

**BEFORE THE
SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION
FULL COMMISSION APPELLATE PANEL
WCC FILE NO. 1320600**

Kevin M. Todd,)
)
Appellant/)
Employee/Claimant/)
)
vs.)
)
Mike Roberts d/b/a Mike Roberts)
Home Repair,)
)
Employer,)
and)
)
S.C. Uninsured Employers Fund,)
)
Carrier,)
Respondents/Defendants.)

DECISION AND ORDER

RECEIVED
JUN 19 2020
SC Court of Appeals

Considered at Conference: Before the Full Commission Appellate Panel on February 20, 2020 in Columbia, South Carolina

Appearances: Gene M. Connell, Jr., Esquire, for Employee/Claimant/Appellant

Mike Roberts d/b/a Mike Roberts Home Repair, Uninsured Employer appeared *pro se*

Samuel T. Brunson, Esquire, for S.C. Uninsured Employers Fund

Purpose of Hearing: To determine issues on remand from the South Carolina Court of Appeals as per Order dated May 23, 2018.

Decision and Order: By Full Commission Appellate Panel

Filed: May 18, 2020

I. STATEMENT OF THE CASE

This matter originally came before a Single Commissioner based on a Form 50 filed by the Claimant on February 28, 2014 alleging he sustained injuries by accident to his arms and torso arising out of and in the course of his employment for an accident on August 9, 2013. The Claimant has an average weekly wage of \$500.00 with a resulting compensation rate of \$333.33. The Claimant requested payment for past medical treatment, permanency and for temporary total disability. The Claimant's request for temporary compensation is for a period of temporary disability from August 9, 2013 through July 28, 2014. The Claimant also contended he has reached maximum medical improvement and requested an award for scarring. The Single Commissioner and the Full Commission denied the claim. The Claimant appealed to the South Carolina Court of Appeals

This matter is now before the Full Commission Appellate Panel based on an Order of Remand issued by the South Carolina Court of Appeals on May 23, 2018 in which the Full Commission's Order was vacated and this matter was remanded back to the Commission for decision. The issue for determination is whether the incident arose out of Todd's employment with Michael Roberts Home Repair and whether Todd's work on the salvage of a boat owned by Roberts provided any benefit to Mike Roberts or to Todd's employment with Michael Roberts Home Repair.

Briefly stated, on August 9, 2013, Todd was an employee of Michael Roberts d/b/a Michael Roberts Home Repair when Michael Roberts asked Todd to help Roberts salvage his boat. The work resulted in an explosion in which Todd was badly injured and was flown by helicopter to the University of North Carolina Burn Center. The question before the Commission is whether or not Todd was in the course and scope of his employment at the time of his injury.

We now review the evidence presented at the hearing along with the recent deposition of James Flom.

II. REVIEW OF EVIDENCE BY FULL COMMISSION APPELLATE PANEL.

A. Testimony of Holmes Adams.

The Claimant called Holmes Adams to testify. Holmes Adams was a subcontractor for Mike Roberts and did work for Mike Roberts for seven to eight months. (Tr. p. 11, lines 9-10). He further testified Kevin Todd, Bobby Days, Ryan Harrelson and James Flom all drew weekly paychecks. (Tr. p. 11, lines 15-17). He also testified that Todd did anything Mike Roberts asked (Tr. p. 12, lines 17,19) and that he did whatever needs to be done (Tr. p. 12, lines 20-21). He commented: "poor people got to eat and he (Kevin) did what was asked of him." (Tr. p. 12, lines 23-24).

Holmes also testified that Kevin Todd worked for Mike Roberts and received a weekly paycheck. (Tr. p. 13, lines 10-13) and that if Mike Roberts barked, Kevin jumped. (Tr. p. 13, lines 13-15). He further stated whatever Mike needed, Kevin handled. (Tr. p. 13, lines 16-19).

B. Testimony of James Marshall Flom.

The Claimant submitted an additional deposition of James Flom who testified that he also worked for Roberts and that Todd did anything that Roberts asked and that Todd worked on the boat as requested by Roberts.

C. Testimony of Michelle Bratcher.

Another witness, Michelle Bratcher, testified that she had lived with Kevin Todd for fourteen years (Tr. p. 21, lines 7-8); that Kevin worked for Mike Roberts (Tr. p. 21, line 15); that she worked for him for two years (Tr. p. 21, lines 18-19); that Kevin did everything for Mike (Tr. p. 21, lines 21-22); that anything Mike wanted Kevin did (Tr. p. 21, line 25); that other people worked

there including Bobby Days, James Flom and Ryan Harrelson (Tr. p. 22, lines 5-12); and she came to the scene of the accident and saw the accident as she was coming over the Waccamaw Bridge (Tr. p. 23, lines 1-25). She further testified that Kevin worked five or six days a week for Mike Roberts (Tr. p. 28, lines 8-12); that he was working for Mike Roberts on the day of the accident (Tr. p. 24, lines 11-12); and that Kevin repaired homes and also did many other things for Mike (Tr. p. 24, lines 23-25).

She further stated that Kevin took Mike Roberts' child to school and even laid brick pavers at his pool (Tr. p. 25, lines 2-7). She testified Kevin was called after hours by Mike to work (Tr. p. 25, lines 15-20). She further testified Mike Roberts paid wages to Kevin after the accident (Tr. p. 26, lines 1-2) and paid him when he was in the hospital (Tr. p. 26, lines 1-2). On cross examination, she testified that she had worked on a boat for Roberts (Tr. p. 30, lines 19-20). She again reiterated Kevin and the others she had named were employees, but Kevin was assigned to pay them weekly (Tr. p. 31, lines 20-23). She also said Roberts gave Kevin's dad money while he was in the hospital (Tr. p. 33, lines 1-10).

D. Testimony of Anthony Williams.

Also, at the scene of the accident was Anthony Williams (Tr. p. 38, lines 1-15) and he stated that he had been hired to do electrical work (Tr. p. 38, line 1). He testified he was paid to work on the boat that day (Tr. p. 38, lines 20-23).

E. Testimony of Kevin Todd.

Kevin Todd was called to testify. He stated that he had been employed for one and a half years with Mike Roberts (Tr. p. 44, lines 1-10); that he did anything for him (Tr. p. 44, lines 7-8); that he was on the clock and he took Roberts son to school (Tr. p. 44, lines 16-18); that Roberts paid him for that time (Tr. p. 44, line 18); that he paid the other employees for Roberts including Ryan

Harrelson, James Flom and Bobby Days (Tr. 44, lines 22-25); that he did "anything" (Tr. p. 44, lines 8-9); that he worked for Roberts on weekends (Tr. p. 44, lines 6-7); that he worked after hours (Tr. p. 45, line 10); that he was cleaning Roberts' boat on the clock (Tr. p. 46, lines 6-8); and that every minute he worked he got paid (Tr. p. 46, lines 9-11);

Todd stated on the day of the accident he was on his way to a job at Quail Creek and Roberts told him to come to the Roberts' house and assist with repairs on the boat (Tr. p. 46, lines 18-20). He further stated he was supposed to "get Tony started on working on the boat" (Tr. p. 46, lines 18-19). Todd further said that before the explosion he was helping Williams drain the gas at Roberts' directions who was also there supervising the work. (Tr. p. 46, lines 21-24).

III. FINDINGS OF FACT

After due consideration of the claims and defense and after reviewing all the evidence contained in the records, the following Findings of Facts, as required under 42-17-40, S.C. Code of Laws, 2976 as amended are hereinafter set forth:

1. There is no dispute in the case as to an explosion on the boat injuring the Claimant on August 9, 2013. Further the work being performed benefitted the Employer and was at his direction.
2. The Claimant was airlifted and treated at the University of North Carolina Burn Center where he spent several weeks recovering.
3. We find that the Claimant was working on the boat in the course and scope of his employment with the Defendant Employer.
4. We find the Claimant was paid \$500.00 per week.
5. We find based upon witnesses Bratcher, Adams, Flom and Williams that the Claimant was in the course and scope of his employment when the explosion injured Todd.

6. We find that Claimant's work on the salvage boat benefitted both Roberts as the employer and Todd as the employee.

7. We find from a thorough review of the deposition testimony of another employee, Flom, that the Claimant's incident did arise out of and in the course and scope of his employment with Michael Roberts Home Repair.

8. We find by a preponderance of the evidence that Roberts had regularly incorporated boat repair and yard work/landscaping into his home repair business. This finding is based on the hearing testimony of the Claimant and Adams as well as the deposition testimony of Flom that these employees were regularly assigned and directed to perform these other tasks as part of their employment so they would not have to seek employment elsewhere. (9/25/14 Hearing Tr. p. 12-20; Depo. of Flom p. 7, lines 1-3).

9. We further find both Claimant and Roberts testified Claimant took employer's son to school each day and Claimant testified that as soon as he got to Mike Roberts' house and picked his son up, he was on the clock. (Hearing Tr. p. 44, lines 16-18).

10. We find Claimant testified he was "on the clock" every time he worked on the boat and that he was actually on his way to a jobsite at Quail Creek when he was told by Roberts to help another employee, Anthony Williams, get started on working on the boat. Claimant was paid for the entire time by Roberts. (Hearing Tr. p. 46).

11. Roberts continued to pay Claimant \$500.00 per week for three weeks after the injury.

12. We give greater weight to the testimony of Todd than the other witnesses.

13. We find that Roberts d/b/a Mike Roberts Home Repair regularly employed 4 or more individuals in furtherance of his business interests. This finding is based on the preponderance

of the evidence as a whole including the testimony of the claimant, James Flom, Holmes Adams, Michelle Bratcher, and Anthony Williams. As such, Mike Roberts is subject to the Act but did not maintain workers' compensation insurance as required by law. Thus, the South Carolina Uninsured Employers Fund is a proper party to this claim.

14. We find based on a review of the evidence Claimant suffered serious third degree burn injuries and scarring to both arms and both hands as a result of his work accident. Claimant's medical treatment included skin grafts taken from his legs.

15. We find Claimant was at maximum medical improvement for his burn injuries as of July 28, 2014 when he returned to work full duty for a new employer.

16. We find Claimant is entitled to a lump-sum back-payment of TTD benefits from August 9, 2013 until he returned to work full time on July 28, 2014.

17. We find Defendants are entitled to a credit of \$1,500 that the Employer paid directly to the Claimant after this injury.

18. We find Claimant's scarring is to body parts regularly exposed in his employment in construction and renovation work.

19. We find Claimant is entitled to 20 weeks of benefits for his resulting burn scarring and/or disfigurement. See S.C. Code Ann. Section 42-9-30(23).

20. We find Claimant is entitled to receipt of the award in a lump-sum.

21. We find that Employer is liable for all causally-related incurred medical treatment – including treatment to the University of North Carolina Burn Center, Conway Hospital and for the helicopter transportation to the University of North Carolina Burn Center. All payments shall be made pursuant to the South Carolina Workers' Compensation Fee Schedule.

22. We find Claimant is not entitled to any future medical treatment as none has been recommended that would tend to lessen his period of disability.

23. No hearing costs are assessed.

IV. AWARD

Pursuant to the above, the Employer is required to make the following payments to or on behalf of the Claimant:

The Claimant is awarded a lump sum back payment of temporary total benefits from August 9, 2013 to July 28, 2014 which equals 46.42 weeks and is \$15,473.17.

The Claimant is awarded 20 weeks of benefits for his resulting burn scarring and/or disfigurement in the amount of \$6,666.66.

The Claimant is awarded a lump sum of \$22,409.83, less \$1,500.00 that the employer paid directly to the Claimant after the accident.

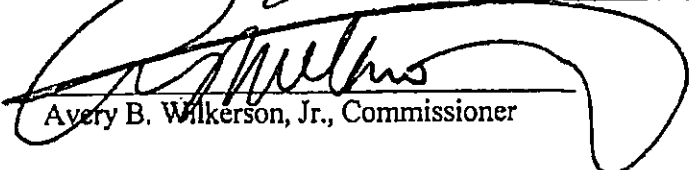
Accordingly, the Claimant is entitled to a lump sum payment of \$21,909.83.

In addition, the Employer is required to pay causally related medical bills to the medical providers pursuant to the Fee Schedule of the SC Workers' Compensation Act.

Should the Employer be unable or unwilling to provide the above payments, responsibility for those benefits shall fall to the SC Workers' Compensation Uninsured Employers' with the Fund having all rights of recovery and subrogation pursuant to Section 42-1-200 of the SC Workers' Compensation Act.



Aisha Taylor, Commissioner/Chairman



Avery B. Wilkerson, Jr., Commissioner



R. Michael Campbell, Commissioner

Date: _____, 2020

Order Served via E-Mail:

Gene M. Connell, Jr. Kelaher, Connell, & Conner PC GConnell@classactlaw.net	Samuel T. Brunson Brunson Law Firm Bublaw@earthlink.net
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Order Served via USPS:

Mike Roberts dba Mike Roberts Home Repair 3334 New Road Conway, SC 29526	
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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 May 18, 2020