THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM FAIRFIELD COUNTY
Court of Common Pleas

Brooks P. Goldsmith, Circuit Court Judge

Trial Court Case No. 2011-CP-20-0436
Appellate Case No.: 2012-212898

James Clark, Jr.,. Respondent,

v.

Pyramid Masonry Contractors, Inc., and
Hartford Accident Insurance Company Appellants.

BRIEF OF RESPONDENT

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II. DID THE COMMISSION ERR IN AWARDING THE RESPONDENT ENTITLEMENT TO RELATED MEDICAL EXPENSES AND TEMPORARY TOTAL DISABILITY BENEFITS AS A RESULT OF ITS FINDING OF COMPENSABILITY?

STATEMENT OF THE CASE

This case was previously appealed to this Court by the Respondent, James Clark, Jr. In that appeal, Mr. Clark was the Appellant. This Court issued its opinion on June 28, 2010. Clark v. Pyramid Masonry Contractors, Inc., et al., Op. No. 2010-UP-332, _____S.E.2d _____ (S.C. Ct. App. 2010). This Court stated in its Opinion that the facts of this case and the case involving Joey Horton, a co-worker injured in the same accident, occurred under similar circumstances. Because Horton's case finding compensability was affirmed by this Court during the pendency of the appeal in the instant case and had become a final decision, the Court found it appropriate to remand the case to allow the Commission to consider Horton v. Pyramid Masonry Contractors, Inc., et al., Op. No. 2008-UP-208 (S.C. Ct. App., filed March 27, 2008). The Court further specifically instructed the Commission to make findings of fact and conclusions of law on the issue of actual or apparent authority and the effect thereof.

On remand, a hearing was held in front of Commissioner Lyndon on October 25, 2010. He was the Single Commissioner who had heard this case

initially. The case was briefed extensively by the parties and they presented oral arguments to the Commissioner pursuant to this Court's instructions on remand. Additional documentary evidence consisting of Respondent's updated medical records, the Transcript of Hearing in Joey Horton's workers' compensation case, and the Court of Appeals decision in Horton, *supra* were submitted at the hearing in Respondent's APA submissions.

Commissioner Lyndon issued a Decision and Order on March 7, 2011 finding that Appellants' foreman, Mark Hinson, had actual authority to discuss the terms and conditions of employment and to answer any questions prospective employees may have concerning employment. He further found that Hinson had apparent authority to offer the Respondent transportation to and from the job sites on behalf of Pyramid. He concluded that Hinson, acting with apparent authority, offered Respondent transportation to and from job sites and Respondent accepted the offer and went to work for Respondent Pyramid. Therefore, the Commissioner concluded that the accident in question came within the exception to the "going and coming" rule and the accident was therefore compensable. He also found Respondent was entitled to temporary total disability benefits from the date of the accident through the present and continuing. He also concluded that the Appellants were responsible for all causally related medical expenses.

The Appellants timely filed a Request for Commission Review. The Appellate Panel of the South Carolina Workers' Compensation Commission unanimously confirmed Commissioner Lyndon's Order by Decision and Order

dated October 15, 2011. Appellants timely filed an appeal from the Appellate Panel's Decision and Order to the Fairfield County Court of Common Pleas. A hearing was held before the Honorable Brooks P. Goldsmith on June 7, 2012. All parties were present and argued their respective positions. They also submitted briefs concerning the issues on appeal. Judge Goldsmith confirmed the decision of the Commission concerning compensability by Order dated July 5, 2012. He found that Mark Hinson had apparent authority to offer the Respondent transportation on behalf of the Respondent Pyramid. He remanded the case to the Commission to issue additional findings concerning Respondent's entitlement to temporary total disability benefits and medical benefits. The Appellants made a motion to alter or amend the judgment which was denied by Judge Goldsmith by Order dated August 3, 2012. This appeal followed.

ARGUMENT

I. THERE WAS SUBSTANTIAL EVIDENCE IN THE RECORD SUPPORTING THE COMMISSION'S FINDINGS CONCERNING ACTUAL AND APPARENT AUTHORITY AND RESULTING COMPENSABILITY OF THE ACCIDENT IN QUESTION AND THE COMMISSION APPROPRIATELY FOLLOWED THE INSTRUCTIONS OF THIS COURT IN FINDING THE ACCIDENT COMPENSABLE.

This case has been exhaustively briefed concerning the issues of actual and/or apparent authority and exceptions to the going and coming rule. Upon review of the Briefs filed in the prior appeal of this case to this Court, this Court reviewed the record and made the determination that the facts and circumstances of this case were similar to the facts and circumstances of Horton, *supra* which

was finally determined by this Court during the pendency of the appeal of this case. Thus, the Court remanded the case to the Commission to consider the facts of this case in light of this Court's holding in Horton, and to correspondingly make findings of fact and conclusions of law on the issue of actual or apparent authority and the effect thereof.

This Court would not have remanded this case to the Commission to consider in light of Horton, *supra* and to make specific findings concerning actual and apparent authority, if upon this Court's review of the record there was not substantial evidence from which the Commission could reasonably make a determination that the Respondent's accident was compensable on the same grounds of actual and/or apparent authority as existed in the Horton case. This Court would not have remanded the case had there been an absence of such evidence. It would not have remanded the case for a futile effort on the part of the Commission and would have simply ruled against the Respondent on the prior trip to this Court on the grounds there was not substantial evidence supporting Respondent's position.

Nevertheless, here is a summary of the evidence in the record supporting the Decision of the Single Commissioner, the unanimous Appellate Panel of the Commission and the Circuit Court on the issue of actual and/or apparent authority and resulting compensability of the Respondent's accident.

At the workers' compensation hearing before the Single Commissioner, the Respondent testified that he did not know Mark Hinson prior to being hired by

Hinson to work for Pyramid. (R. p. 505, lines 10-11). He testified that when Mark Hinson came to his house to hire him, he told Mark Hinson he did not have a driver's license or transportation. As a result, Mark Hinson told him the company would provide transportation for him. (R. p. 502, lines 5-19; p. 514, lines 19-25; p. 530, line 16 - p. 532, line 12; p. 534, lines 5-17). He testified that subsequent to his hiring, Mark Hinson picked him up for work every day at his house and carried him from his house to the job sites every day he worked for Appellant Pyramid through the date of the accident. (R. p. 500, lines 3-13; p. 502, lines 5-19; p. 502, lines 4-20).

At the hearing before the Single Commissioner, Joey Horton, Respondent's co-employee at Pyramid, testified that Mark Hinson came to Horton's home in Lancaster in January, 2004 and offered him a job as a brick mason, despite Mr. Horton telling Mark Hinson that he did not own a car or have a driver's license, to which Mr. Hinson replied that Pyramid would provide transportation for Horton to and from work through Mark Hinson. (R. p. 526, line 20 - p. 530, line 25). Joey Horton testified further that he was present at Respondent Clark's house when Mark Hinson offered Respondent Clark a job with Pyramid despite being told by Respondent Clark that he did not have a driver's license or a car, to which Mr. Hinson replied that the company would provide transportation. (R. p. 530, line 16 - p. 531, line 8). Joey Horton testified that Mark Hinson picked him up and took him to work and back home from work every day that Joey Horton was employed with Pyramid. (R. p. 531, line 16 - p. 532, line 12).

Kimberly Ingram, Respondent Clark's wife, testified that she was present when Mark Hinson hired Respondent Clark and that she heard Respondent Clark ask Mark Hinson how he was supposed to get to and from work. She heard Mark Hinson reply that the Respondent was not to worry about that; the company would furnish transportation. (R. p. 538, line 13 - p. 539, line 7). This is corroborated by Appellant Pyramid's own paperwork which they introduced at the hearing which clearly authorizes Mark Hinson to answer any questions the Respondent may have any item in the application. (Defendants' Exhibit 1 at the hearing before the Single Commissioner; R. p. 598).

David George Mauney testified for Pyramid that he was a 25 year employee of Pyramid and that he was its Regional Vice-President who hired Mark Hinson in January, 2004 as a foreman. He testified further that Pyramid paid Hinson $150.00 per month for use of his vehicle during incidental trips made during the work day. (R. p. 546, line 13 - p. 547, line 17). He testified that Mark Hinson was not given the form which stated the company's policy concerning $150.00 a month reimbursement for use of his truck and that he never told Mark Hinson that he could not offer employees whom he hired transportation, and that Mark Hinson had the authority to hire employees, set their salaries, and set their job duties. (R. p. 553, line 9 - p. 555, line 1). Mr. Mauney testified that he never told Mark Hinson that he could not offer employees transportation. (R. p. 554, lines 11-16). He testified that he had absolutely no knowledge of the actions of Mark Hinson at Respondent's home when he hired Respondent and never

discussed the terms and conditions of Respondent's hiring or Joey Horton's hiring with Mark Hinson, and had no personal knowledge of the facts and circumstances of the hiring of Respondent Clark or Joey Horton.

The only knowledge Respondent Clark ever had about transportation to and from his job sites with Appellant Pyramid and the only employee of Pyramid who ever dealt with and transacted with Respondent Clark about the terms and conditions of his employment was his supervisor Mark Hinson. (The Decision and Order of the Single Commissioner dated March 7, 2011, Findings of Fact No.'s 1, 3, 4, 5 and 8, R. pp. 9-10). Those Findings were never appealed by the Employer/Carrier to the Appellate Panel of the Workers' Compensation Commission.

The Single Commissioner had available to him the hearing transcript of the Joey Horton case upon which Horton, *supra* was based. (R. pp. 153-215). The facts of that case are substantively identical to the facts of the instant case. The foreman for Appellant Pyramid is given authority to find and hire laborers on a masonry crew which works out of town. He is given the authority to negotiate the terms and conditions of employment with prospective employees, set their wages, etc. He hires Joey Horton with knowledge that Joey Horton does not have a car or a driver's license and tells Joey Horton that the company will provide transportation. He picks Joey Horton up for work and carries him to work and home from work every day that Joey Horton works for Appellant Pyramid. He subsequently approaches Respondent Clark. He is specifically asked how Mr.

Clark is supposed to get to work as he does not have a car or a driver's license either and is in the exact same position as Joey Horton. He tells Respondent Clark, in front of Joey Horton and Kimberly Ingram, that the company will provide transportation. He picks Respondent Clark up every day that Respondent Clark works for Appellant Pyramid and carries him from his home to work at the job site and home from the job site back to his house every day. Mark Hinson is the only employee of Appellant Pyramid with whom Joey Horton or Respondent James Clark ever had any dealings whatsoever.

While Appellants attempt to make much of the employment package which was handed to Respondent James Clark and which he signed concerning his hiring, the very employment package which Appellants introduced at Respondent Clark's initial hearing in front of the Single Commissioner clearly authorizes Mark Hinson to answer any questions Respondent Clark may have had concerning any item in the application. (Defendants' Exhibit 1; R. p. 598). Indeed, absent the explanation given by Mark Hinson to Respondent Clark and to Joey Horton and the subsequent provision of transportation to both Respondent Clark and Joey Horton, neither one could have ever worked for Appellant Pyramid. It would have been a physical impossibility as neither one had a driver's license or an automobile. The great weight placed on the application by Appellants is therefore completely misplaced. The blanket authorization to answer or explain any questions concerning the application gives Mark Hinson express actual authority

to answer and explain any questions or concerns the respective employee may have had.

The Appellate Courts of South Carolina are not bound by language in employment agreements or contracts when those agreements or contracts and their terms conflict with the actual facts on the ground.

This issue was directly addressed by this Court in Wilkinson v. Palmetto State Transp. Co., 371 S.C. 365, 638 S.E.2d 109 (S.C. Ct. App. 2006). In that case, the employer sought to invoke the employment agreement signed between the parties which named the claimant as an independent contractor in an effort to deny workers' compensation benefits. The court stated, "However, Palmetto forgets neither the descriptions or relationships as set forth in the party's contract, nor the language in the contract declaring the parties to be that of independent contractor/carrier is binding on this court, *citing*, Kilgore Group, Inc. v. S.C. Employment Sec. Commission, 313 S.C. 65, 69, 437 S.E.2d 48, 50 (1993). Rather the determination of whether the worker is an employee or independent contractor is a fact specific matter resolved by applying certain established principles", *citing*, Nelson v. Yellow Cab Company, 349 S.C. 589, 594, 564 S.E.2d 110, 112-13 (2002).

Thus, the Appellate Courts of this State will not allow employers to avail themselves of statements made in employment applications and defeat the compensability of claims when the terms and conditions of those applications or agreements directly conflict with the facts as they exist in the employment

relationship. The simple fact of the matter is that in the instant case, just as in Horton, *supra*, the Respondent could not have worked for the Appellant Pyramid but for the provision of transportation. This fact is directly corroborated by the subsequent conduct of Mark Hinson in providing transportation for Respondent and Joey Horton every day they worked for Appellant Pyramid. Mr. Hinson told them both the company would provide transportation to and from the job sites, through him. Such transportation was subsequently provided for them both. This brings this case squarely within the facts as set forth in Medlin v. Upstate Plaster Service, 329 S.C. 92, 495, S.E.2d 447 (1998) and Eadie v. H.A. Sack Company, 322 S.C. 164, 470 S.E.2d 397 (S.C. Ct. App. 1996). Those cases, in conjunction with Judge Anderson's well reasoned opinion in Horton, *supra* bring the facts of this case completely in conformity with the long held case law as stated in South Carolina.

In *Medlin*, an employee was unable to provide his own transportation and the employer testified that "we had to furnish him a ride". The Single Commissioner and Full Commission held that the employee had not sustained an injury arising out of and within the course of his employment when one of the employer's employees was taking the claimant to work. That decision was then affirmed by the Circuit Court and the Court of Appeals. The South Carolina Supreme Court reversed the Single Commissioner, the unanimous finding of the Full Commission, the Circuit Court and the Court of Appeals. In a unanimous opinion, Justice Toal found that the facts of the case fell squarely within the first

exception to the "going and coming rule" as set forth in Sola v. Sunny Slope Farms, 244 S.C.6, 135 S.E.2d 321 (1964). The Supreme Court found "the evidence is uncontradicted that Medlin needed transportation to work sites and the employer had agreed to provide such transportation. Medlin testified that before he started working the employer, he had informed Garris he did not have a driver's license. Garris asked if Medlin could get to the office; Garris could then provide transportation from there. Garris' own testimony reveals that the employer had agreed to provide transportation. In response to the question, "But Mr. Medlin did not provide his own transportation, did he?"; Garris responded: "No. We had to furnish him a ride. One of the men would take him ...". This admission by Garris clearly establishes that provision of transportation to Medlin was not simply a gratuitous act by Garris, but was directly related to the work of the employer. As such, we find that Medlin clearly comes under the first exception to the "going and coming rule". Medlin, *supra* at p. 96, *citing*, Bailey v. Santee River Hardwood Co., 205 S.C. 433, 32 S.E.2d 365 (1944). (finding it easily inferable the employees were furnished transportation to work by the company). Equally applicable is Eadie, in which a project superintendent had been provided with a company vehicle when he worked previously for the employer and on the particular project at issue, there were no company vehicles available. The employer agreed to pay Eadie $.22 per mile for the use of his personal vehicle in driving to and from the job site. Eadie was authorized to hire his own crew. Eadie hired two other employees and told them the company would pay the gas costs for

driving to and from the work site. He told the other employees that the three of them could alternate driving their vehicles to and from the job site and charge the gas on his personal credit card, which Eadie would then in turn pay with money from the employer. While driving to the job site in one of the other employee's vehicles, Eadie and the two employees were involved in an automobile accident which one employee was killed and Eadie and the other employee were seriously injured. Eadie, the other injured employee and the deceased employee's estate filed separate workers' compensation claims against the employer. The claims were consolidated for hearing and the Single Commissioner found that the employer's payment of mileage equated to providing transportation for all three claimants to and from the job site and, therefore qualified as an exception to the "going and coming rule". The employer appealed to the Full Commission which fully affirmed and adopted the Commissioner's decision in each case. The employer then appealed to the Circuit Court which affirmed the decision of the Workers' Compensation Commission. While arguing whether or not payment of mileage was deliberate and substantial enough to meet the exception, the employer also argued that the provision of transportation exception did not apply to the other employees, because Eadie lacked authority to obligate the company to pay transportation costs for his crew. The Commissioner found that Eadie had at least "assumed" authority and entered an agreement with the two other employees. The Court of Appeals affirmed the Commission's and the Circuit Court's decision on the grounds that Eadie had apparent authority. The Court stated: "The doctrine of

apparent authority provides that a principal may be bound by the acts of its agent when the principal has placed the agent in a position such that third parties are reasonably led to believe the agent has certain authority and they in turn deal with the agent in reliance on this manifestation. Eadie, *supra* at p. 171, *citing*, Fernander v. Thigpen, 278 S.C. 140, 293 S.E.2d 424 (1982). The Court found, "It is uncontested that Eadie was expressly authorized to hire his own crew and to offer them hourly wages, within a reasonable range, based on Eadie's knowledge of each crew member's level of skill. Garrick admitted he never spoke with Stanley or Nix regarding what their employment arrangement was with Eadie. Because Eadie personally hired Stanley and Nix and set their wages, and because the two had no contact from any other H.A. Sack authority regarding the terms of their employment, they could have reasonably believed Eadie had complete authority to negotiate any and all employment terms including provisions for transportation. Because H.A. Sack, through Garris, placed Eadie in a position impliedly manifesting his authority to dictate the employment terms, we agree with the Commissioner that the company is estopped from denying the agency. (There is no true difference between apparent authority and agency by estoppel)." Eadie, *supra* at 171.

These are exactly the same facts we have in the instant case. The testimony of Appellant Pyramid's regional supervisor who hired Mark Hinson clearly states that Hinson was authorized to hire his own crew and offer them hourly wages, within a reasonable range, based on his knowledge of each crew member's level of

skill. Mr. Mauney admitted he never spoke with Respondent Clark or Joey Horton regarding what their employment arrangement was with Mark Hinson. Because Mark Hinson hired Respondent Clark and Joey Horton and set their wage and working conditions, and because the two had no contact whatsoever from any other Pyramid employee regarding the terms of their employment, they reasonably believed Mark Hinson had authority to negotiate any and all employment terms, including provisions for transportation. Pyramid, through Mauney, placed Mr. Hinson in a position impliedly manifesting his authority to dictate the terms of employment. The cases could not be more analogous. Pyramid even expressly authorized Mark Hinson to answer any questions the Respondent had concerning any terms of employment or requirements of employment. (Defendants' Exhibit 1; R. p. 598). Thus in the instant case, the undisputed facts fall squarely within the South Carolina Supreme Court's holding in Medlin, *supra* and the Court of Appeals' holding in Eadie, *supra*, and Horton, supra. Judge Anderson stated in Horton that: "While the foreman's offer of transportation may have exceeded the scope of the actual authority employer conferred upon him, there is sufficient evidence in the record to support employee's belief that foreman had apparent authority to negotiate the terms of his employment, including employer's provision of transportation. The employer is bound by the foreman's representation to the employee concerning the conditions of his employment." (Horton, *supra* at p. 6; R. p. 223).

The hypothetical scenario posed by the Appellants is completely inaccurate to the facts of this case. In that hypothetical, the Appellants' posit that if Hinson had offered the Respondent $100.00 per hour for the same laborer's job, Pyramid would not be bound by Hinson's offer because the job description stated that laborers made a maximum of $12.00 per hour. This is completely inapposite to the facts of this case. An accurate hypothetical would be if Mark Hinson offered the Respondent $100.00 per hour for a laborer's job despite a job description that stated laborers made $12.00 per hour and then Respondent was subsequently paid $100.00 per hour during the entire time he worked for Appellant Pyramid. Would Respondent's average weekly wage computed to determine his compensation rate be based on a wage rate of $100.00 per hour, which he actually made, or $12.00 per hour because a job description said that was what he was supposed make? Presumably, the Appellants would argue that the job description would trump the actual facts and that the Respondents' hypothetical compensation rate would be based on an average weekly wage of $12.00 per hour.

Given the instructions of this Court on remand, the uncontroverted facts in the record and the applicable law, the Single Commissioner, the Appellate Panel of the Commission, and the Circuit Court correctly ruled that the Respondent's claim was compensable.

ARGUMENT

II. THE SINGLE COMMISSIONER AND THE APPELLATE PANEL OF THE COMMISSION CORRECTLY RULED THAT THE RESPONDENT'S CLAIM WAS COMPENSABLE AND THAT TEMPORARY TOTAL DISABILITY BENEFITS AND MEDICAL BENEFITS BE PROVIDED PURSUANT TO THE INSTRUCTIONS OF THE S.C. COURT OF APPEALS ON REMAND.

This Court clearly instructed the Hearing Commissioner on remand to consider Horton, *supra* and "on remand, the Commission shall also make findings of fact and conclusions of law on the issue of actual or apparent authority and the effect thereof." (*emphasis added*). Indeed that is the whole point of remanding the case, to determine the issue of compensability and the issue of Claimant's entitlement to benefits contained in the Workers' Compensation Act. Otherwise, this would be a futile exercise.

The Appellants are absolutely incorrect in submitting that no additional evidence was submitted at the hearing before the Single Commissioner on remand. The Respondent submitted voluminous medical records documenting the injuries suffered by the Respondent in the accident in question. These include, only partially, the following:

Closed head injury with left hemispheric contusion and subdural hematoma (R. p. 240); Right eye hyphema; Meningitis; Right maxillary sinus fracture; Nasal bone fracture and right orbit fracture with emphysema; Frontal bone fracture; subdural hematoma; Subarachnoid hemorrhage; C2 fracture; Left femur fracture; Ventilator associated pneumonia; Aortic arch injury; and Hypertension (R. pp.

242-243). The Respondent has subsequently been suffering from seizures due to his traumatic brain injury and was started on Dilantin. (Discharge Summary, R. p. 248). He has continued to be treated for his myriad injuries as best he could in light of the Appellants' refusal to authorize medical treatment. He has had continuous headaches since the accident and been assessed as having complex partial seizures with secondary generalization secondary to a closed head injury. This is due to a severe closed head injury with left subdural hematoma and subarachnoid hemorrhage. (R. p. 334). He has continued to seek medical attention where he could for his injuries and physical problems suffered as a result of the accident as shown in the voluminous medical records documenting these facts submitted by the Respondent. These include treatment and medication for his seizure disorder. (R. pp. 353-390). The last record submitted for treatment was a record of August 13, 2010 in which he was still following up for his seizure disorders and other physical problems.

The medical records concerning the Respondent's treatment speak for themselves. In light of the nature of the Respondent's injuries and his continuing problems, it strains credibility that the Appellants would seriously argue that Respondent has not been disabled since the accident through the present date as fully documented in the medical records submitted at the hearing on remand.

The Circuit Court judge remanded the case to the Commission to make specific findings concerning the extent of the Respondent's disability and entitlement to medical treatment and temporary total disability benefits. If the

Appellants seriously contended that the Respondent's disability was contested and desired for the Commission to make its own findings of fact concerning the nature of his injuries and whether or not he has been temporarily totally disabled since the accident then certainly they could have appealed the portion of the Circuit Court order finding compensability, while not appealing the portion of the Circuit Court order remanding the case to the Commission for a finding on the extent of Respondent's injuries and entitlement to temporary total benefits and medical benefits. However, they chose to appeal the entire order thereby depriving the Commission of jurisdiction on the issue of entitlement to temporary total disability benefits and medical benefits.

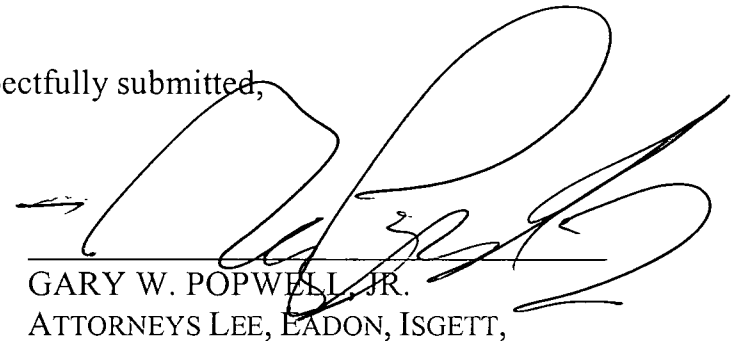
Appellants also now argue, for the first time on appeal, that the Circuit Court's order presents a constitutional issue when that argument was never made before the Circuit Court either at the hearing on appeal, or in Appellants' motion to alter or amend the judgment pursuant to Rule 59(e)(SCRCP). Indeed the Appellants' Rule 59(e) motion makes absolutely no mention of the Circuit Court's remand of the case to the Commission for specific findings as to extent of disability, entitlement to temporary total benefits and entitlement to medical benefits. (Appellants' Motion to Alter or Amend, R. pp. 133-141). It focuses solely on the issue of compensability. Therefore, the whole argument of Appellants on appeal concerning the Circuit Court's order regarding remand to the Commission for further findings and indeed the Commission's findings

themselves concerning Respondent's disability is improper as it was not included in the Rule 59(e) motion.

CONCLUSION

Medlin, Eadie and Horton could not be more clear. The facts of this case fall squarely within the law as enunciated in these cases. There is not only substantial evidence, but overwhelming evidence in the record supporting a finding of compensability. Otherwise, there would be a preposterous result. Two employees were hired by the same man for the same company. Neither had a driver's license or an automobile. The Appellants' hiring supervisor told both men the company would provide transportation. Both men were picked up and taken to the job site and taken home every day by the hiring supervisor. There was an accident on the way to the job site and both employees were severely injured. One employee's claim was found by the Commission, the Circuit Court, and this Court to have been compensable. It flies in the face of common sense and binding precedent for the other employee's claim to be found not compensable. The decision of the Single Commissioner, the unanimous decision of the Appellate Panel of the Workers' Compensation Commission, and the Circuit Court should be affirmed.

Respectfully submitted,



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June 6, 2013.

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CERTIFICATE OF COUNSEL

The undersigned certifies that this Final Brief of Appellant complies with Rule 211(b), SCACR.

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