STATE OF SOUTH CAROLINA COUNTY OF BERKELEY	BEFORE THE SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION
Frankie Padgett, Claimant/Appellant, -vs- Cast & Crew Entertainment Services, Inc., Employer, and American Zurich Ins., Carrier, Defendants/Appellants,	**WCC FILE NO. 1506114** **APPELLATE PANEL DECISION AND ORDER**

DATE OF REVIEW HEARING: Hearing held and oral arguments presented in Columbia, S.C. on September 17, 2018.

APPEARANCES: Claimant represented by Stephen B. Samuels, Esquire, of Samuels Law Firm, LLC. Employer & Carrier represented by Vernon Dunbar, Esquire, of McAngus, Goudelock & Courie LLC.

DECISION AND ORDER: by Commissioners Michael R. Campbell, II, Melody L. James, and Gene McCaskill.

FILED: July 3, 2019

STATEMENT OF THE CASE

This is an appeal from a Decision and Order of the Single Commissioner following a Petition for Hearing to Terminate Compensation filed by the Defendants. The Single Commissioner granted Defendants' Petition in part and ordered compensation to immediately be terminated on June 15, 2018. This appeal followed.

For the following reasons, we **AFFIRM IN PART AND VACATE IN PART.**

ISSUES ON APPEAL

1. Whether the Single Commissioner erred in finding Claimant was an employee of Cast & Crew Entertainment Services when "Cast & Crew is a payroll company and does not have a personnel file for the claimant."

2. Whether the Single Commissioner erred in denying Claimant's Motion to Submit After Discovered Evidence.

3. Whether the Single Commissioner erred in finding Claimant was previously compensated for 1,704.56 weeks by Cast & Crew in the previous case when the provision allocating a lump sum clincher settlement over a claimant's life expectancy pursuant to James v. Anne's is for social security disability purposes and cannot be considered payment of compensation.

4 Whether the Single Commissioner erred in finding Claimant's "receipt of temporary total benefits since May 6, 2015, has resulted in payment of more than 500 weeks of compensation benefits for the same employer."

5. Whether the Single Commissioner erred in finding "Defendants are entitled to immediately terminate payment of temporary total disability compensation benefits because Claimant has exceeded the maximum allowable weeks of benefits pursuant to the Act."

6. Whether the Single Commissioner erred in finding "Claimant is not entitled to continued temporary total, temporary partial, permanent partial, permanent and total, and/or wage benefits."

7. Whether the Single Commissioner erred as a matter of law in concluding: "S.C. Code Annot. § 42-9-170 (A)(2018) provides that an employee having sustained a permanent injury in the same employment and suffers a subsequent injury is only entitled to a maximum of 500 weeks of compensation benefits. See also *Medlin v. Greenville County*, 303 S.C. 484, 401 S.E.2nd 667 (1991)."

8. Whether the Single Commissioner erred in finding "that Danger Boy Productions was the production company for the show Claimant was driving for, but was not Claimant's actual employer."

9. Whether the Single Commissioner erred in finding "Claimant's employment with Cast & Crew was in violation of the terms of his Settlement Agreement & Release dated October 22, 2012, wherein Claimant agreed he would not seek employment with Cast & Crew."

SINGLE COMMISSIONER FINDINGS OF FACT

1. Claimant was an employee of Cast & Crew Entertainment Services on May 6, 2015, the date of his accident. Claimant completed employment application documents dated March 30, 2015, that clearly reflect that his employer was "Cast & Crew". (Exhibit F-1).

2. Cast & Crew Entertainment Services is listed as a business entity in public documents obtained from the South Carolina Secretary fo State's office. No documents were submitted which reflects Danger Boy Production was a recognized business entity operating within the jurisdiction of the state of South Carolina.

3. Cast & Crew Entertainment Services' designation as an employer was proven by preponderance of the evidence. Moreover, Cast & Crew's designation as an employer is analogous to an upstream contractor being designated as an employer in a statutory employment case and a Professional Employer Organization (PEO). In both instances, the upstream contractor and the PEO are entities not directly controlling the daily operations of the employee, nevertheless, each entity is designated as the employer. *See S.C. Code Ann. §§ 42-1-400 et. seq. and 40-68-60 275 (2018).*

4. Danger Boy Productions as the production company for the show which Claimant was providing transportation services, but was not Claimant's actual employer. Claimant's testimony that he thought Danger Boy Productions was his employer is not supported by the greater weight of the evidence. The greater weight of the evidence, including the personnel paperwork and Claimant's pay stubs, support a finding that Cast & Crew as Claimant's employer.

5. Because Cast & Crew was Claimant's employer, at the time of the accident on May 6, 2105, this at-will employment was in clear violation of the terms of the settlement agreement and release or clincher dated October 22, 2012, wherein Claimant agreed he would not seek future employment with Cast & Crew. The undersigned did take into account the process by which Claimant sought this employment, which was through union assignment. However, once Claimant reviewed the hiring or initial paperwork and discovered that Cast & Crew was to pay his wages and did in fact pay his salary, he had ample opportunity decline the assignment. However, the facts show Claimant expressly and knowingly accepted the work assignment with Cast & Crew, which violated the terms of the contract and the settlement agreement, and release.

6. Notwithstanding the above finding, there is insufficient evidence to support a finding of fraud in the inducement or *fraud ab initio*, which would void the employee/employer relationship at the time of Claimant's injury. Claimant's use of two versions of his name, pre-injury and post-injury, while compelling, is not persuasive, absent the undersigned engaging in surmise or speculations as to fraud. Therefore, Claimant sustained a compensable injury to his right lower

extremity (ankle) within the course and scope of his employment with Cast & Crew, the employer.

7. Claimants is not at maximum medical improvement and is entitled to continued medical treatment at the direction of the employer and carrier pursuant to Section 42-15-60.

8. Based upon the terms of the settlement agreement and release, Claimant was previously compensated by Cast & Crew for 1,704.56 weeks of benefits (per a mutually agreed to allocation by the parties). As such, Claimant has exceeded 500 weeks of compensation benefits pursuant to the Act. Assuming *arguendo*, Claimant's prior award did not exceed or reach the 500 week limitation or cap, his receipt of temporary total benefits since May 2015, has resulted in payment of more than 500 weeks of compensation benefits for the same employer.

9. Defendants are entitled to immediately terminate payment of temporary total disability compensation benefits because Claimant has exceeded the maximum allowable weeks of benefits pursuant to the Act.

10. Claimant is not entitled to continued temporary total, temporary partial, permanent partial, permanent and total, and/or wage loss benefits.

SINGLE COMMISSIONER CONCLUSIONS OF LAW

1. S.C. Code Annot. § 42-1-160 (2018) governs accidental injuries.

2. S.C. Code Annot. § 42-1-130 (2018) governs the employer/employee relationship.

3. S.C. Code Annot. § 42-1-400 and 40-68-10 et. Governs the designation of employer for contractors and Professional Employer Organizations.

4. S.C. Code Annot. § 42-9-170 (A)(2018) provides that an employee having

sustained a permanent injury in the same employment and suffers a subsequent injury is only entitled to a maximum of 500 weeks of compensation benefits. See also *Medlin v. Greenville County*, 303 S.C. 484. 401 S.E.2d 667 (1991).

5. S.C. Code Annot. § 42-9-210 (2018) governs credit for overpayment of compensation/indemnity benefits.

6. S.C. Code Annot. § 42-15-60 (2018) governs medical treatment and benefits.

APPELLATE PANEL FINDINGS OF FACT

The Appellate Panel hereby affirms in part and vacates in part the findings of the Single Commissioner and makes the following Findings of Fact:

1. We affirm the Single Commissioner's finding that:

> Claimant was an employee of Cast & Crew Entertainment Services on May 6, 2015, the date of his accident. Claimant completed employment application documents dated March 30, 2015, that clearly reflect that his employer was "Cast & Crew". (Exhibit F-1).

2. We affirm the Single Commissioner's finding that:

> Cast & Crew Entertainment Services is listed as a business entity in public documents obtained from the South Carolina Secretary of State's office. No documents were submitted which reflects Danger Boy Production was a recognized business entity operating within the jurisdiction of the state of South Carolina.

3. We affirm the Single Commissioner's finding that

> Cast & Crew Entertainment Services' designation as an employer was proven by preponderance of the evidence. Moreover, Cast & Crew's designation as an employer is analogous to an upstream contractor being designated as an employer in a statutory employment case and a Professional Employer Organization (PEO). In both instances, the upstream contractor and the PEO are entities not directly controlling the daily operations of the employee, nevertheless, each entity is designated as the employer. *See S.C. Code Ann. §§ 42-1-400 et. seq. and 40-68-60 275 (2018).*

4. We affirm the Single Commissioner's finding that:

Danger Boy Productions as the production company for the show which Claimant was providing transportation services, but was not Claimant's actual employer. Claimant's testimony that he thought Danger Boy Productions was his employer is not supported by the greater weight of the evidence. The greater weight of the evidence, including the personnel paperwork and Claimant's pay stubs, support a finding that Cast & Crew is Claimant's employer.

5. We affirm the Single Commissioner's finding that:

Because Cast & Crew was Claimant's employer, at the time of the accident on May 6, 2105, this at-will employment was in clear violation of the terms of the settlement agreement and release or clincher dated October 22, 2012, wherein Claimant agreed he would not seek future employment with Cast & Crew. The undersigned did take into account the process by which Claimant sought this employment, which was through union assignment. However, once Claimant reviewed the hiring or initial paperwork and discovered that Cast & Crew was to pay his wages and did in fact pay his salary, he had ample opportunity decline the assignment. However, the facts show Claimant expressly and knowingly accepted the work assignment with Cast & Crew, which violated the terms of the contract and the settlement agreement, and release.

6. We affirm the Single Commissioner's finding that:

Not withstanding the above finding, there is insufficient evidence to support a finding of fraud in the inducment or *fraud ab initio*, which would void the employee/employer relationship at the time of Claimant's injury. Claimant's use of two versions of his name, pre-injury and post-injury, while compelling, is not persuasive, absent the undersigned engaging in surmise or speculations as to fraud. Therefore, Claimant sustained a compensable injury to his right lower extremity (ankle) within the course and scope of his employment with Cast & Crew, the employer.

7. We affirm the Single Commissioner's finding that:

Claimant is not at maximum medical improvement and is entitled to continued medical treatment at the direction of the employer and carrier pursuant to Section 42-15-60.

8. We vacate the Single Commissioner's finding that:

> Based upon the terms of the settlement agreement and release, Claimant was previously compensated by Cast & Crew for 1,704.56 weeks of benefits (per a mutually agreed to allocation by the parties). As such, Claimant has exceeded 500 weeks of compensation benefits pursuant to the Act. Assuming *arguendo*, Claimant's prior award did not exceed or reach the 500 week limitation or cap, his receipt of temporary total benefits since May 2015, has resulted in payment of more than 500 weeks of compensation benefits for the same employer
>
> The application and analysis of Section 42-9-170 is premature. The Statute applies to a successive "permanent" injury after a previous "permanent" injury. The Claimant is not yet at maximum medical improvement. He is still receiving temporary benefits. A determination of "permanent" injury from this accident cannot be made at this time.

10. We vacate the Single Commissioner's finding that:

> Defendants are entitled to immediately terminate payment of temporary total disability compensation benefits because Claimant has exceeded the maximum allowable weeks of benefits pursuant to the Act.

We find Defendants shall immediately reinstatement payment of temporary total disability compensation benefits until further order of the Commission.

11. We vacate the Single Commissioner's finding that:

> Claimant is not entitled to continued temporary total, temporary partial, permanent partial, permanent and total, and/or wage loss benefits.

We find a determination of permanent partial, permanent and total, and/or wage loss benefits is premature and not before us as Claimant has not reached maximum medical improvement.

APPELLATE PANEL CONCLUSIONS OF LAW

1. S.C. Code Annot. § 42-1-160 (2018) governs accidental injuries.

2. S.C. Code Annot. § 42-1-130 (2018) governs the employer/employee relationship.

3. S.C. Code Annot. § 42-1-400 and 40-68-10 et. governs the designation of employer for contractors and Professional Employer Organizations.

4. S.C. Code Annot. § 42-9-170 (B)(2018) provides that "If an employee previously has incurred permanent partial disability through the loss of a hand, arm, shoulder, foot, leg, hip, or eye and by subsequent accident incurs total permanent disability through the loss of another member, the employer's liability is for the subsequent injury only, except that the employee may receive further benefits as provided under the provisions of Section 42-9-35."

5. S.C. Code Annot. § 42-15-60 (2018) provides the employer shall provide and the employee shall accept "an attending physician and any medical care or treatment that is considered necessary by the attending physician . . ."

AWARD

IT IS HEREBY ORDERED that the Decision and Order of the Single Commissioner is **Affirmed in part and Vacated in part;**

IT IS FURTHER ORDERED that Defendants shall immediately reinstatement payment of temporary total disability compensation benefits retroactively and continuing on a weekly basis until further order of the Commission;

IT IS FURTHER ORDERED that Defendants shall provide all causally related medical treatment deemed necessary by the attending physician pursuant to Section 42-15-60 until Claimant reaches MMI and thereafter so long as such treatment tends to lessen the period of disability;

IT IS FURTHER ORDERED that determination of permanency is premature pending maximum medical improvement;

IT IS FURTHER ORDERED that no hearing costs or penalties are assessed;

AND IT IS SO ORDERED.

R. Michael Campbell, II

Melody L. James

Gene McCaskill

South Carolina Workers' Compensation Commission
Columbia, SC

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 July 3, 2019