APPELLATE PANEL

DECISION AND ORDER

OF THE

SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION

WCC FILE NO. 1706639

Jorge Lopez-Celestin,	CLAIMANT APPELLANT,
vs.	
Reeves Young, LLC., Holder Construction Group, LLC,	EMPLOYERS,
AND	
Amerisure Insurance Company, American Zurich Insurance Company	CARRIER, DEFENDANTS/RESPONDENTS

Appellate Panel Review held in Columbia, South Carolina, on February 10, 2020, per notices timely and properly served upon all parties of interest.

Appellate Panel Decision and Order filed _____, 2020

APPEARANCES:

Appellant Jorge Lopez-Celestin, Claimant of Gainesville, Georgia represented by C. Daniel Vega, Esquire, of Columbia, South Carolina.

Defendants Reeves Young and Amerisure Insurance Company represented by Jason A. Griggs, Esquire of Willson Jones Carter & Baxley, P.A., Greenville, South Carolina.

Defendants Holder Construction Company and American Zurich Insurance Company represented by W. James Flynn, Esquire of Goodman McGuffey, LLP, Columbia, South Carolina.

STATEMENT OF THE CASE

The parties were heard by Commissioner R. Michael Campbell, II, on March 21, 2019, in Ninety Six, South Carolina. On September 6, 2019, Commissioner Campbell issued his Decision and Order, which included the following Findings of Fact, Conclusions of Law, and Order:

Single Commissioner's Findings of Fact

It is found as fact:

1. On January 5, 2017, Claimant was involved in motor vehicle accident after he left his job site in Clemson, South Carolina and was driving to his home in Gainesville, Georgia. Defendants denied compensability of the claim under the "going and coming" rule. This finding of fact is based on the evidence as a whole.
2. Claimant underwent various evaluations and treatments for his alleged work-related injuries. Claimant treated at AnMed Health beginning on January 5, 2017, and underwent multiple surgeries. His care was later transferred to orthopaedist Dr. Scott Barbour, who treated him for neck, left shoulder, left knee, left ankle, and right elbow problems. Dr. Barbour performed left shoulder arthroscopic surgery on May 2, 2017. On July 20, 2017, Dr. Barbour performed a left knee total arthroplasty. Claimant also treated with Dr. Vidyadhar Chitale at Premier Neurosurgical Institute for his neck pain and tingling/numbness in his upper extremities. Dr. Chitale diagnosed Claimant with a brachial plexus injury. According to his hearing testimony, Claimant continues to treat with Dr. Barbour. This finding of fact is based on the evidence as a whole, including Claimant's medical records and hearing testimony.
3. Claimant was doing construction work at the Earle Street Apartment Complex in Clemson on the day of his motor vehicle accident on January 5, 2017, and left for his home in Gainesville from the apartment job. Reeves Young had insurance through Amerisure for the Earle Street Apartment Complex. Claimant lived in Gainesville, Georgia at the time he

was working in Clemson and chose to drive back and forth from Clemson to his home in Gainesville to take care of his sick wife. This finding of fact is based on the evidence as a whole, including Claimant's hearing testimony and William Reeves' hearing testimony.

4. Reeves Young is based out of Sugar Hill, Georgia. Matt McCormack testified that the Clemson project was one of the first out of state construction jobs for Reeves Young. Reeves Young provided housing in Clemson for the out of state workers so they would not have to travel back and forth to Georgia. Reeves Young made the decision to pay these out of state workers $2.00 more an hour and a $175.00 weekly per diem to make the Clemson job more attractive and to cover the cost of their meals for being out of town. This finding of fact is based on the evidence as a whole, including Claimant's hearing testimony, testimony of Juan Ochoa, testimony of William Reeves, and testimony of Matt McCormack.

5. Every Reeves Young employee from out of state working on the Clemson job site received the $175.00 per diem regardless of where they drove from to get to the job site. Reeves Young did not require Claimant or any employees to keep receipts for what they spent the $175.00 per diem on, nor did they require them to keep mileage logs. This finding of fact is based on the evidence as a whole, including Claimant's hearing testimony, testimony of William Reeves, and testimony of Matt McCormack.

6. Claimant was paid $2.00 more an hour than his normal hourly wage and also received the $175.00 weekly per diem while he was working in Clemson. Claimant received $175.00 regardless of how many days he worked a week. Claimant did not receive the $175.00 per diem when he worked in Georgia. Claimant testified that the $175.00 did not fluctuate with his time worked or the distance he traveled. This finding of fact is based on the evidence as a whole, including Claimant's hearing testimony.

7. After working at the Clemson job site, Claimant was moved to a job in Atlanta with his supervisor, Juan Ochoa's, crew for a couple of weeks. Claimant was called back to the Clemson site by Shane Burrell, the Clemson site superintendent. Juan wanted Claimant to come back to Atlanta, but Shane told him Claimant could stay in Clemson if he wanted. Claimant testified that he chose to stay and work in Clemson because he was making more money. This finding of fact is based on the evidence as a whole, including Claimant's hearing testimony and testimony of Juan Ochoa.
8. Claimant was not paid his hourly wage while driving to and from the Clemson job site. Reeves Young did not pay his car insurance, any of his car maintenance, or give him a gas card. Claimant was not doing any errands for Reeves Young nor was he charged with any tasks by Reeves Young on his way to and from the Clemson job site from his home in Gainesville. This finding of fact is based on the evidence as a whole, including Claimant's hearing testimony.
9. Claimant presented no evidence of the cost it took to fill up his gas tank. He also had no evidence of the maintenance cost of operating his vehicle. This finding of fact is based on the evidence as a whole, including Claimant's hearing testimony.
10. Juan Ochoa, Foreman for Reeves Young on the Clemson site and Claimant's supervisor, lived in Gainesville, Georgia when he worked on the Clemson job. He drove to and from Clemson everyday in his company truck and used a company gas card. Juan received the per diem of $175.00 a week when he worked at the Clemson job site and received the $175.00 regardless of the amount of time he worked during the week. This finding of fact is based on the evidence as a whole, including Juan's hearing testimony.
11. Juan transported other employees, Julio Abrego, Isidro Silva, and Mario Romero, who lived near the Gainesville area in his company truck most days to work at Clemson. Julio,

Isidro, and Mario also received the $175.00 per diem even though they carpooled with Juan. This finding of fact is based on the evidence as a whole, including Juan Ochoa's hearing testimony.

12. Juan offered Claimant and other employees the option of staying in housing in Clemson free of charge. Claimant chose to drive back to Gainesville to take care of his sick wife. Juan testified that Claimant would have still received the $175.00 per diem if he had decided to stay in the housing. Every employee would have received the per diem, regardless if they chose to stay in the provided housing or to drive back home. This finding of fact is based on the evidence as a whole, including Juan Ochoa's hearing testimony.

13. William Reeves, the Vice President of Reeves Young, testified that $175.00 weekly per diem was given to Reeves Young employees working on the Clemson project that traveled from out of state. He testified that the employees received the per diem for being out of town, for meal money, and because of industry standard, which dictated that generally people working out of state are given per diems. William testified that some workers stayed overnight in company provided housing in Clemson. William explained that this was an option for all employees to stay overnight, and that all employees would still receive the per diem regardless if they chose to stay or go home. This finding of fact is based on the evidence as a whole, including William Reeves' hearing testimony.

14. The $175.00 per diem bore no relation to travel time, travel distance, or actual transportation expenses incurred by Reeves Young employees. Employees received the same $175.00 amount irrespective of travel time, distance travelled, or transportation expense actually incurred by the employee. The $175.00 amount did not fluctuate with and increases or decreases in the actual distance or time travelled and the claimant was not required to file any receipts, mileage logs, or vouchers with Reeves Young regarding

mileage, expenses, or travel time. This finding of fact is based on the evidence as a whole.

15. William further testified that Reeves Young did not derive any benefit from Claimant driving to and from Clemson from Gainesville. In fact, Reeves Young tried to avoid workers from having to drive to and from Gainesville to Clemson by providing housing free of charge. The $175.00 weekly per diem was provided to offset the cost of extra meals the workers would have to buy when they stayed overnight if Clemson. This finding of fact is based on the evidence as a whole, including William Reeves' hearing testimony.

16. William did not place any restrictions on Claimant after he left the job site, and Claimant did not carry out any errands on the way home from Clemson or the way in. This finding of fact is based on the evidence as a whole, including William Reeves' hearing testimony.

17. Claimant's employment was separated in December of 2017, after he could not come back to work for a certain period of time. From his accident in January of 2017 until December of 2017, William Reeves testified that Reeves Young kept Claimant on their group health policy and paid his premiums. This finding of fact is based on the evidence as a whole, including William Reeves' hearing testimony.

18. Based on the sworn testimony of Claimant, William Reeves, Matt McCormack, Juan Ochoa, and payroll records, I hereby find Claimant was an employee of Reeves Young LLC on the date of his motor vehicle accident. In addition, I hereby find that Reeves Young LLC had coverage provided by Amerisure Insurance Company on the date of Claimant's accident, as stipulated to by the parties at the hearing before the undersigned Commissioner. It is also determined that Claimant spent the large majority of January 5, 2017, working on the apartment job and left for his home in Gainesville from this site. Therefore, Holder Construction Group LLC and American Zurich Insurance Company are hereby dismissed as parties to this claim. This finding of fact is based on the evidence as a whole.

19. However, given that Claimant had been at the Holder Construction Group LLC site of their dormitory project earlier on the date of his accident, I hereby find it was not unreasonable for Claimant to have initially added Holder Construction Group LLC as a potential party to this claim, therefore Defendants Holder Construction Group LLC and American Zurich Insurance Company's motion for costs and fees is hereby denied. This finding of fact is based on the evidence as a whole.

20. Based on a preponderance of the evidence, including the sworn testimony of Claimant and representatives for the employer (Juan Ochoa, William Reeves, and Matt McCormack), it is apparent that Claimant on his own chose not to stay in the housing provided by the employer, but rather elected to travel back and forth to work from his home in Gainesville, Georgia. In addition, I find that no part of Claimant's travel to and from his home included performing any duties related to his employment. This finding of fact is based on the evidence as a whole, including Claimant's hearing testimony, testimony of William Reeves, testimony of Juan Ochoa, and the testimony of Matt McCormack.

21. Furthermore, I am persuaded that the $175.00 per diem that was provided to Claimant and to other employees was intended to offset the cost of meals for the week for the employees working in Clemson and was not for travel expenses or "gas money," as housing was provided for them and daily travel was not required. This is further supported by the fact that employees working on job sites other than Clemson were not provided the same per diem. Additionally, Juan Ochoa, also received the $175.00 per diem even though he drove a company truck and had a company gas card. Members of Juan's crew, who carpooled with Juan in his company truck from around Gainesville to Clemson also received the $175.00 per diem. This finding of fact is based on the evidence as a whole, including Claimant's hearing testimony, testimony of William Reeves, testimony of Juan Ochoa, and the

testimony of Matt McCormack.

22. Therefore, I hereby find Claimant has not met his burden with regard to the requisite standard for the going and coming exception. This finding of fact is based on the evidence as a whole.

23. Claimant's request for benefits under the Act is hereby denied.

Single Commissioner's Conclusions of Law

Accordingly, as provided in S.C. Code Ann § 42-17-40 (1976), as amended, it is the determination of this Commission that:

1. Under § 42-1-130, Claimant was a covered employee at the time in question; and under § 42-1-140, Defendant/Employer was a covered employer under the Act.

2. Under § 42-1-160, Claimant did not sustain a compensable injury by accident arising out of and in the course of his employment on January 5, 2017.

3. Under § 42-15-60, Claimant is not entitled to any benefits.

Single Commissioner's Order

IT IS, HEREBY, ORDERED that Claimant did not sustain a compensable injury by accident arising out of and in the course of his employment on January 5, 2017. Claimant is not entitled to any benefits under the Act.

No hearing costs are assessed in this instance.

IT IS SO ORDERED.

On September 19, 2019, within the statutory period, counsel for Claimant filed an application for review in the case setting forth his grounds for review, copies of which were furnished to all interested parties, prior to oral argument presented to the Appellate Panel on February 10, 2020. All proffered testimony has been taken. Such, together with all documentary evidence, has been

delivered by oral argument to the individual members of the Appellate Panel and has since been under study and consideration. By appeal, Claimant submitted the following grounds for review:

1. Whether the Single Commissioner erred during the hearing in sustaining the objection of defense counsel, when defense counsel objected to the use of deposition testimony of officers, directors, and managing agents of Reeves Young, LLC, as they testified on behalf of the corporation, when SCRCP Rule 32, explicitly permits the use of deposition testimony of officers, directors and managing agents of corporations by the adverse party for any purpose.

2. Whether the Single Commissioner erred in his Finding of Fact 1, in finding the evidence of record as a whole supports a denial of benefits under the "going and coming" rule, when the evidence of record demonstrates claimant's injury by accident meets the exception to the general rule pursuant to *McMillan v. Huntington & Guerry Electric Co.*, 277 S.C. 552, 290 S.E.2d 810 and other legal authority.

3. Whether the Single Commissioner erred in his Finding of Fact 4, in failing to find claimant's motor vehicle accident and injuries were in the course and scope of employment, when the evidence of record demonstrates claimant was paid two ($2.00) additional dollars per hour worked and thirty-five ($35.00) dollars per diem for working out of state, the error being the evidence of record demonstrates claimant's injury by accident meets the exceptions to the general rule pursuant to *McMillan v. Huntington & Guerry Electric Co.*, 277 S.C. 552, 290 S.E.2d 810 and other legal authority.

4. Whether the Single Commissioner erred in his Finding of Fact 3, in failing to find claimant's motor vehicle injury by accident was not within the course and scope of employment, when the evidence of record demonstrated claimant's injury by accident was suffered in the course and scope of employment.

5. Whether the Single Commissioner erred in his Finding of Fact 4, in failing to find claimant's motor vehicle accident and injuries were in the course and scope of employment, when the evidence of record demonstrates claimant was paid ($2.00) additional dollars per hour worked and thirty-five ($35.00) dollars per diem for working out of state, the error being the evidence of record demonstrates claimant's injury by accident meets the exception to the general rule pursuant to *McMillan v. Huntington & Guerry Electric Co.*, 277 S.C. 552, 290 S.E.2d 810 and other legal authority.

6. Whether the Single Commissioner erred in his Finding of Fact 5, in failing to find claimant's motor vehicle accident and injuries were in the course and scope of employment, when the evidence of record demonstrates claimant was paid ($2.00) additional dollars per hour worked and thirty-five ($35.00) dollars per diem for working out of state, the error being the evidence of record demonstrates claimant's injury by accident meets the exception to the general rule pursuant to *McMillan v. Huntington & Guerry Electric Co.*, 277 S.C. 552, 290 S.E.2d 810 and other legal authority.

7. Whether the Single Commissioner erred in his Finding of Fact 6, in failing to find

claimant's motor vehicle accident and injuries were in the course and scope of employment, when the evidence of record demonstrates claimant was paid ($2.00) additional dollars per hour worked and thirty-five ($35.00) dollars per diem for working out of state, the error being the evidence of record demonstrates claimant's injury by accident meets the exception to the general rule pursuant to *McMillan v. Huntington & Guerry Electric Co.*, 277 S.C. 552, 290 S.E.2d 810 and other legal authority.

8. Whether the Single Commissioner erred in his Finding of Fact 7, in failing to find claimant's motor vehicle injury by accident was not within the course and scope of employment, when the evidence of record demonstrates claimant's injury by accident was suffered in the course and scope of employment.

9. Whether the Single Commissioner erred in his Finding of Fact 8, in failing to find claimant's motor vehicle injury by accident was not within the course and scope of employment, when the evidence of record demonstrates claimant's injury by accident was suffered in the course and scope of employment.

10. Whether the Single Commissioner erred in his Finding of Fact 9, in failing to find claimant's motor vehicle injury by accident was not within the course and scope of employment, when the evidence of record demonstrates claimant's injury by accident was suffered in the course and scope of employment.

11. Whether the Single Commissioner erred in his Finding of Fact 10, in failing to find claimant's motor vehicle injury by accident was not within the course and scope of employment, when the evidence of record demonstrates claimant's injury by accident was suffered in the course and scope of employment.

12. Whether the Single Commissioner erred in his Finding of Fact 11, in failing to find claimant's motor vehicle injury by accident was not within the course and scope of employment, when the evidence of record demonstrates claimant's injury by accident was suffered in the course and scope of employment.

13. Whether the Single Commissioner erred in his Finding of Fact 12, in failing to find claimant's motor vehicle injury by accident was not within the course and scope of employment, when the evidence of record demonstrates claimant's injury by accident was suffered in the course and scope of employment.

14. Whether the Single Commissioner erred in his Finding of Fact 13, in failing to find claimant's motor vehicle injury by accident was not within the course and scope of employment, when the evidence of record demonstrates claimant's injury by accident was suffered in the course and scope of employment.

15. Whether the Single Commissioner erred in his Finding of Fact 14, in failing to find claimant's motor vehicle accident and injuries were in the course and scope of employment, when the evidence of record demonstrates claimant was paid ($2.00) additional dollars per hour worked and thirty-five ($35.00) dollars per diem for working out of state, the error being the evidence of record demonstrates claimant's injury by accident meets the exception to the general rule pursuant to *McMillan v. Huntington &*

Guerry Electric Co., 277 S.C. 552, 290 S.E.2d 810 and other legal authority.

16. Whether the Single Commissioner erred in his Finding of Fact 15, in failing to find claimant's motor vehicle accident and injuries were in the course and scope of employment, when the evidence of record demonstrates claimant was paid ($2.00) additional dollars per hour worked and thirty-five ($35.00) dollars per diem for working out of state, the error being the evidence of record demonstrates claimant's injury by accident meets the exception to the general rule pursuant to *McMillan v. Huntington & Guerry Electric Co.*, 277 S.C. 552, 290 S.E.2d 810 and other legal authority.

17. Whether the Single Commissioner erred in his Finding of Fact 16, in failing to find claimant's motor vehicle injury by accident was not within the course and scope of employment, when the evidence of record demonstrates claimant's injury by accident was suffered in the course and scope of employment.

18. Whether the Single Commissioner erred in his Finding of Fact 18, in dismissing Holder Construction Group, LLC and American Zurich Insurance Company from the claim, when the evidence of record demonstrates claimant performed work for Holder on the day of the injury by accident.

19. Whether the Single Commissioner erred in his Finding of Fact 20, in failing to find claimant's motor vehicle accident and injuries were in the course and scope of employment, when the evidence of record demonstrates claimant was paid ($2.00) additional dollars per hour worked and thirty-five ($35.00) dollars per diem for working out of state, the error being the evidence of record demonstrates claimant's injury by accident meets the exception to the general rule pursuant to *McMillan v. Huntington & Guerry Electric Co.*, 277 S.C. 552, 290 S.E.2d 810 and other legal authority.

20. Whether the Single Commissioner erred in his Finding of Fact 21, in failing to find claimant's motor vehicle accident and injuries were in the course and scope of employment, when the evidence of record demonstrates claimant was paid ($2.00) additional dollars per hour worked and thirty-five ($35.00) dollars per diem for working out of state, the error being the evidence of record demonstrates claimant's injury by accident meets the exception to the general rule pursuant to *McMillan v. Huntington & Guerry Electric Co.*, 277 S.C. 552, 290 S.E.2d 810 and other legal authority.

21. Whether the Single Commissioner erred in his Finding of Fact 22, in failing to find claimant's motor vehicle accident and injuries were in the course and scope of employment, when the evidence of record demonstrates claimant was paid ($2.00) additional dollars per hour worked and thirty-five ($35.00) dollars per diem for working out of state, the error being the evidence of record demonstrates claimant's injury by accident meets the exception to the general rule pursuant to *McMillan v. Huntington & Guerry Electric Co.*, 277 S.C. 552, 290 S.E.2d 810 and other legal authority.

22. Whether the Single Commissioner erred in his Finding of Fact 23, in denying claimant's request for benefits, the error being the evidence of record demonstrates claimant's injury by accident meets the exception to the general rule pursuant to *McMillan v. Huntington & Guerry Electric Co.*, 277 S.C. 552, 290 S.E.2d 810 and other legal authority, and the

claim is, therefore, compensable.

23. Whether the Single Commissioner erred in his Conclusions of Law 2, in finding claimant did not suffer an injury by accident in the course and scope of employment pursuant to S.C. Ann. § 42-1-160, when the evidence of record demonstrates claimant's injury by accident was suffered in the course and scope of employment.

24. Whether the Single Commissioner erred in his Conclusions of Law 3, in finding claimant is not entitled to benefits pursuant to § 42-25-60, when the evidence of record demonstrates claimant suffered injury by accident in the course and scope of employment pursuant to S.C. Code Ann. § 42-1-160.

25. Whether the Single Commissioner erred in failing to conclude in his Conclusions of Law, claimant's injury falls within the exceptions to the general rule an employee going to or coming from the place where his work is to be performed is not engaged in performing any service growing out of and incidental to his employment, when the evidence of record demonstrates claimant's injury by accident meets the exception to the general rule pursuant to *McMillan v. Huntington & Guerry Electric Co.*, 277 S.C. 552, 290 S.E.2d 810 and other legal authority.

26. Whether the Single Commissioner erred in ordering claimant did not sustain a compensable injury by accident arising out of and in the course of his employment on January 5, 2017 and is therefore not entitled to benefits, when the greater weight and preponderance of evidence support a legal conclusion that claimant suffered an injury by accident in the course and scope of employment and this, therefore, entitled to an order awarding benefits.

In an appellate review, the Appellate Panel shall, pursuant to S.C. Code Ann. Section 42-17-50 (1985), review the Award, weigh the evidence as presented at the initial hearing, and, if good grounds be shown therefore, make its own Findings of Fact and reach its own Conclusions of Law consistent with, or inconsistent with, those of the Single Commissioner. After careful review in the instant case, the Appellate Panel, by unanimous vote, has determined that all of the Single Commissioner's Findings of Facts and Conclusions of Law are correct as stated. As such, the Appellate Panel of the South Carolina Workers' Compensation Commission, by unanimous vote, fully affirms the Single Commissioner's Order, and issues the following Findings of Fact and Conclusions of Law, which shall become, and hereby are, the law of the case.

FINDINGS OF FACT

Based upon the documentary evidence submitted by the respective parties, pursuant to the Administrative Procedures Act, and the Commission's file relative to this claim, WE, THE APPELLATE PANEL, FIND THE FOLLOWING AS FACT:

1. On January 5, 2017, Claimant was involved in motor vehicle accident after he left his job site in Clemson, South Carolina and was driving to his home in Gainesville, Georgia. Defendants denied compensability of the claim under the "going and coming" rule. This finding of fact is based on the evidence as a whole.
2. Claimant underwent various evaluations and treatments for his alleged work-related injuries. Claimant treated at AnMed Health beginning on January 5, 2017, and underwent multiple surgeries. His care was later transferred to orthopaedist Dr. Scott Barbour, who treated him for neck, left shoulder, left knee, left ankle, and right elbow problems. Dr. Barbour performed left shoulder arthroscopic surgery on May 2, 2017. On July 20, 2017, Dr. Barbour performed a left knee total arthroplasty. Claimant also treated with Dr. Vidyadhar Chitale at Premier Neurosurgical Institute for his neck pain and tingling/numbness in his upper extremities. Dr. Chitale diagnosed Claimant with a brachial plexus injury. According to his hearing testimony, Claimant continues to treat with Dr. Barbour. This finding of fact is based on the evidence as a whole, including Claimant's medical records and hearing testimony.
3. Claimant was doing construction work at the Earle Street Apartment Complex in Clemson on the day of his motor vehicle accident on January 5, 2017, and left for his home in Gainesville from the apartment job. Reeves Young had insurance through Amerisure for the Earle Street Apartment Complex. Claimant lived in Gainesville, Georgia at the time he was working in Clemson and chose to drive back and forth from Clemson to his home in Gainesville to take care of his sick wife. This finding of fact is based on the evidence as a

whole, including Claimant's hearing testimony and William Reeves' hearing testimony.

4. Reeves Young is based out of Sugar Hill, Georgia. Matt McCormack testified that the Clemson project was one of the first out of state construction jobs for Reeves Young. Reeves Young provided housing in Clemson for the out of state workers so they would not have to travel back and forth to Georgia. Reeves Young made the decision to pay these out of state workers $2.00 more an hour and a $175.00 weekly per diem to make the Clemson job more attractive and to cover the cost of their meals for being out of town. This finding of fact is based on the evidence as a whole, including Claimant's hearing testimony, testimony of Juan Ochoa, testimony of William Reeves, and testimony of Matt McCormack.

5. Every Reeves Young employee from out of state working on the Clemson job site received the $175.00 per diem regardless of where they drove from to get to the job site. Reeves Young did not require Claimant or any employees to keep receipts for what they spent the $175.00 per diem on, nor did they require them to keep mileage logs. This finding of fact is based on the evidence as a whole, including Claimant's hearing testimony, testimony of William Reeves, and testimony of Matt McCormack.

6. Claimant was paid $2.00 more an hour than his normal hourly wage and also received the $175.00 weekly per diem while he was working in Clemson. Claimant received $175.00 regardless of how many days he worked a week. Claimant did not receive the $175.00 per diem when he worked in Georgia. Claimant testified that the $175.00 did not fluctuate with his time worked or the distance he traveled. This finding of fact is based on the evidence as a whole, including Claimant's hearing testimony.

7. After working at the Clemson job site, Claimant was moved to a job in Atlanta with his supervisor, Juan Ochoa's, crew for a couple of weeks. Claimant was called back to the

Clemson site by Shane Burrell, the Clemson site superintendent. Juan wanted Claimant to come back to Atlanta, but Shane told him Claimant could stay in Clemson if he wanted. Claimant testified that he chose to stay and work in Clemson because he was making more money. This finding of fact is based on the evidence as a whole, including Claimant's hearing testimony and testimony of Juan Ochoa.

8. Claimant was not paid his hourly wage while driving to and from the Clemson job site. Reeves Young did not pay his car insurance, any of his car maintenance, or give him a gas card. Claimant was not doing any errands for Reeves Young nor was he charged with any tasks by Reeves Young on his way to and from the Clemson job site from his home in Gainesville. This finding of fact is based on the evidence as a whole, including Claimant's hearing testimony.

9. Claimant presented no evidence of the cost it took to fill up his gas tank. He also had no evidence of the maintenance cost of operating his vehicle. This finding of fact is based on the evidence as a whole, including Claimant's hearing testimony.

10. Juan Ochoa, Foreman for Reeves Young on the Clemson site and Claimant's supervisor, lived in Gainesville, Georgia when he worked on the Clemson job. He drove to and from Clemson every day in his company truck and used a company gas card. Juan received the per diem of $175.00 a week when he worked at the Clemson job site and received the $175.00 regardless of the amount of time he worked during the week. This finding of fact is based on the evidence as a whole, including Juan's hearing testimony.

11. Juan transported other employees, Julio Abrego, Isidro Silva, and Mario Romero, who lived near the Gainesville area in his company truck most days to work at Clemson. Julio, Isidro, and Mario also received the $175.00 per diem even though they carpooled with Juan. This finding of fact is based on the evidence as a whole, including Juan Ochoa's

hearing testimony.

12. Juan offered Claimant and other employees the option of staying in housing in Clemson free of charge. Claimant chose to drive back to Gainesville to take care of his sick wife. Juan testified that Claimant would have still received the $175.00 per diem if he had decided to stay in the housing. Every employee would have received the per diem, regardless if they chose to stay in the provided housing or to drive back home. This finding of fact is based on the evidence as a whole, including Juan Ochoa's hearing testimony.
13. William Reeves, the Vice President of Reeves Young, testified that $175.00 weekly per diem was given to Reeves Young employees working on the Clemson project that traveled from out of state. He testified that the employees received the per diem for being out of town, for meal money, and because of industry standard, which dictated that generally people working out of state are given per diems. William testified that some workers stayed overnight in company provided housing in Clemson. William explained that this was an option for all employees to stay overnight, and that all employees would still receive the per diem regardless if they chose to stay or go home. This finding of fact is based on the evidence as a whole, including William Reeves' hearing testimony.
14. The $175.00 per diem bore no relation to travel time, travel distance, or actual transportation expenses incurred by Reeves Young employees. Employees received the same $175.00 amount irrespective of travel time, distance travelled, or transportation expense actually incurred by the employee. The $175.00 amount did not fluctuate with and increases or decreases in the actual distance or time travelled and the claimant was not required to file any receipts, mileage logs, or vouchers with Reeves Young regarding mileage, expenses, or travel time. This finding of fact is based on the evidence as a whole.
15. William further testified that Reeves Young did not derive any benefit from Claimant

driving to and from Clemson from Gainesville. In fact, Reeves Young tried to avoid workers from having to drive to and from Gainesville to Clemson by providing housing free of charge. The $175.00 weekly per diem was provided to offset the cost of extra meals the workers would have to buy when they stayed overnight if Clemson. This finding of fact is based on the evidence as a whole, including William Reeves' hearing testimony.

16. William did not place any restrictions on Claimant after he left the job site, and Claimant did not carry out any errands on the way home from Clemson or the way in. This finding of fact is based on the evidence as a whole, including William Reeves' hearing testimony.

17. Claimant's employment was separated in December of 2017, after he could not come back to work for a certain period of time. From his accident in January of 2017 until December of 2017, William Reeves testified that Reeves Young kept Claimant on their group health policy and paid his premiums. This finding of fact is based on the evidence as a whole, including William Reeves' hearing testimony.

18. Based on the sworn testimony of Claimant, William Reeves, Matt McCormack, Juan Ochoa, and payroll records, we hereby find Claimant was an employee of Reeves Young LLC on the date of his motor vehicle accident. In addition, I hereby find that Reeves Young LLC had coverage provided by Amerisure Insurance Company on the date of Claimant's accident, as stipulated to by the parties at the hearing before the undersigned Commissioner. It is also determined that Claimant spent the large majority of January 5, 2017, working on the apartment job and left for his home in Gainesville from this site. Therefore, Holder Construction Group LLC and American Zurich Insurance Company are hereby dismissed as parties to this claim. This finding of fact is based on the evidence as a whole.

19. However, given that Claimant had been at the Holder Construction Group LLC site of their dormitory project earlier on the date of his accident, we hereby find it was not unreasonable

for Claimant to have initially added Holder Construction Group LLC as a potential party to this claim, therefore Defendants Holder Construction Group LLC and American Zurich Insurance Company's motion for costs and fees is hereby denied. This finding of fact is based on the evidence as a whole.

20. Based on a preponderance of the evidence, including the sworn testimony of Claimant and representatives for the employer (Juan Ochoa, William Reeves, and Matt McCormack), it is apparent that Claimant on his own chose not to stay in the housing provided by the employer, but rather elected to travel back and forth to work from his home in Gainesville, Georgia. In addition, we find that no part of Claimant's travel to and from his home included performing any duties related to his employment. This finding of fact is based on the evidence as a whole, including Claimant's hearing testimony, testimony of William Reeves, testimony of Juan Ochoa, and the testimony of Matt McCormack.

21. Furthermore, we am persuaded that the $175.00 per diem that was provided to Claimant and to other employees was intended to offset the cost of meals for the week for the employees working in Clemson and was not for travel expenses or "gas money," as housing was provided for them and daily travel was not required. This is further supported by the fact that employees working on job sites other than Clemson were not provided the same per diem. Additionally, Juan Ochoa, also received the $175.00 per diem even though he drove a company truck and had a company gas card. Members of Juan's crew, who carpooled with Juan in his company truck from around Gainesville to Clemson also received the $175.00 per diem. This finding of fact is based on the evidence as a whole, including Claimant's hearing testimony, testimony of William Reeves, testimony of Juan Ochoa, and the testimony of Matt McCormick.

22. Therefore,we hereby find Claimant has not met his burden with regard to the requisite

standard for the going and coming exception. This finding of fact is based on the evidence as a whole.

23. Claimant's request for benefits under the Act is hereby denied.

CONCLUSIONS OF LAW

In view of those Findings of Fact, and as provided in the South Carolina Code of Laws, WE, THE APPELLATE PANEL, CONCLUDE THE FOLLOWING AS MATTERS OF LAW:

1. Under § 42-1-130, Claimant was a covered employee at the time in question; and under § 42-1-140, Defendant/Employer was a covered employer under the Act.

2. Under § 42-1-160, Claimant did not sustain a compensable injury by accident arising out of and in the course of his employment on January 5, 2017.

3. Under § 42-15-60, Claimant is not entitled to any benefits.

ORDER

Based upon the foregoing Findings of Fact and Conclusions of Law,

IT IS, THEREFORE, ORDERED that the Order of the Single Commissioner filed in the above-captioned matter on September 6, 2019, is hereby affirmed by the Appellate Panel, and the above Findings of Fact and Conclusions of Law shall constitute the Decision and Order of the Appellate Panel.

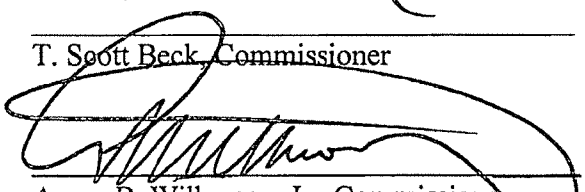
IT IS FURTHER ORDERED that Claimant's claim for benefits under the South Carolina Workers' Compensation Act be, and hereby is, denied.

No hearing costs are assessed in this instance.

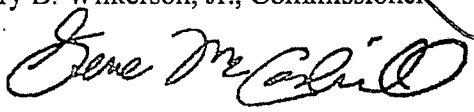
AND IT IS SO ORDERED.

SOUTH CAROLINA WORKERS'
COMPENSATION COMMISSION

T. Scott Beck, Commissioner



Avery B. Wilkerson, Jr., Commissioner



Gene McCaskill, Commissioner

Order Served via E-Mail:

Jason A. Griggs Wilson, Jones, Carter, & Baxley jagriggs@wjlaw.net	W. James Flynn Goodman, McGuffey LLP jlynn@GM-LLP.com

C. Daniel Vega Chappell, Smith, & Arden dvega@csa-law.com	

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 April 7, 2020