

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM THE SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION

Aisha Taylor, Commissioner
Gene McCaskill, Commissioner
Avery B. Wilkerson, Jr., Commissioner

Appellate Case No. 2019-000613

James M. Stevenson,

Claimant, Appellant,

v.

Arnold Laney, D/B/A Metal & Roofing
Shingle Pros.,

Employer, and

South Carolina Workers' Compensation
Uninsured Employers Fund

Defendants, Respondents.

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SC Court of Appeals

BRIEF OF APPELLANT

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STATEMENT OF ISSUES ON APPEAL

1. Did the Appellate Panel of the South Carolina Workers' Compensation Commission err in finding as fact and concluding as a matter of law, pursuant to S.C. Code Ann. Section 42-1-130, James M. Stevenson was not an "employee" of Arnold Laney, d/b/a Metal & Roofing Shingle Pros?
2. Did the Appellate Panel of the South Carolina Workers' Compensation Commission err in finding as fact and concluding as a matter of law, pursuant to S.C. Code Ann. Section 42-1-150, Arnold Laney, d/b/a Metal & Roofing Shingle Pros., was not subject to the Workers' Compensation Act?
3. Did the Appellate Panel of the South Carolina Workers' Compensation Commission err in finding as fact and concluding as a matter of law, James M. Stevenson did not establish his claim is within the jurisdiction of the Workers' Compensation Commission?
4. Did the Appellate Panel err in finding as fact claimant was not credible?
5. Did the Appellate Panel err in finding claimant failed to provide corroborating testimony?

STATEMENT OF THE CASE

Appellant, James Stevenson (hereinafter “Stevenson”) suffered admitted injuries to his right ankle, leg, and lower back when he fell from a ladder in the course and scope of his employment with Arnold Laney d/b/a Metal & Roofing Shingle Pros (“Employer,” Respondent) on January 16, 2018. Stevenson sustained a closed intra-articular fracture of the distal end of his right tibia, in addition to a fibula and talus fracture, which required three surgeries and the placement of pins, screws, and plates in his ankle and foot. Stevenson filed a Form 50, Request for Hearing, dated January 30, 2018, (R. p. 14), and in due course, the South Carolina Workers’ Compensation Uninsured Employers’ Fund’s (“UEF,” Respondent) filed a Form 51 in response, dated March 2, 2018. (R. p. 15 – 16). The UEF filed a general denial and Employer did not file a Form 51, so a general denial was entered for Employer pursuant to S.C. Code Ann. Reg. 67-603. Thereafter, Commissioner R. Michael Campbell, II heard the matter in Rock Hill, South Carolina, and found Employer was not subject to the South Carolina Workers’ Compensation Act (“the Act”) because Stevenson could not prove that Employer had regularly employed four or more persons during the relevant time period and was a casual employee. (R. p. 29 – 89). Thus, in an Order dated June 29, 2018, the Commissioner denied Stevenson’s claims for benefits.

Stevenson filed a timely appeal of the Commissioner’s Order, dated July 10, 2018, asserting the Commissioner erred in his findings and erred in concluding Employer was not subject to the statutory terms and provisions of the Act. Notice of Appellate Hearing was filed on November 16, 2018. The Appellate Panel heard oral arguments on January 22, 2019, and subsequently affirmed the June 29, 2018, Order of the Single Commissioner with a Decision and Order dated March 13, 2019. Specifically, the Appellate Panel found that Stevenson was not an “employee” pursuant to the Act, that Stevenson did not satisfy his burden of proof Employer had

four or more regular employees, and Employer was not subject to the Act. Ultimately, the Appellate Panel denied Stevenson's claim for benefits.

Stevenson appealed to the Court of Appeals on April 10, 2019, asserting the Appellate Panel erred in finding Stevenson was not an "employee" of Employer, erred in finding Employer was not subject to the Act, erred in finding Stevenson did not establish his claim within the jurisdiction of the Workers' Compensation Commission, erred in finding Stevenson was not credible, and erred in finding that Stevenson did not provide corroborating testimony.

STATEMENT OF FACTS

Stevenson is a thirty-five year-old, single man residing in Lancaster, South Carolina, who was previously employed by Employer roofing company until the date of his injury, January 16, 2018. Arnold Laney (“Laney”) is a fifty-eight year-old man who has been working in the roofing industry for forty-two years. Laney collects Social Security and disability benefits, and at the time of Stevenson’s injury, had ceased doing many of the physical aspects of roofing himself because of his disability. (R. p. 72, lines. 17-20; R. p. 70, lines 21 – 25).

Stevenson was introduced to Laney through Laney’s longtime friend Scott Faile, who was Stevenson’s father’s coworker. (R. p. 72, lines 2 – 5). Stevenson stated he began working for Employer on weekends before he eventually began working for Employer full time. (R. p. 43, lines 2 – 5). Stevenson was hired because he told Laney “if you hire me, you know, full time, I don’t steal so, you know that would be a good option.” (R. p. 43, lines 2 – 5). According to Stevenson, he regularly worked four to five times per week over a period of several months. (R. p. 43, lines 9 – 23).

Stevenson testified that on the first job he worked for Employer there were seven employees total, including Laney. (R. p. 39, lines 12 – 17). Stevenson stated Laney was actively involved in overseeing and managing how the project was completed. (R. p. 39, lines 17 – 25). Throughout the nine months he worked for Employer, he worked with seven additional employees: Scott Faile, Jimmy Stevenson (Stevenson’s father), Stevenson’s brother, “another fella,” a man named Walt, “a lady,” and a man who had fallen off the roof on an earlier job. (R. p. 41, lines 5 – 9). Of note, a man named Billy and Billy’s son also worked for Laney, per Laney’s testimony. (R. 76, lines 16 – 22; R. p. 73, lines 1 – 3). Stevenson further testified the jobs could not be

completed with less than “five or so” people because “it takes two [employees] to hand [panels] up to two more people.” (R. p. 41, lines 17 – 18, 20 – 22).

Laney operated his “Metal Roofing and Shingle Professionals” roofing business without a business license until the day of Stevenson’s accident, at which time Laney shut his business down. (R. p. 71, lines 12 – 13; R. p. 85, lines 1 – 3). While operating his business, Laney would advertise his company’s services in the newspaper or on Facebook, obtain a job, sign the paperwork with the client, procure the materials, supply the tools, direct and oversee the labor, and then pay his employees in cash under the table. (R. p. 83, lines 22 – 24; R. p. 67, lines 14 – 17; R. p. 85, lines 24 – 25; R. p. 86, lines 1 – 13). Laney did not subtract taxes from the wages he paid his employees, did not generate W4’s, and did not pay any taxes on the income from his roofing business. (R. p. 87, lines 11 – 16). Laney stated he oversaw the jobs to ensure they were completed properly. (R. p. 88, lines 2 – 5). Laney’s testimony suggests he started the business intending for his nephew to oversee the projects, but that soon fell through so Laney took over managing each job directly. (R. p. 82, lines 13 – 18). Laney used various employees depending on their availability for jobs but testified two or three laborers on a job was insufficient to complete the project because his health wouldn’t allow him to make up the difference in labor gaps. (R. p. 72, lines 17 – 20).

Employer completed approximately thirty roofing jobs in the months before Stevenson’s injury. (R. p. 71, lines 18 – 19). Laney testified that he hired employees because he could not do work himself, he needed the work, and he liked providing employment for his employees. (R. p. 82, lines 17 – 19). Laney testified that the jobs would span anywhere from a few hours, to days long, depending on the specific job and the workers available for each job. (R. p. 71, lines 19 – 23). On job days, the employees would show up at Laney’s home at 7:00 am, and Laney would often give the employees coffee before then providing the employees with the requisite supplies

and tools for the day's job. (R. p. 63, lines 9 – 14). Additionally, Laney would provide lunch for the employees while they were on a job and would reimburse Stevenson, his father, or other employees for the cost of gas to get to the job site. (R. p. 42, lines 21 – 24; R. p. 62, lines 1 – 2). Stevenson testified he never bid for jobs with Employer, never bought the supplies, never used his own tools, and never directed the labor because Laney always handled those tasks. (R. p. 42, lines 6 – 13).

On the day of Stevenson's injury, Stevenson fell by accident approximately eighteen feet when the ladder he was climbing down from snapped in half. (R. p. 34, lines 16 – 18; R. p. 79, lines 12 – 15; R. p. 65, line 11). From the fall, Stevenson sustained injuries to his right foot, ankle, and lower back, which resulted in a closed intra-articular fracture of the distal end of his right tibia, in addition to a fibula and talus fracture. (R. p. 35, lines 5 – 6; Claimant's APA p. 83 – 172). Stevenson's injuries required three surgeries to treat, including the placement of pins, screws, and plates in his leg and ankle. (R. p. 48, lines 14 – 17). Following his surgeries, Stevenson was placed on bed rest and prohibited from placing pressure on his foot for ten months. (R. p. 48, lines 20 – 22). Stevenson testified about the unbearable pain caused by placing any weight on his right foot and stated he was completely dependent on twenty-four hour assistance from family because his injury prevents him from being able to do basic daily tasks such as using the restroom. (R. p. 49, lines 23 – 25; R. p. 50, lines 1 – 6). Laney conceded Stevenson's fall was an injury by accident and admitted Stevenson suffered serious injuries. (R. p. 88, lines 24 – 25; R. p. 89, lines 1 – 2; R. p. 79, lines 14 – 15).

STANDARD OF REVIEW

The state Administrative Procedures Act establishes the standard for judicial review of decisions of the Workers' Compensation Commission. *Nicholson v. South Carolina Dept. of Social Services*, 405 S.C. 537, 748 S.E.2d 256 (Ct. App. 2013). The Appellate Courts can reverse or modify a decision of the Workers' Compensation Commission if it is affected by an error of law or is clearly erroneous in view of the reliable, probative, and substantial evidence in the whole record. *Id.* The degree of "substantial evidence" sufficient to find that a decision of the Workers' Compensation Commission is not clearly erroneous, is evidence which, considering the record as a whole, would allow reasonable minds to reach the conclusion the Workers' Compensation Commission reached. *Burnette v. City of Greenville*, 401 S.C. 417, 737 S.E.2d 200 (Ct. App. 2012). Findings of the Workers' Compensation Commission will be set aside if unsupported by substantial evidence. *Hicks v. Piedmont Cold Storage, Inc.*, 335 S.C. 46, 515 S.E.2d 532 (1999). Furthermore, the issue of whether an employer regularly employs the requisite number of employees to be subject to the Workers' Compensation Act is jurisdictional. *Harding v. Plumley*, 329 S.C. 580, 584-85, 496 S.E.2d 29, 31-32 (Ct. App. 1998). Therefore, the Commission's findings of fact relative to the number of employer's statutory employees are not conclusive on appeal and the appellate courts have the power and duty to review the record and decide the issue in accordance with their own view of the preponderance of the evidence. *Id.* Where the question of whether an employer-employee relationship existed at the time of an alleged injury for which a workers' compensation claim is made is jurisdictional, the reviewing court may also take its own view of the preponderance of the evidence. *Shatto v. McLeod Regional Medical Center*, 406 S.C. 470, 475, 753 S.E.2d 416, 419 (2013). When determining questions of jurisdiction, jurisdictional doubts will be resolved in favor of inclusion of employees within workers' compensation coverage

rather than exclusion. *Simmons v. SC STRONG*, 402 S.C. 166, 171, 739 S.E.2d 631, 633 (Ct. App. 2013). While the substantial evidence standard affords the Workers' Compensation Commission significant deference as to the weight of the evidence on other questions of fact, where there are no disputed facts, the question of whether an accident is compensable is a question of law. *Nicholson v. South Carolina Dept. of Social Services*, 405 S.C. 537, 748 S.E.2d 256 (Ct. App. 2013). Further, deference does not prevent the courts from overturning the full commission's decision when it is legally incorrect. *Id.*

ARGUMENT

I. The Appellate Panel of the South Carolina Workers' Compensation Commission erred in finding as fact and concluding as a matter of law, pursuant to S.C. Code Ann. Section 42-1-130, James M. Stevenson was not an "employee" of Arnold Laney, d/b/a Metal & Roofing Shingle Pros.

The Appellate Panel of the South Carolina Workers' Compensation Commission erred in finding as fact and concluding as a matter of law that Stevenson was not an employee of Arnold Laney. The term "employee" is statutorily defined, in relevant part, as

every person engaged in an employment under any appointment, contract of hire, apprenticeship, expressed or implied, oral or written, . . . whether lawfully or unlawfully employed, but excludes a person whose employment is both casual *and* not in the course of the trade, business, profession, or occupation of his employer.

S.C. Code Ann. § 42-1-130 (emphasis added).

The first requirement, that there exists a contract of hire, requires no formality. To be engaged in a contract for hire as is required to qualify as an employee, "The contract may be oral or written. It may be accomplished with a few words, or it may be implied from conduct without words. It is sufficient if the circumstances show unequivocally that the parties recognized each other as employer and employee." *Alewine v. Tobin Quarries, Inc.*, 206 S.C. 103, 109, 33 S.E.2d 81, 83 (1945). Actual control exerted by an employer is evidence of an employment relationship, as is the right and authority to control and direct the particular work or undertaking. *Shatto v. McLeod Regional Medical Center*, 406 S.C. 470, 478, 753 S.E.2d 416, 420 (2013).

Regarding the second portion of the employee definition, the South Carolina Supreme Court defined casual employment by stating,

Employment is "casual" when it is irregular, unpredictable, sporadic and brief in nature . . . Casual employment is defined in Black's Law Dictionary, . . . as (e)mployment at uncertain times or irregular intervals . . . by chance, fortuitously, and for no fixed time . . . not in the usual course of trade, business, occupation or profession of employer . . . for short time . . . occasional, irregular or incidental employment.

Privette v. S.C. State Forestry Comm., 265 S.C. 117, 122-23, 217 S.E.2d 25, 27 (1975) (citations omitted). Moreover, based upon legislative action in response to Supreme Court holdings, *see, e.g., Jolly v. Atl. Greyhound Corp.*, 207 S.C. 1, 35 S.E.2d 42 (1945), both elements of the casual employee definition must be met for an employee to be excluded as a casual employee.¹ *Ridden v. Kermet Elec. Corp.*, 313 S.C. 261, 265, 437 S.E.2d 156, 159 (Ct. App. 1993).

Here, Stevenson operated under a contract for hire and did not act as a casual employee.² While both nonverbal communications and actions can establish that an employee works under a contract for hire, both Stevenson and Laney verbally agreed to Stevenson becoming a full-time employee of Laney. (R. p. 42, lines 17 – 25; R. p. 43, lines 1 – 5). Moreover, Laney expressly stated at the hearing on this matter that Stevenson worked for him for six or seven months. (R. p. 80, lines 14 – 15). Therefore, it is unequivocal that Stevenson and Laney recognized each other

¹ Prior to 1974, confusion existed as to whether an employee was excluded from the Act if his employment was casual in nature, but was in the course of the trade, business, profession, or occupation of his employer. In 1940, the Fourth Circuit addressed the issue and followed the practice of North Carolina, agreeing that an employee is only exempted from the Act if his employment is casual and outside the course of his employer's trade, business, profession, or occupation. *Berry v. Atlantic Greyhound Lines*, 114 F.2d 255, 256 (4th Cir. 1940). The South Carolina Supreme Court, however, held in 1945 that a casual employee is excluded from the Act even if the work is in the course of her employer's business. *Jolly v. Atlantic Greyhound Corp.*, 207 S.C. 1, 7, 35 S.E.2d 42, 44 (1945). In 1974 the Act was amended to clarify when a casual employee is excluded from its provisions and this Court affirmed in 1993 that both prongs must be met to exclude an employee due to the casual nature of her work. *Ridden v. Kermet Elec. Corp.*, 313 S.C. 261, 265, 437 S.E.2d 156, 159 (Ct. App. 1993).

² Respondents initially argued Stevenson may have been an independent contractor and not an employee of Laney. (R. p. 35, lines 23 – 25). Based upon the findings of the Appellate Panel on this issue, “[Stevenson] was not *regularly employed* by Arnold Laney and was not an ‘employee’ as defined by the Act,” Stevenson presumes the Appellate Panel found his employment was casual, not that he was an independent contractor. Moreover, the testimony of both Stevenson and Laney shows Stevenson was an employee and not an independent contractor. *Lewis v. L.B. Dynasty*, 411 S.C. 637, 770 S.E.2d 393 (2015); (R. p. 26, lines 7 – 16; R. p. 63, lines 9 – 14; R. p. 67, lines 14 – 17; R. p. 68, lines 1 – 13; R. p. 77, lines 5 – 10; R. p. 79, lines 22 – 25; R. p. 80, lines 5 – 11; R. p. 86, lines 9 – 13; R. p. 88, lines 1 – 5).

and behaved as employer and employee, thus satisfying the contract for hire element of the “employee” definition, above.

Furthermore, Stevenson was not a casual employee. Laney consistently bid on and secured jobs, on which Stevenson regularly worked during the relevant period. Stevenson testified he would at times work full weeks for Laney and other times work only a few days during the week, but he testified that the amount he worked was dependent on the jobs on which Laney was bidding. (R. p. 43, lines 23 – 25; R. p. 44, lines 1 – 7). Stevenson’s employment was not by chance or fortuitous. It was in the usual course of trade, business, occupation or profession of Metal and Roofing Shingles, Pros., and his work was neither occasional nor irregular. Stevenson worked for Metal and Roofing Shingles, Pros., as a roofer, on Metal and Roofing Shingles, Pros.’ jobs. (R. p. 44, lines 4 – 7).

Moreover, and most clearly, Stevenson cannot be characterized as a casual employee, for he was hired as a roofer to work for a roofing company and was injured while performing roofing work. (R. p. 41, lines 5 – 25; R. p. 42, lines 1 – 5; R. p. 57, lines 22 – 25; R. p. 58, lines 1 – 2). As made clear in *Ridden*, a casual employee is “a person whose employment is *both casual and* not in the course of the trade, business, profession or occupation of his employer.” 313 S.C. at 264 n. 5, 437 S.E.2d at 158 n. 5 (emphasis in original). Therefore, this portion of the test to determine if Stevenson is an employee is “two-pronged: [the Court] must consider (1) whether [Stevenson’s] work for [Employer] was casual; and (2) whether [Stevenson] was performing work for [Employer] that was not in the course of [Employer’s] trade, business, profession, or occupation.” *Id.* at 265, 437 S.E.2d at 159. Because Stevenson was a roofer, working for a roofing company, who was hurt while doing roofing work, he cannot be excluded from the Act as a casual employee.

Accordingly, Stevenson respectfully requests this Court reverse the findings of fact and conclusions of law of the Commission that Stevenson was not an employee of Metal & Roofing Shingles, Pros. This Court is empowered to take its own view of the preponderance of the evidence on this jurisdictional issue. *Simmons v. SC STRONG*, 402 S.C. 166, 171, 739 S.E.2d 631, 633 (Ct. App. 2013). Stevenson therefore respectfully requests this Court find he was an employee as defined by the Act based upon a preponderance of the evidence.

II. The Appellate Panel of the South Carolina Workers' Compensation Commission erred in finding as fact and concluding as a matter of law, pursuant to S.C. Code Ann. Section 42-1-150, Arnold Laney, d/b/a Metal & Roofing Shingle Pros., was not subject to the Workers' Compensation Act.

The Appellate Panel of the Commission erred in finding as fact and concluding as a matter of law that Arnold Laney d/b/a Metal & Roofing Shingle Pros. was not subject to the Act. The Commission ruled Laney was not subject to the Act, for it found the statutory definition of “employment” was not met. Employment is defined by the Act as including “employment by the state, all political subdivisions thereof, all public and quasi-public corporations therein and all private employments in which four or more employees are regularly employed in the business or establishment.” S.C. Code Ann. § 42-1-150. The issue of whether an employer regularly employs the requisite number of employees such that he is subject to the Act is jurisdictional. *Harding v. Plumley*, 329 S.C. 580, 584, 496 S.E.2d 29, 31 (Ct. App. 1998).

In *Hartzell v. Palmetto Collision, LLC*, this Court explored in detail the jurisdictional requirements of the Act as they relate to the requirement that an employer employ four or more persons to be subject to the Act. 406 S.C. 233, 241–42, 750 S.E.2d 97, 101–02 (Ct. App. 2013), *rev'd on other grounds*, 415 S.C. 617, 785 S.E.2d 194 (2016). There, the employer argued it did not regularly employ four or more employees because their employment was not sufficiently regular. *Id.* at 241, 750 S.E.2d at 101. The Court began its analysis by reiterating that the appellate

courts review jurisdiction issues, like the one at hand, by a preponderance of the evidence and without regard to the findings and conclusions of the appellate panel. *Id.*

From there, the Court explained the test it borrowed from North Carolina to highlight the common characteristics of regular employment under the Act: “(1) employment of the same number of persons, although not necessarily the same individuals; (2) during the relevant period of time; (3) with some constancy; (4) not by chance or for a particular occasion; and (5) without regard to the regularity of the days or hours worked.” *Id.* at 243, 750 S.E.2d at 102. Further, the Court explained that “‘employment of the same number of persons,’ establishes a minimum number of employees, . . . but does not preclude a finding of regularity if, at some point during the relevant time period, [the] employer employed more than that minimum number.” *Id.* The Court also stressed the importance of defining the relevant time frame. *Id.* Of note, the Court cited *Hernandez–Zuniga v. Tickle* in support of its note that working irregular days and hours does not prevent an employee from being regularly employed. *Id.* at 242, 750 S.E.2d at 102 (citing 374 S.C. 235, 244, 647 S.E.2d 691, 695 (Ct. App. 2007)) (“Although employees worked irregular days and hours, their employment extended over a period of some four weeks, during which they worked, not by chance or for a particular occasion, but according to a definite employment at hourly wages which were paid at the end of each week worked.”).

The *Hartzell* Court also provided a quick shortcut for counting employees, which this Court initially provided in *Hernandez-Zuniga v. Tickle*,

In the context of construing the statute, the term “regular” is often juxtaposed with the term “casual.” 4 Larson, Workers' Compensation §§ 74.01–02 (“It has been said that the two concepts are the same . . . in the casual employment definition, both duration and regularity of recurrence are important factors.”). Where employment cannot be characterized as permanent or periodically regular, but occurs by chance, or with the intention and understanding on the part of both employer and employee that it shall not be continuous, it is casual. Employment is casual when not

permanent or periodically regular but occasional or by chance and not in the usual course of the employers trade or business.

Id. (citing 374 S.C. 235, 248, 647 S.E.2d 691, 697-98 (Ct. App. 2007)).

In *Hartzell*, the Court ultimately decided the employer regularly employed four or more employees. *Id.* at 244, 750 S.E.2d at 102. In so deciding, the Court concluded one quarter was the relevant period. *Id.* at 244, 750 S.E.2d 102–03. First, the Court found by a preponderance of the evidence that four employees were paid by the employer during the first quarter of 2009. *Id.* at 244–45, 750 S.E.2d at 102–03. Second, the Court relied on testimony to show one employee had been on the payroll since 2007, and that two other employees joined the payroll in the first quarter of 2009. *Id.* at 244, 750 S.E.2d at 103. Third, the Court found the men all worked “with some constancy and not by chance or for a particular occasion.” *Id.* at 245, 750 S.E.2d at 103. Thus, the Court concluded the Commission had jurisdiction over the employer. *Id.*

Here, like in *Hartzell*, the Commission never defined the relevant period for determining if Laney employed four or more persons. Stevenson asserts the relevant period is the time in which he worked for employer. During that time, Stevenson worked on several jobs with multiple individuals. (*See, e.g.*, R. p. 39, lines 9 – 15; R. p. 58, lines 6 – 17; R. p. 41, lines 5 – 25; R. p. 13, lines 1 – 5). Stevenson testified the work he performed for Employer necessitated at least four employees. (R. p. 41, lines 14 – 20). Laney testified in accord, stating that he used various employees depending on their availability for jobs, but admitting two or three laborers on a job was insufficient to complete the project because his health wouldn’t allow him to make up the difference in labor gaps. (R. p. 72, lines 17 – 20).

Moreover, Laney testified when asked about a specific job that “Stevenson, [Stevenson’s] brother, and [Stevenson’s] daddy” worked on jobs with him. (R. p. 73, lines 24 – 25). Laney

further testified he also had in his employ Scott Faile, Billy, and Billy's son.³ (R. p. 76, lines 16 – 22). When describing the arrangement Laney had with his employees, he discussed that it was his responsibility to pay Stevenson, "his daddy and his brother. And if Walt was there, I'd pay him." (R. p. 77, lines 6 – 10). It is therefore apparent, from the testimony of both Stevenson and Laney, that Laney had more than four persons working for him.

Regarding the consistency of the nature of Laney's employees' work, he testified, the days each job would take was dependent on the nature of the work and the employees who were on that particular job. (R. p. 72, lines 18 – 23). Laney testified Stevenson's father worked for him every other weekend for almost a year before Stevenson was injured. (R. p. 76, lines 3 – 7). He stated Walt would work for him two or three days every week. (R. p. 77, lines 11 – 14). Scott, Billy, and Billy's son also worked every other weekend for Laney. (R. p. 81, line 25; R. p. 82, line 1). Stevenson stated he normally worked four or five days per week, depending on the work Laney had available. (R. p. 43, lines 19 – 25; R. p. 44, lines 1 – 3). Thus, Laney's employees worked with consistency.

Moreover, the testimony of both Laney and Stevenson shows that the work of Laney's employees was not by chance or limited to a particular occasion. Laney would regularly go out and bid for roofing jobs. (R. p. 67, lines 14 – 17; R. p. 44, lines 4 – 7; R. p. 85, lines 24 – 25; R.

³ Laney specifically referred to Scott Faile as a subcontractor. Stevenson rejects this contention, and asserts Laney maintained requisite control over Faile such that he was an employee. However, if this Court disagrees and believes Faile was a subcontractor, Billy and Billy's son remain Laney's statutory employees pursuant to S.C. Code Ann. § 42-1-410. That section of the Act creates the concept of statutory employees, which "provides an exception to the general rule that coverage under [the Act] requires the existence of an employer-employee relationship." *Fortner v. Thomas M. Evans Const. Develop. LLC*, 402 S.C. 421, 432, 741 S.E.2d 538, 544 (2013). "The rationale is to prevent owners and contractors from subcontracting out their work to avoid liability for injuries incurred in the course of employment." *Id.* at 432-33, 741 S.E.2d at 544. Thus, Laney could not use Faile as a subcontractor to avoid his liability for the injuries incurred by his employees.

p. 86, lines 1 – 5). Once he secured work, his employees would work to complete the job at his direction. (R. p. 88, lines 1 – 5). Thus, the work of Laney’s employees was not by chance or for a particular occasion.

Therefore, Laney, through his business, Metal & Roofing Shingle Pros., employed more than four people in the months leading up to Stevenson’s accident, all of whom worked consistently at least every other weekend, for the purpose of completing the multiple jobs Laney secured. At least four of those individuals, including Stevenson, qualified as employees under the Act. Four employees were working for Laney on the date of Stevenson’s accident. (R. p. 62, lines 10 – 12). Therefore, Employer regularly employed four or more employees and is subject to the Act. Stevenson respectfully requests this Court reverse the findings of the Appellate Panel that Employer was not subject to the Act based upon the preponderance of the evidence.

III. The Appellate Panel of the South Carolina Workers’ Compensation Commission erred in finding as fact and concluding as a matter of law that James M. Stevenson did not establish his claim is within the jurisdiction of the Workers’ Compensation Commission.

The Appellate Panel erred in finding as fact and concluding as a matter of law that Stevenson did not establish that his claim was within the jurisdiction of the Commission. The existence of an employer-employee relationship is a jurisdictional question. *Simmons*, at 171, 739 S.E.2d at 633. Likewise, whether an employer is subject to the Act is a jurisdictional question. *Harding*, at 584, 496 S.E.2d at 31. Both of these jurisdictional questions are subject to appellate review based upon the appellate court’s own view of the preponderance of the evidence and no deference is required to be given to the findings of the Appellate Panel. *Id.*; *Simmons*, at 171, 739 S.E.2d at 633. For the reasons stated above, and based upon the facts presented above, Stevenson asserts he sufficiently established his claim is within the jurisdiction of the Commission. Thus,

Stevenson respectfully requests this Court find his claim is within the jurisdiction of the Commission.

IV. The Appellate Panel of the Worker's Compensation Commission erred in finding as fact claimant was not credible.

The Appellate Panel erred in finding Stevenson was not credible. While the Commission is the fact-finder in workers' compensation cases, its findings on credibility are still subject to review by the appellate courts and may be overturned if the findings are not supported by substantial evidence. S.C. Code Ann. § 1-23-380; *Fishburne v. ATI Systems Intern.*, 384 S.C. 76, 85, 681 S.E.2d 595, 599-600 (Ct. App. 2009); *Hamilton v. Martin Color-fi, Inc.*, 405 S.C. 478, 483, 748 S.E.2d 76, 79 (Ct. App. 2013).

Here, the Appellate Panel found Stevenson was not credible based upon his testimony of his employment history and his criminal record.⁴ Stevenson's criminal record was submitted over Stevenson's objection as part of the record as Defendant's Exhibit A. Stevenson was asked during the hearing in this matter if he had been arrested in the last ten years. Stevenson testified he recalled being arrested four times in the past. (R. p. 53, lines 19 – 23). He testified that he had been arrested for receiving stolen goods, for possession, and for controlled substances.⁵ (R. p. 52, lines 24 – 25; R. p. 53, line 1). The record demonstrates Stevenson was not convicted of all of the

⁴ Of note, the Single Commissioner did not make a finding on credibility. (*See* R. pp. 7–13). However, in its recitation of the findings of fact of the Single Commissioner, the Appellate Panel states that Commissioner Campbell found Stevenson did not testify credibly. (*See* R. p. 3). That is incorrect. Moreover, the Appellate Panel ordered Commissioner Campbell's order be affirmed without making additional findings. As a result of the credibility finding erroneously being added to the recitation of Commissioner Campbell's Findings of Fact, it was also included in the Appellate Panel's affirmation of Commissioner Campbell's Order.

⁵ Stevenson's testimony that he had been arrested for receiving stolen goods in the previous ten years was technically incorrect, for that crime occurred more than ten years earlier, but extra disclosure does not show he was not credible, and the fact that he was charged for that crime is not relevant since it was greater than ten years before the hearing, pursuant to Rule 609, SCRE.

charges brought against him. (R. p. 375 – 378). In essence, Stevenson was required to testify as to all crimes for which he had been accused, even those for which he was not convicted. Stevenson did not hide or conceal his criminal record. Even though he was candid about his past, his past was used against him. Thus, the Appellate Panel’s finding that Stevenson did not testify credibly regarding his criminal history is not proper.

Regarding Stevenson’s work history, Stevenson testified he worked as a construction laborer in multiple roles for three different companies that install sprinkler systems. Laney did not testify as to his knowledge of Stevenson’s employment history and Respondents presented no evidence regarding his employment history. Thus, the Appellate Panel’s finding that Stevenson did not testify credibly regarding his employment history is not founded, relevant, or proper.

With regard to the relevant issues at hand, Stevenson’s injury, employment, and jurisdiction, there is no evidence of inconsistency or lack of veracity. In fact, Mr. Laney’s testimony was particularly similar to and consistent with that of Stevenson. Therefore, Stevenson’s testimony was credible, consistent with Laney’s, and proved by a preponderance that the parties were subject to the Act.

V. The Appellate Panel of the Workers’ Compensation Commission erred in finding Stevenson failed to provide corroborating testimony.

Lastly, there is no requirement that Stevenson present corroborating evidence in the form of his father’s testimony. Stevenson satisfied his burden of proof by the preponderance of the evidence, and he could and did meet that burden without calling his father to testify. The finding of fact at issue states “[Stevenson] presented no corroborating testimony. He testified that his own father worked for the alleged employer, but his father did not testify.” That Stevenson’s father worked for the Employer was not a fact in dispute. Laney and Stevenson both testified his father

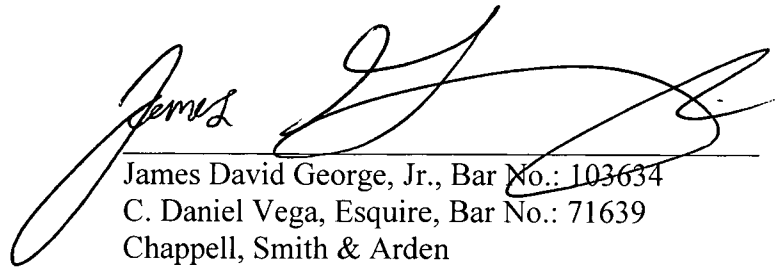
worked for Metal & Roofing Shingle Pros, and no evidence to the contrary was presented. (*See, e.g., R. p. 76, lines 3 – 7*).

Most importantly here, however, is the fact that Stevenson and Laney's testimony alone is sufficient to prove by a preponderance of the evidence that Stevenson was an employee and Laney was the employer. Stevenson's testimony is evidence. Laney's testimony is evidence. No further evidence is required to prove his case, absent contradiction. Here, Laney's testimony principally corroborated Stevenson's position. Laney identified in his testimony, with a fair degree of specificity, the employees and putatively statutory employees who worked for him. Likewise, Laney testified as to Stevenson's employment, the method of payment, the control he had over Stevenson, the fact that he provided equipment, the type of work Stevenson performed, and the degree of regularity with which Stevenson performed work for him.

Thus, Stevenson presented sufficient evidence to show he was an employee and Laney regularly employed four or more employees. Stevenson's evidence was supported by Laney's testimony with the exception of his self-serving conclusions as to the ultimate issues. The Commission erroneously inserted a requirement that Stevenson prove his claim with evidence from multiple sources. The Commission should have judged the evidence presented to it by a preponderance. Had it done so appropriately, it would have found Stevenson met his burden of proof. Therefore, it was error for the Appellate Panel to insert a requirement that Stevenson provide corroborating evidence when his testimony and the testimony of Laney proved his case was within the jurisdiction of the Commission by a preponderance of the evidence.

CONCLUSION

For these reasons, Stevenson respectfully requests the Order of the South Carolina Workers' Compensation Appellate Panel be reversed. Moreover, Stevenson requests this Court make findings that Stevenson was an employee as defined in the Act and find that the Commission has jurisdiction over this matter.



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THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM THE SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION

Aisha Taylor, Commissioner
Gene McCaskill, Commissioner
Avery B. Wilkerson, Jr., Commissioner

Appellate Case No. 2019-000613

James M. Stevenson,

Claimant, Appellant,

v.

Arnold Laney, D/B/A Metal & Roofing
Shingle Pros.,

Employer, and

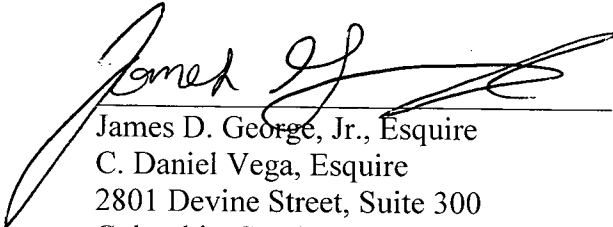
South Carolina Workers' Compensation
Uninsured Employers Fund

Defendants, Respondents.

CERTIFICATE OF COUNSEL

The undersigned certified that this Final Brief complies with Rule 211(b), SCACR

October 18, 2019



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