

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

RECEIVED

APPEAL FROM
THE SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION SEP 17 2018

Full Commission Decision

SC Court of Appeals

WCC File No. 1710100

Anthony Graham, Employee.....Respondent,

v.

Stacy Whitfield d/b/a Whitfield Land and Tree Service, Employer, and
S.C. Uninsured Employers Fund; Carrier.....Appellants.

NOTICE OF APPEAL

The South Carolina Uninsured Employers Fund appeals the Decision and Order of the Workers' Compensation Commission Appellate Panel dated August 8, 2018 and received by Defendants on August 12, 2018 pursuant to S.C. Code Ann. § 42-17-60.

September 10, 2018



David Hill Keller, Esquire
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Attorney for Appellant
South Carolina Uninsured Employers Fund

Other Counsel of Record:

Samuel D. Harms, III, Esquire
Harms Law Firm, P.A.
Post Office Box 51449
Piedmont, SC 29673
864-227-0102
samuel@harmslawfirm.com
Attorney for Respondent

Other Defendant (Unrepresented by Counsel):

Stacy Whitfield d/b/a Whitfield Land and Tree Service
220 Sandy Circle
Pendleton, SC 29670

The grounds for appeal are as follows:

The Defendant/Appellant reiterates the Form 30 questions presented as if specifically restated herein; and that the Full South Carolina Workers' Compensation Commission erred further as follows:

- (1) The Commission erred in finding and concluding that Stacy Whitfield d/b/a Whitfield Land and Tree Service was subject to the South Carolina Workers' Compensation Act by virtue of having four or more employees regularly employed in the same business or occupation.
- (2) The Commission erred in finding and concluding that S.C. Code Ann. § 42-1-360(2) means that if that employer had four different people working for him at any time that he was subject to the South Carolina Workers' Compensation Act.
- (3) The Commission erred in finding and concluding that South Carolina case law supports the Hearing Commissioner's interpretation of S.C. Code Ann. § 42-1-360(2) meaning that if that employer had four different people working for him at any time that he was subject to the South Carolina Workers' Compensation Act.
- (4) The Commission erred in failing to find and conclude that South Carolina case law supports the exact opposite interpretation of S.C. Code Ann. § 42-1-360(2) that than arrived at by the Hearing Commissioner. Instead, South Carolina case law looks to the number of people hired on an individual job, rather than the identities of the individuals. See, e.g., Ferguson v. New Hampshire Ins. Co., S.C. 203, 771 S.E.2d 851 (Ct. App. 2015) (holding that "Regularly employ" has been defined by the Court of Appeals as "employment of the same number of persons throughout the period with some constancy.").

(5) The Commission erred in failing to find and conclude that the purpose of the Act's exemptions supports the exact opposite interpretation of S.C. Code Ann. § 42-1-360(2) that than arrived at by the Hearing Commissioner. Instead, the Act's exemptions are meant to relieve small employers from both the administration and jurisdiction of the Act. See, e.g., Harding v. Plumley d/b/a Plumley Construction Co., 329 S.C. 580, 496 S.E.2d 29 (Ct. App. 1998), (noting that it would be contrary to the purpose of the Workers' Compensation Act to make the act applicable to an employer who had more than four employees in total but never had more than three on any specific job).



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PROOF OF SERVICE

I certify that I have served the Notice of Appeal on Anthony Graham by depositing a copy of it in the United States Mail, postage prepaid, on September 10, 2018, addressed to his attorney of record, Samuel D. Harms, III, Esquire, Harms Law Firm, P.A., Post Office Box 51449, Piedmont, SC 29673; on the employer, addressed to Stacy Whitfield d/b/a Whitfield Land and Tree Service, 220 Sandy Circle, Pendleton, SC 29670; and on the South Carolina Workers' Compensation Commission, addressed to Amy Bracy, Judicial Director, P.O. Box 1715, Columbia, South Carolina 29202.

September 10, 2018


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September 10, 2018

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SC Court of Appeals

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

RE: Claimant: Anthony Graham
 Employer: Stacy Whitfield d/b/a Whitfield Land and Tree Service
 Carrier: SC Uninsured Employers Fund
 Claim No.: 2017-0804
 WCC File No.: 1710100
 Our File No.: 04206.00149
 D/A: 01/27/2017

Dear Ms. Kitchings:

Enclosed please find Defendant's Notice of Appeal for the above-referenced claim. We are also enclosing copies of the Order which is to be challenged on appeal. Please note that, pursuant to Rule 203(d)(2)(B)(iii), no filing fee is required for "appeals by the State of South Carolina or its departments or agencies." **Also please note that Defendant is already in possession of the hearing transcript, and therefore, no separate transcript need be ordered at this juncture.**

By copy of this letter, we are also serving Samuel D. Harms, III, Esquire, attorney for claimant, Stacy Whitfield d/b/a Whitfield Land and Tree Service, the uninsured employer, and the S.C. Workers' Compensation Commission.

Very truly yours,

Turner Padget Graham & Laney, P.A.



David H. Keller, Esquire

DHK/EAN

Enclosures: (1) Notice of Appeal
 (2) Copy of the Full Commission Decision
 (3) Proof of Service
cc: Samuel D. Harms, III, Esquire, (w/enclosures)
 Stacy Whitfield d/b/a Whitfield Land and Tree Service, (w/enclosures)
 Amy Bracy, Judicial Director, S.C. Workers' Compensation Commission

Turner | Padgett

P.O. Box 1509, Greenville, SC 29602

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SC Court of Appeals

The Honorable Jenny Abbott Kitchings
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