

STATE OF SOUTH CAROLINA
BEFORE THE
SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION
WCC No. 1707458

Scotty Steele,)
Employee,)
v.)
Canal Wood, LLC,)
Employer,)
and)
The Hartford,)
Carrier/Defendants.)

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DEC 28 2018

SC Court of Appeals

FULL COMMISSION HEARING

Monday, July 16, 2018
1:33 p.m. - 1:54 p.m.

The Full Commission Hearing was heard before Commissioners Susan S. Barden, Melody L. James and Aisha Taylor, at the Workers' Compensation Commission, 1333 Main Street, Suite 500, Columbia, South Carolina, on the 16th day of July, 2018, before Amanda Creel Godfrey, Court Reporter and Notary Public in and for the State of South Carolina.



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APPEARANCES

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EXHIBITS

(No exhibits marked during this hearing.)

STIPULATIONS

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



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1 CALL TO ORDER:2 **COURT REPORTER:** Today is Monday, July 16, 2018.

3 This is South Carolina Workers' Compensation
4 Case Number 1707458. This is the case of
5 *Scotty Steele, Claimant, versus Canal Wood,*
6 *LLC, Employer, and Hartford, Carrier.* The
7 appellant is the South Carolina Uninsured
8 Employers Fund, represented by Amy Cofield.
9 The respondents are the carrier, represented by
10 Erica Loudin, and the claimant, represented by
11 Stephen Suggs. Each side is allowed ten
12 minutes for oral argument and the appellant
13 three minutes in reply. You are requested to
14 argue the grounds of exception and stay within
15 the record.

16 **COMMISSIONER:** And I should have asked while we were
17 off the record, but how do the respondents want
18 to divide their time?

19 **MS. LOUDIN:** I don't need much.

20 **COMMISSIONER:** Just evenly?

21 **MR. SUGGS:** Five and five.

22 **MS. LOUDIN:** Five and five.

23 **COMMISSIONER:** Okay. All right, Ms. Cofield. And
24 the employer has not presented himself, would
25 that be accurate?



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1 MS. LOUDIN: That's correct.

2 COMMISSIONER: Okay.

3 ARGUMENT BY MS. COFIELD:

4 MS. COFIELD: May it please the Commission. I
5 represent the Uninsured Employers' Fund today
6 in this appeal. The claimant herein was a
7 logger and it was his position at the hearing
8 that he was directly employed by Wallace
9 Logging, who was hired by Canal Wood. He
10 sustained an injury to his right middle finger
11 and ring finger in an accident there with his
12 logging. He -- he testified that his position
13 required no training at all. You just went out
14 there with your chainsaw, notched a tree, and
15 cut it down. It was the position of the
16 carrier that it was not a statutory employer,
17 while it was the position of the UEF and the
18 claimant that Canal Wood was a statutory
19 employer. The single Commissioner held that
20 Wallace Logging was the employer, but that
21 Canal Wood was the statutory employer. And
22 another part of the order for which I have
23 appealed, not only that finding, but the
24 finding that the claimant was entitled to
25 temporary total benefits from the date of the



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1 accident and continuing. The only real
2 evidence at the hearing was the claimant's
3 testimony and that of a representative from
4 Canal Wood. I wanna address first the question
5 of whether or not Canal Wood was a statutory
6 employer. It's our position that of the four
7 factors that are required to establish whether
8 or not one is a statutory employer, only one
9 has to be met to make that happen. And in this
10 case, it is clearly -- it clearly has been met
11 and Canal Wood is a statutory employer. Mr.
12 Shannon West is the one who testified on behalf
13 of Canal Wood. He said basically it was his
14 job to go out, sign the wood up under contract,
15 work with a logger, negotiate and broker it
16 with the mill, and pay the landowner, and make
17 sure, you know, boundary lines and things like
18 that are all identified, actually go out and
19 buy the wood and negotiate the deals with the
20 landowners. We, Canal Wood, purchase timber
21 and harvest timber off properties. This, in
22 itself, makes Canal Wood a statutory employer.
23 They clarify their business as one of
24 harvesting the timber, and that includes, of
25 course, the cutting down of trees, for which



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1 Wallace Logging was doing that day when the
2 claimant was injured. The second criteria was
3 also addressed by Canal Wood's representative
4 when he said a couple of times that harvesting
5 and transporting wood was an integral part of
6 the job for Canal Wood, as it was to take the
7 wood to the sawmill. There's no doubt, as
8 well, that our laws make it clear that any
9 doubt is always resolved in favor of coverage.
10 In this case, they have met two prongs of the
11 test for statutory employer, even though only
12 one is required. The second issue of concern
13 that we have appealed is the finding that the
14 claimant was entitled to TT from the date of
15 the accident and continuing. This claimant
16 hurt two fingers, his middle finger and his
17 ring finger. That's all. He presented to the
18 emergency room on June 3rd and 5th and followed
19 up with an orthopedic evaluation on June 9th.
20 That orthopedic said, he may require further
21 debridement or removal of tissue damage in the
22 middle finger. The ring finger should, at this
23 point, heal uneventfully and I would not expect
24 any major issues. We'll check him back in a
25 week, and certainly, any significant changes or



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1 problems occur, he needs to let us know. He
2 never went back. There was no further
3 treatment asked for or did he attempt to get
4 any. The final part of that -- of that
5 statement from the doctor said, he should not
6 return to work. Anticipated length of time out
7 of work is approximately six weeks. Clearly,
8 I think that the Commissioner's finding to put
9 an injury of this sort on a running award for
10 over a year is clearly against the only
11 evidence in the case. There was no other
12 evidence presented that he could not work or
13 was unable to. The only evidence of any
14 possible treatment he could have needed was
15 some debridement of the middle finger. And
16 clearly, he chose not to return to the doctor.
17 Therefore, based on these and other reasons set
18 out in my brief, it is clear to me that Canal
19 Wood is a statutory employer and should be as
20 -- as insured should be liable for this claim.
21 Additionally, the claimant is not entitled to
22 temporary total benefits for this sort of
23 injury when, clearly, the only medical evidence
24 sustained, he should have been able to return
25 to work after six weeks. It's clearly against



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1 the substantial evidence of the case. Thank
2 you.

3 COMMISSIONER: Thank you. Mr. Suggs or -- Ms.
4 Loudin.

5 ARGUMENT BY MS. LOUDIN:

6 MS. LOUDIN: Thank you. May it please the
7 Commission. My name is Erica Loudin and I
8 represent Canal Wood and The Hartford Insurance
9 Company. Before I begin in response to Ms.
10 Cofield's arguments, I would like to clarify
11 some of the roles of the parties in this case.
12 The claimant was directly employed by Wallace
13 Logging. This fact is uncontroverted in the
14 record. Wallace Logging is a tree logging
15 business and they harvest and sell timber to
16 dealers and lumber mills and actually deliver
17 that timber to lumber mills. Canal Wood is a
18 dealer and they purchase timber that was
19 harvested by companies, like Wallace Logging.
20 Canal Wood has no control or say over the
21 timber or the harvesting process. That is all
22 left up to the logging company, such as Wallace
23 Logging. Wallace Logging actually owns that
24 timber until it is sold to a dealer like Canal
25 Wood. Therefore, Canal Wood has no contractual



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1 right or cause of action over Wallace Logging
2 until that timber is purchased. That being
3 said, it's our position -- the Commissioner --
4 single Commissioner was correct in finding that
5 Canal Wood is not a statutory employer of the
6 claimant because there was no contract between
7 Canal Wood and Wallace Logging. The Act
8 specifically requires the parties to contract
9 for services in order to link the -- link the
10 two by the statutory employer. The
11 relationship, in fact, between Canal Wood and
12 Wallace Logging was actually that of a buyer
13 and seller. Because there was no contract
14 between Canal Wood and Wallace Logging, it --
15 Canal Wood simply purchased timber from Wallace
16 Logging. Canal Wood didn't know where that came
17 from; they didn't have any rights to that
18 timber until it was purchased; they didn't
19 direct Wallace Logging to perform any work on
20 their behalf. And there is no evidence that
21 Canal Wood specifically contracted with Wallace
22 Logging to harvest the timber for Canal Wood.
23 Wallace Logging was free to take that timber to
24 any other dealer or any other lumber mill and
25 the testimony at the hearing -- the hearing

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1 will show that they did, in fact, do that.
2 Wallace Logging had no contractual obligation
3 to sell the timber to Canal Wood. And there
4 was no penalty if Wallace Logging took that
5 wood to another dealer or mill. Canal Wood had
6 no cause of action against Wallace Logging if
7 they did take it to another dealer or mill
8 because they had no contractual right to that
9 wood. Wallace Logging's business activities
10 were totally separate and independent of Canal
11 Wood's and Canal -- and they were subject to no
12 control by Canal Wood. Therefore, Wallace
13 Logging is not a subcontractor of Canal Wood,
14 rather they're merely a seller of goods and
15 Canal Wood is a purchaser of those goods. As
16 far as the TTD is concerned, the defendant,
17 Canal Wood, would take the position that the
18 Commissioner was correct in finding that
19 claimant's APA-59 was not dispositive of a full
20 duty release. However, we would take the
21 position that it is neither dispositive of
22 claimant's disability status beyond the
23 estimated six -- or anticipated six weeks that
24 he was to be written out. So, that being said,
25 Canal Wood -- we would request this appellate



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1 panel to affirm the findings of the single
2 Commissioner and, alternatively, to affirm
3 those findings and amend the finding concerning
4 the TTD to state that it was neither
5 dispositive of the disability status.

6 **COMMISSIONER:** Ms. Loudin, before you sit ---

7 **MS. LOUDIN:** Yes, Your Honor.

8 **COMMISSIONER:** What about the -- I guess the
9 characterization by Ms. Cofield as to what the
10 dealer, if you will, testified to with regard
11 to his negotiations back and forth between the
12 two outside parties, would you agree that at
13 some point that might create a contractual
14 relationship?

15 **MS. LOUDIN:** No, Your Honor, I would disagree. The
16 -- the agreement that Mr. West testified to was
17 characterized as a gentlemen's agreement.
18 However, that agr- -- he never testified to the
19 terms of the agreement. We don't know what
20 that agreement was actually for, so it's our
21 position that to merely label a conversation
22 that Mr. West had with Mr. Wallace a
23 gentlemen's agreement, that creates no
24 contractual obligation to perform services for
25 Canal Wood or to harvest timber for Canal Wood.



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1 Thank you very much.

2 ARGUMENT BY MR. SUGGS:

3 MR. SUGGS: Thank you very much. From my client's
4 perspective, we're here today because he was
5 injured at work; he went to a doctor. The
6 doctor said, you should go see an orthopedic.
7 He goes to the orthopedic. The orthopedic
8 says, yeah, you're gonna need further
9 treatment. We're gonna monitor this; we're
10 gonna treating it. And he's entitled to
11 temporary total disability benefits at that
12 point. He's established an injury at work.
13 He's established that he's entitled to
14 benefits. The doctor said he anticipated. One
15 of the things that I heard first up here was
16 that somebody said that the doctor said he
17 should be back to work in six to eight weeks.
18 That's not what he said. What he said was he
19 anticipated that he might be back to work in
20 approximately six to eight weeks. And that's
21 another thing, he didn't even specify the
22 number of weeks. He specified a range, but it
23 was speculation. It was if he gets the
24 treatment he needs, that I recommended in the
25 records, then he might be better at six to



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1 eight weeks. But he never said he was better.
2 He's never been placed at MMI to this day.

3 **COMMISSIONER:** But has he gotten any more medical
4 treatment since then?

5 **MR. SUGGS:** He hasn't been able to afford any more
6 medical treatment. I mean, he hasn't -- he --
7 he wasn't -- he's out of work; he's not getting
8 paid TTD; he was recently remarried right
9 before that and has stepchildren. I mean, he's
10 doing everything he can to keep things afloat
11 ---

12 **COMMISSIONER:** But nobody sent him for further
13 treatment and provided him with further
14 treatment, is that correct?

15 **MR. SUGGS:** Nobody ever provided him with further
16 treatment.

17 **COMMISSIONER:** Did he request further treatment,
18 because that's a different answer?

19 **MR. SUGGS:** Well, he provided his own treatment and
20 he requested further treatment when we got
21 involved. I mean, it's a -- no one -- they
22 didn't pick up -- they didn't accept the case
23 when he was trying to work on it and he's never
24 been paid any temporary benefits or the case
25 has never been accepted. They've never said



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1 that they would pay for any treatment at all.

2 **COMMISSIONER:** But you do understand how it creates
3 a problem for a finger -- two finger case, you
4 know, when there is no treatment for a year?

5 **MR. SUGGS:** I understand that, but here's the -- the
6 way I look at it is this. If my client had
7 gone to his employer and said, you know, I've
8 had this injury and the doctor says I should be
9 out of work six to eight weeks, but I need
10 further treatment ---

11 **COMMISSIONER:** Uh-huh.

12 **MR. SUGGS:** --- and the employer had said, well, let
13 me get my -- and then someone had assumed the
14 responsibility for taking care of him at that
15 point. If a carrier had come in and said,
16 here, we're gonna pay you temporary total
17 disability, but in six to eight weeks, we're
18 gonna file a Form 15 saying you're at maximum
19 medical improvement based on this single
20 medical record without providing you any
21 further treatment, they couldn't cut off --
22 they couldn't cut off his temporary total
23 disability benefits in an existing case with
24 just this note saying sometime in the future
25 you might be better. That's not a sufficient



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1 -- so he's established that he has an injury.
2 He's established that he should be getting the
3 benefits and he's -- but then he never gets the
4 treatment. And, again, if a carrier came in
5 and said we're gonna accept the claim, but
6 we're not gonna pay for any further treatment
7 because his doctor says -- didn't say anything
8 specific, they can't then come back in six to
9 eight weeks and say, well, we're gonna file a
10 Form 15 because he's at MMI. Someone said he's
11 at MMI. They haven't. No one has put him at
12 maximum medical improvement. And, in fact,
13 he's not. He still needs treatment.

14 **COMMISSIONER:** Wasn't this injury described as
15 significant?

16 **MR. SUGGS:** His injuries were described as
17 significant. He was described as having bone
18 loss. The doctor indicated a loss of range of
19 motion in the records. His -- his injuries
20 were described as significant and causing him
21 significant problems.

22 **COMMISSIONER:** Partial amputation?

23 **MR. SUGGS:** Partial amputation. His grip strength
24 has never been -- I mean, his grip strength is
25 an issue. His -- because of the injury and the



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1 scar tissue and other issues he's got going on
2 because it wasn't debrided. It was not -- you
3 know, he had infections. There are all these
4 other things that have happened that he's tried
5 to deal with on his own because he can't afford
6 to go to the doctor. He's a poor man.

7 **COMMISSIONER:** The injury was on June 3rd. I see a
8 hearing request June 9th, so I understand that
9 it's taken time to work its way through the
10 system, but at some point when you get to the
11 hearing and you're asking for more medical
12 treatment, you're almost basing it on stale --
13 for purposes of this panel, the medical report
14 is stale. I don't know what he needs now.

15 **MR. SUGGS:** But, Commissioner Beck heard all this
16 evidence in person, listened to the claimant
17 testify about why he did or didn't go to
18 receive treatment and found that he needed
19 further treatment; that he'd never gotten it.
20 Therefore ---

21 **COMMISSIONER:** And the last medical record in
22 evidence says he should not return to work.

23 **MR. SUGGS:** Right.

24 **COMMISSIONER:** Anticipated length of time out and
25 then I think it goes up to eight weeks. But



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1 there's no further pronouncement from any
2 physician because no medical treatment was
3 provided.

4 **MR. SUGGS:** Absolutely. And, again, if this case
5 came up in the context of -- before
6 Commissioner Beck in the same context except
7 someone had paid TTD for six to eight weeks and
8 then said we want to cut your benefits off
9 without sending you to see any other doctors,
10 that wouldn't be sufficient. They'd have to
11 establish that he was actually at MMI and
12 there's not a sufficient record to establish a
13 point at which he's at MMI. So Commissioner
14 Beck's position was correct, that no one sent
15 him to treatment; no one took care of the
16 injury; and, therefore, no one knows if he's at
17 MMI or not. He may still need treatment for
18 the next six to eight weeks. Who knows how
19 long he needs to treat for this injury.

20 **COMMISSIONER:** Thank you.

21 **MS. COFIELD:** How long do I get?

22 **COMMISSIONER:** Three.

23 **MS. COFIELD:** Three minutes, okay. I have to figure
24 out how fast to talk. All right. It was
25 Canal's position when Erica spoke that there



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1 was no control over the subcontractor. Well,
2 control is something you look for to establish
3 that one is an employee, not to establish that
4 one is a subcontractor. When one's a
5 subcontractor, you don't have any control over
6 them. They take a -- they take care of their
7 own business. They go and cut the tree and
8 they deliver it. The difference in this case
9 is that Canal -- that he testified that Canal
10 -- the claimant did, only used -- I'm sorry,
11 Wallace only used Canal for like the last seven
12 years. And as far as a contract, it was
13 Shannon West's own testimony that he had a
14 contract with every logger but Wallace. And
15 that the only reason he didn't with Wallace is
16 because they had a gentlemen's contract. Okay.
17 It doesn't have to be a written contract. They
18 knew what the deal was. Shannon -- Shannon's
19 own testimony shows that it was far more than
20 a purchaser of goods or services, excuse me.
21 Because his testimony is he went out and signed
22 up the wood under contract; he worked with the
23 logger; he negotiated and brokered with the
24 mill; and paid the landowner; and he had to
25 mark the boundaries around which the logger



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1 would go. I actually go out and buy the wood.
2 Then we purchase timber and harvest timber.
3 Okay. That doesn't say I only hire people to
4 harvest my timber. He said we -- we harvest
5 timber. So that statement says they, too, do
6 that job right there. It was an integral part
7 of Canal's business. That was his testimony at
8 least twice. Clearly, they are a statutory
9 employer. The doctor's statement regarding the
10 six weeks out and everything, he was very
11 specific that one finger may require a
12 debridement. That's all.

13 **COMMISSIONER:** Then this anticipated. These are
14 possible words. Anticipated is used and then
15 the little squiggly mark, which means
16 approximately.

17 **MS. COFIELD:** Uh-huh.

18 **COMMISSIONER:** So we don't know and we're not
19 physicians.

20 **MS. COFIELD:** Well, absolutely, that's why it's
21 claimant's position -- it's claimant's job to
22 prove he's entitled to more meds, okay. If I
23 have a claimant, I send him for an IME to
24 establish these things. This claimant comes in
25 with a finger that the doctor said may need a



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1 debridement, nothing else; the other finger is
2 fine.

3 **COMMISSIONER:** Haven't y'all stipulated to -- I
4 thought, maybe I read it wrong. I guess not.
5 Okay. I thought y'all had stipulated to the --
6 maybe not. Okay. Go ahead.

7 **MS. COFIELD:** I just think when you read the whole
8 report in itself, looking at what the injury
9 is, the only treatment he could possibly have
10 and then to come back if you need anything, and
11 he didn't. There's no proof he couldn't afford
12 it. There's no proof -- he afforded this other
13 treatment apparently. He went three times to
14 see somebody. He never went back. He wasn't
15 sent back and turned away because he couldn't
16 pay. Thank you.

17 **COMMISSIONER:** Thank you. That completes this
18 hearing.

19 **(There being nothing further, the full commission**
20 **hearing concluded at 1:54 p.m.)**

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