

APPELLATE PANEL OF THE
SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION

DECISION AND ORDER

WCC FILE NO: 1707458

RECEIVED

SCOTTY STEELE, CLAIMANT/RESPONDENT, NOV 09 2018

vs.

SC Court of Appeals

CANAL WOOD, LLC, WALLACE LOGGING and THE HARTFORD INSURANCE
COMPANY, DEFENDANTS/RESPONDENTS,

And

THE SC WORKERS' COMPENSATION UNINSURED
EMPLOYERS' FUND, DEFENDANT/APPELLANT.

Appellate Panel Review: Held in Columbia, South Carolina on July 16, 2018.

Appearances: Scotty Steele, Claimant/Respondent represented by:
Stephen Suggs, Esq. of Stewart Law Offices
P.O. Box 670, Rock Hill, South Carolina 29731

Canal Wood, LLC and The Hartford Insurance Company,
Employer/Carrier/Respondents, represented by:
Erica E. Loudin, Esq. of Willson, Jones, Carter, & Baxley
3600 Forest Drive, Columbia, South Carolina 29204

Wallage Logging, Employer/Respondent
Unrepresented and not in attendance

The SC Workers' Compensation Uninsured Employers' Fund,
Defendant/Appellant, represented by:
Amy V. Cofield, Esq. of Cofield Law Firm
809 South Lake Drive, Lexington, South Carolina 29072

Appellate Panel: Commissioner Melody James, Chair
Commissioner Aisha Taylor
Commissioner Susan S. Barden

Order Filed: October 10, 2018

STATEMENT OF THE CASE

This matter is before the Appellate Panel of the South Carolina Workers' Compensation Commission ("Appellate Panel") upon the petition for review by the South Carolina Workers' Compensation Uninsured Employers' Fund ("UEF") from a Decision and Order of Commissioner T. Scott Beck ("Single Commissioner") entered on April 18, 2018 ("Order") following a December, 19, 2017, hearing in Rock Hill, South Carolina.

This claim involves an injury to Claimant that occurred on June 3, 2017. At the hearing before the Single Commissioner, Claimant's Employer, Wallace Logging, ("Wallace") did not appear and was not represented. Defendant, The Hartford Insurance Company, ("Hartford") appeared to contest coverage over the matter as insurance carrier for the alleged statutory employer, Canal Wood ("Canal"). The South Carolina Workers' Compensation Uninsured Employers' Fund ("UEF") also appeared to contest whether it should have coverage for the claim.

The Hearing Commissioner's Decision and Order contained the following findings of fact and conclusions of law:

FINDINGS OF FACT OF SINGLE COMMISSIONER

1. *That Employee and Employer are subject to and bound by the terms and provisions of the South Carolina Workers' Compensation Act, as amended, with Scotty Steele as Employee-Claimant and Wallace Logging as Employer-Defendant.*
2. *That the average weekly wage of Employee at the time of the above-described accident was \$500.00, and his compensation rate was \$333.35.*
3. *Defendant, Canal Wood's objection to the Deposition of Shannon West is sustained, as such Claimant APA 60-85 is removed.*

4. *Wallace Logging is subject to the Act as they regularly employed four or more employees.*
5. *Claimant was hired by Wallace Logging, was supervised and directed by Wallace Logging, could have been fired by Wallace Logging, and was paid by Wallace Logging. Claimant is therefore a direct employee of Wallace Logging.*
6. *Defendant, Canal Wood, is not a statutory employer because there is no agreement between Canal Wood and Wallace Logging for the performance of activities that are part of Canal Wood's trade, business, or occupation. The only agreement between the two companies is the agreement to purchase inventory, not to perform services. The relationship between the two companies is that of a buyer and seller of commodities.*
7. *There is no contract for service – express, written, or implied – between Canal Wood and Wallace Logging, and Claimant is not a statutory employee of Canal Wood.*
8. *Claimant suffered compensable injuries to his right middle and right ring fingers.*
9. *Claimant is entitled to temporary total disability from June 03, 2017 to present and continuing.*
10. *Claimant APA 59 is not dispositive of a release to full duty.*
11. *Wallace Logging is responsible for all benefits. Should Wallace Loggins be unable or unwilling to provide benefits, the South Carolina Workers Compensation Uninsured Employer's Fund shall provide the same, retaining all subrogation rights.*

CONCLUSIONS OF LAW OF
SINGLE COMMISSIONER

1. Pursuant to S.C. Code Ann. § 42-1-130, Claimant was a covered employee at the time in question; and under § 42-1-140, Defendant/Employer was a covered employer under the Act.
2. Pursuant to S.C. Code Ann. § 42-1-160, Claimant did sustain an injury to his right middle and right ring fingers by accident arising out of and in the course of his employment on June 03, 2017.
3. Pursuant to S.C. Code Ann. § 42-0-10, Claimant is entitled to a total temporary disability compensation from June 03, 2017 to present and continuing.
4. Pursuant to S.C. Code Ann. § 42-1-400, Meyer v. Piggly Wiggly, 331 S.C. 261 (1998); Wilson v. Daniel International Corp., 260SC 548 (1973); Pyett v. Marsh Plywood Corp., 240 SC 56 (1962), Canal Wood is not a statutory employer.
5. Pursuant to S.C. Code Ann. § 42-1-150, Wallace Logging is subject to the Act as they regularly employed four or more employees.

Within the statutory period, the South Carolina Workers' Compensation Uninsured Employers' Fund, Defendant/Appellant, filed a Form 30 – Request for Commission Review which alleges the following errors and exceptions:

1. Did the Single Commissioner err in Finding of Fact Number 4 in finding that Wallace Logging is subject to the Act having regularly employed four or more employees when such findings are contrary to the reliable, probative and the substantial evidence and the laws of South Carolina?
2. Did the Single Commissioner err in Finding of Fact Number 6 that Defendant Canal Wood is not a statutory employer when such finding is contrary to the reliable, probative and the substantial evidence and the laws of South Carolina?

3. *Did the Single Commissioner err in Finding of Fact Number 7 that there was no agreement between Canal Wood and Wallace Logging and Claimant was not a statutory employee of Canal Wood when such finding is contrary to the reliable, probative and the substantial evidence and the laws of South Carolina?*
4. *Did the Single Commissioner err in Finding of Fact Number 9 that the Claimant is entitled to temporary total disability from June 3, 2017 to present and continuing when such finding is contrary to the reliable, probative and the substantial evidence and the laws of South Carolina?*
5. *Did the Single Commissioner err in Finding of Fact Number 10 that Claimant's APA 59 is not dispositive of a release to full duty when such finding is contrary to the reliable, probative and the substantial evidence and the laws of South Carolina?*
6. *Did the Single Commissioner err in Finding of Fact Number 11 that Wallace Logging is responsible for all benefits when such finding is contrary to the reliable, probative and the substantial evidence and the laws of South Carolina?*

Oral argument was held before the Full Commission Panel on July 16, 2018. All proffered testimony has been taken. Such, together with all documentary evidence, has been delivered to the individual members of the Full Commission Panel and has since been under study and consideration. After reviewing the record and considering the briefs and oral arguments, the Commissioners **AFFIRM in part and REVERSE in part**, as follows:

FINDINGS OF FACT

1. That Employee and Employer are subject to and bound by the terms and provisions of the South Carolina Workers' Compensation Act, as amended, with Scotty Steele as Employee-Claimant and Wallace Logging as Employer-Defendant.
2. That the average weekly wage of Employee at the time of the above-described accident was \$500.00, and his compensation rate was \$333.35.

3. Defendant Canal Wood's objection to the Deposition of Shannon West is sustained, as such Claimant APA 60-85 is removed.
4. Wallace Logging is subject to the Act as they regularly employed four or more employees.
5. Claimant was hired by Wallace Logging, was supervised and directed by Wallace Logging, could have been fired by Wallace Logging, and was paid by Wallace Logging. Claimant is therefore a direct employee of Wallace Logging.
6. Defendant Canal Wood is not a statutory employer because there is no agreement between Canal Wood and Wallace Logging for the performance of activities that are part of Canal Wood's trade, business, or occupation. The only agreement between the two companies is the agreement to purchase inventory, not to perform services. The relationship between the two companies is that of a buyer and seller of commodities.
7. There is no contract for service – express, written, or implied – between Canal Wood and Wallace Logging, and Claimant is not a statutory employee of Canal Wood.
8. Claimant suffered compensable injuries to his right middle and right ring fingers.
9. Claimant is entitled to temporary total disability for a total of eight (8) weeks which finding is supported by the treating physicians last report dated June 9, 2017 in which he stated that the "anticipated time out of work (approx.) 6 weeks. Further, the Claimant did not return to the doctor for further treatment after this date.

10. Wallace Logging is responsible for all benefits. Should Wallace Loggins be unable or unwilling to provide benefits, the South Carolina Uninsured Employer's Fund shall provide the same, retaining all subrogation rights.

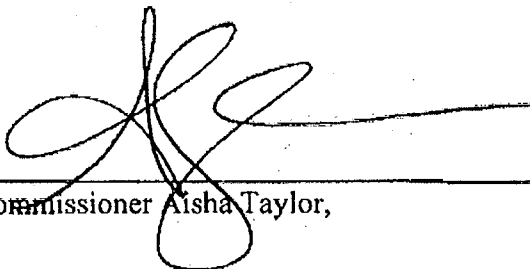
CONCLUSIONS OF LAW

1. Pursuant to S.C. Code Ann. § 42-1-130, Claimant was a covered employee at the time in question; and under § 42-1-140, Defendant/Employer was a covered employer under the Act.
2. Pursuant to S.C. Code Ann. § 42-1-160, Claimant did sustain an injury to his right middle and right ring fingers by accident arising out of and in the course of his employment on June 03, 2017.
3. Pursuant to S.C. Code Ann. § 42-0-10, Claimant is entitled to a total temporary disability compensation for a total of eight (8) weeks.
4. Pursuant to S.C. Code Ann. § 42-1-400, *Meyer v. Piggly Wiggly*, 331 S.C. 261 (1998); *Wilson v. Daniel International Corp.*, 260 SC 548 (1973); *Pyett v. Marsh Plywood Corp.*, 240 SC 56 (1962), Canal Wood is not a statutory employer.
5. Pursuant to S.C. Code Ann. § 42-1-150, Wallace Logging is subject to the Act as they regularly employed four or more employees.

ORDER/AWARD


IT IS HEREBY ORDERED Finding of Fact Number Nine (9) and Conclusion of Law Number Three (3) is hereby by REVERSED AND MODIFIED to an award of eight (8) weeks of Temporary Total benefits awarded to the Claimant. All remaining Findings of Fact and Conclusions of Law are hereby AFFIRMED.

IT IS SO ORDERED.



Commissioner Aisha Taylor,

I CONCUR:



Commissioner Melody James

I would respectfully Dissent. The undersigned is not a physician. The treating physician indicated that the Claimant would be out of work "anticipating" an "approximate" return to work. The last medical indicated that the Claimant had not reached maximum medical improvement. The Claimant has not been provided any further treatment. Therefore, I decline to amend Commissioner Beck's Order, which would be penalizing the Claimant.

DISSENTING:



Commissioner 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).

By Eugenia Hollmon on October 10, 2018

*Order of the Appellate Panel
Scotty Steele v. Canal Wood, LLC, et al
SCWCC #: 1707458*