

At the time of the claimant's accident, Jayesh stated that his parents were living alone by themselves in the hotel where they worked and there were no other individuals living with them. Jayesh's mother, Hansaben, has two brothers named Dineshkumar Patel and Khanduibhai Patel. Khanduibhai resides in India. Jayesh's father, Kantibhai has one living brother named Jayantibhai Patel who resides in India. Jayantibhai can be reached by telephone at 919712351664 or at 912692258966.

Ms. Allison Nussbaum
File Number: SC012216XX3-4
February 18, 2016
Page Three

Jayesh stated that at the time of his mother and father's death, they were both sending money to Jayesh in Kenya and also to their other son, Jayesh's brother Mehul, who resides in India. Jayesh stated that his parents last sent him money in July of 2015 but he was not certain when the claimant's last sent money to his brother, Mehul. Jayesh stated that he is employed in Kenya, and has a job, but his brother, Mehul, who resides in India is unemployed. As a result, Jayesh stated that his parents sent more money to his brother, Mehul, in India than they sent to him in Kenya. Jayesh stated that he received approximately \$350 to \$400 per month from his parents and his brother received closer to \$500 per month. Jayesh did not know of any individuals who would have been financially dependent upon his mother, Hansaben or on his father, Kantibhai, at the time of their deaths other than himself and his brother, Mehul.

Recorded Statement – Mehulbhai Kantibhai Patel (Son):

On February 5, 2016 with the assistance of certified translator, Leena Karambelkar, we secured the attached recorded statement from the claimant's son, Mehul Patel. Mehul is represented by Attorney Warren Johnson in Hardeeville, South Carolina and we secured Mehul's statement with Attorney Johnson's permission. Mehul Patel was born on December 14, 1976 and his current mailing address is 377 Vasant Fania, Post Kasor, District Anand, Gujarat, India 388461. Mehulbhai can be reached by telephone at 7575024011.

Mehul stated that his father, Kantibhai Patel, was born in the town of Kasor. Mehul's mother, Hansaben Patel, was born in the nearby town of Tarapur. The couple was married on May 17, 1967 and lived together initially in Kasor, Kenya. Mehul stated that his father Kantibhai, and his mother Hansaben, never separated or divorced at any time prior to their deaths.

Kantibhai and Hansaben had two children born from their marriage. Those two children are Mehul and his brother, Jayeshkumar, who was born on January 17, 1972. Mehul stated that he did not know of any other children that his mother and father had at any point during their lives other than Mehul and his brother, Jayesh. At the time of his parents deaths, they were living together alone in South Carolina.

The parents of Mehul's father, Kantibhai Patel, are both deceased. Their names were Ambalal and Shantaden. The father of Mehul's mother, Hansaben, is also deceased and his name was Punambhai Patel. Hansaben's mother, Mehul's grandmother, is still living and her name is Shardaden Patel. Hansaben has two brothers named Dinesh

Ms. Allison Nussbaum
File Number: SC012216XX3-4
February 18, 2016
Page Four

Patel who lives in California, and Kanduibhai Patel who lives in India. Mehul's father, Kantibhai, has one sibling, a brother named Jayantibhai who lives in India.

At the time of Hansaben and Kantibhai's deaths, there were no other individuals financially dependent upon the couple at that time other than their two sons, Mehul and Jayesh. Mehul stated that his parents would send him money in India when they could and the amount was usually \$500, \$600 or sometimes less and as little as \$200. Mehul stated that his parents also sent money to his brother, Jayesh, who lives in Kenya, but they never told Mehul how much money they were sending to him. Mehul stated that he believed that Jayesh was receiving less money, but he did not know exactly how much was being sent to Jayesh.

Recorded Statement – Jayantibhai Ambalal Patel (Brother/Brother-in-Law):

On February 5, 2016 with the assistance of a certified translator, Leena Karambelkar, we secured the attached recorded statement from the brother of Kantibhai Patel, Jayantibhai Patel. Jayantibhai's current mailing address is A-4 Marutidhyan Society, Vyayansara Road, Anand, Gujarat, India 388001. Jayanti can be reached by telephone at 9712351664.

Jayantibhai stated that his brother, Kantibhai, was born in the town of Kasor. Kantibhai's wife, Hansaben, was born in a small town called Tarapur, which is approximately twenty kilometers away. Kantibhai and Hansaben were married around 1967 or 1968. Their marriage was the first and only marriage for both of them and the couple never separated or divorced prior to their deaths. Hansaben and Kantibhai came to the United States approximately twelve years ago. At first they lived for approximately one month in California and then moved to South Carolina when Hansaben got a job at a motel.

Hansaben and Kantibhai had two children born from their marriage, two sons named Jayesh Patel and Mehul Patel. Jayesh is around forty-two or forty-three years old and Mehul is around thirty-nine or forty years old. Jayanti stated that he did not know of any other children that his brother, Kantibhai or his sister-in-law, Hansaben, had at any point during their lives other than their two sons, Jayesh and Mehul. Jayanti also confirmed that at the time of his brother's death, he was living with his wife, Hansaben, together in a hotel. There were no other individuals living with Kantibhai and Hansaben at the time of their deaths.

Ms. Allison Nussbaum
File Number: SC012216XX3-4
February 18, 2016
Page Five

Kantibhai's parents are named Ambalal Patel and Shantaden Patel. Jayanti confirmed that both of them are deceased. Hansaben's parents were named Punambhai Patel and Shardaden Patel. Punambhai Patel is deceased but Shardaden Patel is still living and resides in California with her son. Jayanti stated that his brother, Kantibhai, had no other siblings other than himself. Hansaben, however, has a brother in California and another brother who lives in India.

At the time of Kantibhai's death, both he and Hansaben were sending money to their son Mehul in India because he did not have a job. Jayanti was not certain how much money they were sending to Mehul. Jayesh was employed and had a job in Kenya where he lives, but Jayanti was not certain if his brother and his wife were sending any money to Jayesh. Jayanti confirmed that to his knowledge, he did not know of any individuals who may have been financially dependent upon his brother, Kantibhai, or his wife, Hansaben, at the time of their deaths other than possibly their sons.

Recorded Statement – Dineshkumar Patel (Brother):

On February 9, 2016 we secured the attached recorded statement from Dinesh Patel, who is the brother of Hansaben Patel. Dinesh resides at 37811 Cherry Blossom Court, Fremont, California 94536. Dinesh can be reached by telephone at (510) 378-4983.

Dinesh confirmed that Hansaben Patel is his sister and he is her brother. Hansaben was born in India, but came to the United States around 2006 or 2007. She originally lived a few months in California before moving to South Carolina.

Hansaben Patel was married one time throughout the course of her life and that marriage was to her husband, Kantibhai Patel. Hansaben and Kantibhai were married some point between 1965 and 1967. It was the first and only marriage for both of them and the couple never separated or divorced at any time prior to their deaths. Kantibhai and Hansaben had two sons born as a result of their marriage, Mehul and Jayesh. Both sons are in their forties. Dinesh did not know of any other children that Kantibhai or his sister, Hansaben, had at any point during their lives other than their two sons, Mehul and Jayesh. At the time of the claimant's death, she and her husband, Kantibhai, were living alone in a hotel room.

Kantibhai's parents are both deceased. His father was named Ambalal Patel and his mother was named Shantaden Patel.

Ms. Allison Nussbaum
File Number: SC012216XX3-4
February 18, 2016
Page Six

Dinesh stated that his brother-in-law, Kantibhai and his wife, Hansaben, were sending money to their two children at the time of their deaths. Dinesh did not know how much money or how often the money was being sent to the children, but Dinesh confirmed that he did not know of any other individuals who may have been financially dependent upon Hansaben or Kantibhai at the time of their deaths, other than their two sons.

Neighborhood Canvass:

Since we understood that both potential claimants were residing together in a hotel room, we did not conduct a neighborhood canvass.

Courthouse Searches – Jasper and Beaufort Counties:

On February 10, 2016 we conducted searches of the Beaufort and Jasper County Probate and Family Courts. Specifically, we searched the Family Courts in both counties for any cases under the names of Hansaben Patel or Kantibhai Patel indicating the existence of any paternity actions, child support orders or divorce decrees. There were cases within the past eighteen years in either the Jasper or Beaufort County Family Courts under either the name Hansaben or Kantibhai Patel.

We also conducted searches of the Probate Courts in both Jasper and Beaufort Counties for any records of a marriage license under the name of Hansaben or Kantibhai Patel. There were no records of a marriage license in the Beaufort or Jasper County Probate Courts under the names Hansaben or Kantibhai Patel.

Documentation:

We have secured several supporting documents which we are enclosing with our report. We are enclosing a copy of the marriage license between Hansaben and Kantibhai Patel. The couple was married on May 17, 1967 in Tarapur, Gujarat, India. We are also enclosing two birth certificates written in Hindi for Mehul and Jayesh Patel. We are also enclosing translations of those two birth certificates as well. Jayeshkumar Patel was born on January 17, 1972. Mehulbhai Patel was born on December 14, 1976.

We are also enclosing copies of the death certificates for both Kantibhai and Hansaben Patel. Both parties died on August 16, 2015 as a result of gunshot wounds.

Results of Dependency Investigation:

As a result of our investigation it appears that Hansaben and Kantibhai Patel were married at the time of their deaths. It appears that the couple had two children throughout the course of their lives, and those two children, Mehul and Jayesh Patel,

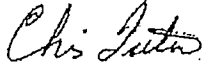
Ms. Allison Nussbaum
File Number: SC012216XX3-4
February 18, 2016
Page Seven

were both over the age of eighteen at the time of their parents' deaths. It does appear, however, that Hansaben and Kantibhai were sending money to both of their sons during the months prior to their deaths. None of the individuals that we spoke with knew of any other children that Hansaben or Kantibhai had at any point during their lives other than Jayesh and Mehul. None of the individuals that we spoke with knew of anyone who may have been financially dependent upon Hansaben or Kantibhai Patel at the time of their deaths other than possibly their two sons whom they apparently were assisting financially.

Remarks:

Since this appears to conclude our handling of this investigation, we are taking the liberty of retiring our file and submitting our bill for services. Thank you very much for this assignment.

Very truly yours,
Tuten Insurance Services



Christopher L. Tuten
President

Enc: Recorded Statement – Jayesh Patel
Recorded Statement – Mehul Patel
Recorded Statement – Jayanti Patel
Recorded Statement – Dinesh Patel
Marriage License
Birth Certificates (2)
Death Certificates (2)
Our Service Bill
IRS Form W-9 for 2016

(H. A Retard)	SL				
(H. P. Retard)	SL				
(गोपबन्धन वापरवी - प्रि.) low	low	low	low	low	low

1-B-Part-OK
MARRAGE REGISTRATION
TARAPUR.

17-9-2003

MEMORANDUM OF MARRIAGE

- | | | | |
|----|--|------------------|---|
| 1. | Date of Marriage | ..... | 17th May, 1967 |
| 2. | Place of marriage (with Sufficient Particulars to locate the place) | ..... | Ganadla Street, Tarapur-388180, Dist-Anand(Kheda) Gujarat, India. |
| 3. | (a) Full name of the bridegroom | ..... | Kantibhai Ashbalal Patel |
| | (b) His age | ..... | 24 Years |
| | (c) Usual place of residence | ..... | Vasant Street, |
| | (d) Address | ..... | Kasor, Te.Sojitra, Dist-Anand(Kheda) Gujarat, India |
| | (e) Status of the bridegroom | <u>unmarried</u> | Unmarried |
| | at the time of | <u>widower</u> | |
| | marriage whether | <u>divorced</u> | |
| | married, and if so | ..... |  |
| | how many wives | ..... |  |
| | are alive | ..... |  |
| | (f) Signature of the bridegroom with date | | (H.A. Patel) SD
17-5-2003 |
| 4. | (a) Full name of the bride | ..... | Kansaban D/O Punarabhai Gundabbai Patel. |
| | (b) Her age | ..... | 20 Years |
| | (c) Usual place of residence | ..... | Ganadla Street, |
| | (d) Address | ..... | Tarapur-388180, Dist-Anand(Kheda) Gujarat, India |
| | (e) Status of the bride | ..... | Unmarried |
| | at the time of | <u>unmarried</u> | |
| | marriage whether | <u>widower</u> | |
| | | <u>divorced</u> | |
| | (f) Signature of the bride with date | | (H.P. Patel) SD
17-5-2003 |
| 5. | (a) Full name of the father or guardian of the bridegroom | ..... |  |
| | (b) His age | ..... |  |
| | (c) Usual place of Residence | ..... |  |
| | (d) Address | ..... |  |
| | (e) Signature of the father or guardian of the bridegroom, with date | ..... |  |
| 6. | (a) Full name of the father or guardian of the bride | ..... |  |
| | (b) His age | ..... |  |
| | (c) Usual place of residence | ..... |  |
| | (d) Address | ..... |  |
| | (e) Signature of the father or guardian of the bride, with date | ..... |  |
| 7. | (a) Full name of the officiating priest | ..... | Pundrik Matvarlal Dixit |
| | (b) His age | ..... | 24 Years |

The memorandum and the fee of 5/- Ave Ry Plesone were received by me on 17-9-2003 and the memorandum is filed at Serial No. 112 17-9-2003 on page 52 of volume 2 of the register of Marriages maintained under the Bombay Registration of Marriages Act 1953. (Bom. V 1954)

Date 17-9-2003



[Signature]

M. B. Patil
MARRIAGE REGISTRAR,
TARAPUR,
Registrar of Marriages

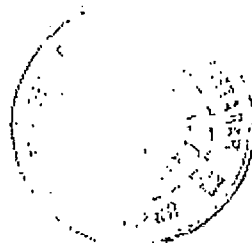
Here insert the amount received in accordance with the provision of section 5 (3) of the Act or rule 3-A these Rules, as the case may be.

- Instructions :
- [1] The form should be filled in duplicate.
 - [2] In Item 4 (a) of the form, bride's maiden name should be written (vide Govt. Letter LGS & PHD No. SMA Govt. 1958/10653-E. dated 13th December, 1958)
 - [3] Item 5/6 may be left blank when the bridegroom / bride is not minor.
 - [4] Erasures alterations should be initialled by the party concerned.

True copy

M. B. Patil
MARRIAGE REGISTRAR,
TARAPUR.

17-9-2003



No. 04263 78877

(C) 1026071 (R) 251034

Maheshbhai S. Pathak

Advocate & Notary

(Govt. of Gujarat)

Ex Asst. Public Prosecutor &
Asst. Govt. Pleader Sessions Court, Anand.

Office: Opp. Library Chowdr Bazar
PETLAD-388 450 Dist. Anand
Resi.: J. Ganga Society, Samal Road,
PETLAD-388 450 Dist. Anand



મો. : ૯૪૨૬૩૭૮૮૭૭

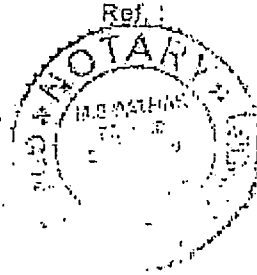
(T) : (૦૨૬૦૭) (R) ૨૫૧૦૩૪

મહેશભાઈ એસ. પાઠક

એડવોકેટ અને નોટરી
(ગુજરાત સરકાર)

એક્સ. આસિસ્ટન્ટ પબ્લીક પ્રોસી્યુટર અને
આસી. ગવર્મેન્ટ પ્લીડર, સેશન્સ કોર્ટ, આણંદ.
ઓફીસ: લાયબ્રેરી ચાવડા બજાર,
પેટલાદ રોડ, પેટલાદ-૩૮૮ ૪૫૦.
રહેઠાણ: જી. ગંગા સોસાયટી, સમલ રોડ,
પેટલાદ-૩૮૮ ૪૫૦. ઝ. આણંદ.

Date: - 200



TRANSLATION INTO ENGLISH FROM GUJARATI

DUPLICATE

BIRTH CERTIFICATE

(According to birth and death registration Act 1969 section 12/17)

Government of Gujarat

Serial no:- 9

Public Health Department

This is to certify that the following information has been taken from the original record of birth which is in the register for village Kasor of Taluka Petlad of District Anand of Gujarat state.

- (1) Name:- Mehulbhai (2) Sex (M/F):- Male
(3) Date of Birth:- 14/12/76 (4) Registration no:- 319
(5) Place of birth:- In center
(6) Date of registration:- 15/12/76
(7) Mother's name:- Hansaben
(8) Father's name:- Kantibhai Ambalal Patel
(9) Mother/Father Address:- Kasor, Vasant pura

Note:- (1) Name of born child after birth registration in one year. If written the name of born child after time limit paid by penalty of Rs. 2.00.

Date:- 25/9/97

Sd-ilegible:-

25/9/97

Talati Com Mantri

45

CERTIFICATE

This is to certify that:-

This is True version from original vernacular Gujarati language.

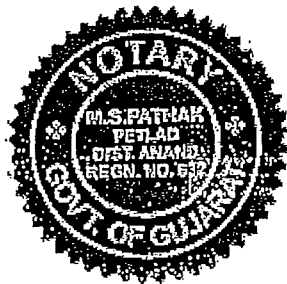
In testimony where of I have set here unto set my hand and seal of my office on

(M. S. PATHAK)
ADVOCATE & NOTARY

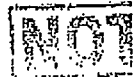
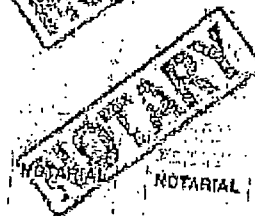
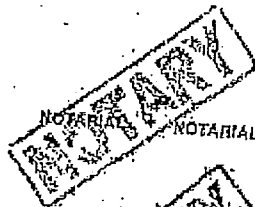
TRUE TRANSLATION

M. S. Pathak

Maheshbhai S. Pathak
Advocate & Notary
10, Mahatma Road of Gujarat
Dharampur, Tal. Opp. Library
Gandhinagar, Station Road
PERMAL-381450 Dist. Anand



Reg No. 1942/2012
Date 22-6-2017



No. 94263 75077

(02697) (R) 251034

Maheshbhai S. Pathak

Advocate & Notary

(Govt. of Gujarat)

Ex. Asst. Public Prosecutor &
Asst. Govt. Pleader Sessions Court, Anand.

Office : Opp. Library, Chavda Bazar
PETLAD-388 450. Dist. Anand

Resd. : 3, Gokul Society, Sarathi Road
PETLAD-388 450. Dist. Anand



મો. 94263 75077
પે. (02697) (R) 251034

મહેશભાઈ એસ. પાઠક

એડવોકેટ અને નોટરી

(ગુજરાત સરકાર)

એક્સ. આસીસ્ટન્ટ પબ્લીક પ્રોસીયુટર અને
આસી. ગવર્નમેન્ટ પ્લીડર, સેશન્સ કોર્ટ, અણંદ.

ઓફીસ : ઓપ્પ. લાઈબ્રેરી સામે, ચાવડા બાજર,

પેટલાદ-૩૮૮ ૪૫૦.

રહેઠાણ : ૩, ગોકુલ સોસાયટી, સારથી રોડ,

પેટલાદ-૩૮૮ ૪૫૦. અણંદ.

Ref. :

Date : 20

TRANSLATED INTO ENGLISH FROM GUJARATI

GOVERNMENT OF GUJARAT FORM NO: 5

DEPARTMENT OF HEALTH AND FAMILY WELFARE

BIRTH CERTIFICATE

Issued under Section 12(1) of the Registration of Birth and Deaths Act, 1969 and
Rule 8 of the Gujarat Registration of Birth and Deaths Rules, 2004.

This is to certify that the following information has been taken from the original record of
birth which is in the register for Village/City: Tarapur of Taluka: Tarapur of District:
Anand, GUJARAT STATE

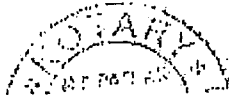
1. Name. : JAYESHKUMAR
2. Sex of child (Male/female) : MALE
3. Date of Birth : 17-1-72
4. Place of Birth : TARAPUR
5. Name of Mother : HANSABEN KANTIBHAI PATEL
6. Name of Father : KANTIBHAI AMBALAL PATEL
7. Address of Parents at the time of Birth of child : AT. GANAPDIA FALL. TARAPUR
8. Permanent address of parents : AT. GANAPDIA FALL. TARAPUR
9. Registration No. : 153
10. Date of registration : 16-7-72
11. Remarks.

Date of issue: 3-08-72

Round seal of the
Gram Panchayat, Tarapur
Ta. Tarapur, Dist. Anand

Sd/-Illegible,
Tahsil cum Mantri
Gram Panchayat, Tarapur

Ensure Registration of every Birth & Death



Page...2

47

Page...2

CERTIFICATE

This is to certify that.

This is the true English version of the annexed Gujarati document.

In testimony whereof I have set hereunto my hand and seal of my office on this
4-8-2012.

NOTARY(M.S.PATHAK)

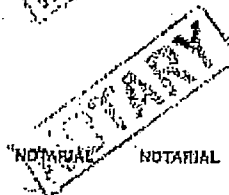
TRUE TRANSLATION

M. S. Pathak

Maheshbhai S Pathak
Accounts & Notary
Government of Gujarat
Near Akh Nagar Opp Library
Chowd Gazar Station Road,
BETLAD-388450 Dist, Anand



Reg. No. 2578/2012
Date 4-8-2012



48

Page...2

CERTIFICATE

This is to certify that.

This is the true English version of the annexed Gujarati document.

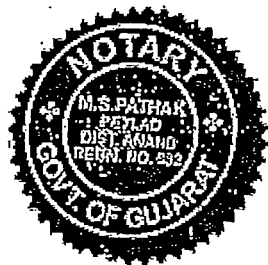
In testimony whereof I have set hereunto my hand and seal of my office on this
4-8-2012.

NOTARY(M.S.PATHAK)

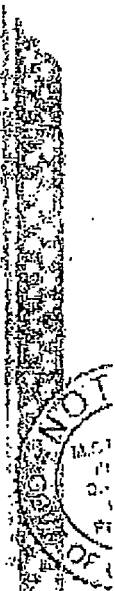
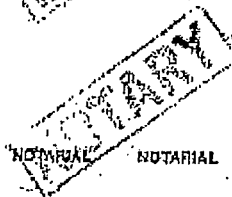
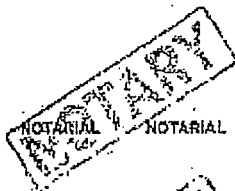
TRUE TRANSLATION

m.s. pathak

Maneshbhai S Pathak
Advocate & Notary
Government of Gujarat
Near Alap Nagar Opp Library
Chowd Bazar Station Road,
PETLAD 383430 Dist, Anand



Stamp No. 2578/2012
Date 4-8-2012



NO

49



ફોર્મ - ૫ FORM - 5

ગુજરાત સરકાર

GOVERNMENT OF GUJARAT

આરોગ્ય અને પરિવાર કલ્યાણ વિભાગ

DEPARTMENT OF HEALTH AND FAMILY WELFARE

જન્મ પ્રમાણપત્ર

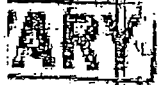
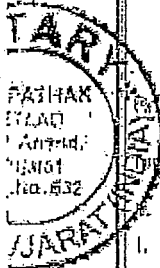
BIRTH CERTIFICATE

(જન્મ અને મરણ નોંધણી અધિનિયમ, ૧૯૬૯ની કલમ ૧૩(૧) અને
ગુજરાત જન્મ-મરણ નોંધણી નિયમો, ૨૦૦૪ના નિયમ - ૮ મુજબ)(Issued under Section 12(1) of the Registration of Births and Deaths Act, 1969
and Rule 8 of the Gujarat Registration of Births and Deaths Rules, 2004)

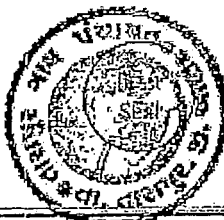
આથી પ્રમાણિત કરવામાં આવે છે કે, નીચેની માહિતી જન્મના મૂળરેકૉર્ડમાંથી લેવામાં આવી છે, જે મુજબન સરકારના આદેશનું છે.

This is to certify that the following information has been taken from the original record of birth which is in the register

Village/City of Taluka of District of Gujarat State.



૧. નામ	: જયેશભાઈ	૩. જાતિ (પુ.સ્ત્રી)	: પુ.
૨. Sex (M-F)	: M	૪. જન્મ સ્થળ	: પાથન
૫. Date of Birth	: ૧૩/૧૨/૯૨	૬. Place of Birth	: પાથન
૭. માતાનું નામ	: હસમતબેન-સરનામું		
૮. પિતાનું નામ	: હસમતભાઈ-સરનામું		
૯. Address of parents at the time of Birth of child	: રા. પાથન, તા. પાથન, જિ. ગાંધીનગર	૧૦. Permanent address of Parents	: રા. પાથન, તા. પાથન, જિ. ગાંધીનગર
૧૧. Registration No.	: ૧૫૩	૧૨. Date of Registration	: ૧૩/૧૨/૯૨
૧૩. Remarks (if any)			
૧૪. Date of Issue	: ૩/૧૨/૯૨		



Ensure Registration of every Birth & Death

દરેક જન્મ અને મરણની નોંધણી આવશ્યક કરાવવાનો

સિ.મ. વ. - ૧૫-૫૨ ૩૦-૨૦, ૧૦૦-૨-૨૦૧૨

[illegible]

(पन्ना २५३) मरुतु नोयतु अतिनिमित्तं ॥ २५३ ॥ ५३३ ॥ ५३३ ॥

जलद्वारा प्रसारित न हो, बल्कि प्रत्येक व्यक्ति को स्वयं ही जागरूक होना चाहिए।

LIBRARY
JAN 10
1964



१. नाम :- Rajender	२. पालिका/नाम :- (पुल्ले) G
३. वसति स्थान :- 98192135	४. मोबाईल नम्बर :- 396
५. कार्यस्थान :- विट्ठलपुरा	६. मोबाईल कार्डनं :- 98192135
७. नागरिकता :- उत्तरप्रदेशीय	८. पिता का नाम :- अनिल कुमार शर्मा
९. पालिका / पिता का निवास :-	अधारे . लक्ष्मीपुरा,

નોંધ—જા મળી નોંધ દરમ્યાન પાક ૧ પરથીના ગુણોના નામ લેવામાં આવ્યા.
પ્રથમ વિધેય નોંધ કમ્પાયરેસને મે. ૨-૨૨ સુધી હોવાથી ગણા

दिनांक : २५/५/८३

श्री अष्टाक्षर साहिबसिंह

25/17

STATE OF SOUTH CAROLINA
CERTIFICATION OF VITAL RECORD

DEATH CERTIFICATION

STATE FILE NUMBER: 139-15-029220
DECEDENT'S NAME: *HANSABEN KANTIBHAI PATEL*
AKA's: NA
ARMED FORCES: NO
DATE OF BIRTH: FEBRUARY 21, 1948
TYPE OF PLACE OF DEATH: DECEDENT'S HOME
NAME AND ADDRESS OF PLACE OF DEATH: 3536 POINT SOUTH DRIVE, YEMASSEE, SC 29945
PLACE OF DISPOSITION: CHAPEL OF THE CRIMES CREMATORY
DISPOSITION LOCATION: HAYWARD, CALIFORNIA
METHOD OF DISPOSITION: CREMATION
DECEDENT'S RESIDENCE: 3536 POINT SOUTH DRIVE APT. 265, YEMASSEE, JASPER COUNTY, SC, 29945
PLACE OF BIRTH: INDIA
SURVIVING SPOUSE'S NAME: KANTIBHAI AMBALAL PATEL
FATHER'S NAME: PUNAMBHAI PATEL
MOTHER'S NAME PRIOR TO FIRST MARRIAGE: SHARDABEN P PATEL
INFORMANT'S NAME: VAISHALI VYAS
MAILING ADDRESS: 3536 POINT SOUTH DRIVE, YEMASSEE, SC, 29945
FUNERAL HOME: GAMBLE FUNERAL SERVICE, INC., 410 STEPHENSON AVE, SAVANNAH, GA, 31405
FUNERAL DIRECTOR: J EDWARD GAMBLE III
EMBALMER'S NAME: J EDWARD GAMBLE III
ACTUAL OR PRESUMED DATE OF DEATH: AUGUST 16, 2015
ACTUAL OR PRESUMED TIME OF DEATH: 0801
CAUSE OF DEATH - PART I
GUNSHOT WOUNDS OF THE TRUNK
SEX: FEMALE
SOCIAL SECURITY NUMBER:
AGE: 67 YEARS
COUNTY OF DEATH: JASPER
MARITAL STATUS: MARRIED
RELATIONSHIP: FAMILY FRIEND
LICENSE NUMBER: 1551 SC
LICENSE NUMBER: 1551
MANNER OF DEATH: HOMICIDE

OTHER SIGNIFICANT CONDITIONS - PART II:
NA
CORONER CONTACTED? YES
DATE OF INJURY: AUGUST 16, 2015
PLACE OF INJURY: DECEDENT'S HOME
LOCATION OF INJURY: 3536 POINT SOUTH DRIVE, YEMASSEE, JASPER COUNTY, SC, 29945
HOW THE INJURY OCCURRED?
SHOT BY SOMEONE
CERTIFIER NAME AND TITLE: CORONER LINIUS MARTIN SAULS III
CERTIFIER'S ADDRESS: 310 W ADAMS AVE, RIDGELAND, SC, 29936
DATE FILED: AUGUST 21, 2015
DATE OF ISSUANCE: AUGUST 21, 2015
SPECIAL INSTRUCTIONS:
NA
AUTOPSY PERFORMED? YES
TIME OF INJURY: 0801
AUTOPSY AVAILABLE? YES:
INJURY AT WORK? NO
LICENSE NUMBER: NA

SC04479370

This is a true certification of the facts on file in the Division of Vital Records, SC Department of Health and Environmental Control.

Catherine Templeton
Catherine Templeton
Director and State Registrar

Barbara E. Derrick
Barbara E. Derrick
Assistant State Registrar

This copy is not valid unless prepared on an engraved border displaying the state seal and issuing agency logo.
Revision Date: 09/10/2014



STATE OF SOUTH CAROLINA
CERTIFICATION OF VITAL RECORD

DEATH CERTIFICATION

STATE FILE NUMBER: 139-15-029215

DECEDENT'S NAME: *KANTIBHAI AMBALA PATEL

AKA's: NA

ARMED FORCES: NO

DATE OF BIRTH: MAY 01, 1943

TYPE OF PLACE OF DEATH: DECEDENT'S HOME

NAME AND ADDRESS OF PLACE OF DEATH: 3536 POINT SOUTH DRIVE, YEMASSEE, SC 29945

PLACE OF DISPOSITION: CHAPEL OF THE CHIMES CREMATORY

DISPOSITION LOCATION: HAYWARD, CALIFORNIA

METHOD OF DISPOSITION: CREMATION

DECEDENT'S RESIDENCE: 3536 POINT SOUTH DRIVE APT 265, YEMASSEE, JASPER COUNTY, SC, 29945

PLACE OF BIRTH: INDIA

SURVIVING SPOUSE'S NAME: HANSABEN KANTIBHAI PATEL

FATHER'S NAME: AMBALAL PATEL

MOTHER'S NAME PRIOR TO FIRST MARRIAGE: SHANTABEN A PATEL

INFORMANT'S NAME: VAISHALI VYAS

MAILING ADDRESS: 3536 POINT SOUTH DRIVE, YEMASSEE, SC, 29945

FUNERAL HOME: GAMBLE FUNERAL SERVICE, INC., 410 STEPHENSON AVE, SAVANNAH, GA, 31405

FUNERAL DIRECTOR: J EDWARD GAMBLE III

EMBALMER'S NAME: J EDWARD GAMBLE III

ACTUAL OR PRESUMED DATE OF DEATH: AUGUST 16, 2015

ACTUAL OR PRESUMED TIME OF DEATH: 0800

CAUSE OF DEATH - PART I

GUNSHOT WOUND OF THE NECK

SEX: MALE

SOCIAL SECURITY NUMBER:

AGE: 72 YEARS

COUNTY OF DEATH: JASPER

SC 29945

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OTHER SIGNIFICANT CONDITIONS - PART II:

NA

CORONER CONTACTED? YES

DATE OF INJURY: AUGUST 16, 2015

PLACE OF INJURY: DECEDENT'S HOME

LOCATION OF INJURY: 3536 POINT SOUTH DRIVE, YEMASSEE, JASPER COUNTY, SC, 29945

HOW THE INJURY OCCURRED?

SHOT BY SOMEONE

AUTOPSY PERFORMED? YES

TIME OF INJURY: 0800

AUTOPSY AVAILABLE? YES

INJURY AT WORK? NO

CERTIFIER NAME AND TITLE: CORONER LINIOUS MARTIN SAULS III LICENSE NUMBER: NA

CERTIFIER'S ADDRESS: 310 W ADAMS AVE, RIDGELAND, SC, 29936

DATE FILED: AUGUST 21, 2015

DATE OF ISSUANCE: AUGUST 21, 2015

SPECIAL INSTRUCTIONS:

NA

SC04479377

This is a true certification of the facts on file in the Division of Vital Records, SC Department of Health and Environmental Control.

Catherine Templeton
Catherine Templeton
Director and State Registrar

Barbara E. Derrick
Barbara E. Derrick
Assistant State Registrar

This copy is not valid unless prepared on an engraved border displaying the state seal and issuing agency logo.

Revision Date: 09/10/2014



ANY ALTERATION OR ERASURE VOIDS THIS CERTIFICATE

< Employee list

HANSABEN PATEL

Edit employee

Employee details

Paycheck list

Date Range

Last year

Run Report

Select paychecks to print or delete. You can also print pay stubs

PAY DATE	NAME	TOTAL PAY	NET PAY	PAY METHOD	CHECK NUMBER
08/17/2015	PATEL, HANSABEN	\$225.04	\$205.17	Check	12754
08/03/2015	PATEL, HANSABEN	\$225.04	\$205.17	Check	12730
07/20/2015	PATEL, HANSABEN	\$205.00	\$185.42	Check	12707
07/06/2015	PATEL, HANSABEN	\$225.04	\$205.15	Check	12681
06/22/2015	PATEL, HANSABEN	\$225.04	\$205.18	Check	12639
06/08/2015	PATEL, HANSABEN	\$232.00	\$211.42	Check	12624
05/25/2015	PATEL, HANSABEN	\$225.04	\$205.17	Check	12604
05/11/2015	PATEL, HANSABEN	\$224.97	\$205.11	Check	12583
04/27/2015	PATEL, HANSABEN	\$200.03	\$182.75	Check	12558
04/13/2015	PATEL, HANSABEN	\$240.10	\$218.67	Check	12531
03/30/2015	PATEL, HANSABEN	\$200.03	\$182.75	Check	12508
03/16/2015	PATEL, HANSABEN	\$200.03	\$182.75	Check	12488
03/06/2015	PATEL, HANSABEN	\$250.05	\$227.58	Check	12468
02/13/2015	PATEL, HANSABEN	\$250.05	\$227.60	Check	12438
02/02/2015	PATEL, HANSABEN	\$250.05	\$227.59	Check	12418
01/16/2015	PATEL, HANSABEN	\$250.05	\$227.59	Check	12397
01/05/2015	PATEL, HANSABEN	\$250.05	\$227.59	Check	12378

Show adjustment checks

54

< Employee list

HANSABEN PATEL

Edit employee

Employee details

Paycheck list

Date Range

Custom

01/01/2013

to

12/31/2015

Run Report

Select paychecks to print or delete. You can also print pay stubs

PAY DATE	NAME	TOTAL PAY	NET PAY	PAY METHOD	CHECK NUMBER
08/17/2015	PATEL, HANSABEN	\$225.04	\$205.17	Check	12754
08/03/2015	PATEL, HANSABEN	\$225.04	\$205.17	Check	12730
07/20/2015	PATEL, HANSABEN	\$203.00	\$185.42	Check	12707
07/06/2015	PATEL, HANSABEN	\$225.04	\$205.10	Check	12681
06/22/2015	PATEL, HANSABEN	\$225.04	\$205.10	Check	12639
06/08/2015	PATEL, HANSABEN	\$232.00	\$211.42	Check	12624
05/25/2015	PATEL, HANSABEN	\$225.04	\$205.17	Check	12604
05/11/2015	PATEL, HANSABEN	\$224.97	\$205.11	Check	12583
04/27/2015	PATEL, HANSABEN	\$200.03	\$182.75	Check	12558
04/13/2015	PATEL, HANSABEN	\$240.10	\$218.07	Check	12531
03/30/2015	PATEL, HANSABEN	\$200.03	\$182.75	Check	12508
03/16/2015	PATEL, HANSABEN	\$200.03	\$182.75	Check	12488
03/06/2015	PATEL, HANSABEN	\$250.05	\$227.58	Check	12468
02/13/2015	PATEL, HANSABEN	\$250.05	\$227.60	Check	12438
02/02/2015	PATEL, HANSABEN	\$250.05	\$227.59	Check	12418
01/18/2015	PATEL, HANSABEN	\$250.05	\$227.59	Check	12397
01/05/2015	PATEL, HANSABEN	\$250.05	\$227.59	Check	12378
12/22/2014	PATEL, HANSABEN	\$249.98	\$227.53	Check	12357
12/08/2014	PATEL, HANSABEN	\$250.05	\$227.50	Check	12325

PAY DATE	NAME	TOTAL PAY	NET PAY	PAY METHOD	CHECK NUMBER
11/24/2014	PATEL, HANSABEN	\$250.05	\$227.58	Check	12276
11/10/2014	PATEL, HANSABEN	\$249.98	\$227.53	Check	12253
10/27/2014	PATEL, HANSABEN	\$300.01	\$272.11	Check	12216
10/10/2014	PATEL, HANSABEN	\$300.01	\$272.11	Check	12192
09/29/2014	PATEL, HANSABEN	\$300.01	\$272.11	Check	12170
09/15/2014	PATEL, HANSABEN	\$300.01	\$272.11	Check	12157
08/29/2014	PATEL, HANSABEN	\$300.01	\$272.11	Check	12128
08/29/2014	PATEL, HANSABEN	\$300.01	\$272.11	Check	12125
07/26/2014	PATEL, HANSABEN	\$300.01	\$272.11	Check	12101
07/21/2014	PATEL, HANSABEN	\$300.01	\$272.11	Check	12088
07/07/2014	PATEL, HANSABEN	\$299.93	\$272.03	Check	12087
06/23/2014	PATEL, HANSABEN	\$210.61	\$192.25	Check	12056
06/09/2014	PATEL, HANSABEN	\$249.98	\$227.52	Check	
05/23/2014	PATEL, HANSABEN	\$300.01	\$272.11	Check	12010
05/12/2014	PATEL, HANSABEN	\$300.01	\$272.11	Check	
04/28/2014	PATEL, HANSABEN	\$300.01	\$272.11	Check	
04/14/2014	PATEL, HANSABEN	\$249.98	\$227.53	Check	
03/31/2014	PATEL, HANSABEN	\$256.14	\$233.05	Check	
03/22/2014	PATEL, HANSABEN	\$200.10	\$182.61	Check	

Show adjustment checks

Payroll Summary Report

Page 1 of 2

Payroll Summary Report

Print

Best Western Point South

Jan 01 - Dec 31, 2015

CHECK DATE	NAME	NET AMOUNT	TOTAL HOURS	TAXES WITHHELD	TOTAL DEDUCTIONS	TOTAL PAY	EMPLOYER TAXES	EMPLOYER CONTRIBUTIONS	TOTAL COST	CHECK NUM
08/17/2015	PATEL, HANSABEN	\$205.17	31.04	\$19.87	\$0.00	\$225.04	\$37.50	\$0.00	\$262.54	12754
08/03/2015	PATEL, HANSABEN	\$205.17	31.04	\$19.87	\$0.00	\$225.04	\$37.49	\$0.00	\$262.53	12730
07/20/2015	PATEL, HANSABEN	\$185.42	28.00	\$17.58	\$0.00	\$203.00	\$33.80	\$0.00	\$236.80	12707
07/06/2015	PATEL, HANSABEN	\$205.16	31.04	\$19.88	\$0.00	\$225.04	\$37.52	\$0.00	\$262.56	12681
06/22/2015	PATEL, HANSABEN	\$205.18	31.04	\$19.86	\$0.00	\$225.04	\$37.49	\$0.00	\$262.53	12639
06/08/2015	PATEL, HANSABEN	\$211.42	32.00	\$20.58	\$0.00	\$232.00	\$38.64	\$0.00	\$270.64	12624
05/25/2015	PATEL, HANSABEN	\$205.17	31.04	\$19.87	\$0.00	\$225.04	\$37.50	\$0.00	\$262.54	12604
05/11/2015	PATEL, HANSABEN	\$205.11	31.03	\$19.86	\$0.00	\$224.97	\$37.48	\$0.00	\$262.45	12583
04/27/2015	PATEL, HANSABEN	\$182.75	27.59	\$17.28	\$0.00	\$200.03	\$33.32	\$0.00	\$233.35	12558
04/13/2015	PATEL, HANSABEN	\$218.67	27.60	\$21.43	\$0.00	\$240.10	\$40.00	\$0.00	\$280.10	12531
03/30/2015	PATEL, HANSABEN	\$182.75	27.59	\$17.28	\$0.00	\$200.03	\$33.32	\$0.00	\$233.35	12508
03/16/2015	PATEL, HANSABEN	\$182.75	27.59	\$17.28	\$0.00	\$200.03	\$33.33	\$0.00	\$233.36	12488
03/06/2015	PATEL, HANSABEN	\$227.58	34.49	\$22.47	\$0.00	\$250.05	\$41.67	\$0.00	\$291.72	12468
02/13/2015	PATEL, HANSABEN	\$227.60	34.49	\$22.45	\$0.00	\$250.05	\$41.64	\$0.00	\$291.69	12438
02/02/2015	PATEL, HANSABEN	\$227.59	34.49	\$22.46	\$0.00	\$250.05	\$41.66	\$0.00	\$291.71	12418
01/16/2015	PATEL, HANSABEN	\$227.59	34.49	\$22.46	\$0.00	\$250.05	\$41.66	\$0.00	\$291.71	12397
01/05/2015	PATEL, HANSABEN	\$227.59	34.49	\$22.46	\$0.00	\$250.05	\$41.66	\$0.00	\$291.71	12378
Totals		\$3,532.67	529.05	\$342.94	\$0.00	\$3,875.61	\$645.68	\$0.00	\$4,521.29	

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P.O. Box 995
1550 Gadsden Street
Columbia, SC 29202
dew.sc.gov



Nikki R. Haley
Governor

Cheryl M. Stanton
Executive Director

October 19, 2015

Ms. Ashley R. Jones
McAngus Goudelock & Courie, LLC
P.O. Box 650007
Mt. Pleasant, SC 29465

Re: Hansaben K. Patel v. BVM Motel, LLC d/b/a Best Western Point South
WCC File No.: UNKNOWN

Dear Ms. Jones:

This is in response to your letter received in this office on October 12, 2015, transmitting to us a subpoena and check #27938 in the amount of \$25.00 for any and all records pertaining to the above referenced individual.

We were unable to locate any unemployment information however enclosed is a certified copy of the wage record. Please be advised that the documents produced to you may contain information that is protected under state and federal law including but not limited to 20 C.F.R. Part 603 from unauthorized access or re-disclosure.

Please do not hesitate to contact us if we can be of any other assistance.

Sincerely,

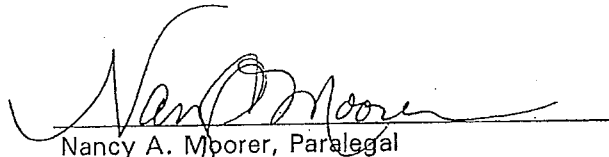
Nancy Andrews Moorers, Paralegal
UI Records
SC Department of Employment and Workforce
nmoorers@dew.sc.gov

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SOUTH CAROLINA DEPARTMENT
OF EMPLOYMENT AND WORKFORCE
Post Office Box 995
Columbia, South Carolina 29202

To the best of my knowledge & belief, I certify that the attached is a true copy of the responsive records pertaining to Hansaben K. Patel.


Nancy A. Moorer, Paralegal
SC Department of Employment & Workforce

Columbia, South Carolina
October 19, 2015

SSN Wage Record Inquiry

SSN: 005

Name	Acct #	Employer Name	Report Type	Year	Qtr - 1	Qtr - 2	Qtr - 3	Qtr - 4
HANSABEN PATEL	338280	BVM MOTEL LLC	Original	2015	\$1,650.31	\$1,347.18	DOI	
HANSABEN PATEL	338280	BVM MOTEL LLC	Original	2014	\$456.24	\$1,610.60	\$2,099.99	\$1,600.08
HANSABEN PATEL	338280	BVM MOTEL LLC	Original	2013	\$1,437.59	\$1,672.80	\$1,606.17	\$803.02
HANSABEN PATEL	338280	BVM MOTEL LLC	Original	2012	\$2,229.95	\$2,416.15	\$3,481.97	\$2,330.80
HANSABEN PATEL	338280	BVM MOTEL LLC	Original	2011	\$2,109.03	\$2,507.79	\$1,863.76	\$2,140.19
HANSABEN PATEL	338280	BVM MOTEL LLC	Original	2010	\$2,359.01	\$3,065.59	\$2,223.65	\$2,649.16
HANSABEN PATEL	338280	BVM MOTEL LLC	Original	2009	\$2,528.21	\$2,122.28	\$964.40	\$2,414.17
HANSABEN PATEL	338280	BVM MOTEL LLC	Original	2008	\$2,416.34	\$2,516.15	\$2,130.84	\$2,475.17
HANSABEN PATEL	338280	BVM MOTEL LLC	Original	2007		\$1,196.12	\$1,403.91	\$3,723.47

6,697.56

128.80

85.87



L. MARTIN SAULS, III
PO BOX 9630
JASPER, GA 30143
(770) 224-1111

April 17, 2015

The Honorable Robert R. Godec
US Ambassador, Nation of Kenya
Nairobi, Kenya

MRE Kantubhai Ambalal Patel and Hansaben Kantubhai Patel

DEAR Sir,

It is with deep regret that I must inform you of the death of husband and wife, Hansaben Kantubhai Patel and Kantubhai Ambalal Patel. The recently naturalized US citizens were shot to death during an armed robbery at their residence in Yemassee, SC which is located in Jasper County.

We are told that both have very close relatives who are living in Kenya. The family is following all known official procedures to obtain an emergency visa for travel to the United States. I would greatly appreciate any assistance that you could provide to help them come here for the funeral services. If you need any further information, I am standing by to assist in any way possible.

Respectfully,

L. Martin Sauls, III
Jasper County Coroner

Lol

Print Date/Time: 08/17/2016 11:37
Login ID: ddaley
Case Number: 2015-00001761

ORI Number: Jasper County Sheriff's Office
SC0270000

Offense # 1
Group/ORI: State
Description: MURDER
NCIC Code:
Crime Code: 09A
Statute: 16-3-10
Counts: 2
Attempt/ Commit Code: Commit (C)
Offense Date: 08/16/2015
Bias/Motivation: NO Hate/Bias Motivation (88)
Scene Code: Hotel/Motel (14)
Occupancy Code:
Status Date: 08/16/2015
Offense Status: Open
Arson Code:
Child Abuse:
Gang Related:
Sub Code:
IBR Seq. No: 1
Household Status:
of Adults:
Property Damage Amt:
Abandoned Structure
Child Abuse:
Domestic Circumstances:
Child Abuse:
Accosting Situation:
Hate Bias Indicator:
Premis: Code:
Gambling Motivated:
Order of Protection:
Prior Inv - Victim:
Prior Inv - Offender:
Anti-reproductive rights crime:
Carga Theft:
Special Circumstances:
Precipitating Event:

Offender Suspected of Using

Alcohol: Unknown
Drugs: Unknown
Computer: Unknown
Aggravated Assault/ Homicide Circumstances #1:
Aggravated Assault/ Homicide Remarks #1:
Justifiable Homicide Circumstances:
Method of Entry Type:
Point of Entry:
Method of Exit Type:
Point of Exit:
Direction of Travel:
Counterfeit Type:

Victim Suspected of Using

Alcohol: No
Drugs: No
Computer: No
Aggravated Assault/ Homicide Circumstances #2:
Aggravated Assault/ Homicide Remarks #2:
Larceny Type:
Method of Entry:
of Premises Entered:
Method of Exit:
How Left Scene:

Justifiable Homicide Code:
Counterfeit Status:

Counterfeit Amount:

Weapon Code : Firearm(type unknown) (11)

Feature:
Weapon Gauge:
Weapon Finish Other:
Caliber:
Gauge Other:
Caliber Other:
Weapon Grips:
Weapon Other:
Weapon Length:
Weapon Finish:

Subjects

Type	No.	Name	Address	Phone	Race	Sex	DOB/Age
Suspect (S)	1	UNKNOWN			Black	Male	
Victim (V)	1	patel, kantilbhal ambalal	3536 POINT SOUTH DR Yemassee, SC 29945		White	Male	05/01/1943 72
Victim (V)	2	patel, hansaben kantilbhal	3536 POINT SOUTH DR Yemassee, SC 29945		White	Female	07/21/1948 67

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South Carolina Workers' Compensation
1333 Main Street, Suite 500
P.O. BOX 1715
Columbia, SC 29202-1715
803-737-5675 www.wcc.sc.gov



WCC File #: 1514060
Carrier File #: 236-204-2015
Carrier Code #:
Employer FEIN #:

Claimant's Name: Hansaben K. Patel SSN: Employer's Name: BVM Motel, LLC d/b/a Best Western Point South
Address: unknown Address: 3536 Point S Dr, Yemassee, SC 29945
Home Phone: unknown Work Phone: unknown Insurance Carrier: Auto-Owners Insurance Company
Preparer's Name: Allison C. Nussbaum Law Firm: McAngus Goudelock & Courie Preparer's Phone Number: (843) 576-2925

REQUEST FOR COMMISSION REVIEW

Request for Commission Review by ☐ Claimant ☒ Employer (check one) Date of Injury or Illness: August 16, 2015 (m/d/yyyy)

The undersigned makes application for review of the findings of the Commissioner in the above-captioned case. The request for review is based on the following grounds: (State the grounds of your appeal in the form of questions presented. Each question presented must contain a concise statement of one proposition of law or fact. Refer to evidence by title and exhibit number. Use additional pages if necessary).
SEE ATTACHED FOR GROUNDS FOR REVIEW

(Check one) Oral argument ☒ is ☐ is not requested. Appellant's request for oral argument is waived if not indicated on this form.

☐ Mediation

☐ Mediation is requested by consent of the Parties pursuant to Reg. 67-1803.

Questions regarding mediation may be submitted to mediation@wcc.sc.gov.

I certify I have served this document pursuant to Reg. 67-211 by delivering a copy to
Post Office Box 1125
address Hardeeville, South Carolina 29927
by ☒ first class postage ☐ certified mail ☐ personal service.
Warren Paul Johnson, Jr., Esquire, Law
Offices of Darrell Thomas Johnson, Jr.,
LLC
on the 9th day of January 20 17

allison.nussbaum@mgclaw.co
m
Email
Attorney for Employer/Carrier
Title
Preparer's Signature

January 9, 2017
Date

Check this box if you are not represented by an attorney. ☐

Questions about the use of this form should be directed to the Judicial Department at 803.737.5675 or appeals@wcc.sc.gov. If the claimant appeals and is not represented by counsel, the Judicial Department will properly serve this form pursuant to Reg. 67-607 C. Pursuant to Reg. 67-205 and Reg. 701, the appeal must be postmarked no later than 14 days from the date of service of the Decision and Order of the Hearing Commissioner along with the filing fee. Attach a Form if you are unable to pay the filing fee. Refer to Reg. 67-211 and Reg. 67-701 through 711.

WCC FORM #30
Revised 7/13

REQUEST FOR COMMISSION REVIEW

Hansaben K. Patel (deceased) v. BVM Motel, LLC dba Best Western Point South
WCC 1514060
FORM 30 ATTACHMENT (2 pages)

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.

SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION
W.C.C. FILE NO: 1515021

JAYESHKUMAR K. PATEL and
MEHULBHAI PATEL,

Dependents,

Claimants,

KANTIBHAI PATEL,

Deceased Employee,

vs.

BVM MOTEL, LLC D/B/A BEST
WESTERN POINT SOUTH,

Employer,

AND

AUTO-OWNERS INSURANCE
COMPANY

Carrier,

Defendants.

**DEFENDANTS'/APPELLANTS'
BRIEF TO THE APPELLATE
PANEL OF THE FULL
COMMISSION**

BVM Motel, LLC d/b/a Best Western Point South and Auto-Owners Insurance Company ("Defendants/Appellants"), hereby submit this brief to the Appellate Panel of the Full Commission in advance of the review hearing scheduled for March 20, 2017.

STATEMENT OF THE CASE

This Appeal arises before the Appellate Panel of the Full Commission based on Defendants' petition. This matter was before the Single Commissioner on September 26, 2016, in Walterboro, South Carolina, pursuant to Claimants' Form 52 and Defendants' Form 53. Pursuant to a Dependency Investigation, the Claimants have been identified as Jayeshkumar K.

Patel and Mehulbhai K. Patel. (APA #9) The deceased employee is Kantibhai Patel ("Decedent"). Among other issues, the primary issues presented for determination at the hearing before the Single Commissioner were whether Decedent was an employee of Defendants, whether Decedent's death arose out of and in the course of his employment with Defendants, what Decedent's appropriate average weekly wage is, and should it be found that Decedent is an employee, whether his death was the result of a compensable accident under the South Carolina Workers' Compensation Act given the fact that it was the result of an assault committed by a random third party.

At the September 26, 2016 hearing, Claimants took the position that Decedent was an employee of Best Western Motel who was required to live at the Motel and died from injuries arising out of and in the course of his employment on August 16, 2015. Defendants contended that the 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 his employment and that the Claimants are not entitled to relief under the Act. Specifically, Defendants contended that Decedent was not an employee of the Best Western Motel at the time of his death on August 16, 2015. Defendants further took the position that there is no evidence to indicate that Decedent was required to live at the Best Western Motel.

Following the September 26, 2016 hearing, the Single Commissioner issued a Decision and Order dated December 30, 2016, in which she found that Decedent was an employee of Defendants and that his death occurring on August 16, 2015, was compensable under the South Carolina Workers' Compensation Act. Upon receipt of the Single Commissioner's Decision and Order, Defendants filed a timely Form 30 requesting Full Commission review on the following 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 Kantibhai Patel was an employee of Defendants on August 16, 2015, 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.
3. Defendants contend the Hearing Commissioner erred as a matter of law and fact, by finding and concluding that Kantibhai Patel was provided a motel/Motel room by his Employer 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.
4. Defendants contend the Hearing Commissioner erred as a matter of law and fact, by finding and concluding that Kantibhai Patel's wife was required to live on premises as a condition of her employment and 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.
5. Defendants contend the Hearing Commissioner erred as a matter of law and fact, by finding and concluding that the fact that Kantibhai Patel was not paid wages and was not on Employer's payroll was not dispositive to his employment status, 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 Kantibhai Patel died at approximately 8:00 a.m. during an armed robbery on Employer's premises and in Kantibhai Patel's Motel room, 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.
7. 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.
8. 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.

9. Defendants contend the Hearing Commissioner erred as a matter of law and fact, by finding and concluding that Kantibhai Patel (Kantibhai Patel's wife) 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.
10. Defendants contend the Hearing Commissioner erred as a matter of law and fact, by finding and concluding that Kantibhai Patel was an employee based on various factors listed in Finding of Fact #12, 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.
11. 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.
12. 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.
13. Defendants contend the Hearing Commissioner erred as a matter of law and fact, by finding and concluding that Kantibhai Patel's average weekly wage is \$280.00, yielding a compensation rate of \$186.68, 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 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.
15. Defendants contend the Hearing Commissioner erred as a matter of law and fact, by finding and concluding that Kantibhai Patel was an employee as defined by S.C. Code Ann. Section 42-1-130, 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.
16. 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.

17. 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 his workplace accident, and accordingly, Decedent-Employee's statutory beneficiaries are entitled to five hundred weeks of compensation and funeral benefits of \$2500.
18. 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.
19. Defendants contend the Hearing Commissioner erred as a matter of law and fact by ordering Defendants to pay 500 weeks of compensation and \$2500 in funeral benefits 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.

STATEMENT OF FACTS

Decedent lived at the Best Western Motel with his wife, Hansaben Patel, who was a housekeeper at the Best Western Motel. Decedent was not on the payroll at the Best Western Motel and did not receive any wages for his alleged employment. In years past, Decedent received wages; however, he was no longer an employee and no longer on payroll at the time of his murder. On August 16, 2015, Decedent died as the result of gunshot wounds that he sustained during an armed robbery committed by a non-guest intruder at the Best Western Motel in Jasper County, South Carolina. Decedent's death occurred in his private motel room, where he lived with his wife. Decedent's death occurred sometime between the evening of August 15, 2015, and the morning of August 16, 2015. According to the Employer's representative, Mr. Raj Vyas, Decedent's body was discovered after his wife failed to report for her shift at 8:00 A.M. on August 16, 2015. According to the autopsy report, Decedent died as a result of gunshot wounds in his room.

ARGUMENT

- I. Defendants contend the Hearing Commissioner erred as a matter of law and fact, by finding and concluding that Decedent was an employee of Defendants on August 16, 2015, 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.

S.C. Code Ann. §42-1-130 defines an employee as "every person engaged in an employment under any appointment, contract of hire, apprenticeship, expressed or implied, oral or written, including aliens and also including minors, whether lawfully or unlawfully employed, but excludes a person whose employment is both casual and not in the course of the trade, business, profession, or occupation of his employer."

Defendants contend that there is no evidence in the record to support a finding that the Deceased was an employee of the Best Western Motel. To the contrary, there is evidence to indicate that the deceased was previously an employee of the Best Western Motel, but was removed from the payroll in 2007. Thereafter, Decedent began to receive Social Security Disability benefits and was receiving such benefits at the time of his death on August 16, 2015. At the time of his death on August 16, 2015, the Deceased was not listed on the payroll of the Best Western Motel. It is Defendants' position that there is no evidence to support a finding that the Deceased was employed by the Best Western Motel at the time of his death. Defendants admit that the Deceased's wife, Hansaben Patel, was an employee of the Best Western Motel and contend that the Deceased simply lived with her by choice at the Best Western Motel and was not charged with performing any duties in furtherance of the business of the Best Western Motel.

Based on the foregoing, Defendants contend that there is no evidence in the record to support the Single Commissioner's finding that Decedent was an employee of Defendants on

August 16, 2015. Therefore, Defendants contend that this finding is against the greater weight and preponderance of the substantial evidence in the record and is based upon erroneous legal conclusions. As a result, Defendants request that the Appellate Panel of the Full Commission reverse the Single Commissioner's finding, and find that Decedent was **not** an employee of Defendants at the time of his death on August 16, 2015.

- II. Defendants contend the Hearing Commissioner erred as a matter of law and fact, by finding and concluding that Decedent 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 his 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.

In the event that the Appellate Panel of the Full Commission finds that Decedent was an employee of Defendants at the time of his death on August 16, 2015, Defendants take the position that the Single Commissioner erred in finding that his death was the result of an accident arising out of and occurring in the course of his employment.

Under S.C. Code Ann. §42-1-160, an injury by accident must both "arise out of" and "occur in the course of" employment in order to be found compensable under the South Carolina Workers' Compensation Act. Our appellate courts have interpreted the plain and ordinary meaning of S.C. Code Ann. §42-1-160 to reflect that an injury resulting from an accident must "arise out of" and take place while "in the course of" the employment. Baggett v. Southern Music, Inc., 330 S.C. 1, 496 S.E. 2d 852 (1998); Bickley v. South Carolina Electric & Gas Co., 259 S.C. 463, 192 S.E. 2d 866 (1972); and Dicks v. Brooklyn Copperage Co., 208 S.C. 139, 37 S.E. 2d 286 (1946).

The phrases "arising out of" and "in the course of employment" are used conjunctively when ascertaining the compensability of an accident. One of these elements without the other

will never justify a finding of compensability and the award of benefits. Simply, the terms "arising out of" and "in the course of employment" must coexist. Dicks v. Brooklyn Copperage Co., Supra. "An injury arises in the course of employment within the meaning of the Workmen's Compensation Act when it occurs within the period of the employment at a place where the employee reasonably may be in the performance of his duties, and while he is fulfilling those duties, or engaged in doing something incidental thereto. An accident arises out of the employment when it arises because of it, as when the employment is a contributing proximate cause. These conditions must occur before the Act can apply." Schrader v. Monarch Mills, 215 S.C. 357, 55 S.E.2d 285 (1949).

It is undisputed that the Decedent's death occurred in his private motel room at the Best Western Motel as the result of gunshot wounds sustained in an armed robbery committed by a random non-guest intruder sometime between the evening of August 15, 2015 and the morning of August 16, 2015. Defendants take the position that there is absolutely no evidence in the record to support a finding that Decedent's death occurred in the course of his employment. Assuming that the Appellate Panel finds that Decedent was an employee, there is no evidence as to what his job title or duties would have been. The record is clear that Decedent's death occurred in his personal residence. As further discussed below, Defendants assert that Decedent was in no way charged with any duties connected to his employment at the time of his death. Although his personal residence was a motel room located at the Best Western Motel, there is no indication or evidence to support a finding that Decedent was performing any task connected to his alleged employment at the time of his death. To the contrary, there is ample evidence to indicate that Decedent's death occurred sometime during the night or early morning in his personal residence as the result of a crime committed by a non-guest intruder at the Best Western

Motel. These facts clearly indicate that Decedent was in no way whatsoever performing a task related to his alleged employment with Best Western Motel or engaging in any activity that could possibly be considered in the course of employment at the time of his death. Based on the evidence submitted at the hearing before the Single Commissioner, there are no facts to support a finding that Decedent was reasonably in performance of any employment duties, fulfilling a duty of his employment, or engaged in doing something incidental thereto at the time of his death.

Should the Appellate Panel of the Full Commission find that Decedent's death did occur during the course of his employment; then Defendants assert that it can still not be found that Decedent suffered an injury pursuant to the Act as there is no evidence to support a finding that his death arose out of his employment. As previously indicated, Decedent's death was the result of gunshot wounds from an armed robbery committed by a random third party with no connection to his alleged employment. There is no evidence in the record to support a finding that Decedent's alleged employment was in any way dangerous or in any way put him at increased risk of being the victim of an assault. Additionally, Decedent's assailant had no connection whatsoever to his employment and all evidence indicates that he was chosen at random as the victim of a crime. Based on these facts, Defendants assert that there is no evidence to support a finding that Decedent's death arose out of his employment at the Best Western Motel.

The legal analysis in the Decision and Order issued by the Single Commissioner is improperly focused on where the injury occurred as a basis of finding this claim compensable. The law is clear that an accidental injury is not rendered compensable by the mere fact that it occurred on the employer's premises. Evans v. Jones-Wilson, Inc., 235 S.C. 219, 110 S.E.2d 851 (1959). Even when an accident occurs on the employer's premises, the injured worker must

also prove that the accident is connected to the performance duties of employment. *Id.*

Accordingly, pursuant to S.C. Code Ann. § 42-1-160 (A) (2016), Defendants request that the Appellate Panel of the Full Commission reverse the Single Commissioner's finding that Decedent 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 his employment.

III. Defendants contend the Hearing Commissioner erred as a matter of law and fact, by finding and concluding that Decedent 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.

In the event that the Appellate Panel of the Full Commission finds that Decedent was an employee of Defendants at the time of his death on August 16, 2015, Defendants take the position that the Single Commissioner erred in finding that he was required to live in the room provided by the Employer as a condition of his employment.

"When an employee is required to live on the premises, either by his contract of employment or by the nature of his employment, and is continuously on call (whether or not actually on duty), the entire period of his presence on the premises pursuant to this requirement is deemed included in the course of employment." Pierre v. Seaside Farms, Inc., 386 S.C. 534, 689 S.E.2d 615 (2010). "However, if the employee has fixed hours outside of which he is not on call, compensation is awarded usually only if the course of the injury was a risk associated with the conditions under which claimant lived because of the requirement of remaining on the premises. *Id.* at 619.

In Pierre, the claimant was injured when he slipped on a wet sidewalk outside of the housing provided by his employer. Claimant was a migrant worker, and he lived in the migrant camp provided by his employer, along with the rest of his crew. Although there was nothing

expressly in the claimant's contract requiring him to live at the camp, the Commission found that his employer derived a benefit from claimant living in the camp. The benefit to employer was based on the fact that all of the workers were able to be transported to the job site at the same time, which was necessary because the job could not be started until the entire crew was there. The Commission further found that the claimant was exposed to the dangerous condition due to the nature of his employment (migrant worker), which made it necessary for him to live at the camp.

In the present case, Decedent made the choice to live at the Best Western Motel on his own volition. Defendants contend that Decedent's wife was an employee of the Best Western Motel and was provided a room at the Motel as a benefit of her employment. Defendants contend that Decedent, nor his wife were required to live at the Motel, but chose to do so on their own free will. Specifically, Defendants assert that Decedent was in no way an employee of the Best Western Motel and simply chose to live in the Motel room with his wife. There was nothing about his alleged employment that would require him to live on-site. Defendants contend that the Decedent was not employed by the Best Western Motel and therefore had no job requirements or duties at all; much less any that would mandate that he live at the Best Western Motel. Additionally, there is no evidence to indicate that Decedent had entered into a contract or was required to live at the Best Western Motel by his employer. Unlike Pierre, there was nothing about Decedent's alleged employment that required him to show up at work at the same time as a crew to begin his job. The greater weight of the evidence does not support a finding that Decedent's employer received any benefit from him living at the Best Western Motel. Furthermore, there is no evidence to indicate that Decedent was required to live at the Best Western Motel, or that by living at the Best Western Motel his risk of becoming a victim of assault was increased.

Based on the foregoing, Defendants request that the Appellate Panel of the Full Commission reverse the Single Commissioner's finding that Decedent was required to live on the premises of the Best Western Motel as a condition of his employment.

- IV. Defendants contend the Hearing Commissioner erred as a matter of law and fact, by finding and concluding that Decedent's average weekly wage is \$280.00, yielding a compensation rate of \$186.68, 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.**

S.C. Code Ann. §42-1-40 defines average weekly wage as "the earnings of the injured employee in the employment in which he was working at the time of the injury during the period of fifty-two weeks immediately preceding the date of the injury".

Defendants take the position that the Decedent was not an employee of the Best Western Motel and all evidence in the record supports the fact that the Decedent did not receive any wages from the Best Western Motel. Defendants requested Decedent's wage records from the Best Western Motel and were informed that Decedent was not on the payroll. Defendants also requested Decedent's pay records from the South Carolina Department of Employment and Workforce, which reveal that the last time that Decedent received wages from the Best Western Motel was in 2012. (APA #10)

- a. Defendants contend that the Hearing Commissioner erred as a matter of law and fact, by finding and concluding that the regular rate/value of the room in which Decedent lived in 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.**

In addition to the wages which she received, Decedent's wife, Hansaben Patel, was provided a motel room to live in at the Best Western Motel. Defendants contend that only half of the value of this motel room should be included in the calculation of Decedent's average weekly wage and compensation rate, as the room was split between Decedent and his wife, Decedent's

wife's death is the subject of a separate Workers' Compensation claim and therefore, her share of the motel room should not be included in the calculation of Decedent's average weekly wage.

Defendants contend that there is no evidence to support a finding that the going rate/value of the Motel room in which Decedent lived in is valued at \$80 per night. To the contrary, Defendants contend that the value of the motel room should be found to be consistent or below that of the motel room in which a similar employee, a bartender at the Motel, lived in. In his deposition, Decedent's employer testified that the bartender who lived at the Motel paid \$120.00 every two weeks to live in a suite at the Motel. (Dep. Tran. Raj Vyas P. 9 ll. 8-20) While the Motel room may have been rented to paying customers at \$80 per night, there is no evidence to indicate that \$80 per night is the rate that the room was being rented to Decedent. To the contrary, there is direct evidence that a similarly situated employee rented a larger room in the same motel at a rate of \$120.00 every two weeks. The room that Decedent shared with his wife at the Best Western Motel was a standard room and is smaller and less expensive to rent than the suite in which the bartender lived in. Based on this evidence, Defendants contend that at most, the value of the motel room that Decedent lived in should be found to be consistent with that of the similar employee, and valued at \$60 per week (\$120 every two weeks).

Defendants further contend that the Single Commissioner appropriately split the value of the motel room in which Decedent lived in between him and his wife, who is the subject of a separate claim. Consistent with a finding of the value of the motel room to be \$60.00 per week, Defendants contend that Decedent's appropriate average weekly wage is \$30.00, which results in the minimum compensation rate of \$75.00.

Based on the foregoing, Defendants assert that the Single Commissioner erred in concluding that the value of the motel room in which Decedent lived in was valued at \$80 per

night. Additionally, Defendants contend that the Single Commissioner erred in finding Decedent's average weekly wage to be \$280.00, which results in a compensation rate of \$186.68. As outlined above, Defendants request that the Appellate Panel of the Full Commission find that Decedent was not an employee and was not paid wages, and therefore does not have an average weekly wage. Additionally Defendants request that the Appellate Panel of the Full Commission find the value of the motel room in which Decedent lived to be \$60 per week, and find that Decedent is only entitled to one half of the value of the room, which equals \$30 per week.

- V. Defendants contend the Hearing Commissioner erred as a matter of law and fact, by finding and concluding that Decedent's wife 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.

"An injury arises in the course of employment within the meaning of the Workmen's Compensation Act when it occurs within the period of the employment at a place where the employee reasonably may be in the performance of his duties, and while he is fulfilling those duties, or engaged in doing something incidental thereto. An accident arises out of the employment when it arises because of it, as when the employment is a contributing proximate cause. These conditions must occur before the Act can apply." Schrader v. Monarch Mills, 215 S.C. 357, 55 S.E.2d 285 (1949). "An accidental injury may be compensable if received at some distance from employer's place of business, where, at the time and place of injury, employee was doing some work in connection with, or incidental to his employment. A "possibility" is not enough to show that respondent's injury arose out of and in the course of employment." Fowler v. Abbott Motor Co., 236 S.C. 226, 113 S.E.2d 737 (1960).

In Fowler the claimant was a mechanic and service manager that was on call 24 hours a day, and his employer furnished him a company car for answering service calls. The claimant

was injured while driving the company car in performance of a non-work-related activity. The claimant was running an errand unrelated to his employer's business. The Commission found that the claimant's accident did not occur during the course and scope of his employment, and therefore was not a compensable claim. The Commission further found that **simply because the claimant was on call, "a possibility" that he could be called to perform a work related task did not make his employer constantly susceptible to the Act.**

In the present case, Decedent's wife was employed as a housekeeper at the Best Western Motel. Defendants take the position that there are no facts to indicate that she was constantly on call. However, should it be found that she was constantly on call, this case is similar to Fowler in that Decedent's wife was not performing any work related tasks or benefiting her employer at the time of her death. As previously discussed, she chose to live in a motel room at the Best Western Motel where she worked. The assault which led to her death occurred during the middle of the night while she was presumably asleep in her room. The evidence indicates that she was in her private residence at the time of her death and, therefore, was in no way furthering the business of the Best Western Motel, or performing any duties within the scope of her employment.

Furthermore, it is irrelevant whether Decedent's wife was on call at the time of her death. As previously discussed, there is no evidence to indicate that Decedent was an employee of the Best Western Motel. Additionally, should the Appellate Panel find that Decedent was an employee, there is no evidence to indicate what his job title or duties were, and there is certainly no evidence to support a finding that he was an on call employee. Additionally, Decedent's death occurred in his own private motel room, which clearly indicates that he was not in the performance of any duty to benefit his alleged employer. Therefore, Defendants assert that there is no evidence to support a finding that Decedent was an on call employee at the time of his

death. Furthermore, in terms of the compensability of Decedent's death, it is irrelevant whether his wife was an on call employee at the Best Western Motel as this does not act to bring Decedent's death within the scope of the South Carolina Workers' Compensation Act.

VI. 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.

To be compensable under the Workers' Compensation Act, an injury by accident must both "arise out of" and "occur in the course of employment." S.C. Code Ann. § 42-1-160 "Arising out of" refers to the origin of the cause of the accident; "occur in the course of" refers to the time, place, and circumstances under which the accident occurred. An injury occurs in the course of employment when it occurs within the period of employment at a place where the employee reasonably may be in the performance of his duties and while fulfilling those duties or engaged in something incidental thereto." Baggott v. Southern Music, Inc., 330 S.C. 1, 496 S.E.2d 852 (1998). "An injury to an employee assaulted by another employee growing out of a quarrel about the employer's work arises out of the employment. A dispute that culminates in an assault arising out of an employee's private life is not compensable. An accident arises out of the employment when it arises because of it as when the employment is a contributing proximate cause." Id. at 854. "Where there is some causal connection between an employee's employment and an assault on him or where the conditions of the employment have the effect of exposing the employee to an assault, it is generally held, in the absence of extenuating factors, that the injury is compensable." Carter v. Penney Tire & Recapping Co., 261 S.C. 341, 200 S.E.2d 64 (1973). "Critical to a determination as to whether injuries from an assault arise out of employment is the origin of the dispute between the protagonists. An assault arises out of

employment if the risk of assault is increased by the nature or setting of the work, or if the reason was a quarrel which originated in the work. When the dispute that culminates in an assault arises out of the claimant's personal life, the injury is not ordinarily compensable." Bright v. Orr-Lyons Mill, 285 S.C. 58, 328 S.E.2d 68 (1985).

In Baggott, the claimant reported to a bar as part of his employment to repair a jukebox. Following the completion of his work, he began to play pool and drink a beer. He was subsequently assaulted by a co-worker that had arrived at the bar and confronted the claimant regarding an alarm that the claimant had failed to turn off. The Court found that the dispute between the claimant and his assailant "arose out of" his employment, as the assault was the result of the assailant's anger towards the claimant in failing to disengage a security alarm at their place of mutual employment. The Court found that the assault also 'occurred in the course of' the claimant's employment as the cause of the assault was about a work-related matter, which required the claimant to resume his work duties for his employer. Because the assault "arose out of" and 'occurred in the course of' the claimant's employment, the Court found the claim to be compensable under the South Carolina Workers' Compensation Act.

Contrary to Baggott, is the case of Bright. In Bright, the claimant was walking to his car on his employer's property when he was assaulted by a third party who was not a co-worker, and had no relation to the claimant's employment. The assailant had mistaken the claimant for a different employee, and the assailant's motives for the attack were purely personnel and unrelated to any employment activities. As a result, the Court found that the claim was not compensable as the assault and the claimant's employment had no logical connection and the employment had not created the risk. Similarly, in the case of Elrod v. Union Bleachery, 204 SC 481, 30 S.E.2d 73 (1944), an employee's family filed a workers' compensation claim after the

employee was killed by a co-worker at work. The evidence revealed that the assailant had killed the employee because the employee was making advances towards the assailant's wife. Upon review, the Court found that the assault did occur during the course of the employee's employment as it occurred while the claimant was in the performance of his work duties; however, it did not "arise out" his employment as the assault occurred due to matters completely unassociated with the employee's employment.

In Carter, the claimant was assaulted by a third party while the claimant was repairing a roof, which was directly "in the course of" of his employment. The third party was not a co-worker of the claimant, and had threatened the claimant earlier that day. Following the initial threat, the claimant informed his employer of the potential danger, and he was assured by his employer that he would be protected and was instructed to return to work. When the claimant returned to work, he was ultimately shot by the third party assailant. The Court found the claim to be compensable as the claimant was required to perform his duties under circumstances where he was endangered by a peril from a source outside of and unrelated to his actual work, which peril was known to the employer and against which the employer afforded no protection or relief. Opposite of Carter, is the case of Bridges v. Elite, Inc., 212 S.C. 514, 48 S.E.2d 497 (1948), where the claimant was assaulted, and ultimately died as the result of an assault committed by a third party unrelated to her work. In Bridges, the claimant was employed as a hostess when her estranged lover came to the restaurant where she worked and shot and killed her. The claimant's estranged lover had informed a co-worker of the claimant that he intended to shoot the claimant; however, the co-worker had not informed the claimant's manager of the severity of the threat. The Court ultimately held that the claim was not compensable as the assault could not be fairly

traced to the employment as a contributing proximate cause, and that the claimant was just as exposed to the assault outside of work as she was while at work.

In Gory v. Monarch Mills, 208 S.C. 86, 37 S.E.2d 291 (1946), a claimant was performing a task for his employer when he took a break and went to ask a stranger for a cigarette. When he approached the stranger, the stranger assaulted the claimant by striking him in the face. The Court held that the claimant's injury was not compensable because taking a break to go ask a stranger for a cigarette was not a task that benefited his employer. The Court further reasoned that the man who assaulted the claimant was not in any way connected to the claimant's work, therefore the injury sustained by the claimant did not "arise out of" or occur "in the course of his employment." In Lanford v. Clinton Cotton Mills, 204 S.C. 423, 30 S.E.2d 36 (1944), the claimant was involved in a fight with a co-worker on the employer's premises. The fight arose out of a dispute concerning crankshafts, which were being used the claimant and his assailant during their employment. As a result of the fight, the claimant had a portion of his ear bitten off, and filed a workers' compensation claim for benefits. The Court held that the claim was compensable as the altercation was clearly in the "course of employment" as it occurred at work. The Court also found that the claim "arose out of" the claimant's employment as the dispute occurred in regards to carrying crankshafts and other parts to the machine shop in furtherance of the claimant's employer's business.

Based on the aforementioned cases, it can be seen that when addressing whether a claim for workers' compensation benefits as the result of an injury caused by an assault/criminal act is compensable, the Court looks to a multitude of factors. The standard established by the aforementioned cases is that in order to be found compensable, an assault must occur during the "course of" the claimant's employment, which typically occurs while the claimant is actually

performing a work related task, and the assault must "arise out of" the claimant's work, meaning that the assault must somehow be connected to the Claimant's employment. A notable exception to this rule is when the claimant's employer has reason to know that the Claimant is at increased risk of the assault due to the employment. That exception is not applicable in the present case as there is no evidence to indicate that anyone had knowledge that the August 16, 2015 armed robbery would occur, or was at an increased likelihood of occurring due to the Decedent's alleged employment at the Best Western Motel.

In the present case, the Decedent was assaulted by a third party assailant that had no connection to his alleged employment. Additionally, there is no evidence that the assault occurred while the Decedent was in the performance of any activity connected to his alleged employment. Much like Bright, Bridges, and Gory, the assailant in this claim was a complete stranger to the workplace who randomly selected the Decedent as the victim of his crime. There is no evidence to support a finding that the assault suffered by the Decedent had any causal connection to his employment at the Best Western Motel. Similar to Bridges, Decedent's assault cannot be fairly traced to the employment as a contributing proximate cause, and he was just as exposed to the assault had he not been at the Best Western Motel as he was by being at the Best Western Motel.

Defendants contend that this claim is most consistent with the aforementioned cases of Bright, Bridges, and Gory where the Court found that the claims were not compensable under the South Carolina Workers' Compensation Act. Defendants contend that the Single commissioner erred in finding that Decedent's death occurred during the course of his alleged employment. However, should the Appellate Panel find that Decedent's death did occur during the course of his alleged employment; then Defendants take the position that there are certainly no facts to

support a finding that the assault arose out of Decedents' alleged employment with the Best Western Motel. As previously discussed, Decedent's death occurred as the result of an armed robbery committed by a non-guest intruder while he was in his private motel room. There are no facts to indicate that his death had any causal connection to his employment at the Best Western Motel. Contrary to Baggott, and Lanford, where the Court found the claims to be compensable, there is no evidence in this claim that Decedent's death had any origin as a work-related matter. The Court has clearly established that for an assault to meet the "arise out of" prong, and be found compensable, there must be some evidence that the cause of the assault or subject of the dispute leading to the assault is in some way connected to the claimant's employment. In the present case, that standard is not met as there is no evidence to support a finding that Decedent's death had anything to do with, or was even remotely related to his alleged employment by the Best Western Motel.

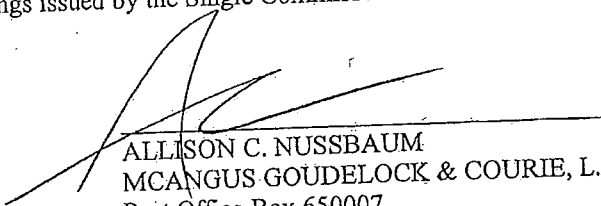
Based on the foregoing, Defendants request that the Appellate Panel of the Full Commission reverse the Single Commissioner's finding that the fact that the perpetrator of Decedent's homicide was not a guest does not serve to defeat this claim. Defendant's request that the Appellate Panel of the Full Commission find that the fact that Decedent's death was caused by an assault committed by an assailant with no connection to his alleged employment is grounds to find that Decedent's death did not arise out of his employment and is therefore not compensable under the South Carolina Workers' Compensation Act.

- VII. Defendants contend the Hearing Commissioner erred as a matter of law and fact, by finding and concluding that Decedent'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.**

As outlined in the sections above, Defendants maintain that Decedent was not an employee of the Best Western Motel at the time of his death on August 16, 2015. Additionally, Defendants contend that should the Appellate Panel of the Full Commission find Decedent to be an employee of Defendants, then his death did not occur during the course and scope of his employment with the Best Western Motel. Given the fact that there is no evidence to support a finding that Decedent's death occurred during the course of, or arose out of, his alleged employment, Defendants contend that the events surrounding Decedent's death do not meet the standard of S.C. Code Ann. §42-1-160. As such, Defendants take the position that the Single Commissioner erred in finding that Decedent's death was the result of a compensable accident. As such, Defendants contend that Decedent's beneficiaries are not entitled to receive 500 weeks of compensation or the statutory benefit of \$2500, pursuant to S.C. Code Ann. Section 42-9-290.

CONCLUSION

Based on the foregoing, Defendants respectfully request that Appellate Panel of the Full Commission REVERSE the findings issued by the Single Commissioner in full.



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Charleston, South Carolina
February 17, 2017

SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION
W.C.C. FILE NO.: 1514060

JAYESHKUMAR K. PATEL and
MEHULBHAI PATEL,

Dependents,

Claimants,

HANSABEN PATEL,

Deceased Employee,

v.

BVM MOTEL, LLC D/B/A BEST
WESTERN POINT SOUTH,

Employer,

AND

AUTO-OWNERS INSURANCE
COMPANY

Carrier,

Defendants.

CLAIMANTS'/RESPONDENTS'
BRIEF TO THE APPELLATE
PANEL OF THE FULL COMMISSION

BVM Motel, LLC d/b/a Best Western Point South and Auto-Owners Insurance Company (hereinafter "Defendant/Appellants") requested review of the Single Commissioner's Decision in the above captioned case. Jayeshkumar K. Patel and Mehulbhai Patel, dependents of deceased employees Kantibhai and Hansaben Patel, (hereinafter, "Claimants") hereby submit this brief to the Appellate Panel of the Full Commission prior to the hearing scheduled for March 20, 2017.

Statement of the Case

This matter is before the Full Commission on petition of Defendants. This matter came before the hearing Commissioner in Yemassee, South Carolina on September 26, 2016, by way of

Claimants' Form 52 and Defendants' Form 53. The Claimants were appropriately identified as dependents following a Dependency Investigation. Issues before the Commissioner were whether Mrs. Hansaben Patel (hereinafter, "Mrs. Patel") were whether Mrs. Patel's death arose out of and in the course of her employment with Defendants, a determination of her appropriate average weekly wage and compensation rate, and whether her death was the result of a compensable accident under the South Carolina Workers' Compensation Act (hereinafter, "the Act").

At the hearing, Claimants maintained that, as a condition of her employment, Mrs. Patel lived in a room provided by her employer and was required to be on the premises for work and be on duty at all times. Claimants further maintained that she died from injuries sustained on her employer's premises on August 16, 2015 and that those injuries arose out of and occurred in the course of her employment. Defendants contended that Mrs. Patel did not die because of an injury arising out of and occurring in the course of her employment. Defendants' rationale for this contention was that Mrs. Patel was not in the course of performing any work-related task at the time of her death and that her death was caused by an assault by a person that was not a guest at the motel where she was employed.

The Commissioner issued her Decision and Order, dated January 3, 2017, in which she found that Mrs. Patel's injuries and resulting death were compensable under the Act.

Specifically, the Commissioner found and ordered *inter alia* as follows:

1. Defendants admit that Mrs. Patel was an employee who received W-2 forms documenting her wages. (Order, Finding of Fact, No. 2).
2. Mrs. Patel died of gunshot wounds on August 16, 2015, at approximately 8:01 a.m. during an armed robbery on Employer's premises (Order, Finding of Fact, No. 1).

3. Decedent was employed by the Best Western Motel as a housekeeper and was a 10-year employee. (Order, Finding of Fact, No. 4, 6.).
4. The Employer's motel is in close proximity to Interstate 95. The Commissioner based this finding on the address of the motel. (Order, Finding of Fact, No.5).
5. Rajesh Vyas was the general manager and owner/partner of the motel on the date of the homicide. (Order, Finding of Fact, No. 7).
6. As part of Mrs. Patel's compensation, she was provided a room in which she and her husband lived, and as a condition of her employment she was required to live in the room provided by the Employer on the Employer's premises (Order, Finding of Fact, No. 8-9).
7. The "going rate" or regular rate/value of the room was \$80 per night (Order, Finding of Fact, No. 10).
8. Although Mrs. Patel'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 Mrs. Patel was on the premises, she was charged with doing whatever was necessary. (Order, Finding of Fact, No. 11).
9. Mrs. Patel was on call 24/7, and she did not clock in/clock out; nor was she required to. (Order, Finding of Fact, No. 12, 13).
10. Mrs. Patel was found deceased wearing (a) her name badge affixed to the shirt she was wearing, and (b) black pants. Based upon these findings, the Commissioner found and concluded that she was dressed for work (Order, Finding of Fact, No. 15).
11. The Commissioner found that the perpetrator of the homicide was not a guest, but that fact did not serve to defeat this claim. (Order, Finding of Fact, No. 16).
12. The cases cited in Defendants' Memorandum of Law are distinguishable from the case *sub judice*. Further, the Memorandum's statements that Mrs. Patel (a) "chose" to live at the motel, and (b) was murdered "during the middle of the night" while she was "presumably asleep" are erroneous. Living at the hotel and being on call 24/7, were in fact conditions of Mrs. Patel's employment. Additionally, the autopsy report states that the approximate time of death was 8:01 a.m., and further states that Mrs. Patel's body was received as clad in a tan shirt (name badge affixed to the shirt) and black pants – not pajamas or other sleepwear. (Order, Finding of Fact, No. 17).

13. Mrs. Patel's beneficiaries are entitled to receive 500 weeks of compensation as well as the statutory benefit of \$2500, pursuant to S.C. Code Ann. § 42-9-290. (Order, Finding of Fact, No. 18).
14. Mrs. Patel's average weekly wage is \$404.38, yielding a compensation rate of \$275.25. The Commissioner based this finding on her actual payroll earnings, plus half of the value of the motel room provided to Mrs. Patel and her husband. (Order, Finding of Fact, No. 19).
15. The arrangement between the bartender and the Employer as to the charge for the bartender's room is irrelevant. The Commissioner based this on the testimony of Mr. Vyas. The financial arrangement between another housekeeper and Employer would be relevant; however, no such evidence exists. (Order, Finding of Fact, No. 20).

Based upon these findings, the Commissioner concluded *inter alia* that the Mrs. Patel sustained injuries resulting in death, arising out of and in the course of her employment at the Best Western Motel, that her death resulted proximately from the workplace accident, and, accordingly, that the Claimants are entitled to five hundred (500) weeks of compensation and funeral benefits of two thousand five hundred dollars (\$2,500.00).

Statement of the Facts/Evidence of the Case

This claim arose out of a tragic incident that occurred on August 16, 2015, when Mr. and Mrs. Patel were shot to death by a visitor of the Best Western Motel in Jasper County, South Carolina, where the Patels lived and were employed. Mrs. Patel was employed by the Best Western Motel as a housekeeper, was on Best Western's payroll, and as a condition of her employment, she was required to live in one of the rooms and stay at the motel. Mrs. Patel was on call or on duty at all times as a condition of her employment. Although he was not officially on the Best Western's payroll like Mrs. Patel, it was understood that in order to live at the motel and take advantages of the motel's services, Mr. Patel was also on call or on duty at all times and required to help with various tasks around the motel as directed by his employer. While living at the motel, which was a condition and requirement of their employment, the Patels were shot and

killed by a non-guest intruder. According to the owner and manager of the Best Western, Mr. Raj Vyas, the bodies of the Patels were found after Mrs. Patel failed to report for her shift at 8:00 A.M. on August 16, 2015. The autopsy report performed revealed that the Patels died as a result of gunshot wounds at approximately 8:00 A.M. in their room at the motel. As noted in the Commissioner's findings, Mrs. Patel was found wearing what appeared to be work-clothes and with her name badged affixed to her shirt.

Mr. Vyas, who was the person most knowledgeable regarding the employment of Mrs. Patel, testified that the Patels had been long-time employees and that they were required to live in their assigned room as a condition of their employment. Mr. Vyas also testified that the Patels lived on the premises so that he could utilize their service at any time, day or night, and that Mrs. Patel was on call 24/7. He also testified that the fair market value for their room was eighty (\$80.00) per day.

Issues

I. Were the Commissioner's findings of fact and conclusions of law that Mrs. Patel's injuries and resulting death arose out of and in the course of her employment with Best Western against the greater weight and preponderance of the substantial evidence of record, such as to constitute an error of law?

II. Did the Commissioner err in finding and concluding that (a) the perpetrator of the homicide was not a guest, and (b) the fact that the perpetrator was not a guest did not serve to defeat this claim?

III. Were the Commissioner's findings of fact and conclusions of law that Mrs. Patel's average weekly wage was \$408.38, yielding a compensation rate of \$272.25, against the greater weight and preponderance of the substantial evidence in the record, such as to constitute error?

Argument

- I. **The Commissioner did not err in finding and concluding that Mrs. Patel's injuries and resulting death arose out of and in the course of her employment with the Best Western Motel, because the finding is supported by the greater weight of substantial evidence in the record and the conclusion is supported by the law.**

To be compensable under the Act, an injury by accident must "arise out of" and occur "in the course of" employment. S.C. Code Ann. § 42-1-160. An injury arises out of employment when "there is apparent to the rational mind upon consideration of all the circumstances, a causal connection between the conditions under which the work is required to be performed and the resulting injury." *Douglas v. Spartan Mills, Startex Div.*, 245 S.C. 265, 268, 140 S.E.2d 173, 174 (1965). An accident occurs in the course of employment when it occurs within the period of employment at a place where the employee reasonably may be in the performance of his duties and while fulfilling those duties or engaged in something incidental thereto. *Hicks v. Piedmont Cold Storage, Inc.*, 324 S.C. 628, 470 S.E. 2d 831 (Ct. App. 1996). An employee need not be in the actual performance of the duties for which he was expressly employed in order for his injury to be in the course of employment for workers' compensation purposes; rather, it is sufficient if the employee is engaged in a pursuit or undertaking consistent with his contract of hire and which in some logical manner pertains to or is incidental to his employment. *Hall v. Desert Aire, Inc.*, 376 S.C. 338, 656 S.E. 2d 753 (Ct. App. 2007).

The Supreme Court of South Carolina adopted "the bunkhouse rule," which has also been adopted by several other jurisdictions. This rule provides that "injuries [arise] out of an din the course of employment where the employee [is] required, either by contract or by the nature of the work, to reside on the employer's premises." *Pierre v. Seaside Farms, Inc.*, 386 S.C. 534, 545, 689 S.E.2d 615, 619 (2010).). In describing the rule adopted in other states, the Court cited the *Larson's Law of Workmen's Compensation* as follows:

When an employee is required to live on the premises, either by his contract of employment or by the nature of his employment, and is continuously on call (whether or not actually on duty), the entire period of his presence on the premises pursuant to this requirement is deemed included in the course of employment. However, if the employee has fixed hours outside which he is not on call, compensation is awarded usually only if the course of the injury was a risk associated with the conditions under which the claimant lived because of the requirement of remaining on the premises.

Id at 542, 689 S.E.2d at 619 (quoting 1A Arthor Larson, *The Law of Workmen's Compensation*, § 24.00, at 5-234 (1993)).

In *Pierre*, the claimant was a migrant worker at a tomato farm that slipped on a wet sidewalk outside the housing provided by his employer. In that case, the Court held that although there was nothing in the claimant's employment contract requiring him to live in the housing provided, his employer derived a benefit from the claimant living in that housing. The employer was benefitted by Pierre's living in the employer-provided housing because all the workers could be transported to the job site at the same time, and the work could not be commenced until the entire crew was there. The Court further noted that the claimant was exposed to the dangerous condition (slipping on a wet sidewalk on the premises), and the injury was a risk associated with the conditions under which the employee was required to live, because he would not have been exposed to the injury "[b]ut for the fact that Pierre's work essentially required him to live on his employer's premises near the farm." *Id* at 548-549, 386 S.E.2d, at 622. Importantly, the Court declined to rely on North Carolina courts' holding in a factually similar case. See *Juaregui v. Carolina Vegetables*, 112 N.C. App. 593, 436 S.E.2d 268 (1998). In *Juaregui*, the North Carolina Court of Appeals the Court declined to apply the "bunkhouse rule" when it considered a claim by a migrant worker who was injured when he slipped and fell on a piece of soap as he walked down the steps outside a shower at the labor camp where he resided. That court held that "although the nature of his employment arguably required that he live on the premises," *Juaregui* was not

continuously on call at the time of his injury and he was not engaged in a duty that was calculated to further his employer's business directly or indirectly. *Id.* at 271. In applying this rule in virtually the exact same context in *Pierre*, and rejecting the persuasive North Carolina precedent, the Supreme Court of South Carolina articulated the rule to apply in circumstances when the employer is benefited directly or indirectly by an employee who, by contract or nature of employment, is required to live on the employer's premises or employer-provided housing. The Court's holding in *Pierre* also suggests that for an injury to be compensable under these circumstances, the employee need not be on call or on duty 24/7 or engaged in activity directly benefiting the employer at the time of the injury.

The only evidence in the record clearly establishes that Mrs. Patel and her husband were required to live on the premises of the motel as a condition of their employment and by the nature of their work, like the claimant in *Pierre*. As previously discussed, Mr. Vyas affirmed that this was a condition of their employment and he stated that they were required to live there so that he could "utilize their services at any time of the day or night." Depo of Raj Vyas, p. 6, ln. 12-20. Mr. Vyas further stated that Mrs. Patel was always on call if something occurred, that she was charged with doing whatever necessary on the premises while she was on the premises, and that Mr. Patel was responsible for helping whenever necessary or directed by his employer. *Id.* p. 6-7. Mr. Vyas illustrated this fact by examples, stating that "if a bathroom overflowed at 11:30 in the night . . . they would call the front desk and the front desk would call [room 265] and tell Hansaben" to clean, and if a bed "had a dirty sheet and it had to be changed," she would be called to change it even it was in the middle of the night. *Id.* p.11 Therefore, Defendants' assertions that the Patels lived on the premises of the hotel by choice, that the employers received no benefit from the Patels living at the hotel, and that there was nothing about their employment that required them to live

there are disingenuous at best, as they completely disregard the admissions of the employer, through the employer's 30(b)(6) designee.

Moreover, like the claimant in *Pierre*, Mrs. Patel's injuries are associated with the conditions under which she and her husband were required to live and work. In *Pierre*, the Court explained that the Commission's findings that the risk of the claimant's injury was not associated with his employment because he could have slipped on other sidewalks was not supported by substantial evidence of record. As mentioned above, the Court indicated that but for the fact that Pierre's work essentially required him to live on the employer's premises, he would not have been exposed to the hazard that caused his injury. Similarly, but for the fact that the Patels were required to live on the employer's premises as a condition of their employment, they would not have been exposed to the attack that caused their deaths. In the present case, the employers had control over where the Patels lived and required them to live in a specific place, room 264 of the Best Western Motel, which was where the risk associated with the condition that caused their deaths existed.¹

Defendants contend that the Commissioner erred as a matter of law and fact by finding that the Patels were on call 24/7 at the motel. Defendants further assert that there is no evidence that either Mr. Patel or his wife were on call or involved in any work-related activity at the time of their deaths. Defendants cited the *Fowler* case, which involved a claimant that was on call 24/7 and injured while performing a non-work-related activity. In that case, the Court held that merely being on call and the possibility of performing a work-related task did not make his injury compensable under the Act. *Fowler v. Abbott Motor Co.*, 236 S.C. 226, 113 S.E.2d 737 (1960).

¹ It is the Claimants' position that, by virtue of the requirement to live on the premises of the hotel, Mr. Patel's injuries arose out of and in the course of his employment. In further support of their position, Claimants' would submit that the South Carolina Court of Appeals has also held that there was a causal connection between the employment of an employee working out of town and his death occurring as a result of a fire in his hotel. *Ardis v. Combined Ins. Co.*, 380 S.C. 313, 669 S.E.2d 628 (2008).

However, the present case differs radically from the circumstances of that case. The claimant in *Fowler* did not live on the premises of his employer's business and was not required to do so as a condition of his employment, like the Patels. The claimants contend that, based on the Court's holding in *Pierre*, it is not required that an employee be continuously on call or on duty, or engaging in a work-related activity for an injury to be compensable. Rather, the rule is applied to find an injury compensable when the employee is required to live on the premises or in housing provided by the employer to the benefit of the employer.

Assuming *arguendo* there was such a requirement, the assertion that there is no evidence that the Patels were on call or involved in any work-related activity at the time of their deaths ignores the only substantial evidence. As discussed above, the only evidence of record concerning the employment arrangement between the Patels and the Best Western Motel is the testimony of Mr. Vyas. Mr. Vyas testified that the Patels lived on the premises so that Mr. Vyas could utilize their services at any time of the day and night and that they were expected to work whenever necessary. In support of their assertion that the Patels were not engaged in any work-related activity at the time of their deaths, Defendants suggest that they were murdered "during the middle of the night" while they were "presumably asleep." As noted by the Commissioner, these suggestions are completely "erroneous" and contrary to the evidence of record. The autopsy report noted that Mrs. Patel's approximate time of death was 8:01 a.m. and that she was found dressed for work, wearing a Best Western name badge. APA #2, p. 2-10.

Therefore, given the foregoing, the Commissioner did not err in her findings or conclusions that Mrs. Patel's injuries arose out of and in the course of her employment at the Best Western Motel, because the greater weight of the substantial evidence, and indeed the only substantial evidence presented in this case as to that issue, support that factual finding and legal conclusion.

II. The Commissioner did not err as a matter of law or fact in finding that the fact that The perpetrator was not a guest does not serve to defeat this claim.

In their brief, Defendants Contend that because Mrs. Patel's death was caused by a person that was found not to be a guest at the motel, Mrs. Patel's injuries did not arise out of her employment at the Best Western Motel. Defendants argue that there was no causal connection between her injuries and the conditions of her employment, and the injuries did not occur in the course of her employment. In support of this argument, Defendants cite a line of assault cases. While it is Claimants' contention that the injuries and resulting deaths of the Patels are compensable pursuant to the "bunkhouse rule," assuming arguendo that doctrine does not apply to Mrs. Patel's injuries, there is a significant body of law that supports that when the cause of death is unexplained or the reasons are ambiguous, the Commission or Court should apply "a natural presumption, or presumption of fact, that one charged with the performance of a duty and injured while performing such duty, or found injured at a place where his duty may have required him to be is injured in the course of, and as a consequence of the employment." *Owens v. Ocean Forest Club, Inc.*, 196 S.C. 97, 102, 12 S.E.2d 839, 841 (1941). In *Owens*, the decedent was a game warden at a private hunting club, who was found dead of a bullet wound at a place where his duties required him to be. Although suicide was a possible cause of death, it was not the only reasonable inference, based upon substantial evidence, and the Court applied the presumption to find his injuries and death compensable under the Act. This presumption has been applied by the Court in various other circumstances in which the cause of death is uncertain, including other cases involving assaults. See *Suburban Propane Gas Co. v. Deschamps*, 298 S.C. 230, 379 S.E.2d 301 (1989). In *Deschamps*, the claimant was an outdoor propane salesman, who was found dead in the driveway of a home within the operating radius of the company. Although there was some evidence that the decedent-employee's murder may have arisen from a personal dispute with a

third-party, which was unrelated to his work, the Court held that the presumption applied and the death was compensable, because compensability was supported by substantial evidence that the decedent was killed in a place his employment normally required him to be.

In the present case, the greater weight of the evidence of record supports that Mrs. Patel was an employee at the time of her death, that she and her husband were required to live on the premises as a condition of their employment, that they were on duty at all times of the day and night, and that they were murdered in their motel rooms assigned by their employer. The bodies of the deceased Patels were found dressed in their work clothes and in a place where their employment required them to be. In their brief, Defendants suggest that the death of the Patels was related to a robbery. However, Defendants presented no evidence as to the intentions of the perpetrator, and the motive or reason for their deaths is unknown. Moreover, Defendants presented no evidence concerning the relevance of the identity of the perpetrator. Given the circumstances, the dubious cause or reason for the deaths of the Patels, and the fact that they were found deceased where their employment reasonably required them to be, the natural presumption that the Patels' injuries and resulting death arose out of and in the course of their employment should apply. Therefore, the Commissioner properly found and concluded that the fact that the person who caused the deaths of the Patels was not a guest did not serve to defeat this claim.

III. The Commissioner did not err in calculating Mrs. Patel's average weekly wage and compensation rate because this finding and conclusion is supported by the greater weight of substantial evidence of the record.

The average weekly wage is defined in the Act as "the earnings of the injured employee in the employment in which he was working at the time of the injury during the period of fifty-two weeks immediately preceding the date of the injury." S.C. Code Ann. § 42-1-40. When death results proximately from a compensable injury and within two years of the accident or while total

disability continues, "the employer shall pay or cause to be paid . . . to the dependents of the employee wholly dependent upon his earnings for support at the time of the accident, a weekly payment equal to sixty-six and two-thirds percent of his average weekly wages." S.C. Code Ann. § 42-9-290. Prior to the hearing, evidence was submitted before the Commissioner concerning Mrs. Patel's wages. As discussed, Mrs. Patel was on the employer's payroll at the time of her death. Defendants submitted Mrs. Patel's pay records for the 52 weeks prior to her death. APA #10. Defendants also submitted her wage records from the South Carolina Department of Employment and Workforce (APA #11). The wages reported by the employer resulted in an average weekly rate of \$123.26. However, the wages reported did not reflect her actual wages, given that her employer provided housing in addition to the pay that was reported. The manager and person most knowledgeable about Mrs. Patel's employment, Mr. Vyas, testified that although she was on the payroll, part of her compensation was a free room at the motel. Depo. of Raj Vyas, p. 6, ln. 5-20. Mr. Vyas testified that the value or going rate of the motel room was \$80 per night. Because Mrs. Patel shared the room with her husband, the Commissioner added half of the weekly value of the motel room to Mrs. Patel's to arrive at an average weekly wage of \$408.38 and resulting compensation rate of \$272.25.

Defendants contend that the Commissioner erred in adding the value of the motel room to arrive at Mrs. Patel's average weekly wage and that the average weekly wage should have been calculated solely based on wages reported by the employer. Alternatively, Defendants argue that "there is no evidence" to support a finding that the going rate or value of the motel room was \$80. With this contention, Defendants appear to ignore the only substantial evidence presented prior to the hearing of the value of the motel room, which was Mr. Vyas' testimony. Defendants suggest instead that the Commissioner should have calculated the value of the motel based upon a reduced

rate that a bartender living on the premises paid. Mr. Vyas stated that he rented a room to a bartender working at the motel at a bi-weekly rate of \$120.00. Depo. of Raj Vyas, p. 9, ln. 5-19. However, Mr. Vyas stated that the employment "arrangement was a little bit different than that that what we had with Hansaben." *Id.* at p.10, ln. 2-17. He affirmed that his compensation of the bartender varied from that of the Patels and other housekeepers. *Id.* Based on this testimony and other evidence of record, the Commissioner split the full value of the motel room between the Patels because they were sharing the room, to calculate their average weekly wages. Appropriately, the Commissioner gave little weight to what another employee, with another compensation arrangement and job title, paid the employer to live at the motel to work on the premises.

Conclusion

Given the foregoing, the Claimants' respectfully request that the Full Commission affirm the findings and conclusions of law of the Single Commissioner, as they are supported by the greater weight of the substantial evidence of record.

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March 3rd, 2016

SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION

W.C.C. FILE NO: 1514060

JAYESHKUMAR K. PATEL and
MEHULBHAI PATEL,

Dependents,

Claimants,

HANSABEN K. PATEL,

Deceased Employee,

vs.

BVM MOTEL, LLC D/B/A BEST
WESTERN POINT SOUTH,

Employer,

AND

AUTO-OWNERS INSURANCE
COMPANY

Carrier,

Defendants.

**DEFENDANTS'/APPELLANTS'
REPLY BRIEF TO THE
APPELLATE PANEL OF THE FULL
COMMISSION**

On March 3, 2017, through their attorney, Respondents, Jayeshkumar K. Patel and Mehulbhai Patel (Dependents), filed a Brief in opposition to Defendants'/Appellants' Brief to the Appellate Panel of the Full Commission. In their Brief, Respondents assert that the Single Commissioner correctly concluded that the injuries and resulting death of the Deceased, Hansaben K. Patel, arose out of and in the course of her employment with Defendant, Best Western Motel. Respondents also contend that the Single Commissioner correctly held that the

fact that the perpetrator of Decedent's homicide was not a guest of the Best Western Motel, does not serve to defeat this claim. Lastly, Respondents assert that the Single Commissioner correctly found that Decedent's average weekly wage was \$408.38, which results in a compensation rate of \$272.25.

Appellants hereby submit this Reply Brief in direct response to the assertions made in Respondent's Brief.

- I. Appellants contend the Hearing Commissioner erred as a matter of law and fact, by finding and concluding that Decedent 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.

In their Brief, Respondents take the position that the Appellate Panel should rely on "the bunkhouse rule" as outlined in Pierre v. Seaside Farms, Inc., 386 S.C. 534, 689 S.E.2d 615 (2010) in order to find that Decedent's death occurred during the course and in the scope of her employment with the Best Western Motel. In response, Appellants rely on the fact that the present case differs substantially from Pierre in that there is no evidence that the Decedent was required to live at the Best Western Motel. There was nothing about Decedent's job as a housekeeper that would require her to live on-site at the Best Western Motel. Additionally, there is no evidence to indicate that she had entered into a contract or was required to live at the Best Western Motel by her employer. Unlike Pierre, there was nothing about Decedent's job that required her and her crew to show up at work at the same time to begin her job. Appellants take the position that Decedent was provided a room at the Best Western Motel as a benefit of her employment rather than a condition. There is no evidence to indicate that but for Decedent living at the Best Western Motel, the cleaning crew would be unable to operate. Contrary to Pierre,

there was no requirement for Decedent to live at the Best Western Hotel in order to ride with a crew to a job site or a need for her to always be at the Motel. In fact, the evidence indicates that Decedent and a bartender at the Motel were the only employees residing at the Motel. Based on the evidence presented before the Single Commissioner, Decedent's living situation is clearly different than that of a migrant worker required to live in a migrant camp in order to be transported to a job site with their crew.

Additionally, Appellants assert that there is no evidence to support Respondent's contention that the employer had control over where the Patels lived or that the employer required them to specifically live in room 265 of the Best Western Motel. There is no evidence in the record to support a finding that the Patels were required to specifically live in room 265 of the Best Western Motel by their employer. Based on the evidence, the Patels may have chosen to live in room 265 on their own accord. Additionally, there is no evidence to indicate that room 265 was an unsafe room or that the employer required the Patels to remain in room 265 should they have wished to move to another room.

Respondents further contend that Decedent was engaged in a work-related activity at the time of her death simply because she was found dressed for work wearing a Best Western name badge and the time of her death was estimated to be around 8:01 a.m. In response, Appellants take the position that simply because an employee is dressed for work does not mean that they are engaged in a work-related activity. There is no evidence to support a finding that Decedent was performing any work-related task or in any way furthering the business of the Best Western Motel at the time of her death. The evidence in the record supports a finding that Decedent was still in her private residence at the time of her death. Appellants assert that it does not matter what Decedent was wearing at the time of her death, it matters where she was and what activities

she was performing. The facts in this claim are clear that Decedent was in her private residence and in no way performing a work-related task at the time of her death. The situation surrounding Decedent's death is analogous to an employee getting dressed and prepared for work in their own home and becoming the victim of a crime committed by a third party while doing so. Surely, the simple fact that an employee was wearing a piece of clothing affiliated with their work place is not enough to render a claim compensable, when at the time that they are injured the employee is in their own residence not engaging in the performance of any work-related activities.

Furthermore, Appellants assert that simply because Decedent may have been on call at the time of her death does not mean that her death automatically arose out of or occurred in the course of her employment. Appellants rely on Fowler, where it was held that "an accidental injury may be compensable if received at some distance from employer's place of business, where, at the time and place of injury, employee was doing some work in connection with, or incidental to his employment. A "possibility" is not enough to show that respondent's injury arose out of and in the course of employment." Fowler v. Abbott Motor Co., 236 S.C. 226, 113 S.E.2d 737 (1960). Appellants disagree with Respondent's assertion that Fowler is not applicable in this claim. Appellants take the position that the facts of the present case are exactly what the Court in Fowler intended to preclude from compensability under the Act. Appellants assert that the evidence in this claim clearly shows that Decedent was not engaged in the performance of any work-related duty at the time of her death. Decedent was still in her personal residence and had yet to begin her work day at the time of her death. This is further supported by the fact that her fellow employees and employer did not become aware of her absence until she failed to appear for her first shift on the morning of her death. This clearly indicates that

Decedent had yet to appear for work on the morning of August 16, 2015, and as such had yet to begin an activities incidental to her employment. For the Appellate Panel to find that Fowler does not apply to this claim would in essence mean that Appellants would be constantly susceptible to the Act simply because Decedent was "on call." This finding would be inconsistent with the logic behind the ruling in Fowler, which indicates that the Court intended to provide for times when an employer with an on call employee would not be susceptible to the Act. The facts surrounding the present case are clearly in line with what the Court in Fowler intended to preclude from compensability. In this case, it is evident that Decedent was still in her private residence and had yet to report for her first shift of the day on the date of her death.

Based on the foregoing along with the arguments outlined in detail in their Brief, Appellants respectfully request that the Appellate Panel of the Full Commission find that the Hearing Commissioner erred as a matter of law and fact, by finding and concluding that Decedent 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.

II. Appellants 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.

In their Brief, Respondents rely on Owens v. Ocean Forest Club, Inc., 196 S.C. 97, 102, 12 S.E.2d 839, 841 (1941) to assert that "a natural presumption, or presumption of fact, that one charged with the performance of a duty and injured while performing such duty, or found injured at a place where his duty may have required him to be is injured in the course of, and as a

consequence of the employment." Appellants assert that Respondent's reliance on the unexplained death presumption is not justified. Respondents attempt to persuade the Appellate Panel of the Full Commission that Decedent's death is unexplained or ambiguous. This is simply not the case. Based on the evidence presented before the Single Commissioner, it is obvious and undeniable that Decedent's death was the result of a homicide committed by the random act of a third party assailant. Additionally, the Single Commissioner expressly found in her Findings of Fact that Decedent died from gunshot wounds during an armed robbery (Finding of Fact #1).

In Owens, the deceased was a game warden who was found dead on a trail after having sustained gunshot wounds to the head. Contrary to the present case, the deceased in Owens was found hours after his death on a trail with no indication as to how his death had occurred. In the present case, the Deceased was clearly the victim of homicide in her own hotel room. At the Single Commissioner level, Appellants submitted a letter from the Jasper County Coroner, which clearly states that the Deceased was "shot to death during an armed robbery at her residence in Yemassee, South Carolina." (APA #12 P. 61) Additionally, Appellants submitted the report of the Jasper County Sheriff's Office, which clearly indicates that Decedent's cause of death was murder. Additionally, the Jasper County Sheriff's Office notes the case as open and indicates that the suspect is a black male. (APA #13 P.62) Based on the foregoing, Respondent's contention that Decedent's death was unrelated to a robbery, and implication that the cause or occurrence of Decedent's death is a mystery is unsupported by the evidence submitted before the Single Commissioner.

Additionally, Appellants contend that in order to apply the unexplained death presumption, it is the claimant's burden to "prove facts that will bring the injury within the workers' compensation law, and such award must not be based on surmise, conjecture or

speculation.” Jennings v. Chambers Dev. Co., 335 S.C. 249, 516 S.E.2d 453 (1999). Furthermore, it is the claimant’s burden to “show not only that the injury was in the course of employment but also that the death arose out of employment, in that it was brought about by the unexpected strain or over-exertion or as a result of unusual extraordinary conditions of employment.” Id. at 255. Additionally, as outlined in Owens, “circumstantial evidence may be sufficient to support an award of compensation under the Workers’ Compensation Act, and an award may be based on inferences drawn from circumstantial evidence which need not reach such a degree of certainty as to exclude every reasonable or possible conclusion other than that reached.” Based on the evidence presented before the Single Commissioner and on the Single Commissioner’s own findings, Appellants contend that the Appellate Panel does not need to look to circumstantial evidence as there is clear evidence in the record as to the cause of Decedent’s death. The autopsy report, Coroner’s letter, Jasper County Police Department, and Single Commissioner all reached the conclusion that Decedent’s death was the result of an armed robbery committed in her private residence. As a result, Appellants assert that the unexplained death presumption does not apply to this claim. Furthermore Appellants assert that there is ample evidence in the record to support a finding that Decedent was in her private residence and in no way performing a duty of her employment at the time of her death.

Appellants rely on their Brief and the evidence submitted before the Single Commissioner to support a finding that Decedent’s death was caused by the random act of violence of a third party assailant who was a non-guest intruder at the Best Western Motel. Specifically, Appellants note that, “Critical to a determination as to whether injuries from an assault arise out of employment is the origin of the dispute between the protagonists. An assault arises out of employment if the risk of assault is increased by the nature or setting of the work, or

if the reason was a quarrel which originated in the work. When the dispute that culminates in an assault arises out of the claimant's personal life, the injury is not ordinarily compensable." Bright v. Orr-Lyons Mill, 285 S.C. 58, 328 S.E.2d 68 (1985). Appellants rely on the multitude of assault cases outlined in their Brief to support their position that an assault with no causal connection to a claimant's employment is not compensable. Therefore, Appellants respectfully request that the Appellate Panel of the Full Commission reverse the Single Commissioner's finding that the fact that the perpetrator of Decedent's homicide was not a guest does not serve to defeat this claim. Appellants request that the Appellate Panel of the Full Commission find that the fact that Decedent's death was caused by a third party assailant with no connection to her employment results in a finding that her death did not arise out of her employment; and therefore, this claim is not compensable under the Act.

III. Appellants contend the Hearing Commissioner erred as a matter of law and fact, by finding and concluding that Decedent'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.

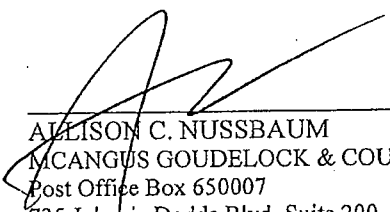
At the September 26, 2016 hearing, Appellants submitted Decedent's pay records for the 52 weeks prior to her death. (APA # 10) Additionally, Appellants submitted Decedent's wage records from the South Carolina Department of Employment and Workforce (APA #11). Appellants contend that using the wage records submitted into evidence, Decedent's average weekly wage is \$123.26, which results in a compensation rate of \$82.18. Appellants take the position that using Decedent's actual wages is the most fair and accurate way to calculate her average weekly wage and compensation rate pursuant to S.C. Code Ann. §42-1-40.

In addition to the wages which she received, Appellants concede that Decedent was provided a motel room to live in at the Best Western Motel. Appellants contend that solely based

on the testimony of Raj Vyas, there is not enough evidence to support a finding that the going rate/value of the motel room in which Decedent lived in is valued at \$80 per night for an employee. To the contrary, Appellants contend that the value of the motel room should be found to be consistent with that of the motel room in which a similar employee, a bartender at the Motel, lived in. In his deposition, Decedent's employer, Raj Vyas, testified that the bartender who lived at the Motel paid \$120.00 every two weeks to live in a suite at the Motel. (Dep. Tran. Raj Vyas P. 9 ll. 8-20) While the motel room that Decedent lived in may have been rented to paying customers at \$80 per night, there is no evidence to indicate that \$80 per night is the rate that the room was being rented to Decedent. To the contrary, there is direct evidence that a similarly situated employee rented a larger style room at a rate of \$120.00 every two weeks. Calculating the value of the motel room that Decedent lived in to be worth \$40 per night (her half), would mean that Decedent derived an average weekly wage of \$280.00 solely from the Motel room in which she lived. This figure is more than double the wages that Decedent was paid. Valuing Decedent's motel room at a rate of \$280 per week, or more than double the wages that she earned from her work is not an appropriate conclusion given the fact that a similarly situated employee's motel room, which was an upgraded version of Decedent's, was only valued at \$120.00 per week. Based on this evidence, Appellants contend that the value of the motel room that Decedent lived in should at its highest be found to be consistent with that of the similar employee, and valued at \$60 per week (\$120 every two weeks).

Based on the foregoing, Appellants assert that the Single Commissioner erred in finding that the value of the motel room that Decedent lived in is valued at \$80 per night, and that she is entitled to an average weekly wage of \$408.38, yielding a compensation rate of \$272.25.

Appellants request that the Appellate Panel of the Full Commission reverse the Single Commissioner's finding.



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Charleston, South Carolina
March 13, 2017

SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION
COLUMBIA, SOUTH CAROLINA
WCC FILE NO. 1514060

EMPLOYEE/CLAIMANT: HANSABEN PATEL

EMPLOYER: BVM MOTEL, LLC D/B/A BEST WESTERN POINT SOUTH

CARRIER: OWNERS INSURANCE COMPANY

SOUTH CAROLINA WORKERS' COMPENSATION HEARING

PURSUANT TO NOTICE OF WORKERS' COMPENSATION
HEARING, THE WITHIN HEARING WAS TAKEN ON THE 26TH DAY
OF SEPTEMBER, 2016, COMMENCING AT THE HOUR OF 12:58
P.M., IN WALTERBORO, SOUTH CAROLINA, BEFORE THE
HONORABLE SUSAN S. BARDEN, ATTENDED BY COUNSEL AS
FOLLOWS:

TIMMI A. PARRISH
VERBATIM REPORTER

ORIGINAL

TIMMI A. PARRISH
COURT REPORTING SERVICES
POST OFFICE BOX 551
ROEBUCK, SC 29376
864-921-8743

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ATTORNEY FOR THE EMPLOYER/CARRIER.

1 PURSUANT TO NOTICE OF HEARING, THE WITHIN HEARING
2 WAS TAKEN BY THE ABOVE-NAMED COURT REPORTER, A NOTARY
3 PUBLIC FOR THE STATE OF SOUTH CAROLINA, IN WALTERBORO,
4 SOUTH CAROLINA.

5 * * * * * * * * * * * * * * *

6 BY COMMISSIONER BARDEN:

7 TODAY'S DATE IS SEPTEMBER 26, 2016. THIS IS
8 SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION FILE
9 NUMBER 1514060. THIS IS THE CASE OF THE DECEASED
10 EMPLOYEE, HANSABEN PATEL, WHO IS REPRESENTED BY
11 ATTORNEY WARREN JOHNSON, VERSUS THE EMPLOYER, BVM
12 MOTEL DOING BUSINESS AS BEST WESTERN POINT SOUTH,
13 AND ITS CARRIER, OWNERS, BOTH OF WHICH ARE
14 REPRESENTED BY ATTORNEY ALLISON NUSSBAUM. THE
15 PURPOSE OF TODAY'S HEARING IS TO DETERMINE ISSUES
16 RAISED IN FORMS 52 AND 53. THIS IS A DENIED CLAIM,
17 NOR IS THE AVERAGE WEEKLY WAGE AND CORRESPONDING
18 COMPENSATION RATE -- OR NOR ARE THOSE ISSUES
19 STIPULATED TO AT THIS POINT. THE DATE OF THIS
20 ALLEGED ACCIDENT WAS AUGUST 16TH, 2015. ARE THERE
21 ANY OBJECTIONS TO APAs, JURISDICTION, VENUE, OR ANY
22 OTHER ITEMS?

23 BY MR. JOHNSON:

24 NONE FROM THE CLAIMANT.

25 BY MS. NUSSBAUM:

1 NONE FROM DEFENDANTS.

2 BY THE COMMISSIONER:

3 THANK YOU. WITHOUT OBJECTION THE COMMISSION
4 FILE BECOMES A PART OF THE RECORD WITH THE EXCEPTION
5 OF SELF-SERVING DECLARATIONS AND UNSTIPULATED
6 MEDICAL REPORTS.

7 WE HAVE NO WITNESSES TODAY. THE PARTIES ARE
8 RELYING ON A DEPOSITION THAT HAS BEEN SUBMITTED. SO
9 I'M GOING TO ASK EACH PARTY TO PUT A POSITION ON THE
10 RECORD WITH REGARD TO COMPENSABILITY, AS WELL AS THE
11 AVERAGE WEEKLY WAGE/COMPENSATION RATE ISSUES. AND,
12 MR. JOHNSON, YOU REPRESENT THE MOVING PARTY, SIR, SO
13 I'LL BEGIN WITH YOU.

14 BY MR. JOHNSON:

15 THANK YOU, YOUR HONOR. YOUR HONOR, THIS IS A
16 CASE WHERE MRS. PATEL WAS EMPLOYED BY THE BEST
17 WESTERN, WAS A HOUSEKEEPER, WAS REQUIRED TO LIVE
18 ONSITE IN A ROOM PROVIDED AND SELECTED BY THE
19 EMPLOYER AS A CONDITION OF HER EMPLOYMENT. SHE WAS
20 NOT ONLY ALLOWED ACCESS TO THE ROOM AT HER
21 CONVENIENCE, BUT WAS REQUIRED TO LIVE THERE. ON THE
22 MORNING OF THIS INCIDENT SHE WAS -- HER BODY WAS
23 DISCOVERED IN ROOM 265, HAVING BEEN MURDERED BY
24 GUNSHOT WOUND.

25 AS FAR AS COMP RATE GOES, IN ADDITION TO HER

1 PAYROLL RECORDS, WHICH WE DON'T HAVE ANY DISPUTE AS
2 TO ANY OF THE COMPENSATION, BUT THE PAYROLL RECORDS,
3 ASIDE FROM THE VALUE OF THE ROOM, WHICH WAS PROVIDED
4 TO HER AS PART OF HER COMPENSATION PACKAGE ---

5 BY THE COMMISSIONER:

6 AND LET ME ASK, WHAT ARE THE FIGURES FOR JUST
7 THE PAYROLL RECORDS?

8 BY MS. NUSSBAUM:

9 I CAN GIVE YOU THOSE.

10 BY THE COMMISSIONER:

11 I WANT TO START WITH SOMETHING THAT WE ALL CAN
12 AGREE ON.

13 BY MS. NUSSBAUM:

14 SURE.

15 BY THE COMMISSIONER:

16 NOT -- AND THEN ADD ACCORDINGLY.

17 BY MS. NUSSBAUM:

18 SURE. THE FIGURES FOR THE PAYROLL ARE
19 \$6,697.56, AND I CONFIRMED THIS MORNING THAT THE --
20 I HAVE THE PAYROLL RECORDS AND THE SOUTH CAROLINA
21 DEPARTMENT OF EMPLOYMENT AND WORKFORCE, AND, THANK
22 GOODNESS, THEY ACTUALLY ARE EXACTLY THE SAME.

23 BY THE COMMISSIONER:

24 OKAY. SO THAT'S OVER THE ---

25 BY MS. NUSSBAUM:

1 THAT DOESN'T ALWAYS HAPPEN.

2 BY THE COMMISSIONER:

3 --- PRECEDING FOUR QUARTERS?

4 BY MS. NUSSBAUM:

5 THAT IS FOUR QUARTERS.

6 BY THE COMMISSIONER:

7 OKAY. ALL RIGHT. GO AHEAD, MR. JOHNSON.

8 THANK YOU.

9 BY MR. JOHNSON:

10 AND IN THE DEPOSITION OF THE EMPLOYER, THE
11 PERSON MOST KNOWLEDGEABLE ON BEHALF OF BVM, MR. RAJ
12 VYAS, HIS TESTIMONY WAS THAT ROOM WAS VALUED AT A
13 VALUE OF \$80 PER NIGHT. THE -- WE DO NOT KNOW WHEN
14 MRS. PATEL WAS MURDERED OTHER THAN SOMETIME BETWEEN
15 WHEN SHE LEFT THE PRIOR EVENING AND WHEN SHE WAS
16 DISCOVERED THE NEXT MORNING. AS FAR AS HER HOURS
17 GO, THERE WAS NO SET HOURS, ACCORDING TO THE
18 EMPLOYER. IF SOMEBODY CHECKED IN AT 11:30 IN THE
19 EVENING AND THEIR TOILET HAD OVERFLOWED, SHE WOULD
20 GET A CALL. SHE HAD TO GO DEAL WITH IT. HE
21 ACTUALLY TESTIFIES HE WANTED THEM TO STAY THERE SO,
22 "I CAN UTILIZE THEIR SERVICES AT ANY TIME OF THE DAY
23 OR NIGHT." AND SO SHE WAS QUITE LITERALLY REQUIRED
24 TO LIVE THERE AND BE AVAILABLE AT ANY TIME FOR ANY
25 REASON. AGAIN, THERE'S NO EVIDENCE THAT THIS WAS

1 ANYTHING PERSONAL. THE ONLY EVIDENCE THAT WE KNOW
2 OF AND THE ONLY EVIDENCE IN THE RECORD IS SHE WAS IN
3 A PLACE WHERE SHE WAS SUPPOSED TO BE, PERFORMING
4 TASKS SHE WAS SUPPOSED TO DO, AND WAS FOUND
5 MURDERED. AS FAR AS ANY -- WHETHER THIS IS AN
6 ASSAULT OR ANY OTHER KIND OF ACCIDENT, FROM HER
7 PERSPECTIVE THIS WAS NOT INTENTIONAL. AND FOR THOSE
8 REASONS WE BELIEVE THIS IS COMPENSABLE.

9 BY THE COMMISSIONER:

10 OKAY. ALL RIGHT.

11 BY MS. NUSSBAUM:

12 JUST TO FIRST SPEAK, DEFENDANTS CONTEND THIS
13 DID NOT -- WE ADMIT THAT MS. PATEL WAS AN EMPLOYEE
14 OF THE HOTEL. WE CONTEND THAT THERE'S TWO PRONGS TO
15 FIND COMPENSABILITY IN THIS CASE. ONE IS COURSE AND
16 SCOPE, AND ONE IS ARISING OUT OF. DEFENDANTS
17 CONTEND SHE WAS NOT IN THE COURSE AND SCOPE OF HER
18 EMPLOYMENT, AND THIS DID NOT ARISE OUT OF.

19 AS REFERENCED IN DEFENDANTS' MEMORANDUM OF LAW,
20 THERE'S A SIMILAR CASE, FIRST NAME FOWLER, WHERE THE
21 CLAIMANT WAS A MECHANIC IN AN ON-CALL SERVICE,
22 MANAGER. HE HAD A COMPANY CAR, AND HE WAS
23 CONSIDERED ON CALL 24 HOURS A DAY. AT THE TIME OF
24 HIS ACCIDENT HE WAS DRIVING THE COMPANY CAR BUT WAS
25 DOING SOME ERRAND UNRELATED TO WORK. THE COURT SAID

1 A POSSIBILITY THAT A CLAIMANT COULD BE CALLED TO
2 PERFORM A WORK-RELATED TASK DID NOT MAKE HIS
3 EMPLOYER CONSTANTLY SUSCEPTIBLE TO THE ACT. IN OUR
4 CASE AT HAND, IT'S SIMILAR. MS. PATEL WAS IN HER
5 ROOM. SHE WAS NOT CLEANING A ROOM. SHE WAS NOT
6 ANYWHERE ELSE BUT IN HER LIVING QUARTERS AT THE TIME
7 OF THE MURDER. THAT'S WHERE THE BODIES WERE FOUND.
8 AND AS INDICATED IN THE DEPOSITION OF THE OWNER, SHE
9 HAD NOT REPORTED DOWN FOR WORK THAT MORNING, AS HER
10 USUAL HABIT, AND THEY WENT UP AND FOUND HER IN HER
11 ROOM.

12 THE SECOND -- IF YOU FIND COURSE AND SCOPE, THE
13 SECOND PRONG THAT STILL HAS TO BE MET IS THE ARISING
14 OUT OF, AND WE CONTEND -- DEFENDANTS CONTEND THAT
15 PRONG CANNOT BE MET IN THIS CASE. THIS IS AN
16 ASSAULT AND A MURDER CASE. WE CAN AGREE ON THAT.
17 IT IS A MURDER. THERE IS ABSOLUTELY NO EVIDENCE IN
18 THIS CASE SUGGESTING THIS MURDER IS LINKED TO THIS
19 HOTEL. THERE IS NO EVIDENCE SUGGESTING, AS IN SOME
20 OF THESE OTHER CASES THAT I'VE CITED, THAT THIS
21 EMPLOYER HAD KNOWLEDGE THAT THIS WAS A DANGEROUS
22 LOCATION WHERE THEY WERE LIVING. THEY WERE LIVING
23 IN A HOTEL ROOM WITH GUESTS THAT RENT OUT THE ROOM
24 RIGHT NEXT DOOR. THERE'S NO EVIDENCE THAT THE
25 EMPLOYER DID ANYTHING TO MAKE THEM SUSCEPTIBLE TO

1 THIS CRIME, THIS CRIMINAL ACT. ALL OF THE CASES
2 THAT ARE CITED AND THAT HISTORICALLY THE COMMISSION
3 AND THE HIGHER COURTS FIND IF THE ASSAULT, MURDER,
4 DOES NOT -- THE INTENTIONAL ACT DOES NOT HAVE A LINK
5 TO EMPLOYMENT, THEN IT IS NOT COMPENSABLE. AND
6 THERE SIMPLY HAS BEEN PROVIDED NO EVIDENCE TO LINK
7 THIS MURDER TO THE EMPLOYER. THIS WAS NOT -- THE
8 PERSON THAT HAS BEEN ARRESTED IS NOT AN EMPLOYEE OF
9 THE HOTEL, WAS NOT STAYING AT THE HOTEL. THERE
10 SIMPLY IS NO LINK, AND THERE HAS TO BE SOME TYPE OF
11 LINK IN THE EVIDENCE TO SATISFY THAT ARISING OUT OF.
12 EVEN IF YOU GET PAST THE COURSE AND SCOPE AND FIND
13 WHERE SHE'S ALWAYS ON CALL IS COURSE AND SCOPE, YOU
14 STILL HAVE TO SATISFY THAT OTHER PRONG. SO WE WOULD
15 CONTEND THAT IT'S NOT COMPENSABLE.

16 ALSO, I PASSED OVER THE AVERAGE WEEKLY WAGE.
17 DEFENDANTS WOULD CONTEND A MORE FAIR REPRESENTATION
18 OF THE VALUE OF THE ROOM FOR ADDRESSING AVERAGE
19 WEEKLY WAGE WOULD BE THE BARTENDER, WHO ALSO LIVED
20 AT THE HOTEL. IN HIS DEPOSITION THE OWNER TESTIFIED
21 THAT THE BARTENDER PAID HIM TO LIVE THERE. HE
22 ACTUALLY LIVED IN A SUITE CLOSER TO THE FRONT END OF
23 THE HOTEL BECAUSE IT WAS CLOSER TO THE BAR, AND HE
24 PAID \$120 BIWEEKLY. SO DEFENDANTS CONTEND THAT'S A
25 MORE ACCURATE REPRESENTATION. AND AS DEFENDANTS

1 BROUGHT UP IN THE HUSBAND'S HEARING PREVIOUSLY, THAT
2 IF YOU ARE GOING TO FIND THAT THE HUSBAND WAS AN
3 EMPLOYEE OF THE HOTEL -- I KNOW THESE CASES AREN'T
4 COMBINED, BUT IF WE DO GO THAT ROUTE, THEN WHATEVER
5 YOU MAY FIND WITH REGARD TO THE ROOM RATE SHOULD BE
6 SPLIT AGAINST BOTH BECAUSE THEY WERE IN THE SAME
7 ROOM. THE PROVISION OF HOUSING WAS THE SAME ROOM;
8 IT WASN'T TWO ROOMS.

9 BY THE COMMISSIONER:

10 MR. JOHNSON?

11 BY MR. JOHNSON:

12 AND THE CLAIMANT WOULD AGREE TO THE EXTENT THAT
13 THAT'S EVIDENCE THAT CAN BE CONSIDERED AND THAT BOTH
14 OF THEM WERE SHARING THE SAME ROOM. NOTHING
15 FURTHER.

16 BY THE COMMISSIONER:

17 ALL RIGHT.

18 BY MS. NUSSBAUM:

19 NOTHING FURTHER.

20 BY THE COMMISSIONER:

21 THANK YOU. THAT CONCLUDES THIS PROCEEDING.
22 (THERE BEING NO FURTHER QUESTIONS, THIS HEARING WAS
23 CONCLUDED AT THE HOUR OF 1:07 P.M.)

STATE OF SOUTH CAROLINA
BEFORE THE
SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION
WCC No. 1515021
WCC No. 1514060

Kantibhai Patel,)
)
Claimant,)
&)
Hansaben Patel,)
)
Claimant,)
)
v.)
)
BVM Motel dba Best)
Western,)
)
Employer,)
)
and)
)
Owners Insurance,)
)
Carrier/Defendants.)
)
-----)

COPY

FULL COMMISSION HEARING

Monday, March 20, 2017

2:30 p.m. - 2:57 p.m.

The Full Commission Hearing was heard before
Commissioners T. Scott Beck, Avery B. Wilkerson, and
R. Michael Campbell at the Workers' Compensation
Commission, 1333 Main Street, Suite 500, Columbia,
South Carolina, on the 20th day of March, 2017,
before Cortney N. Glover, Court Reporter and Notary
Public in and for the State of South Carolina.



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APPEARANCES

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EXHIBITS

(There were no exhibits marked during the hearing.)

STIPULATIONS

It is stipulated and agreed that this deposition is being taken pursuant to the Administrative Procedures Act and the South Carolina Rules of Civil Procedure.



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1 COURT REPORTER: Today is March 20th, 2017. This is
2 South Carolina Workers' Compensation Case
3 Numbers 1515021 and 1514060. This is the case
4 of Kantibhai Patel and Hansaben Patel,
5 Claimants, versus BVM Motel doing business as
6 Best Western, Employer, and Owners Insurance,
7 Carrier.

8 The Appellants are the Defendants, represented
9 by Allison C. Nussbaum. The Respondent is
10 represented by Warren Paul Johnson.

11 Each side is allowed ten minutes for oral
12 argument and the Appellant three minutes in
13 reply. You are requested to argue the grounds
14 of exception and stay within the record.

15 COMMISSIONER CAMPBELL: Ms. Nussbaum?

16 ORAL ARGUMENT BY MS. NUSSBAUM:

17 MS. NUSSBAUM: Thank you. May it please the Court.

18 I want to preface my oral argument to say that
19 the facts of this case are very sad. This is
20 a double murder. Most of you are probably
21 familiar with where this is located, right in
22 front of the Lowcountry Council Government
23 building. It's like in front of Best Western.
24 The facts of this case are both Hansaben and
25 Kantibhai lived in a motel room at the hotel.



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1 Hansaben was employed as a housekeeper.
2 Kantibhai was married to Hansaben, was not an
3 employee at the time of this incident. He used
4 to be an employee. He was on their payroll up
5 until 2012. He was taken off the payroll and
6 was drawing Social Security at the time of the
7 incident.

8 The facts that are undisputed are that a
9 third-party intruder came into their hotel
10 room, murdered them. It was an armed robbery
11 as well. It is in the coroner's report as an
12 armed robbery. It is in the police report as
13 an armed robbery. Subsequently, they caught
14 the suspect. My understanding, he's still
15 waiting for the -- awaiting trial.

16 There is absolutely no link to employment with
17 the murder and the assault. Like I said, they
18 both lived at the hotel. They were in their
19 rooms. They had not started -- she had not
20 started work that morning. See the autopsy,
21 you will see that she was in a work uniform,
22 however, had not started work. In fact,
23 they -- she normally came down around 8:30 in
24 the morning to start, get her room assignments
25 for the day. She didn't come down, and that's



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1 how they found the bodies, because she didn't
2 report to work.

3 There's no clock in and clock out. It's not
4 that type of deal. She's a housekeeper. She's
5 cleaning rooms. If there was a room that
6 needed to have something in the middle of the
7 night, they did call her. But she was not
8 performing any work duties at the time.

9 The main crux of our appeal and the basis for
10 the denial is the "arising out of" prong. Even
11 if you give course and scope, she's at the
12 hotel, where she lived, in a room provided by
13 her employer, as part of her employment. You
14 still have to have the "arising out of" prong.
15 This is an assault. It's a murder and armed
16 robbery. There is no link whatsoever to the
17 employment. This was not a former employee.
18 This was not somebody that was staying at the
19 motel. This was a random act of violence.
20 They provided no evidence whatsoever to link
21 the assault to the employment, and there is no
22 evidence. We don't have any.

23 If you look at all the assault cases that are
24 cited in my brief, the Court has addressed this
25 in multiple cases where somebody comes on an



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1 employer's premises, shoots somebody or
2 assaults somebody. The only way to bring it
3 within the purview of the Act is if that
4 assault somehow was linked to employment. Say,
5 it's a disgruntled customer. Or say they kept
6 money for the hotel and they were being robbed.
7 They didn't. They were housekeepers. They
8 didn't have the money drawers. That was locked
9 in the office. And there's no evidence to
10 suggest why they're separate. In other words,
11 I don't have a motive for the defendant, but
12 they don't have one either. So we would
13 contend that it's not compensable under those
14 facts.

15 And, again, with regards to the husband, we
16 would contend he's not even an employee, so he
17 doesn't even come under the Act. He's
18 literally not employed. Just he lives with his
19 wife. It was his wife. And it's one hotel
20 room. There's not a suite, just one single
21 hotel room. So not compensable. Doesn't arise
22 out of.

23 I anticipate they're gonna argue the Pierre
24 case for the course and scope. That's the
25 Bunkhouse Rule. But if you read the Pierre



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1 case, if in the course and scope, the Court
2 then goes to the analysis of why that was
3 compensable. Pierre slipped on a sidewalk in
4 water. They say, well, the employer controlled
5 the drainage that caused the sidewalk to be wet
6 and increased the risk. My employer didn't
7 increase the risk of a random act of violence.
8 The other issue, if we can get to that, is the
9 hours weekly wage. She was paid wages. We
10 have those without a doubt. She was -- we
11 didn't argue. We contended that, yes, the
12 hotel room is part of her compensation.
13 There's a bartender that lived on site at the
14 hotel. His deal was that instead of giving
15 free hotel lodging, he paid for his. He
16 actually lived in a suite, but he paid \$120
17 every two weeks. So the defendants argue if
18 you're gonna look for any price of this
19 long-term hotel stay, look to the bartender,
20 even though he had a bigger room. But that was
21 all he had to go by. So the \$120 every two
22 weeks, \$60 a week on an average weekly wage.
23 Instead, the Single Commissioner found that
24 irrelevant and assigned an \$80-a-night rate.
25 Just with the math, that's \$30,000 a year for



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1 a single hotel room. That's a lot of money to
2 add to an average weekly wage for a single
3 hotel room in Point South, South Carolina. So
4 we would say that this wage -- that would be
5 completely relevant with a bartender that's
6 paying, obviously, that should be added to the
7 average weekly wage.

8 The other side that has brought up the
9 unexplained death presumption, we would contend
10 that's not applicable at all. It is not an
11 unexplained death. This is a murder. It's in
12 the coroner's report. The coroner writes the
13 defendants, who unfortunately live in India, to
14 let them know that their parents passed away
15 and puts in there that this is a homicide.

16 This is an armed robbery. They took their
17 personal Visa card or debit card, and that's
18 how they located the defendant. They had --
19 there's nothing linking it to work. It's sad.
20 That's about it. The employer's own testimony,
21 the owner of the hotel was deposed. He
22 indicates during his deposition, which is in
23 evidence, that she was not working at the time
24 of the murder.

25 There's got to be some type of causal



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1 connection to bring this under the purview of
2 the Act. Even if you give course and scope,
3 they're living where they're supposed to be.
4 They're in their room. An on-call employee, if
5 you read the Fowler case which talks about
6 on-call employees, they're not -- even though
7 they're on call, they have to be acting on a
8 call at the time of the incident. Otherwise,
9 an on-call employee would literally, everything
10 that would possibly happen to them at any time
11 in that hotel, under their argument, would be
12 compensable. Anything. Because it's an
13 on-call employee.

14 This is an assault, doesn't arise out of
15 employment. It's not a risk that is increased
16 by the employer. It's just as likely that this
17 defendant -- suspect could have gone in and
18 murdered somebody else. There's no evidence
19 linking that they chose these individuals
20 because they were a housekeeper at this hotel.
21 So in summary, we're asking the Commission to
22 overturn the compensability finding and to find
23 that neither the husband nor the wife Hansaben
24 or Kantibhai Patel's murderers were in the
25 course and scope and arose out of employment.



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1 If you disagree and affirm the Commission on
2 the compensability, then we would also ask you
3 to re-address the average weekly wage issue and
4 find that the correct monetary value of that
5 hotel room is more in line with what the
6 bartender paid, which is \$120 every two weeks
7 instead of \$80 a night, \$30,000 a year, for the
8 price of a hotel room. The hotel room
9 provision, under that analysis, was more than
10 she was making in wages as a housekeeper. So
11 first and foremost, we would ask you to
12 overturn compensability. Thank you.

13 COMMISSIONER WILKERSON: Hang on a second.

14 MS. NUSSBAUM: Okay.

15 COMMISSIONER BECK: Do you have a -- they downloaded
16 the same order. Do you have that 1515021 paper
17 copy? Because what they've done in our system
18 is they've loaded both of mine -- and I
19 assume ---

20 MS. NUSSBAUM: I should have it, if you don't.

21 COMMISSIONER BECK: Hansaben is the employee?

22 MS. NUSSBAUM: That's correct. She is the wife, and
23 she is the employee.

24 COMMISSIONER BECK: Yes.

25 MS. NUSSBAUM: I have Kantibhai's order, if you



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1 don't have a copy.

2 COMMISSIONER BECK: Let me see that before you

3 address ---

4 MS. NUSSBAUM: You can have it. I don't need a

5 copy. There's two different orders because

6 they were not combined. There was never ---

7 COMMISSIONER BECK: Yes.

8 MS. NUSSBAUM: There was never a motion for

9 consolidation.

10 COMMISSIONER BECK: And I didn't realize when I read

11 these last night I was reading the same order.

12 MS. NUSSBAUM: They're pretty much synonymous with

13 one another.

14 COMMISSIONER BECK: But what I'm trying to discern

15 in here is how the Commissioner brings in the

16 husband.

17 MS. NUSSBAUM: If I remember correctly, she based it

18 on the testimony of the employer that he would

19 assist his wife with some of the duties at the

20 hotel.

21 COMMISSIONER BECK: Was he being paid?

22 MS. NUSSBAUM: He was not being paid in any

23 capacity. In fact, we submitted the

24 South Carolina Department of Employment and

25 Workforce records that we obtained into the



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1 evidence there in our APAs. And the last time
2 he was paid by the hotel was 2012. The
3 employer testified that he was not an employee
4 of the hotel and that he was not paying him any
5 wages. She found -- the Hearing Commissioner
6 found that he was entitled -- he was an
7 employee and was entitled to half of the price
8 of the hotel room, was how she came up with his
9 average weekly wage.

10 COMMISSIONER WILKERSON: Number 10?

11 COMMISSIONER BECK: It's 12 and 14.

12 COMMISSIONER CAMPBELL: Yeah.

13 MS. NUSSBAUM: And he was ---

14 COMMISSIONER CAMPBELL: I got them backwards.

15 MS. NUSSBAUM: In the autopsy, he did have on a Best
16 Western T-shirt. But a T-shirt, in and of
17 itself, doesn't bring yourself within the
18 purview of an employee, under the Act. We
19 would say the greater weight of the evidence
20 doesn't support the employee finding -- the
21 employer's own testimony, any help that he was
22 providing to his wife would have been
23 gratuitous. It would be synonymous with my
24 husband helping me carry a file up the steps.
25 It's gratuitous.



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1 COMMISSIONER WILKERSON: Okay. I got what I need.

2 Thank you.

3 MS. NUSSBAUM: Thank you.

4 MR. JOHNSON: May it please the Commission.

5 COMMISSIONER CAMPBELL: Mr. Johnson?

6 ORAL ARGUMENT BY MR. JOHNSON:

7 MR. JOHNSON: They were Kantibhai and Hansaben Patel
8 were my employees who were working at the time
9 when she started working there for me. And
10 Kantibhai was helping her out.

11 COMMISSIONER BECK: Don't you play the employees?

12 MR. JOHNSON: Well, your Honor, it would be the
13 Claimant's position that this employer with
14 these oppressive employment conditions,
15 essentially indentured servitude, should not
16 get a hall pass because he managed to evade
17 paying them.

18 COMMISSIONER BECK: Seriously?

19 MR. JOHNSON: Yes, sir. In this circumstance, the
20 employer exercised pure control over both of
21 them. He -- actually, in his -- that's -- his
22 first quote is, They were my employees.
23 Second, he goes on to say, No, because I wanted
24 them to stay there so that I could utilize
25 their services at any time of the day or night.



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1 COMMISSIONER BECK: But he's only paying one of
2 them?

3 MR. JOHNSON: Yes, sir. Yes, sir.

4 COMMISSIONER WILKERSON: Because the guy's on Social
5 Security?

6 MR. JOHNSON: Yes, sir.

7 COMMISSIONER WILKERSON: Okay.

8 MR. JOHNSON: He was receiving a service from
9 Mr. Patel. The Best Western was receiving
10 Mr. Patel's services, and the exchange was
11 providing a room. That room was a condition
12 for both of their ---

13 COMMISSIONER BECK: They were staying in the same
14 room?

15 MR. JOHNSON: Yes, sir. So it's our position that
16 Kantibhai Patel was also an employee at the
17 time of this incident. He had been a long-time
18 employee. In fact, he was -- he and his wife
19 were essentially sent to the Best Western --
20 Mr. Patel or the -- Mr. Veyez (ph) says he was
21 the sponsor that brought him there. And they
22 continued to live and work there for over, I
23 believe, about 12 years.

24 As a condition of that employment, they were
25 required to be on the premises, live on the



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1 premises, and perform services at all times
2 whenever the employer needed them. That's his
3 testimony. Of course, we don't have -- and
4 given the circumstances, that's the only
5 testimony we have. But that's essentially the
6 testimony that's in admission by the employer.
7 He's the representative Best Western person
8 most knowledgeable regarding ---

9 COMMISSIONER BECK: I understood from Ms. Nussbaum's
10 argument, at one point, he was a paid employee?

11 MR. JOHNSON: Yes, sir.

12 COMMISSIONER BECK: When and why did that end?

13 MR. JOHNSON: Quite frankly, I don't know. The
14 employer rep just says he -- at the time of the
15 incident, he was not on payroll, but he was
16 using room services. It was understood he
17 would help whenever it was necessary. That's
18 his testimony.

19 COMMISSIONER BECK: All right.

20 MR. JOHNSON: He exercised control over ---

21 COMMISSIONER BECK: That he then changed?

22 MR. JOHNSON: He changed from -- that was at the
23 time of the incident, is what the employer
24 says. Prior to that, he was a payroll
25 employee. But just because he took him off the



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1 payroll is akin to if he'd paid in cash.

2 COMMISSIONER BECK: Finding Fact 12 says that Veyez
3 initially refers to the decedent and his wife
4 as my employees then qualified the sentence by
5 stating the decedent was helping decedent's
6 wife. Later, Veyez testified the decedent was
7 not an employee?

8 MR. JOHNSON: Yes, sir.

9 COMMISSIONER BECK: So his testimony went both ways?

10 MR. JOHNSON: Yes, sir.

11 COMMISSIONER BECK: Okay.

12 MR. JOHNSON: That's -- yes, sir. The fact that he
13 made some inconsistent testimony doesn't negate
14 the fact that's an admission by the employer
15 that he was my employee. He then backs away
16 from that to some degree, yes.

17 COMMISSIONER BECK: Okay.

18 MR. JOHNSON: But he never backs away from the fact
19 that they were required to perform services --
20 he uses the phrase "they." They were my
21 employees. Their job was to perform services
22 day or night whenever they need it done. If it
23 was a toilet overrunning, if somebody needed
24 clean sheets, it was their job to get it done.
25 In regards to the -- obviously, that just



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1 addresses the employment relationship with
2 Mr. Kantibhai.

3 As it relates to Hansaben, there was no dispute
4 over that. And I think all the rest of the
5 issues are basically in sync, which is the
6 arising out of in the course and scope of the
7 employment. In the case, it's our condition --
8 our position that both of these -- Mr. and
9 Mrs. Patel were required, as a condition of
10 employment, to reside on the premises and be
11 available at his beck and call. They weren't
12 on-call employees. They had no -- neither of
13 them clocked in or out. They had no set hours.
14 That was his testimony. Their requirement was
15 to get the job done. To do that, they had to
16 be on the premises 24/7, is what the employer
17 says.

18 We think that's directly analogous to the
19 Pierre case and the Bunkhouse Rule. In that
20 case, obviously, if it's a condition of
21 employment that you live on the premises, you
22 are injured on the premises, that is part of
23 your employment. In Pierre, he actually wasn't
24 performing any service. There is no dispute
25 over that. He was, I believe, going to a card



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1 game or something.

2 In this case, both of Mr. and Mrs. Patel were
3 dressed for work. They were pronounced -- or
4 the autopsy indicates the time of death
5 approximately 8:01 in the morning. They were
6 dressed for work wearing Best Western T-shirts
7 and placards that said welcome guests. That's
8 consistent with Mr. Patel also being an
9 employee performing service. That's not the
10 same as my wife carrying a file up. That's
11 significantly different.

12 In addition to that, we would turn to the --
13 essentially the death presumption, which is if
14 a person is found dead at a place that they are
15 supposed to be, as a condition of their
16 employment, then there is a presumption or an
17 inference, at least, that that death arose out
18 of the conditions of employment -- or out of
19 employment.

20 COMMISSIONER WILKERSON: Was there any financial
21 information shared where -- on either a W-2 or
22 a 1099 that that \$80 was included under item --
23 I don't know what it is on the thing -- but
24 anything there or just their wages?

25 MR. JOHNSON: The only information we have is the



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1 testimony, period.

2 COMMISSIONER WILKERSON: No wages? Because I
3 couldn't find it.

4 MR. JOHNSON: No, sir.

5 COMMISSIONER WILKERSON: Okay. That's what I was
6 trying to find.

7 COMMISSIONER BECK: How do you ---

8 COMMISSIONER WILKERSON: Just a second. Let me
9 check something read quick.

10 COMMISSIONER BECK: So it looks like with regard to
11 Ms. Patel, they based her average weekly wage
12 and compensation rate on her payroll earnings.
13 On Mr. Patel, the only thing they used was the
14 value of the room that both of them were living
15 in?

16 MR. JOHNSON: Yes, sir. But the Hearing
17 Commissioner split the value of those -- of
18 that room between the two.

19 COMMISSIONER WILKERSON: On the other order.

20 MR. JOHNSON: So in regards to Mrs. Patel, she was
21 credited essentially with \$30 a month.

22 COMMISSIONER BECK: You're right. I see that now.
23 Okay.

24 MR. JOHNSON: And, your Honor, I guess, again, our
25 position would be we view this as substance



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1 over form. This is like an independent
2 contractor.

3 COMMISSIONER BECK: If you're gonna do that, why
4 don't you -- why doesn't it stand to reason
5 that you would add the other 280 to the 408?

6 MR. JOHNSON: We certainly accept that, your Honor.

7 COMMISSIONER BECK: I bet you would. And I'm asking
8 you for reasoning behind it. Why do you think
9 that wasn't applied?

10 MR. JOHNSON: I believe that was the basis is that
11 the earned -- that Mrs. Patel had payroll
12 records that clearly indicated her income. And
13 then in addition to that, a valuation for
14 essentially the in kind, sir, of the room. And
15 then it was split between the two. Instead of
16 \$80 to each, we recognize that they're
17 splitting a room, and so essentially they're
18 sharing -- through their work, they were
19 sharing to pay for that room at \$80 a night.
20 And, again, if this was -- it's not at all
21 uncommon to have, you know, forms that says
22 somebody's an independent contractor. But the
23 employer also sets their time and hours, makes
24 them wear a uniform, gives them the tools to go
25 to work. You know, if you go strictly by the



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1 paper, that person's an independent contractor.
2 If you look at the actual facts, that's an
3 employee. And I think it's the exact same
4 situation here.

5 In regards to the death presumption, if you
6 look at Owens versus Ocean Forest, says that
7 it's a presumption of fact that one charged
8 with the performance of a duty and injured
9 while performing such duty or found injured at
10 a place where his duty may have required him to
11 be injured in the course and consequence of the
12 employment. In that case, the decedent was a
13 game warden. He was found dead from a bullet
14 wound. Yes, it could have been suicide.
15 There's nothing that proved what caused it or
16 whether it was a personal attack or otherwise.
17 But there's a presumption that's rebuttable,
18 and there is no evidence that rebuts that same
19 presumption when applied to this case, which
20 is, again, they were dressed; they were wearing
21 their clothes that were a part of the
22 employment uniform, had a placard saying
23 welcome guests. It was during daylight hours.
24 All of those things point to compensability.

25 COMMISSIONER BECK: Was there a separation executed



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1 when Mr. Patel ceased working for a wage?

2 MR. JOHNSON: No, your Honor. We were -- we did not
3 receive any employment file.

4 COMMISSIONER BECK: Okay. All right.

5 MR. JOHNSON: Again, then when you look at the
6 overall facts, as far as the evidence that
7 is -- and essentially it's undisputed. The
8 inferences are disputed, but the evidence that
9 we know of is both of these individuals were
10 required to stay on this property at all times.
11 Both received compensation and cash ---

12 COMMISSIONER BECK: I guess my question,
13 Mr. Johnson, is: Was he required to stay
14 there? Because his wife was required to stay
15 there.

16 MR. JOHNSON: The only thing I can point to is the
17 voice of Best Western, the employer who says
18 they were required to live there and be
19 available to provide services day or night,
20 their services. You know, I have to take the
21 employer for that, he's -- that's certainly his
22 admission that I exercise control over them.
23 They provided a service that I needed at all
24 times.

25 And, you know, that's the evidence. And,



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1 again, in this type of circumstance, I can't
2 call the claimant to testify. We have no
3 other ---

4 COMMISSIONER BECK: I understand.

5 MR. JOHNSON: --- inside insight into this -- their
6 relationship. But taking the statement of the
7 employer, that's in all reasonable inferences
8 therefrom, in favor is us. I believe that's
9 clearly it. Yes, he can go back and refute it
10 a little bit -- or not refute. He backtracks
11 from that statement a little bit later in his
12 testimony. But I think that goes to
13 credibility. It does not -- he does not back
14 up and say, well, no, I didn't exercise control
15 over both of these individuals. Only she was
16 an employee. He says she was in employee on
17 payroll. He admits other guy's an employee, he
18 just says, but not on payroll, as if there's a
19 distinction. I don't believe the law provides
20 that distinction.

21 COMMISSIONER CAMPBELL: All right. Thank you.

22 MR. JOHNSON: Thank you.

23 COMMISSIONER CAMPBELL: Ms. Nussbaum?

24 REPLY BY MS. NUSSBAUM:

25 MS. NUSSBAUM: Sure. Just a couple of things. I



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1 wanted to read the part of the deposition where
2 he talks about that. I specifically ask him on
3 page 13, Kantibhai, was he an employee of the
4 hotel at the time of the murders?
5 No.
6 Were you paying him at all?
7 No, ma'am. Well, before, yes. Before he
8 retired.
9 Okay. When did he retire? Do you know?
10 I don't. I don't know exactly what day, but I
11 guess it's about a year and a half, you know.
12 I guessing again, you know.
13 I said, Okay. Was he collecting Social
14 Security at the time of the murders?
15 Yes, ma'am.
16 What was his job before he retired from the
17 hotel?
18 Housekeeping.
19 I went on to say, At the time of the murders,
20 were those murders in Room 265? That's the
21 room they lived in.
22 Yes, ma'am.
23 Was she working at the time of the murder?
24 No, ma'am.
25 Because they had a uniform on does not equate



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1 to working. She -- what -- they were not
2 working at the time of the murders. Even if
3 you apply the unexplained death presumption,
4 which, again, to me is not applicable in this
5 case. This game warden example, there were
6 poachers in the woods prior to that. The Court
7 was deciding was it a suicide. Was it a
8 poacher that killed him? We know what killed
9 these individuals. It's in the order. It's an
10 armed robbery. It's a murder. It's a
11 homicide. It's not unexplained. The only
12 thing that's unexplained is the motive. My
13 client can't testify -- can't figure out a
14 motive for a defendant who's sitting on trial.
15 It's not my responsibility to do that. I only
16 have to prove that the assault happened.
17 There's the assault defense. Then they'd have
18 to disprove or prove that the assault was
19 related to work. There's no connection.
20 Even if you take the Pierre case and the
21 Bunkhouse Rule. That is case was all about
22 course. Was he in the course of his
23 employment? Yes. They are at the hotel. So,
24 all right. Check course. They still have to
25 prove arising out of. You still have to prove



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1 the assault arose out of employment. In
2 Pierre, even though he's walking to a poker
3 game, the employer caused the fall because
4 there was a drainage problem. There was wet
5 water sitting on the sidewalk.

6 At the original commission level, the
7 Commission found it wasn't related because it
8 was on a sidewalk, and you incur sidewalks in
9 everyday life. But the Court of Appeals
10 changed it and said, well, there was a drainage
11 problem. It was a wet sidewalk. The employer
12 was causing that risk. My employer didn't
13 cause the risk of an intruder coming to a hotel
14 and randomly murdering these two individuals.
15 There's no way that my employer caused that
16 risk. There's no evidence that they put them
17 in a dangerous situation.

18 Had there been evidence, then maybe you can
19 make that link. There's no evidence in this
20 case whatsoever that is a dangerous location.
21 And that would be incorrect to infer that
22 because it's not in evidence.

23 COMMISSIONER BECK: Let me ask you an average weekly
24 wage comp rate.

25 MS. NUSSBAUM: Okay.



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1 COMMISSIONER BECK: With regard to Ms. Patel, why
2 don't you apply either half or all of the value
3 of the room to the average weekly wage?

4 MS. NUSSBAUM: You're talking about the \$80 versus
5 the \$120 bartender?

6 COMMISSIONER BECK: Yes.

7 COMMISSIONER WILKERSON: Or the \$40. It's 40.

8 MS. NUSSBAUM: Well, that's half.

9 COMMISSIONER WILKERSON: Yes. I'm sorry.

10 MS. NUSSBAUM: So let's assume that there was just
11 Hansaben living at the motel. Then you would
12 apply the full value. We -- our argue at the
13 hearing was Kantibhai's not an employee.
14 Discount him. We wanted to put the full value
15 of the \$120 on Hansaben because we admit that
16 she's an employee. So our argument was \$60 a
17 week, because that's what the bartender paid to
18 stay in a nicer room than what she was having.
19 But that was the only evidence that we had. So
20 I wasn't gonna try to infer something
21 different.

22 So we were saying \$60 a week. Add that to her
23 average weekly wage. But instead, it was ---

24 COMMISSIONER BECK: But isn't the value of the room,
25 in the finding of fact, \$80 a night?



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1 MS. NUSSBAUM: That was the finding that the
2 Commissioner had, based on the employer's
3 testimony that that room renting to -- if you
4 are or I went off the streets to rent at that
5 room, then the average price for that room is
6 \$80.

7 COMMISSIONER BECK: So why isn't that the correct
8 number to apply?

9 MS. NUSSBAUM: Because this is a long-term stay.
10 Typically if you stay at a hotel, you're gonna
11 get a discount with a long-term stay.

12 COMMISSIONER BECK: Yeah. Not the \$60 a week.

13 MS. NUSSBAUM: That's what the bartender paid, and
14 he had a long-term stay. I mean, there's
15 rooms -- a room is not -- you know, they don't
16 have 100 percent occupancy at a hotel typically
17 year around. And that was the only evidence
18 that we had to go by with another individual
19 that resided at that hotel. There were no
20 other employees that lived on site other than
21 the bartender and the housekeeper. So that was
22 the only evidence that we could provide of a
23 value other than the rate for somebody that
24 walked in off the street and rented that hotel.

25 COMMISSIONER BECK: Okay.



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1 COMMISSIONER CAMPBELL: All right.

2 MS. NUSSBAUM: Any other questions?

3 COMMISSIONER CAMPBELL: No. That's it.

4 MS. NUSSBAUM: Thank you.

5 (There being no further questions, the hearing
6 concluded at 2:57 p.m.)

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THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM THE SOUTH CAROLINA
WORKERS' COMPENSATION COMMISSION

Appellate Panel

W.C.C. No. 1514060

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SC Court of Appeals

Jayeshkumar K. Patel and Mehulbhai Patel, Dependents Claimants
for Hansaben Patel, Deceased Employee..... Respondents,

v.

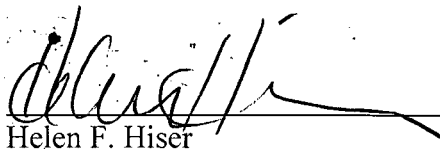
BVM Motel, LLC d/b/a Best Western Point South, Employer,
and Auto-Owners Insurance Company, Carrier, ... Appellants.

PROOF OF COMPLIANCE

The undersigned hereby certifies that the Record on Appeal filed in this matter contains all the material proposed to be included by the parties to this matter and does not include any other material. The undersigned further certifies that the Record on Appeal filed in this matter complies with the South Carolina Supreme Court's April 16, 2014 Order re: Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings.

November 13, 2017

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