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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM APPELLATE PANEL OF THE SOUTH CAROLINA
WORKERS' COMPENSATION COMMISSION

WCC FILE NO. 1320600

Kevin M. Todd, Employee/Claimant Respondent

vs.

Mike Roberts d/b/a Mike Roberts Home Repair, Employer
and S.C. Uninsured Employers' Fund, Carrier/Defendants

OF WHICH

S.C. Uninsured Employers Fund is the..... Appellant

INITIAL BRIEF OF RESPONDENT

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STATEMENT OF ISSUES ON APPEAL

- I. The Appellate Panel of the South Carolina Workers' Compensation Commission correctly found the Claimant Kevin M. Todd suffered a compensable injury by accident arising out of and in the course and scope of his employment with Michael Roberts Home Repair.
- II. The Appellate Panel of the South Carolina Workers' Compensation Commission correctly found that Mike Roberts Home Repair regularly employed four or more persons at the time of the Claimant's accident, subjecting that business to the jurisdiction of the Workers' Compensation Commission.
- III. The Appellate Panel of the South Carolina Workers' Compensation Commission correctly awarded benefits in this case as the accident arose out of or in the scope of the Claimant's employment.
- IV. The Appellate Panel of the South Carolina Workers' Compensation Commission correctly considered this matter at judicial conference and did not err in admitting additional evidence from the Claimant.
- V. As an additional sustaining ground, the personal errand rule applies, and Todd's claim is compensable.

STATEMENT OF THE CASE

This matter is before this Court based on an appeal filed by the S.C. Uninsured Employers Fund after an Appellate Panel of the South Carolina Workers' Compensation Commission (hereinafter referred to as "Appellate Panel") issued an Order on a remand from this Court. The Appellate Panel considered this case on remand at conference without oral arguments and issued its ruling finding Todd was entitled to benefits. Briefly stated, Kevin Todd, the Employee, worked for Mike Roberts Home Repair, a sole proprietorship that was uninsured, when on August 9, 2013, he was severely burned when a boat he was working on for Roberts exploded. While Roberts was in the home repair business, he also had his employees work for him all the time and run personal errands. On the day of this accident, August 9, 2013, Todd was on his way to do home repair at Roberts direction when Roberts called him and told him to go to a boat he owned and help other employees work on the boat. While working on the boat, gasoline exploded burning Todd severely. This

occurred while Roberts was improperly draining the gas tanks and a spark ignited a fire. Todd was flown by helicopter to the University of North Carolina Burn Center as an emergency patient and was hospitalized for two weeks. In the initial hearing, the single Commissioner held that the injury and the claim were not in the course and scope of employment despite the uncontroverted fact the Employer had ordered the Employee to work on the Employer's boat on the morning of a normal weekday workday. An Appellate Panel of the South Carolina Workers' Compensation Commission affirmed, and an appeal was undertaken to this Court. This Court in its Order on remand requested specific findings of fact from the Commission. On remand, the Commission issued a detailed Order finding Todd entitled to benefits. This appeal was properly perfected by the S.C. Uninsured Employers Fund and is before the Court for disposition. Respondent believes this case should be entitled *Todd II* in order that the Court and the parties not confuse this matter with *Todd I*.

STANDARD OF REVIEW

The South Carolina Administrative Procedures Act (APA) S.C. Code Ann. § 1-23-350 (2005) establishes the standard of review for decisions by the Appellate Panel of the Workers' Compensation Commission. See *Carolinas Recycling Group v. S.C. Second Injury Fund*, 398 S.C. 480, 730 S.E. 2d 324, 326 (Ct. App. 2012). Under the scope of review established in the APA, this Court may not substitute its judgment for that of the Appellate Panel of the Workers' Compensation Commission as to the weight of the evidence on questions of fact, but may reverse or modify the Appellate Panel's decision if substantial rights have been prejudiced or the decision is affected by an error law or is "clearly erroneous in view of the reliable, probative and substantial evidence on the whole record." See S.C. Code Ann. § 1-23-380(5)(e) (Sup. 2012). Our Supreme Court has defined substantial evidence as evidence that, in viewing the record as a whole, would allow reasonable minds to reach the same conclusion the Appellate Panel reached. See *Lark v. BiLo, Inc.*, 276 S.C. 130, 135, 276

S.E.2d 304, 306 (1981) (“the possibility of drawing two inconsistent conclusions from the evidence does not prevent an administrative agency’s finding from being supported by substantial evidence.”) *Palmetto Alliance, Inc. v. S.C. Public Service Commission*, 282 S.C. 430, 432, 319 S.E.2d 695, 696 (1984).

Further, any decision of the Appellate Panel must include specific findings and conclusions of law to comport with S.C. Code Ann. § 1-23-350. See *Martinez v. Spartanburg County*, 394 S.C. 224, 230, 715 S.E.2d 339 (Ct. App. 2011). It is respectfully submitted this decision of the Appellate Panel does comport with this standard of review and no errors of law have been committed.

While the employee relationship is a jurisdictional issue for the purposes of worker’s compensation benefits a review by this Court is governed by the preponderance of evidence standard. *Givens v. Steel Structures, Inc.*, 279 S.C. 12, 301 S.E.2d 545 (1983); *Vines v. Champion Bldg. Products*, 315 S.C. 13, 431 S.E.2d 585 (1993); *Barton v. Higgs*, 372 S.C. 109, 641 S.E.2d 39 (2007) (the findings of an administrative agency are presumed correct and will only be set aside if unsupported by substantial evidence). Thus, jurisdictional issues are governed by a preponderance of the evidence and all other findings in this case are governed by the substantial evidence rule (such as the decision on damages).

It is also Respondent’s position that an additional sustaining ground would be the personal errand rule which requires worker’s compensation coverage when an employer tells an employee to do something not specifically part of his job. In this case, the Employee was on the job when he was ordered by his Employer (Roberts) to go to Employer’s boat to assist in repairing it. All of this occurred on a normal workday during normal working hours. The Commission in reviewing this matter made specific findings which clearly meet the standard of review and as a result, there is no error.

ARGUMENT

I. THE APPELLATE PANEL OF THE SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION CORRECTLY FOUND THERE WERE FOUR OR MORE EMPLOYEES WORKING FOR THE EMPLOYER AT THE TIME OF THE INCIDENT.

The South Carolina Uninsured Employers Fund argues that there were not four or more employees and thus no workers' compensation benefits are available.

In support of Respondent's argument that there were four and more employees, Respondent offers the following testimony at the hearing:

A. Testimony of Holmes Adams.

The Claimant first called Holmes Adams to testify. Holmes Adams was a subcontractor for Mike Roberts and did work for Mike Roberts for seven or eight months. (Tr. p. 11, lines 9-10). He further testified Kevin Todd, Bobby Days, Ryan Harrelson and James Flawn [sic] all drew weekly paychecks from Roberts. (Tr. p. 11, lines 15-7). He also testified that he (Kevin) 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).

Adams 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).

On cross examination, Adams testified that he saw checks handed out to Kevin and Bobby on Fridays. (Tr. p. 17, lines 15-16).

B. Testimony of Michelle Bratcher.

The second witness offered was Michelle Bratcher who 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 Flawn [sic] and Ryan Harrelson (Tr. p. 22, lines 5-12); and that 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. 24, 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). Also, 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). She said Mike was "going to pay us the whole time that Kevin was recouping" (Tr. p. 27, lines 1-5).

She testified the day of the accident was a Friday (Tr. p. 29, line 20) and that it was "a normal work day" (Tr. p. 29, lines 23-28). She stated Kevin always got paid at the end of the day on Friday (Tr. p. 30, lines 1-19).

On cross examination, she testified that she had worked on the 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 noted Roberts gave Kevin's dad money while he was in the hospital (Tr. p. 33, lines 1-10) and that she was paid \$100.00 for cleaning the boat (Tr. p. 34, lines 6-7).

On redirect, she noted that the boat had been given to Mike Roberts and had been sunk in the river prior to the fire which caused Todd's injuries (Tr. p. 36, lines 20-25).

C. 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).

On cross examination he said he needed the work and Kevin told him that Mike needed helpers. (Tr. p. 39, line 25; Tr. p. 40, lines 1-5). He further testified that he thought Mike would hire him for more electrical work if he came and worked on the boat (Tr. p. 41, lines 12-15).

D. 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 Flawn [sic] and Bobby Days (Tr. p. 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);.

On the day of the accident Todd stated he was on his way to the job at Quail Creek and Roberts told him to stop by to pick up Anthony Williams who was going to be working on Roberts’ 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). He 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). He also testified he was not a partner in the boat (Tr. p. 49, line 4). He said he was in the hospital after the accident and Roberts paid him wages for being out (Tr. p. 49, lines 15-17).

On cross examination he said he was paid every Friday (Tr. p. 53, lines 1-2) and he was paid extra on Saturday (Tr. p. 53, lines 10-15). He also noted that while he was in the hospital he was taking numerous drugs and was not in his right mind (Tr. p. 54, lines 1-15). He reiterated on cross examination that he was on the way to a foreclosed home in Quail Creek when he was called by Mike Roberts to get the guys “started on the boat job” (Tr. p. 55, lines 10-16). Todd further stated that the other guys needed work and they were out there at the boat job because he had brought them to work on the boat (Tr. p. 55, lines 22-25; Tr. p. 56, lines 1-2).

On redirect, Todd stated it happened on Friday, August 9th and he worked for Roberts Monday through Friday. (Tr. p. 61, lines 20-23).

E. Testimony of Michael Roberts.

Roberts took the stand and indicated he worked on foreclosed homes and that was his business (Tr. p. 63, lines 1-25); that Todd did a lot for him and he trusted him (Tr. p. 66, lines 20-21); that on the day of the accident we were working on a house like Todd said (Tr. p. 67, lines 7-8) and that Todd had guys who needed work so they were working at the boat for Roberts (Tr. p. 67, lines 21-25).

He further noted that Kevin was on salary of \$500 a week (Tr. p. 72, lines 4-6); that he paid Kevin even if he was sick (Tr. p. 72, lines 8-14); and that after the accident, he paid Kevin for eight weeks which was about \$5,000 (Tr. p. 74, line 18). He further said he paid two people Kevin knew to work on the boat that day (Tr. p. 75, lines 9-11).

On cross examination he said the accident happened on a Friday (Tr. p. 75, lines 17-20) and that Todd was on salary (Tr. p. 75, lines 17-20). He further stated Todd came by between 7:00 to 7:15 and picked up his child to take him to school (Tr. p. 76, lines 1-8). Roberts also stated he authorized Todd to get other people to work on the boat (Tr. p. 77, lines 24-25; Tr. p. 78, line 1). Roberts said he would pay them (Tr. p. 78, lines 2-3).

On the day of the accident, Roberts and Todd left Roberts' house on the way to the job together (Tr. p. 79, lines 22-25); that he wanted to make sure the men got to the boat job and got started (Tr. p. 80, lines 2-5). Roberts further stated it was his boat (Tr. p. 80, lines 23-34) and stated, "I'm telling you in my own words, I paid him for working on the job" (Tr. p. 83, lines 4-5).

He again reiterated on cross examination that he met Todd at his home at 7:15 and they went and worked on the boat until the accident (Tr. p. 84, lines 1-20).

F. Deposition testimony of James Flom.

On remand from this Court, Respondent secured the testimony of James Flom. His deposition was presented to the Appellate Panel. In his deposition, Flom indicated that he was an employee of Michael Roberts Home Repair and that as an employee he testified that there were at least four people working for Roberts at the time of Todd's accident. (Dep. ____). Flom's testimony was properly preserved by deposition and the South Carolina Uninsured Employers' Fund did not object to it nor did the uninsured employer.

In sum, all of this testimony proves by a preponderance of the evidence that Todd was an employee and that the uninsured employer was subject to the Act. Accordingly, the Appellate Panel of the Workers' Compensation Commission should be affirmed on this point.

II. THE APPELLATE PANEL OF THE SOUTH CAROLINA WORKERS' COMPENSTION COMMISSION CORRECTLY FOUND THAT THE EMPLOYEE HAD A COMPENSABLE INJURY.

It is well settled in South Carolina that when an employee is directed to go on a private errand by the employer it is compensable in this state. Larson on Workers Compensation, which is frequently cited in the appellate courts of this state, holds that when a person in authority directs an employee to run some private errand or do some work outside his normal duty for the private benefit of the employer or supervisor, the injury in the course of that work is compensable. *See Freeman*

Mechanical, Inc. v. J.W. Bateson, Inc., 316 S.C. 95, 447 S.E.2d 197, 199 (1994); *Peay v. U.S. Silica Co.*, 313 S.C. 91, 93-94, 433 S.E.2d 64, 65-66 (1993).¹

The authorities, including Larson, have noted “the reason for this rule” is that, whatever the normal course of employment may be, the employer and his supervisory staff shall have it within their power to enlarge that course by assigning tasks outside the usual area. The practical reason for the rule is that any other view placed the employee in an intolerable dilemma. If he complies with the order, he forfeits compensation protection; if he does not comply, he gets fired. 1A Arthur Larson Workers’ Compensation Law Section 27.41, 27.44 (1996). See also, *Bickley v. South Carolina Electric & Gas Co.*, 259 S.C. 463, 192 S.E.2d 866 (1972) (employee entitled to compensation when the sustains an injury while performing a special task, service, mission or errand for his employer even before or after customary working hours *Bickley v. South Carolina Electric & Gas Co.*, 259 S.C. 463, 192 S.E.2d 866 (1972); *Gray v. Club Group, Ltd.*, 339 S.C. 173, 528 S.E.2d 435 (2000) (Gray killed in traffic accident while delivering payroll -- his normal job was a hotel bellman. Court finds by a preponderance of the evidence that Gray is a covered employee for his special task.)

The Employee also notes that this is the law in various other states which have similar workers’ compensation laws to South Carolina. See *Stewart v. North Carolina Dept. of Corrections*, 29 N.C. App. 735, 225 S.E.2d 336 (1976). In *Stewart*, one of the Appellant’s superiors asked him if he would come the following day during his off hours to build a picnic shelter. Although the task

¹ Obviously, the work benefited the uninsured employer, Mike Roberts, as it was his boat. Thus, *Fountain v. Hartsville Oil Mills*, 207 S.C. 119, 32 S.E.2d 11 (1945); *Hicks v. Piedmont Cold Storage, Inc.*, 335 S.C. 46, 515 S.E.2d 532 (1999) and its reasoning are applicable – the key factor is did the work benefit the employer. Further, the findings of the Commission if supported by the substantial evidence must be affirmed. Here, the benefit was provided to the employer, Mike Roberts (a sole proprietor). See also, *Portee v. South Carolina State Hospital*, 234 S.C. 50, 106 S.E.2d 670 (1959) (holding injury was compensable under “employer benefit doctrine” where employee died after receiving a penicillin injection from a co-employee as medication for a sore throat.

was not one of his regular work duties, the Appellant agreed to help because his supervisor asked him.

After work began, the Appellant was injured. The Court found the injury compensable stating:

...when a superior directs a subordinate employee to go on an errand or to perform some duty beyond his normal activities, the scope of the Workmen's Compensation Act expands to encompass injuries maintained in the course of such labor. Were the rule otherwise, employees would be compelled to determine in each instance and no doubt at their peril, whether a requested activity was beyond the ambit of the act. See 1A. Larson, Law of Workers' Compensation Section 27.40 (1972).

The Opinion further held:

The order or request need not be couched in the imperative. It is sufficient for compensation purposes that the suggestion, request or even employee's mere perception of what is expected of him under his job classification, serves to motivate undertaking and injury producing activity. So long as ordered to perform by a superior, acts beneficial to the employer which result in injury to performing employees are within the ambit of the act.

See also *Pollock v. Reeves Brothers, Inc.* 313 N.C. 287, 328 S.E.2d 282 (1985) (holding compensable injury sustained when a superior directs a subordinate to go on an errand or perform some duty beyond his normal activity).

The above North Carolina cases are entitled to great respect because the South Carolina Workers' Compensation Act is fashioned after North Carolina's Act. See *Nolan v. Dailey*, 222 S.C. 407, 73 S.E.2d 449, 451 (1952) quoting *McDowell v. Stilley Plywood Co.*, 210 S.C. 173, 181 41 S.E.2d 872 (876) (1947).

The large majority of cases in other jurisdictions favors compensability on similar facts and demonstrates the wide parameters within which the rule favoring compensability operates. See *Wilson and Company v. Curry*, 259 Alabama 685, 68 S.2d 548 (1953) (awarding compensation to employee for injury sustained while building barbecue pit for superior's personal use); *Edwards v. State*, 173 Ga. App. 87, 325 S.E.2d 437 (1984), cert denied (1985) (finding compensable secretary's injury sustained while picking up manager's lunch at nearby restaurant); *Pollock v. Reed Brothers Inc.*, 313

N.C. 287, 328 S.E.2d 282 (1985) (granting compensation to employees injured while flying in another employee's airplane maintained by employer); *Brown v. Jim Brown Service Station* 45 N.C. App. 255, 262 S.C. 2d 700 (1980) (holding death arose out of and in course of employment where employee's son was electrocuted while installing radio antenna at employer-mother's home.)

Claimant asserts the personal errand rule has been adopted in South Carolina and adopted by this Court. See *Hicks v. Piedmont Cold Storage Inc.* 324 S.C. 628, 479 S.E.2d 831 (Ct. App. 1996) (reversed on other grounds, 335 S.C. 46, 515 S.E.2d 532 (1999)). In this case, the work performed by Todd benefited Roberts who was the owner of the boat and also the employer and owner of the sole proprietorship which Todd worked for at the time of the accident. Roberts ordered Todd to go to the boat for him. Todd did what he was told to do and should not be penalized -- he was doing the master's bidding.

The Employee also cites other South Carolina cases which are applicable in this matter. In *Howell v. Cash & Karry*, 264 S.C. 298, 214 S.E.2d 821 (1975) the South Carolina Supreme Court recognized the following general rule:

An act outside an employee's regular duties which is undertaken in good faith to advance the employer's interest, whether or not the employee's own assigned work is thereby furthered, is within the course of employment. 214 S.E.2d at 822 (quoting 1A. Larson, Law of Workers' Compensation Section 27.00); see also *Lomax v. City of Greenville*, 225 S.C. 289, 82 S.E.2d 191 (1954).

In *Howell*, the claimant broke his arm while chasing two young boys who snatched the purse of a prospective customer a few feet from the entrance to the employer's store. Although protecting customers was not a part of the employee's regular duties, the court felt he nevertheless was advancing the employer's interest in trying to save the very money the customer was intending to spend in employer's store and by creating customer good will. The court noted that "awards have been upheld for injuries occurring in the course of miscellaneous good Samaritan activities by employees, on the

theory that the employer ultimately profited as a result of the good will thus created....” 214 S.E.2d at 822.

In *Gibson v. Spartanburg School District No. 3*, 338 S.C. 510, 526 S.E.2d 725 (Ct. App. 2000), the claimant was at Wal-Mart purchasing school supplies for her employer, which was one of her duties. While at Wal-Mart, the claimant reached for a lunchbox for her son, when a box cutter fell off the shelf severely cutting her right eye. The court held that the claimant’s trip to Wal-Mart was a dual purpose in that it served both a business and personal purpose and thus compensable.

In sum, when an employee is obligated to make or perform service at times other than his regular work hours or because of a special errand or mission for the employer, he is entitled to the protection of the compensation laws from the time he leaves home until his return thereto. It is thus logical that when an employee is on this type of special errand and it results in injury or death and such arises out of and in the course of his employment, the employee is thus covered within the meaning of the workers’ compensation act.

III. THE APPELLATE PANEL OF THE SOUTH CAROLINA WORKERS’ COMPENSATION COMMISSION DID NOT ERR IN CONSIDERING THIS MATTER AT JUDICIAL CONFERENCE RATHER THAN ALLOWING ORAL ARGUMENTS.²

The Appellant, The South Carolina Uninsured Employers’ Fund, argues that the Appellate Panel should not have considered this matter at conference. In fact, all parties were notified that the Appellate Panel was going to consider this matter at conference, and it was not necessary that the Appellate Panel have an actual hearing. Significantly, neither the Employee, the Uninsured Employer

² The Commission notifying the parties it would consider the case at conference is no different than this Court considering an appeal without an oral argument. (See Judicial Conference Order 10/21/2019) See Rule 215, SCACR (The appellate court may decide any case without oral argument if it determines oral argument would not aid the court in resolving the issues).

nor the South Carolina Uninsured Employers Fund requested a hearing or additional briefing. Thus, this argument is waived as it was not objected to by any party.

Prior to the Commission hearing this matter at judicial conference, the deposition of James Flom was secured and was offered into evidence. At no point did the Uninsured Employers' Fund or Uninsured Employer object to this process or procedure. In fact, in its brief the S. C. Uninsured Employers' Fund admits no objection was made to the introduction of the deposition of James Flom's deposition into evidence. Accordingly, the Uninsured Employers' Fund waived its rights to appeal this issue. It is well settled when a point of law is not raised in the lower court it may not now be raised for the first time on appeal. *Wilder Corp. v. Wilke*, 330 S.C. 71, 497 S.E.2d 731 (1998) ("axiomatic that an issue cannot be raised for the first time on appeal"). In this case, the Uninsured Employers' Fund did not object to Flom's deposition or to it being offered into evidence and cannot raise it at this point in the proceedings.

In sum, the Uninsured Employer was clearly notified not only of the conference hearing that the Commission intended to have, but also of the deposition and never objected to this procedure.³ Accordingly, the Uninsured Employers' objection to the deposition and to the conference hearing was waived and this Court should not consider it.

CONCLUSION

Here, the work benefited the employer, Mike Roberts, a sole proprietor. Thus, the claim is compensable. The record is clear Roberts used all his employees for anything he needed – thus benefitting him as the employer. The record shows Todd worked every day, and that Roberts called

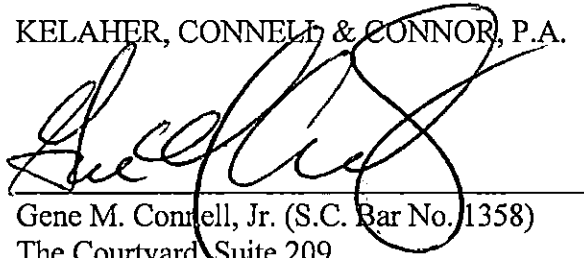
³ See Notice of Deposition dated 9/17/2019 (R. ____) and Order on Conference served on the uninsured employer dated 10/21/2019). (R. ____)

on him to do anything he requested. Indeed, the substantial evidence is that Todd worked for Roberts day and night and the Appellate Panel clearly recognized this by finding coverage.

Finally, this Court has long recognized the personal errand rule in South Carolina which is an additional sustaining ground in this case. In sum, if there is substantial evidence in the record supporting the Commission's findings, this Court will not substitute its judgment for that of the Commission as to the weight of the evidence on questions of fact. See *Gibson v. Spartanburg School District No. 3*, 338 S.C. 510, 526 S.E.2d 725 (Ct. App. 2000). The evidence in this case is overwhelming and Respondent requests the Court affirm the findings of the Appellate Panel of the South Carolina Workers Compensation Commission.

Respectfully submitted,

KELAHER, CONNELL & CONNOR, P.A.



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Attorney for Respondent

November 9, 2020
Surfside Beach, South Carolina

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

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SC Court of Appeals

APPEAL FROM APPELLATE PANEL OF THE SOUTH CAROLINA
WORKERS' COMPENSATION COMMISSION

WCC FILE NO. 1320600

Kevin M. Todd, Employee/Claimant Respondent

vs.

Mike Roberts d/b/a Mike Roberts Home Repair, Employer
and S.C. Uninsured Employers' Fund, Carrier/Defendants

OF WHICH

S.C. Uninsured Employers Fund is the..... Appellant

PROOF OF SERVICE

PERSONALLY appeared before me, Shelia Y. McCumbee, who being duly sworn, deposes and says that she is an employee of Kelaher, Connell & Connor, P.C., and that she has served a copy of the **Initial Brief of Respondent** on the 9th day of November, 2020, by depositing a copy of same in the United States Mail, postage prepaid, to:

Samuel T. Brunson, Esquire.
Brunson Law Firm
P.O. Box 431
Florence, SC 29503

Mike Roberts
d/b/a Mike Roberts Home Repair
3334 New Road
Conway, SC 29526

Shelia Y. McCumbee
Shelia Y. McCumbee

SWORN AND SUBSCRIBED before me,
this 9th day of November, 2020.

Donna H. Hand
Notary Public for South Carolina
My Commission Expires: 3-28-26

KELAHER, CONNELL & CONNOR, P.C.

ATTORNEYS AT LAW

SUITE 209

THE COURTYARD

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SC Court of Appeals

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EDWARD T. KELAHER*
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L. SIDNEY CONNOR, IV
LISA POE DAVIS
*OF COUNSEL

November 9, 2020

Jenny Abbott Kitchings
Clerk, South Carolina Court of Appeals
Post Office Box 11629
Columbia, South Carolina 29211

Re: Appellate Case No. 2020-000923
*Kevin M. Todd v. Mike Roberts d/b/a Mike Roberts Home Repair and
S.C. Uninsured Employers' Fund*
W.C.C. File No. 1320600
Our File No. 2014-0046C

Dear Ms. Kitchings:

Enclosed please find the following for filing in the above-captioned matter:

- (1) Original and one copy of Initial Brief of Respondent, with Proof of Service;
- (2) Original and one copy of Respondent's Designation of Matter to be Included in Record on Appeal, with Proof of Service.

Please be so kind as to return a filed copy of the Proof of Service of each document in the self-addressed, stamped envelope provided for your convenience.

By copy of this letter, we hereby serve a copy of the above-stated documents on Appellant through counsel of record and on Mike Roberts d/b/a Mike Roberts Home Repair.

Sincerely yours,



Gene M. Connell, Jr.

GMC,Jr:sm
Enclosures

cc w/enc.: Samuel T. Brunson, Esquire.
Mike Roberts d/b/a Mike Roberts Home Repair

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