

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM SOUTH CAROLINA
Workers' Compensation Commission

Appellate Case No.: 2018-001477

RECEIVED
JUN 24 2019
SC Court of Appeals

Robert J. D'Espies, ... Claimant, Appellant,

v.

S&A Construction and More, LLC, Employer, and the South Carolina
Workers' Compensation Uninsured Employers' Fund, ... Respondents.

RECORD ON APPEAL

Craig Anderson Snook
AXELROD & ASSOCIATES, P.A.
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Myrtle Beach, South Carolina 29577
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Attorney for Respondent UEF

INDEX

Decision and Order of July 2, 2018	1
Decision and Order of November 29, 2017	7
Form 30 filed by UEF dated December 11, 2017	17
Form 30 filed by S&A Construction and More, LLC dated December 13, 2017.....	18
Form 59 filed by S&A Construction and More, LLC dated January 12, 2018.....	21
Notice of Hearing dated July 19, 2017	25
Form 31 Briefing Schedule and Notice of Appellate Hearing dated December 15, 2017.....	26
Notice of Hearing dated July 23, 2018	28
Notice of Hearing Postponement dated August 14, 2018.....	29
Transcript of Hearing held September 14, 2017	30
Transcript of Full Commission Hearing held February 20, 2018	86

APPELLATE PANEL
DECISION AND ORDER
OF THE
SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION
W.C.C. FILE NO.: 1622756

Robert J. D'Espies,
Claimant/Respondent,

-vs-

S&A Construction and More, LLC,
Employer/Appellant,

-and-

South Carolina Workers' Compensation
Uninsured Employers' Fund,
Defendant/Appellant.

Appellate Panel Review held in Columbia, South Carolina
on February 20, 2018, per notices timely and properly served
upon all parties of interest.

Appellate Panel Decision and Order filed on

July 2nd, 2018

APPEARANCES: Claimant/ Respondent represented by Craig A. Snook, Esquire,
of Axelrod & Associates, PA, of Myrtle Beach, South Carolina.

Employer/Appellant S&A Construction and More, LLC, pro se
by Scott Calder of Conway, South Carolina.

South Carolina Workers' Compensation Uninsured Employers'
Fund represented by Timothy B. Killen, Esquire of Holder,
Padgett, Littlejohn and Prickett, LLC of Mount Pleasant, South
Carolina.

STATEMENT OF THE CASE

This matter arises from the Claimant/Respondent's (Claimant) Form 50, Request for Hearing, dated May 25, 2017. In the Form 50, Claimant alleges injuries to both heels on December 21, 2016, while employed by S&A Construction and More, LLC.

Employer/Appellant S&A Construction and More, LLC (Employer) is uninsured and did not respond to the Form 50. Accordingly, a general denial was issued on its behalf. Defendant/Appellant South Carolina Workers' Compensation Uninsured Employers' Fund (Fund) asserted a denial and that this Commission lacked jurisdiction over Employer.

The Single Commissioner issued his Order in favor of the Claimant on November 29, 2017. The single Commissioner found, *inter alia*, that the Employer is subject to the terms and provisions of the South Carolina Workers' Compensation Act, that the appearing parties stipulated to proper notice of hearing to all parties, and the claimant is entitled to a running award of Temporary Total Disability (TTD) benefits from the date of accident and continuing.

Both Fund and Employer timely appealed.

DISCUSSION

At the hearing before the Appellate Panel, Scott Calder was placed under oath. Mr. Calder testified that, upon information and belief, he is the sole member of S&A Construction and More, LLC. App. Tr. p. 4, ll. 14 – 18. Mr. Calder testified that his mailing address is 296 Highway 66, Conway, South Carolina 29526, and that this has been his address for the last six (6) to seven (7) years. App. Tr. p. 9, ll. 10 – 15.

Mr. Calder argued that he was denied an opportunity to be heard because he did not receive a Notice of Hearing from the Commission. App. Tr. p. 9, ll. 1 – 7. In the Form 59, Appellant's Informal Brief, Employer wrote: "The Commissioner did incorrectly decide the facts of this case due to the fact S&A Construction and More LLC was not properly notified of the hearing date and

time. I have been told the information was dropped in the regular mail and I should have received it, however I did not receive proper notice of the hearing" Form 59.

Regulation 67-607 requires that parties be given thirty (30) days' notice of the hearing.

Regulation 67-213 reads, in pertinent part, as follows:

The Commission services hearing notices . . . electronically or by deposit in the United States Postal Service first class postage, addressed to the parties according to R. 67-210. All . . . uninsured employers shall be served by depositing the notice in the United States Postal Service, first class postage per R. 67-210. The Commission may, but is not required to, serve such notices by certified mail, return receipt requested. Service by certified mail is complete upon receipt.

A review of the hearing notice dated July 19, 2017, appears to show that it was served on the Employer by deposit in the United States Postal Service first class postage, addressed to the Uninsured Employer in this case at the address Mr. Calder testified to at the Full Commission hearing. The hearing notice does not show that the document was mailed by certified mail, return receipt requested.

The Fund also appealed. Fund appealed Stipulation Two (2), which reads: "Notice of the hearing was timely and properly provided to all parties of interest." Order P. 2. Fund asserted that there was no such stipulation in the Record. Tr. p. 1 - 55; Record as a whole. Claimant argued that Fund did so stipulate by not objecting to making the Hearing Notice part of the record before the Single Commissioner ("So when he [Fund's attorney] that the Commission's file would be made part of the record without objection, he agreed and stipulated to that notice of the hearing, and that notice of the hearing is properly addressed to the uninsured employer." App. Tr. p. 18, ll. 20 - 25).

According to Black's Law Dictionary, a stipulation is a "voluntary agreement between opposing parties concerning some relevant point." *Black's Law Dictionary* 1427 (7th ed. 1999). The Defendants in this matter did not make such an agreement. We are loathe to impose a

stipulation on the parties that was not affirmatively made, and where one of the parties was not even present.

Fund also appealed the award of TTD benefits where Claimant admittedly produced no documentation from a medical professional holding Claimant out of work. Fund asserted that under S.C. Code Ann. Section 42-9-10, TTD is to be paid only when "the incapacity for work resulting from an injury is total" Fund asserted that, in this matter, there is no expert medical opinion as to whether the Claimant's condition led to the total incapacity for work. Fund asserted that "[t]he burden is upon a claimant to prove such facts as will render his injury compensable within the provisions of the Workers' Compensation Law. Such an award must not be based on surmise, conjecture, or speculation." *Lee v. Harborside Café*, 350 S.C. 74, 81, 564 S.E.2d 354 (Ct.App. 2002). Fund asserted that the only evidence regarding Claimant's alleged incapacity for work was his self-serving testimony.

Fund further appealed the Single Commissioner's failure to credit Fund and Employer for monies paid to the Claimant's subsequent to the alleged accident. However, because we are vacating the Single Commissioner's Order because Employer did not receive notice of the hearing, we need not reach these issues.

FINDINGS OF FACT

Based upon the testimony and 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. Employer did not receive notice of the hearing;
2. Regulation 67-607 requires that all parties are to receive thirty (30) days' notice in advance of a hearing;

3. Because Employer failed to receive notice of the hearing, Employer was denied substantive and procedural due process;
4. Because Employer failed to receive notice of the hearing, we hereby **VACATE** the Order of the Single Commissioner dated November 29, 2017.
5. We hereby **REMAND** the matter for a hearing *de novo* before the next Jurisdictional Commissioner.

CONCLUSIONS OF LAW

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

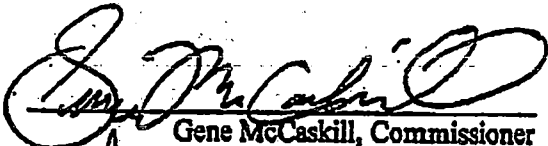
1. Regulation 67-607 governs number of days required for Notice of a Hearing;
2. Regulation 67-213 governs service of Forms and Documents;
3. Regulation 67-701 governs applications for review of an Order of the Single Commissioner; and
4. Section 42-17-50 governs applications for review of an Order of the Single Commissioner.

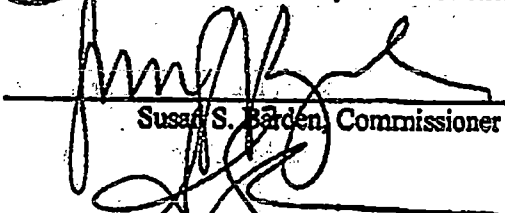
ORDER

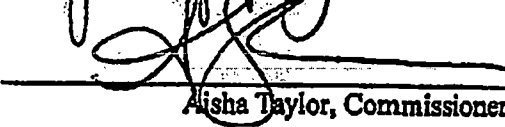
By unanimous vote, based upon the foregoing Findings of Fact and Conclusions of Law, **IT IS, THEREFORE, ORDERED** that the Order of the Single Commissioner dated November 29, 2017, is hereby **VACATED**;

IT IS FURTHER ORDERED that the matter is hereby remanded to the next Jurisdictional Commissioner for a hearing *de novo*;

AND IT IS SO ORDERED!


Gene McCaskill, Commissioner


Susan S. Barden, Commissioner


Alisha Taylor, Commissioner

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 Valerie Deller on July 2, 2018

SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION

W.C.C. FILE NO.: 1622756

Robert J. D' Espies,

Employee/Claimant,

vs.

S&A Construction & More, LLC,

Employer,

AND

SC Workers' Compensation Uninsured
Employers' Fund,

Defendants.

DECISION AND ORDER

HEARING:

Held on September 14, 2017 in Georgetown, South Carolina.

COURT REPORTER:

Ms. Cora Bruton
131 Browning Court
Lexington, SC 29073
corabruton@twc.com
(803) 397-0189

APPEARANCES:

Claimant, Robert J. D' Espies, was represented by Craig Anderson Snook, Esquire, of Myrtle Beach, South Carolina.

Employer, S&A Construction & More, LLC did not appear at the hearing.

SC Workers' Compensation Uninsured Employers' Fund, was represented by Timothy B. Killen, Esquire, of Mt. Pleasant, South Carolina

PURPOSE OF HEARING: The hearing was set to determine the issues as set forth on the Forms 50 and 51, as well as any and all other issues which may have timely come before the Commission.

DECISION AND ORDER: The Honorable R. Michael Campbell, II, South Carolina
Workers' Compensation Commissioner

FILED: November 29, 2017

STIPULATIONS

1. The purpose of the hearing is to determine issues as set forth on the Forms 50 and 51. More specifically these issues include, but are not limited to: A) whether the Defendant/Employer is subject to the South Carolina Workers' Compensation Act (the "Act"); B) whether the Claimant is an employee for purposes of the Act; C) whether the Claimant sustained a compensable injury; D) a determination of the body parts injured; E) a determination of Claimant's average weekly wage and corresponding compensation rate; F) a determination of Claimant's entitlement to payment of his medical bills to date; G) a determination of Claimant's need for future medical treatment; and H) a determination of Claimant's entitlement to temporary total disability benefits.
2. Notice of the hearing was timely and properly provided to all parties of interest.
3. Proper venue is stipulated by the appearing parties to be in Georgetown County.
4. Without objection, the Commission file is made a part of the record, excluding unstipulated medical reports, hearsay testimony, and self-serving statements.
5. The APA Submissions ("APA's") as set forth below were Introduced into evidence and made a part of the record without objection from either party appearing.

CLAIMANT'S APA SUBMISSIONS

<u>APA #</u>	<u>NAME OF PROVIDER/OTHER</u>	<u>DATES OF RECORDS</u>	<u>PAGE(S)</u>
1.	Conway Medical Center	12/22/16	1 - 35
2.	Waccamaw Orthopaedics	12/22/16 - 4/25/17	36 - 56

UEF'S APA SUBMISSIONS

<u>APA #</u>	<u>NAME OF PROVIDER/OTHER</u>	<u>DATES OF RECORDS</u>	<u>PAGE(S)</u>
1.	Conway Medical Center	12/22/16	1 - 2
2.	William Whiteside, M.D.	12/27/16 - 4/25/17	3 - 8

STATEMENT OF THE CASE

Robert J. D' Espies ("Claimant") is a 45-year-old single male who alleges he sustained injuries to both feet/heels arising out of and in the course and scope of his employment on December 21, 2016 while employed as a roofer by Defendant S&A Construction & More, LLC ("Employer") when he accidentally fell from a roof while working at Employer's job site. The claim was investigated by the South Carolina Workers' Compensation Commission Compliance Division and it was determined that the Employer had no coverage at the time of Claimant's accident and further that it could not conclusively establish that the Employer was subject to the Act.

Thereafter, Claimant filed a Form 50 requesting a hearing and the SC Workers' Compensation Uninsured Employers Fund ("UEF") filed a Form 51 denying the claim. The parties filed their respective Pre-Hearing Briefs and APA's and a hearing was held on September 14, 2017 in Georgetown, South Carolina, the Honorable R. Michael Campbell, II presiding. The parties were represented and appeared as noted above and stipulated to the APA's. The Employer did not appear. The UEF did not call any witnesses at the

hearing but did cross-examine both witnesses. The only testimony presented was the unrefuted testimony of the Claimant and his witness, Randy Allison.

EVIDENCE OF THE CASE

The Claimant testified he had been employed by the Employer as a carpenter and roofer for approximately two (2) years before his December 21, 2016 accident. He testified that Employer instructed him what jobs to go to, what duties to perform, provided the job materials and essential job equipment (i.e. ladders, air compressors and nail guns), that the Employer hired the Claimant and maintained the ability to fire the Claimant from his job. The Claimant testified he worked as many as seven (7) days per week depending on the job and the weather, and that in addition to himself there were at least 4 other employees regularly employed by Employer. He further testified that he was paid One Hundred and 00/100 dollars (\$100.00) per day. The Claimant's testimony was corroborated by the testimony of his co-employee, Randy Allison, who testified additionally that the Claimant held the position of job foreman and received a higher rate of pay than other employees.

The Claimant further testified he injured both feet/heels when he fell from a roof at Employer's job site on December 21, 2015 while performing roofing work at the Employer's direction. Mr. Allison was working with the Claimant at the time and witnessed the fall. Mr. Allison described the Claimant's injuries and testified that he assisted their boss, Scott Calder, in transporting the Injured Claimant to the Conway Medical Center Emergency Room for treatment.

Claimant's testimony and the medical records in the APA's show that Claimant was treated acutely at the Conway Medical Center Emergency Room and referred to

Waccamaw Orthopaedics where he was treated by William Whiteside, MD for bilateral calcaneus fractures. Claimant was treated by Dr. Whiteside from December 27, 2016 through April 25, 2017 for: A) a closed displaced fracture of the body of his left calcaneus with routine healing; and B) an unspecified fracture of his right calcaneus with malunion. Dr. Whiteside ordered physical therapy and proposed that a subtalar fusion bone block arthrodesis be performed on his right foot following Claimant's smoking cessation. Claimant testified that he wants to proceed with the treatment plan proposed by Dr. Whiteside, however, he has been precluded from doing so by Employer's failure to maintain workers' compensation insurance and Claimant's financial inability to "self-pay" for his medical care. In this regard, Claimant testified that none of his medical bills have been paid and at least one of these bills (Conway Medical Center) had been turned over to a collection agency.

Claimant testified he has been unable to return to work due to his injuries. He further testified he has not received any compensation or other benefits from the Employer or UEF since the date of the accident.

FINDINGS OF FACT

Based on a preponderance of the evidence, sworn testimony, APA's and Stipulations set forth herein, the undersigned Commissioner hereby finds that:

1. The uninsured employer was properly notified of the hearing and failed to appear. Prior to the commencement of the hearing, and at the request of the undersigned Commissioner, counsel for the UEF summoned for the Employer in the corridor and waiting area outside of the hearing room. Being advised there was no response the hearing commenced as scheduled.

2. Claimant's bilateral heels were the only body parts properly before the undersigned Commissioner.

3. Based on the unrefuted testimony of the Claimant and his witness, Randy Allison, I hereby find the uninsured Employer was subject to the Act and Claimant was an employee of the uninsured Employer.

4. In addition, based upon this unrefuted testimony, along with the medical records included in the APA's, I find that the Claimant sustained compensable injuries by accident to his bilateral heels arising out of and in the course and scope of his employment.

5. Claimant has not reached maximum medical improvement ("MMI").

6. A determination of permanency is premature at this time.

7. Claimant is entitled to all past causally-related medical treatment and out-of-pocket expenses.

8. Claimant is entitled to an evaluation and all causally-related medical treatment, if recommended, by a specialist of the defendants choosing with a specialty in the treatment of injuries to the feet such as those suffered by the Claimant.

9. Based on the unrefuted testimony of the Claimant and his witness, Claimant worked an average of five days a week and was paid at the rate of One Hundred and 00/100 (\$100.00) Dollars per day. Therefore, Claimant's average weekly wage ("AWW") is Five Hundred and 00/100 (\$500.00) Dollars with a compensation rate ("CR") of Three Hundred Thirty-three and 35/100 (\$333.35) Dollars per week.

10. Furthermore, based on the Claimant's unrefuted testimony and the undisputed medical records in the APA's, claimant was clearly Incapable of returning to

his job as a roofer and was taken out of work accordingly. Therefore, claimant is entitled to an award of temporary total disability benefits ("TTD") from the date of accident and continuing until further order of the Commission or appropriate agreement of the parties.

11. The UEF preserves its right to pursue a lien against the uninsured Employer.
12. All other issues are properly held in abeyance at this time.

CONCLUSIONS OF LAW

Based upon the foregoing, and considering all applicable statutory and case law, the undersigned Commissioner hereby concludes that:

1. The parties to this proceeding are subject to and bound by the provisions of the South Carolina Worker's Compensation Act.
2. On December 21, 2016, the Claimant, was an employee of the uninsured Employer within the meaning of S.C. Code Ann. § 42-1-130 (1976) and Sellers v. Tech Serv., Inc., 803 S.E.2d 731 (Ct. App. 2017). Likewise, Employer was an employer within the meaning of S.C. Code Ann. §§ 42-1-140 and 42-1-150 (1976) and did not meet the statutory and regulatory requirements to maintain workers' compensation insurance.
3. On December 21, 2016 Claimant sustained compensable injuries by accident to his bilateral heels arising out of and in the course and scope of his employment within the meaning of S.C. Code Ann. § 42-1-160 (1976) while performing the job duties of his employment with the uninsured Employer.
4. Claimant is entitled to all past causally-related medical treatment and out-of-pocket expenses. Claimant is further entitled to an evaluation and all future causally-related medical treatment, if recommended, by a specialist of the Defendants choosing with a specialty in the treatment of injuries to the feet such as those suffered by the Claimant.

5. Claimant is entitled to a back award of TTD at his compensation rate of \$333.35 per week from December 21, 2016 to the present in a lump sum amount. Thereafter, Defendants shall continue to make weekly TTD payments to the Claimant at said compensation rate until further order of the Commission or appropriate agreement of the parties.

6. Claimant is further entitled to all allowable benefits under the South Carolina Workers' Compensation Act.

7. All benefits shall be provided, and payments pursuant to this award shall be made, by the UEF on behalf of the Defendants. All payments made and/or benefits provided by the UEF hereunder shall be made with all rights of indemnification and reimbursement as prescribed by statute. Nothing in this Decision and Order, explicit or implied, shall limit any claim the UEF has against the Employer pursuant to S.C. Code Ann. Section 42-7-200 or otherwise.

8. All other issues are properly held in abeyance at this time.

AWARD

IT IS HEREBY ORDERED THAT Claimant is entitled to all allowable benefits under the South Carolina Workers' Compensation Act. All such benefits shall be provided, and payments pursuant to this award shall be made, by the UEF on behalf of the Defendants.

IT IS FURTHER ORDERED THAT Defendants shall pay Claimant TTD at his compensation rate of \$333.35 per week from December 21, 2016 to the present in a lump sum amount.

IT IS FURTHER ORDERED THAT Defendants shall continue to make weekly TTD payments to the Claimant at his compensation rate until further order of the Commission or appropriate agreement of the parties.

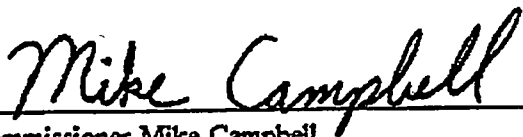
IT IS FURTHER ORDERED THAT Defendants shall be liable for all past causally-related medical treatment and out-of-pocket expenses incurred by Claimant.

IT IS FURTHER ORDERED THAT Defendants shall be liable for an evaluation and all future causally-related medical treatment, if recommended, by a specialist of the Defendants choosing with a specialty in the treatment of injuries to the feet such as those suffered by the Claimant.

IT IS FURTHER ORDERED THAT all payments made or benefits provided by the UEF hereunder shall be made with all rights of indemnification and reimbursement as prescribed by statute. Nothing in this Decision and Order, explicit or implied, shall limit any claim the UEF has against the Employer pursuant to S.C. Code Ann. Section 42-7-200 or otherwise.

IT IS FURTHER ORDERED THAT all other issues are held in abeyance at this time.

AND IT IS SO ORDERED.


Commissioner Mike Campbell

November 29, 2017
Columbia, South Carolina

CERTIFICATE OF SERVICE

This is to certify the undersigned has this date served this order in the above entitled action upon all parties to this cause by sending an electronic copy hereof by electronic mail addressed to the attorney or attorneys for said parties or by depositing a copy hereof, postage paid, in the United States certified mail addressed to any unrepresented party.
November 29, 2017

By: Barbara Cheeseboro, Administrative Assistant to Commissioner Campbell

South Carolina Workers' Compensation Commission
1333 Main Street, Suite 500
P.O. BOX 1715
Columbia, SC 29202-1715
803-737-5675 www.wcc.sc.gov



WCC File #:	1622756
Carrier File #:	2016-4305
Carrier Code #:	
Employer FEIN #:	

Claimant's Name: Robert J. D'Espies SSN: [REDACTED] Employer's Name: S&A Construction & More, LLC
Address: 5620 Privetts Rd Address: 296 Highway 66
City: Conway State: SC Zip: 29526 City: Conway State: SC Zip: 29526
Home Phone: () - Work Phone: Insurance Carrier: Uninsured Employers Fund
Preparer's Name: Timothy B. Killen Law Firm: Wilson Jones Carter & Baxley, P.A. Preparer's Phone #: (843) 284-0831

REQUEST FOR COMMISSION REVIEW

Request for Commission Review by ☐ Claimant ☒ Employer (check one) Date of Injury or Illness: 12/21/2016

The undersigned makes application for review of the findings of the Commissioner in the above-captioned case. The request for review is based on the following grounds: (State the grounds of your appeal in the form of questions presented. Each question presented must contain a concise statement of one proposition of law or fact. Refer to evidence by title and exhibit number. Use additional pages if necessary).

1. The Commissioner erred as a matter of fact and law in finding that the parties "stipulated" to proper notice being received by all parties where no such stipulation was entered into. 2. The Commissioner erred in Finding of Facts 1 - 12, in that said Findings are contrary to the greater weight of the evidence and the law. 2. The Commissioner erred in Conclusions of Law 1 - 8, in the such Conclusions are contrary to the greater weight of the evidence and the law. 3. The Commissioner erred in his Order, as the supportive Findings and Conclusions are contrary to the greater weight of the evidence and the law and Employer did not receive notice of the hearing. 4. The Commissioner erred as a matter of fact and law by determining that the UEF is primarily responsible for the payment of benefits rather than the Employer should claim ultimately be determined to be compensable.

Check one) Oral argument ☒ is ☐ is not requested. Appellant's request for oral argument is waived if not indicated on this form.

☐ Mediation

☐ Mediation is requested by consent of the Parties pursuant to Reg. 67-1803.

Questions regarding mediation may be submitted to mediation@wcc.sc.gov.

certify that I have served this document pursuant to R.67-212 by delivering a copy to: Craig A. Snook, 4701 Oleander Dr, Myrtle Beach, SC 29577; S&A Construction and More, LLC, 296 Hwy 55, Conway, SC 29526 and Judicial Director, SC WCC, P.O. Box 1715, Columbia, SC 29202 on the 11th day of December, 2017 by ☐ first class mail ☒ personal service ☐ certified mail

[Signature]
Preparer's Signature

Attorney for UEF
Title

tbkillen@wilaw.net
Email

12/11/2017
Date

Check this box if you are not represented by an attorney ☐

Questions about the use of this form should be directed to the Judicial Department at 803.737.5675 or appeals@wcc.sc.gov.

If the claimant appeals and is not represented by counsel, the Judicial Department will properly serve this form pursuant to Reg. 67-607 C. Pursuant to Reg. 67-15 and Reg. 701, the appeal must be postmarked no later than 14 days from the date of service of the Decision and Order of the Hearing Commissioner along with the filing fee. Attach a Form 32, if you are unable to pay the filing fee. Refer to Reg. 67-211 and Reg. 67-701 through 711.

South Carolina Workers' Compensation Commission
1333 Main Street, Suite 500
P.O. BOX 1715
Columbia, SC 29202-1715
803-737-5575



WCC File #: 1622756
Carrier File #: 2016-4305
Carrier Code #: _____
Employer FEIN #: _____

Claimant's Name: <u>Robert Despies</u>		SSN: <u>[REDACTED]</u>	Employer's Name: <u>S&A Construction and More LLC</u>	
Address: <u>5620 Privetts Rd</u>		Address: <u>296 Hwy 66</u>		
City: <u>Conway</u>	State: <u>SC</u>	Zip: <u>29526</u>	City: <u>Conway</u>	State: <u>SC</u> Zip: <u>29526</u>
Home Phone: _____	Work Phone: _____	Insurance Carrier: <u>None</u>		
Preparer's Name: <u>Scott Calder</u>	Law Firm: _____	Preparer's Phone #: <u>84 46 7871</u>		

REQUEST FOR COMMISSION REVIEW

Request for Commission Review by ☐ claimant ☒ employer (check one) Date of injury: 12/21/2016

The undersigned makes application for review of the findings of the Commissioner in the above-captioned case. The request for review is based on the following grounds: (State the grounds of your appeal in the form of questions presented. Each question presented must contain a concise statement of one proposition of law or fact. Refer to evidence by title and exhibit number. Use additional pages if necessary).

1. Was I (S&A Construction and More LLC) properly notified of a the hearing date giving me due process?

I was not properly notified of the hearing date and time. I have been told that the information was dropped in the regular mail and I should have received it, however I did not recieve proper notice of the hearing as required in SC Code. I was scheduled for a deposition, but it was canceled therefore, my side of the events were never heard and I was not allowed to present any evidence nor did I have the opportunity to attend the hearing. Please see the attached email...

2. Did Mr. Despies commit fraud by filing a false claim?

Mr. Despies did en-fact commit fraud to the SC Workers Compensation Uninsured (See Next Page).....

(Check one) Oral argument ☒ is ☐ is not requested. Appellant's request for oral argument is waived if not indicated on this form.

I certify that I have served this document pursuant to R.67-211 by delivering a copy to Craig Anderson Snook

4701 Oleander Drive Myrtle Beach, SC 29577

on the 13th day of December, 2017 by Scott Calder ☐ first class mail ☐ personal service ☒ certified mail.
Preparer's Signature: Scott Calder Title: owner Date: 12-13-17

Check this box if you are not represented by an attorney. ☒

If the claimant appeals and is representing himself or herself, the Judicial Department will prepare the additional copies of this form and serve this form on the opposing party. R.67-701B. Otherwise, file the original and four copies of this form with the Judicial Department. The appeal must be postmarked no later than 14 days from the date of service of the Hearing Commissioner's decision. R.67-701 and R.67-205. Attach the filing fee to this form. Attach a Form 32 if you are unable to pay the filing fee. Refer to R.67-701 through R.67-711 for additional information.

From: Scott Calder <scottcalder@live.com>
Sent: Monday, December 04, 2017 2:04 PM
To: Calder, Amy
Subject: Fwd: Depositions - Robert J D'espies vs. S&A C

#1 Canceled
Deposition

Sent from my iPhone

Begin forwarded message:

From: "Michelle M. Adams" <mmadams@wilaw.net>
Date: September 12, 2017 at 2:40:20 PM EDT
To: 'Scott Calder' <scottcalder@live.com>
Subject: RE: Depositions - Robert J D'espies vs. S&A Construction & Mo



Claimant's attorney just notified us he is not available tomorrow.
No depositions will be done tomorrow.

WJC&B
WILLSON JONES CARTER
& BAXLEY, P.A.

Michelle M. Adams, Paral
mmadams@wilaw.net
421 Wando Park Boulevard, Suite 100
Mount Pleasant, South Carolina 29464
Phone: (843) 284-1098
Fax: (843) 284-1081
wicblaw.com

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From: Scott Calder [<mailto:scottcalder@live.com>]
Sent: Tuesday, September 12, 2017 10:01 AM
To: Michelle M. Adams <mmadams@wilaw.net>
Subject: Re: Depositions - Robert J D'espies vs. S&A Construction & More, LLC 2016-4305:

No problem. Just let me know.

Sent from my iPhone

On Sep 12, 2017, at 9:59 AM, Michelle M. Adams <mmadams@wilaw.net> wrote:

I apologize for not getting back to you on Friday, it was a crazy ending to the week and we were closed yesterday due to the storm.
I'm still trying to reach Mr. Snook, claimant's attorney. I will let you know as soon as he responds.

<image003.png>

Michelle M. Adams, Paralegal to Timothy B. Killen
mmadams@wilaw.net
421 Wando Park Boulevard, Suite 100
Mount Pleasant, South Carolina 29464
Phone: (843) 284-1098
Fax: (843) 284-1081
wjcbllaw.com

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From: Scott Calder [<mailto:scottcalder@live.com>]
Sent: Monday, September 11, 2017 10:34 AM
To: Michelle M. Adams <mmadams@wilaw.net>
Subject: Fwd: Depositions - Robert J D'espies vs. S&A Construction & More, LLC 2016-4305:

I never heard back on Friday. Is the date still good?

Sent from my iPhone

Begin forwarded message:

From: Scott Calder <scottcalder@live.com>
Date: September 8, 2017 at 8:55:26 AM EDT
To: "Michelle M. Adams" <mmadams@wilaw.net>
Subject: Re: Depositions - Robert J D'espies vs. S&A Construction & More, LLC 2016-4305:

That should not be a problem. Will you be in the office the rest of the day? I will call you to confirm this afternoon.

Sent from my iPhone

On Sep 7, 2017, at 11:27 AM, Michelle M. Adams
<mmadams@wilaw.net> wrote:

Mr. Calder,
Tim would like to depose you and Mr. D'espies prior to the hearing.
Would you be available September 13th at 2:00 pm or later?
We would do this at Mr. Snook's office in Myrtle Beach.
Thank you in advance.

South Carolina Workers' Compensation Commission
1333 Main Street, Suite 500
P.O. BOX 1715
Columbia, SC 29202-1715
(803) 737-5675



Daniel A
4/20/18
2:00

WCC File #: 1622756
Carrier File #: 2016-4305
Carrier Code #: _____
Employer FEIN #: _____

Claimant's Name: Robert Despres SSN: [REDACTED] Employer's Name: S&A Construction and More LLC
Address: 5620 Privetts Rd. Address: 296 Hwy 66
City: Conway State: SC Zip: 29526 City: Conway State: SC Zip: 29526
Home Phone: () - Work Phone: () - Insurance Carrier: None
Preparer's Name: Scott Calder Law Firm: None Preparer's Phone #: (843) 465-7876

DIRECTIONS: Please print or type. Answer the following questions about your claim to the best of your ability. If you cannot answer a question, leave it blank. Use additional sheets of paper, if necessary. Please use short statements.

Questions

Did the Commissioner fail to consider important reasons for award of compensation? If so, what reasons? _____
Please see attached.

Did the Commissioner incorrectly decide the facts? If so, what facts? Please see attached.

Do you think the Commissioner applied the wrong law? If so, what law? Please see attached.

Do you feel there are any other reasons why the Commissioner's judgment was wrong? If so, what? Please see attached.

What action do you want the Commission to take in this case? See Attached.

DeWee
JAN 17 2018
JUDICIAL

ALL Supporting Evidence
was previously sent in
to support the Facts.

[Signature]
Signature

1/12/18
Date (mm/dd/yyyy)

IMPORTANT: The Commission will serve your Brief on the employer's representative. Questions about the use of this form may be directed to the Commission's Judicial Department at 803.737.5675 or judicial@wcc.sc.gov.

WCC Form # 59
Rev. 10/2017

59

APPELLANT'S INFORMAL BRIEF

COPY

1. Did the Commissioner fail to consider important reasons for award of compensation? If so what reasons?

The relationship between Mr. Despies and S&A Construction and More LLC was that Mr. Despies was a casual laborer with no set work hours or days. Mr. Despies may have worked with S&A Construction a total of 10 times throughout the entire year of 2016. Based on SC Code Section 42-1-360 Mr. Despies would not even qualify for any type of workman's compensation due to the relationship status with S&A Construction. S&A Construction does not have a payroll for the years 2015, 2016 nor 2017 because it would have been less than \$3000. S&A Construction and More LLC does not have four employees that are full-time or part-time.

2. Did the Commissioner incorrectly decide the facts? If so, what facts?

The Commissioner did incorrectly decide the facts of this case because he did not hear both sides of the case due to the fact S&A Construction and More LLC was not properly notified of the hearing date and time. I have been told the information was dropped in the regular mail and I should have received it, however I did not receive proper notice of the hearing as required by SC Code Law. I was scheduled for a deposition, but it was canceled therefore, the Commissioner was never allowed to hear my side of the events nor did I have the opportunity to attend the hearing. Please see attached email.

Mr. Despies was intoxicated during the injury as provided in the evidence. I have also included a statement from Mr. Ramon Martinez whom was also present the day of the injury and is willing to testify or give a deposition. Mr. Ramon Martinez witnessed Mr. Despies drinking the day of the injury and notified myself (Scott Calder). Mr. Despies was told by myself (Scott Calder) do not get on the roof; I will have someone drive you home. Mr. Despies took it upon himself to get on the roof after I instructed him not to get on the roof. Mr. Despies also tested positive on the Alcohol CAGE screening at Conway Medical Center by Dr. Coradi provided on page 1 of the chart. He also had a positive alcohol screening with Dr. William Whiteside MD at Waccamaw Orthopedics on 12/27/2016 page 1 of the dictated report.

Mr. Despies did en-fact commit fraud to the SC Workers Compensation Uninsured Employers fund by committing perjury on Form 50 stating he was a full-time employee of S&A Construction and More LLC. Mr. Despies has no evidence that he was a full-time or part-time employee at S&A Construction and More LLC. S&A Construction and More LLC does not have any full-time or part-time employees therefore; his statement is completely false.

Mr. Despies also stated he earned \$500.00 per week and his story was collaborated by his witness Randy Allison whom also committed fraud by stating that he was a co-employee and that Mr. Despies was a Foreman and received higher pay rate than other employees. Once again S&A Construction and More LLC has no full-time, nor part-time employees. Mr. Allison worked with S&A Construction a total of three time as a causal employee. Mr. Allison's statement is hear-say and should not be entered as evidence. Mr. Allison has no

Idea what Mr. Despies was paid if anything and since I do not have full-time or part-time employees, I surely would not call Mr. Despies a Foreman. That is not evidence that is an opinion based on hearsay. Therefore, pursuant to South Carolina Code Law 42-9-440 both Mr. Allison and Mr. Despies should be reported for fraud.

Did claimant complete smoking cessation per Dr. Whiteside? Claimant stated he wanted to proceed with a treatment plan proposed by Dr. Whiteside. Claimant has not made any reasonable attempt to complete Dr. Whiteside's orders to ensure he is a candidate for the treatment. Dr. Whiteside refused to complete operation on patient unless patient stopped smoking which patient has refused to comply therefore, Mr. Despies should be responsible for his medical treatment. Per the dictated medical record report dated 4/25/2017 page 2 of 15. Mr. Despies still did not qualify for surgical treatment due to his continuing to smoke cigarettes and not completing the program.

3. Do you think the commissioner applied the wrong law? If so what law?

The Commissioner did not uphold SC Code Section 42-1-40. Mr. Despies stated he was paid \$100.00 per day working full-time and his wages were \$500.00 a week. Mr. Despies made this number up and there is no evidence to support his claim. He did not provide any check stubs nor any tax documentations because they do not exist. Wages should have been defined as in SC Code Section 42-1-40 which would have been zero. S&A Construction and More does not have full-time and part-time employees nor do we have a payroll, therefore no wages should have been calculated.

4. Do you feel there are any other reasons why the Commissioners judgment was wrong? If so what?

Mr. Despies currently has twenty-three "Open" judgments against him in New Jersey. therefore, the commissioner should have never awarded monies directly to Mr. Despies due to the fact some of the judgments are Federal Liens and all judgments are open.

When did the injury occur?

Mr. Despies attorney states on Form 50 the injury occurred on 12/21/2016, however per Conway Medical Center the injury actually occurred on 12/22/2016.

5. What action do you want the commission to take in this case?

This case should be dismissed.

South Carolina Workers' Compensation Commission

1333 Main Street, Suite 500
P.O. BOX 1715
Columbia, SC 29202-1715
(803) 737-5723

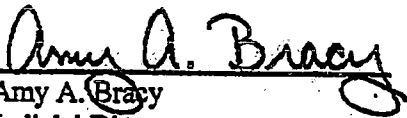


WCC File #: 1622756

Date of Injury: 12/21/2016

ROBERT D'ESPIES v. S&A Construction & More, LLC
WCC File No. 1622756

The Commission is hereby providing you a copy of the Appellant's Brief filed by the unrepresented Employer pursuant to R.67-705 G.


Amy A. Bracy
Judicial Director

Date: January 18, 2018

CERTIFICATE OF SERVICE

I hereby certify on January 18, 2018, I served this document on the parties listed below by electronic mail or depositing a copy hereof, postage prepaid, in the United States mail and addressed as follows:

Craig A. Snook
Axelrod & Associates, PA
4701 Oleander Drive
Myrtle Beach, SC 29577

S&A Construction & More, LLC (Scott Caulder)
296 Highway 66
CONWAY, SC 29526

Timothy B. Killen
Holder Padgett Littlejohn & Prickett, LLC
210 Wingo Way, Suite 201
Mount Pleasant, SC 29464

Lisa C. Glover
P.O. Box 210039
COLUMBIA, SC 29221-0039

By: Valerie D. Deller, Judicial Department

South Carolina Workers' Compensation Commission

1333 Main Street, Suite 500
P.O. BOX 1715
Columbia, SC 29202-1715
(803) 737-5723



WCC File #: 1622756
Carrier File #: NRHR
July 19, 2017

NOTICE OF HEARING

ROBERT J D'ESPIES v. S&A Construction & More, LLC

Subject: To determine issues as set forth on Forms 50 and 51.
Date: September 14, 2017 at 11:30 AM
Location: Georgetown County Judicial Center, 401 Cleland Street, Courtroom 3-C 3rd floor
Georgetown, SC 29442

South Carolina Regulations 67-601 through 67-615 govern hearings before the South Carolina Workers' Compensation Commission. The claimant must attend when not represented by an attorney or when disfigurement is involved. Corporations must be represented by an attorney, and uninsured employers must attend.

Attorneys must file a Form 58 with proof of service pursuant to Regulation 67-611. Postponements are only granted pursuant to Regulation 67-613. Please visit www.wcc.sc.gov/Commissioners to view Commissioners' Preferences. If you have questions regarding this matter, please contact the office of the undersigned Jurisdictional Commissioner.

Commissioner Mike Campbell
803-737-5678, bcheeseboro@wcc.sc.gov

CERTIFICATE OF SERVICE – This is to certify the undersigned has served this notice in the above entitled action upon all parties to this cause by sending a copy hereof by electronic mail or United States mail.

By: Barbara Cheeseboro, SC Workers' Compensation, July 19, 2017

Party

Employee: ROBERT J D'ESPIES

Attorney

Craig A. Snook
craig@gotaxelrod.com
843-916-9300

Carrier: SC Workers Compensation Uninsured Employers
Fund

Lisa C. Glover
lglover@saf.sc.gov
803-896-5898

Employer: S&A Construction & More, LLC
296 Highway 66
CONWAY, SC 29526

South Carolina Workers' Compensation Commission

1333 Main Street, Suite 500
P.O. BOX 1715
Columbia, SC 29202-1715
(803) 737-5723



WCC File #: 1622756

Carrier File #:

December 15, 2017

**FORM 31 BRIEFING SCHEDULE
AND
NOTICE OF APPELLATE HEARING**

S&A Construction & More, LLC v ROBERT J D'ESPIES

Filing Date for Appellant's Brief: January 14, 2018

Subject: Set on Review.

Date: 02/20/18 at 02:00 PM

**Location: South Carolina Workers' Compensation Commission
1333 Main Street, Suite 500
Columbia, SC 29201**

You are receiving this notice pursuant to South Carolina Regulation 67-704. This matter is to be set for Full Commission Review on the above date. Regulation 67-705(A) requires the appellant to file a brief which includes a statement of the case, questions presented, argument, and the conclusion by the date above. Pursuant to Regulation 67-205, please submit your brief electronically through the Upload functionality in eCase located on the Commission's website at www.wcc.sc.gov.

The claimant must attend when not represented by an attorney or when disfigurement is involved. Corporations must be represented by an attorney, and uninsured employers must attend.

Pursuant to South Carolina Regulation 67-705, the Respondent may file a responding brief within fifteen (15) days of service of Appellant's brief. Appellant may then file a reply brief within ten (10) days of service of Respondent's responding brief. All briefs must be received by the Workers' Compensation Commission at least five (5) days before the scheduled date for review.

For questions regarding this matter, please visit eCase Status at www.wcc.sc.gov or contact the Judicial Department of the South Carolina Workers' Compensation Commission at (803) 737-5739.

The Commission requests your presence thirty minutes prior to your scheduled oral argument.

This matter is set before: Panel A

CERTIFICATE OF SERVICE -- This is to certify the undersigned has served this notice in the above entitled action upon all parties to this cause by sending a copy hereof by electronic mail or United States mail. Unrepresented parties were served by United States Postal Service first class postage.

By:Eugenia Hollmon, SC Workers' Compensation, December 15, 2017

Party

Employee: ROBERT J D'ESPIES

Attorney

Craig A. Snook
craig@gotaxelrod.com
843-916-9300

Carrier: SC Workers Compensation Uninsured Employers
Fund

Timothy B. Killen
tbkillen@wjlaw.net
843-284-0831

Carrier: SC Workers Compensation Uninsured Employers
Fund

Lisa C. Glover
lglover@saf.sc.gov
803-896-5898

Employer: S&A Construction & More, LLC
296 Highway 66
CONWAY, SC 29526

South Carolina Workers' Compensation Commission

1333 Main Street, Suite 500
P.O. BOX 1715
Columbia, SC 29202-1715
(803) 737-5723



WCC File #: 1622756

Carrier File #:

July 23, 2018

NOTICE OF HEARING

ROBERT J D'ESPIES v. S&A Construction & More, LLC

Subject: Remand on issues as set forth by Full Commission Order.

Date: September 4, 2018 at 11:00 AM

Location: Magistrate's Office, 110 N. Morgan Ave., Courtroom
Andrews, SC 29510

South Carolina Regulations 67-601 through 67-615 govern hearings before the South Carolina Workers' Compensation Commission. The claimant must attend when not represented by an attorney or when disfigurement is involved. Corporations must be represented by an attorney, and uninsured employers must attend.

Attorneys must file a Form 58 with proof of service pursuant to Regulation 67-611. Postponements are only granted pursuant to Regulation 67-613. Please visit www.wcc.sc.gov/Commissioners to view Commissioners' Preferences. If you have questions regarding this matter, please contact the office of the undersigned Jurisdictional Commissioner.

Commissioner Avery B. Wilkerson Jr.
803-737-5697, DHutto@wcc.sc.gov

CERTIFICATE OF SERVICE – This is to certify the undersigned has served this notice in the above entitled action upon all parties to this cause by sending a copy hereof by electronic mail or United States mail.

By: Deborah Hutto, SC Workers' Compensation, July 23, 2018

Party

Employee: ROBERT J D'ESPIES

Attorney

Craig A. Snook
craig@gotaxelrod.com
843-916-9300

Carrier: SC Workers Compensation Uninsured Employers
Fund

Timothy B. Killen
tkillen@hplplaw.com
843-277-0826

Carrier: SC Workers Compensation Uninsured Employers
Fund

Lisa C. Glover
lglover@saf.sc.gov
803-896-5898

Employer: S&A Construction & More, LLC
296 Highway 66
CONWAY, SC 29526

South Carolina Workers' Compensation Commission

1333 Main Street, Suite 500
P.O. BOX 1715
Columbia, SC 29202-1715
(803) 737-5723



WCC File #: 1622756

Carrier File #:

August 14, 2018

NOTICE OF HEARING POSTPONEMENT

ROBERT J D'ESPIES v. S&A Construction & More, LLC

Subject: Remand on issues as set forth by Full Commission Order.

Date: September 4, 2018 at 11:00 AM

Location: Magistrate's Office, 110 N. Morgan Ave., Courtroom
Andrews, SC 29510

South Carolina Regulations 67-601 through 67-615 govern hearings before the South Carolina Workers' Compensation Commission. The claimant must attend when not represented by an attorney or when disfigurement is involved. Corporations must be represented by an attorney, and uninsured employers must attend.

Attorneys must file a Form 58 with proof of service pursuant to Regulation 67-611. Postponements are only granted pursuant to Regulation 67-613. Please visit www.wcc.sc.gov/Commissioners to view Commissioners' Preferences. If you have questions regarding this matter, please contact the office of the undersigned Jurisdictional Commissioner.

Commissioner Avery B. Wilkerson Jr.
803-737-5697, DHutto@wcc.sc.gov

CERTIFICATE OF SERVICE – This is to certify the undersigned has served this notice in the above entitled action upon all parties to this cause by sending a copy hereof by electronic mail or United States mail.

By: Deborah Hutto, SC Workers' Compensation, August 14, 2018

Party

Employee: ROBERT J D'ESPIES

Attorney

Craig A. Snook
craig@gotaxelrod.com
843-916-9300

Carrier: SC Workers Compensation Uninsured Employers
Fund

Timothy B. Killen
tkillen@hplplaw.com
843-277-0826

Carrier: SC Workers Compensation Uninsured Employers
Fund

Lisa C. Glover
lglover@saf.sc.gov
803-896-5898

Employer: S&A Construction & More, LLC
296 Highway 66
CONWAY, SC 29526

BEFORE THE
SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION
WCC FILE NO. 1622756

ROBERT J. D'ESPIES,	)	
	)	HEARING
CLAIMANT,	)	BEFORE COMMISSIONER
	)	R. MICHAEL CAMPBELL, II
v.	)	
	)	<u>TRANSCRIPT OF HEARING</u>
S&A CONSTRUCTION AND	)	
MORE, LLC,	)	
	)	
EMPLOYER,	)	
AND	)	
	)	
UNINSURED,	)	
	)	
CARRIER,	)	
DEFENDANTS.	)	
	)	

THE WORKERS' COMPENSATION HEARING, TAKEN
BEFORE CORA ELLIS BRUTON, A NOTARY PUBLIC IN AND FOR
THE STATE OF SOUTH CAROLINA, COMMENCING AT THE HOUR OF
12:00 P.M., THURSDAY, SEPTEMBER 14, 2017, GEORGETOWN
COUNTY JUDICIAL CENTER, 401 CLELAND STREET,
GEORGETOWN, SOUTH CAROLINA 29442.

CORA ELLIS BRUTON
COURT REPORTER
131 BROWNING COURT
LEXINGTON, SOUTH CAROLINA 29073
803-397-0189

APPEARANCES

FOR THE CLAIMANT

CRAIG A. SNOOK, ESQUIRE
 AXELROD & ASSOCIATES, PA
 4701 OLEANDER DRIVE
 MYRTLE BEACH, SOUTH CAROLINA 29577
 843-916-9300

FOR THE DEFENDANT

TIMOTHY B. KILLEN, ESQUIRE
 WILLSON, JONES, CARTER & BAXLEY, PA
 421 WANDO PARK BOULEVARD, SUITE 100
 MOUNT PLEASANT, SOUTH CAROLINA 29464
 843-284-0831

REPORTED BY

CORA ELLIS BRUTON
 COURT REPORTER
 131 BROWNING COURT
 LEXINGTON, SOUTH CAROLINA 29073
 803-397-0189

INDEX

WITNESS - ROBERT J. D'ESPIES	
DIRECT EXAMINATION BY MR. SNOOK.	7
CROSS EXAMINATION BY MR. KILLEN.	22
EXAMINATION BY THE COURT	38
RE-CROSS EXAMINATION BY MR. KILLEN	39
WITNESS - RANDALL SCOTT ALLISON	
DIRECTS EXAMINATION BY MR. SNOOK	41
CROSS EXAMINATION BY MR. KILLEN.	46
EXAMINATION BY THE COURT	53
CERTIFICATION.	55

EXHIBITS

(No Exhibits Proffered)

1 THE COURT: Today's hearing date is September
2 14th, 2017. This is South Carolina Workers'
3 Compensation Case File Number 1622756. This is the
4 case of the Claimant Robert J. D'Espies represented by
5 Attorney Craig A. Snook. The Employer is S&A
6 Construction & More, LLC. The Carrier is The South
7 Carolina Workers' Compensation Uninsured Employers
8 Fund; both Defendants represented by Attorney Timothy
9 B. Killen.

10 The date of accident is December 21st, 2016. The
11 average weekly wage and corresponding compensation
12 rate are to be determined.

13 APAs have been submitted. Are there any
14 objections to APAs, jurisdiction, venue or any other
15 items?

16 MR. SNOOK: None from the Claimant.

17 MR. KILLEN: Jurisdiction, Your Honor. Just that
18 the Employer has not been shown to be subject to the
19 terms of the Workers' Compensation Act.

20 THE COURT: Okay. Without further objection the
21 Commission File becomes a part of the record with the
22 exception of self-serving documents and unstipulated
23 medical reports. And please let the record reflect
24 that this hearing was scheduled to begin at 11:30 a.m.
25 this morning. It is now 12:18 p.m. and the Uninsured

1 Employer has not appeared today, so if you would, Mr.
2 Snook, please put your position on the record and let
3 us know exactly what you're seeking here today, sir.

4 MR. SNOOK: Thank you, Commissioner. Our
5 position in the case is relatively simple. Number
6 one, that Mr. D'Espies was an employee of the
7 construction company at the time of his injury.
8 Number two that the construction company was subject
9 to the Act by virtue of having four or more employees
10 and did not have insurance coverage in force and
11 effect at the time of the -- of the injury. We're
12 seeking temporary total disability compensation,
13 either permanent or total partial disability
14 compensation. Medical benefit compensation. Medical
15 benefit provision, prescription provision and
16 additional medical treatment for his heels which was
17 injured in the fall and also additional treatment for
18 his shoulder which he has begun to subsequently have a
19 problem with, and also for the psychological problem.

20 THE COURT: All right. Thank you, sir. Mr.
21 Killen.

22 MR. KILLEN: Commissioner, Tim Killen
23 representing the Uninsured Employers Fund. I did call
24 out three times in the hallway for a representative of
25 S&A Construction & More, LLC. There was no response.

1 The Uninsured Fund's position is that the -- the
2 Employer has not been shown to be subject to the terms
3 of the provisions of the Act and therefore the terms
4 in the Act do not apply to him or that company and the
5 Claimant has not yet shown an Employee relationship
6 proving any of that. So we're entering a denial, a
7 general denial on that basis. Further I would say
8 that the shoulder and psychological conditions are not
9 before you. They are not on the pleadings, including
10 the Form 58. The Form 58 just says both heels were
11 broke and shattered under paragraph three and there is
12 no amending of the Form 50 in paragraph 12. And so if
13 it is a compensable claim it's limited to the heels
14 only as the body parts that were in the case..

15 THE COURT: Okay. I'm assuming, Mr. Killen, that
16 if there is a determination that the uninsured
17 employer was subject to the Act that y'all are going
18 to assert a lien?

19 MR. KILLEN: That's correct. We would assert
20 all our rights of subrogation and indemnification
21 under 42-7-200 and otherwise.

22 THE COURT: All right. Thank you, sir. Mr.
23 Snook, anything more?

24 MR. SNOOK: Nothing further.

25 THE COURT: Okay. Mr. D'Espies, if I'm

1 mispronouncing your name please correct me, but I have
2 a couple of quick things to run through with you
3 before we get started. First of all if you would
4 please speak up and speak clearly for us. It's
5 important that we all hear your responses to the
6 questions, but most importantly that the court
7 reporter get them for the record. If you're asked a
8 yes or no question please give us a verbal yes or no
9 answer. Try and stay away from things like uh-huh and
10 huh-uh just because that can be too easily
11 misunderstood on the record. So if you could help us
12 out with that we would appreciate it. Okay?

13 THE WITNESS: Yes, sir.

14 THE COURT: All right. Please raise your right
15 hand. Do you swear or affirm that the testimony
16 you're about to give is the truth, the whole truth and
17 nothing but the truth?

18 THE WITNESS: Yes, sir.

19 THE COURT: Please state and spell your name for
20 the record, sir.

21 THE WITNESS: My name is Robert G. D'Espies.
22 D-E-S-P-I-E-S.

23 THE COURT: All right. Thank you, sir.

24 MR. KILLEN: And Commissioner, are these
25 witnesses?

1 MR. SNOOK: Yes.

2 THE COURT: Okay. If we could just sequester
3 them for right now. If we're going to take testimony
4 from them if we could just --

5 MR. SNOOK: Yes, sir..

6 THE COURT: If y'all could just make yourself
7 comfortable out there.

8 MR. SNOOK: These -- these are witnesses.

9 THE COURT: Okay. If you're not testifying
10 you're more than welcome to stay in here. We just --
11 you can go out or you can stay in, whatever you want
12 to do.

13 Thank you, sir. And Mr. Snook, your witness.

14 MR. SNOOK: Thank you, sir.

15 Robert D'Espies,

16 Having first been duly sworn, testified as follows:

17 DIRECT EXAMINATION

18 BY MR. SNOOK:

19 Q Tell us where you reside please?

20 A 5620 Prevetts Ave - Prevetts Road, Conway,
21 South Carolina.

22 Q Conway, South Carolina?

23 A Yes, sir.

24 Q Are you married?

25 A Not married; we've been together ten years.

1 Q Okay. And -- and do you live with -- who is
2 this here in the courtroom?

3 A My -- my fiancé.

4 Q Okay.

5 A Michelle Pat -- or Marsal.

6 Q Okay. And do you have any children?

7 A Not with her, no sir.

8 Q Okay. But do you have any children?

9 A Yes sir, I do, three.

10 Q How old are your children?

11 A My daughter just turned 18, my one son is 14
12 and my other son is nine.

13 Q Are any of those children dependent upon you
14 for support?

15 A Yes sir.

16 Q And how many of those children are
17 dependent?

18 A All -- all three.

19 Q All three are?

20 A Yes sir.

21 Q Okay. What's your educational background?

22 A 11th grade.

23 Q And what -- just briefly give us your work
24 history. What have you done for a living during your
25 adult life?

1 A Well, I have been a carpenter my whole life.
2 Carpenter, roofer, you know. All I've known is
3 carpentry.

4 Q Okay. And where are you presently employed?

5 A I'm was employed, but not right now, I'm not
6 employed.

7 Q And where were you previously employed last?

8 A S&A Construction.

9 Q And is that the Employer that we're here
10 about today, S&A Construction?

11 A Yes sir..

12 Q Is that where you were working when you got
13 hurt?

14 A Yes sir.

15 Q Who is Scott Culver?

16 A He was my boss.

17 Q And what is his relationship with S&A
18 Construction?

19 A I believe he was the owner?

20 Q Is he the "S" in the S&A?

21 A I believe so sir, yes.

22 Q Is he married to Amy?

23 A Yes sir.

24 Q And Amy's the "A" in S&A?

25 A Yes sir.

1 MR. KILLEN: Objection to the leading,
2 Commissioner.

3 MR. SNOOK: (Inaudible).

4 BY MR. SNOOK:

5 Q And how long did you work for S&A?

6 A It's been about two years.

7 Q Two years? Okay. How long did you work for
8 S&A at the time of your injury last December?

9 A That was two years, you know.

10 Q That was two years at the time of your
11 injury?

12 A Yes sir. Yeah, I haven't worked since my
13 injury.

14 Q What was your job at S&A?

15 A I was pretty much the foreman, you know, of
16 the jobs -- of the roofing jobs.

17 Q And as a foreman of the roofing jobs at S&A
18 what would you have done? What were -- were -- give
19 us an example of a daily job.

20 A Scott would come in in the morning and tell
21 us, you know, what he wanted done and I'd get the crew
22 together and we'd get going and, you know, get the
23 roof on.

24 Q And did he instruct you where to go and
25 which roof to work on?

1 A Yes sir.

2 Q Who gave you the materials?

3 A He provided everything. It was there on the
4 job when we -- when we got there.

5 Q Okay. How about your tools?

6 A The only thing I had, you know, was my tool
7 belt. He supplied all the other tools.

8 Q Now, you mentioned that you worked -- you
9 were the foreman of a crew. How many people were on
10 your crew?

11 A About five or six.

12 Q Okay. Were they the same people working on
13 the crew every day?

14 A Yeah. Yes sir.

15 Q Did the same crew who worked for S&A move
16 from house -- roofing job to roofing job?

17 A Yes sir.

18 Q Okay. And you were part of that crew for
19 two years?

20 A Yes, sir.

21 Q Okay. And did you do any work for Mr. --
22 Mr. Culver or for S&A Construction other than roofing?

23 A Yes sir.

24 Q What else -- what other kind of work did you
25 do for them?

1 A I -- power washes, you know, the building
2 out back, I built a building behind his house; a three
3 car garage. I done a lot of trim work for him, some
4 tile work. You know, he kept me busy when we didn't
5 have anything to do.

6 Q So he -- he kept you employed even when S&A
7 didn't have roofing jobs going on?

8 A Yes sir.

9 Q And how were you paid?

10 A I was paid daily.

11 Q Pardon me?

12 A Daily. Every day.

13 Q Daily?

14 A Yes sir.

15 Q Okay. And how -- how much did you earn each
16 day?

17 A \$100.

18 Q Okay. And -- and so were those days eight
19 hour days or ten hour days, or just however many hour
20 days?

21 A It varied, some days were, you know, eight
22 hours, some days were 12 hours.

23 Q The agreement was you were paid \$100 a day?

24 A Yes, \$100 a day. Yes.

25 Q Okay. Did you get paid cash or did you get

1 a paycheck?

2 A Cash.

3 Q Did you get paid every day or weekly or
4 biweekly?

5 A I got paid every day.

6 Q And how many days a week did you work?

7 A It was usually seven unless, you know, it
8 had rained or, you know, something happened, he didn't
9 get the material there on time, but usually it was
10 seven days a week.

11 Q Okay. Tell me the names of some of the
12 people that worked on your crew.

13 A There was Ricky, Randy, Benny, he had Gage,
14 Raymond, and Scott.

15 Q Okay. Let's go back through this. You said
16 Ricky. Does Ricky have a last name that you're aware
17 of?

18 A Ricky Boyd.

19 Q Boyd, B-O-Y-D?

20 A Yes sir.

21 Q Okay. How about Randy, does Randy have a
22 last name?

23 A That's Randy here.

24 Q Do you know his last name?

25 A I'm not sure of that.

1 Q How about Benny; does Benny have a last
2 name?
3 A That -- I don't know Benny's last name.
4 Q Okay. And you mentioned Scott --
5 A That's --
6 Q -- and we've already talked about Scott,
7 right?
8 A Yes sir.
9 Q And then you said Gage; who's Gage?
10 A Gage is Scott's son.
11 Q Okay. Gage worked on the jobs too?
12 A Yes sir.
13 Q Raymond?
14 A Martinez.
15 Q Raymond Martinez, and Raymond worked on the
16 jobs?
17 A Yes sir.
18 Q Okay. So did Scott go and actually work on
19 the jobs with you guys?
20 A He was there sometimes, not all the time,
21 but yes, he was there.
22 Q So you think yourself, Scott, Benny,
23 Raymond, Randy, Ricky and Gage; seven people --
24 A Yes sir.
25 Q -- that worked on the jobs?

1 A Yes sir.

2 Q Okay. We're here because you got hurt last
3 December, on or about December 21st. Tell -- tell us
4 what happened on the day you got hurt.

5 A We showed up to the job to do a metal roof,
6 got up there, didn't look all that bad, you know. I
7 started working and when I leaned over I guess I lost
8 my footing and I slid off the roof and hit the ground.
9 But -- broke both my feet, my ankle, my toe and messed
10 up my feet good.

11 Q Both -- so you injured both your right and
12 your left feet when you fell?

13 A Yes sir.

14 Q Did you injure any other parts of your body
15 when you fell?

16 A I -- no sir.

17 Q And did you receive medical treatment for
18 your injuries to your feet?

19 A Yes I did, sir.

20 Q Where -- where did you first receive medical
21 treatment and how did you get there?

22 A Conway Medical Center. Scott had driven me
23 there.

24 Q And so you were treated in the emergency
25 room and did you receive any medical treatment after

1 that?

2 A Yes sir, Tidelands Orthopedics. The doctor
3 was Dr. Whiteside.

4 Q Dr. Whitesides at Waccamaw Orthopedics, the
5 Tidelands Health System?

6 A Yes sir. Yes. I'm sorry.

7 Q That's all right. And what did Dr. White -
8 Whitesides do for you?

9 A We -- it was a tossup between surgery and
10 just letting it heal and we opted for just letting it
11 heal so hopefully I could get back to work, but, you
12 know, that -- that was it. I went to see him for five
13 or six months.

14 Q And ultimately did you get referred out for
15 any treatment outside of his office, any physical
16 therapy?

17 A Physical therapy, yes.

18 Q What happened in physical therapy?

19 A They wanted -- the physical therapy place
20 wanted me to pay out of pocket and I couldn't afford
21 it.

22 Q So you didn't go to physical therapy?

23 A No sir, I didn't.

24 Q Would you have gone if workers' comp would
25 have paid for it?

1 A Yes sir.

2 Q Would you go today if workers' comp would
3 pay for it?

4 A No verbal response.

5 Q Would you go today if workers' comp would
6 pay for it?

7 A Yes sir, I would.

8 Q What kind of problems are you having today
9 that you would attribute to falling off the roof?

10 A I -- I can't walk right. My -- my foot
11 bends out to the -- to the right.

12 Q Which foot are you referring to?

13 A My right foot, sir.

14 Q Right foot?

15 A My left foot -- I can live with my left
16 foot, it's my right foot I -- I can't walk right. I
17 can never go on a roof again. I can't climb a ladder.
18 It's -- my whole life has just changed.

19 Q We talked just a little bit where you
20 mentioned something about your shoulder. Tell us what
21 you think your shoulder has to do possibly with
22 falling off the roof?

23 A I've been using the cane and try to get
24 around and take the pain off my foot, now my shoulder
25 is starting to bother me, you know. Like just -- I

1 can't lift it up over my head no more. So it just
2 seems, you know -- so -- I don't know. I've never
3 been one to sit, you know, and it's kind of got me
4 just stuck.

5 Q I mean how -- I mean do you -- do you have
6 any anxiety problems or depression problems because
7 you can't do anything?

8 A Yes sir. I -- I do. It's wanting to get
9 things done and then realizing that I can't do it and
10 then, you know, you get depressed about it. Like I've
11 been taking care of her for six, eight years now and
12 now she's got to go out and try to take care of me,
13 you know. And it's not -- it's not a good time.

14 Q Would you -- if workers' comp would provide
15 you an opportunity to talk to somebody about anxiety
16 or depression would you like to do that?

17 A Yes I would, sir.

18 Q And if workers' compensation would authorize
19 you to see another orthopedic physician about trying
20 to do something to correct your right foot would you
21 like to do that?

22 A Yes.

23 Q And we talked about -- where was Scott when
24 you fell off the roof?

25 A He was on the job.

1 Q Was he on the roof or was he on the ground?

2 A He was on the ground.

3 Q Did -- what did he do when you hit the
4 ground? Was he -- I mean was he like right down there
5 when you hit the ground?

6 A It's kind of a blur. They said he run over
7 after, you know, I had hit the ground, but you know,
8 me and Randy there, him -- Randy and Scott carried me
9 and put me in the truck, you know, to get me to the --
10 to the hospital, you know.

11 Q So -- so Scott -- Scott knew about the
12 accident immediately when it happened; is that right?

13 MR. KILLEN: Objection to what Scott knew.
14 Scott's not here.

15 MR. SNOOK: Well, it --

16 MR. KILLEN: He can't testify as to what Scott
17 knew. He can testify to what he saw, what he knew.

18 BY MR. SNOOK:

19 Q Well, who -- who -- who put you in the truck
20 and took you the hospital?

21 A Scott and Randy.

22 Q Okay. Have you been able to return to work?

23 A No sir.

24 Q Have you tried to do any kind of work?

25 A Yes I have.

1 Q What have you tried to do?

2 A I tried to do some tile work, I tried to do
3 some trim work. I -- I can only work maybe an hour or
4 two at a time then I got to sit down, you know. And I
5 can't keep getting up and, you know, I -- I can't tote
6 anything heavy.

7 Q You mentioned you can't get up on ladders?

8 A I can't climb a ladder and my foot doesn't
9 bend to allow me to walk on a roof anymore. You know,
10 it doesn't have the mobility that it had so I -- I
11 can't even do roofing now. And you know, I just --

12 Q Would you like to return to work if you were
13 physically able to?

14 A Yes.

15 Q Have you received any medical bills from
16 your medical treatment from the fall?

17 A Yes I have.

18 Q Tell us about those medical bills. What
19 happened to those?

20 A Well, I -- I had the charity care at first
21 and then they found out I had this and they -- now I
22 have bills for over \$10,000 for the emergency room
23 visit alone.

24 Q And that's from Conway Medical Center?

25 A Yes sir.

1 Q And you -- have you received any bills from
2 Waccamaw Orthopedics, Tideland Health?

3 A No sir.

4 Q No bills you had on them?

5 A No sir.

6 Q Have you been paid for any of the time that
7 you haven't been able to work?

8 A No. He -- I -- in the beginning he give me
9 a little bit of money, but -- I think it was like \$600
10 or \$700 and that was it.

11 Q Have you been paid anything else other than
12 that?

13 A No sir, nothing.

14 Q And is it your desire today that the
15 Commission order that S&A be found subject to the Act
16 and by that I mean that they will provide you with
17 medical care, pay you for your time you missed from
18 work, pay you for your future disability benefits and
19 all those kind of things that would be covered under
20 the Act? Are you asking for full benefits under the
21 Act?

22 A Yes sir.

23 MR. SNOOK: Thank you, sir, that's all I have.

24 THE COURT: Thank you, sir. Mr. Killen.

25 MR. KILLEN: Thank you, Your Honor.

CROSS EXAMINATION

1

2

BY MR. KILLEN:

3

Q Mr. D'Espies, my name is Tim Killen.

4

A Yes sir.

5

Q I represent South Carolina Workers'

6

Compensation Uninsured Employers Fund. I do not

7

represent S&A Construction or Scott Caulder. Where

8

does Scott Caulder live?

9

A On highway 66 in I believe it's Conway, sir.

10

Q Okay. How long have you known him?

11

A About four or five years.

12

Q Okay. How did you come to work for his

13

company?

14

A I met -- his father-in-law is my neighbor

15

and I met him through him. You know, he said my, you

16

know, son-in-law does this, that and the other so we

17

got to talking and he asked me if I needed a job, I

18

said yes.

19

Q What were you doing for work before that?

20

A Just here and there, you know.

21

Q Here and there what?

22

A Just like land -- you know, I'd cut

23

somebody's lawn or something like that. I really

24

wasn't doing anything for six months. I had worked

25

for Landmark Builders before that, but got laid off.

1 Q Okay. But then during that time period you
2 were doing work on your own; is that right?

3 A Yeah, like cutting grass and stuff. Nothing
4 big.

5 Q What are your kids' names?

6 A There's Robert, Ryan and Jaya.

7 Q Can -- can you say their full names for the
8 record please, slowly?

9 A Robert H. Fasinski. You got Ryan D'Espies
10 and Jaya Evelyn D'Espies.

11 Q Okay. What's Robert, how do you spell the
12 last name?

13 A No verbal response.

14 Q How do you spell Robert's last name?

15 A Fasinski. F-A-S -- F-A-S-S-K-I.

16 THE COURT: I appreciate you trying to help, but
17 --

18 Q You don't know how to spell your son's last
19 name or do you?

20 A No sir. What she did -- it was my last name
21 and she had it changed.

22 Q Okay. I'm just trying to find out where
23 they are in case something happens. Okay?

24 A Okay.

25 Q So what's her name -- well, do your best at

1 spelling your son's last name.

2 A Fasinski, F-A-S-I-N-S-K-I.

3 Q Okay. And how old is he?

4 A I believe he's 14.

5 Q And your daughter is 18?

6 A Yes sir.

7 Q When's her birthday?

8 A May 31st.

9 Q What year?

10 A I believe it was 2000.

11 Q And what -- what's her full name?

12 A Jaya Evelyn D'Espies.

13 Q You said Jaya?

14 A J-A-Y-A Evelyn D'Espies.

15 Q And your nine year old, what's his name?

16 A Ryan.

17 Q When is his birthday?

18 A I'm not sure of his birthday, sir.

19 Q And where do they live?

20 A New Jersey.

21 Q And where in New Jersey?

22 A One lives in West Milford, one lives in

23 Lacey Township and one lives at -- in Manahawkin.

24 Q Can you -- tell me how -- tell me which one

25 lives in which town?

1 A Yeah. Robert lives in Manahawkin. Ryan
2 lives in Lacey and Jaya lives in West Milford.

3 Q Who do they live with?

4 A Their mother.

5 Q Do they all have the same mother?

6 A No, different mothers, sir.

7 Q Tell me their mother's names if you will.

8 A Janice.

9 Q Tell me who they live with?

10 A Okay.

11 Q The child.

12 A Jaya lives with Janice.

13 Q Okay.

14 A Ryan lives with April and Robert lives with
15 Amanda.

16 Q Can you give me the -- the mother's last
17 names please?

18 A Yeah. Jaya's -- Janice's last name is Lesh,
19 April's last name is Loca and Amanda's last name is
20 Fasinski.

21 Q Okay. And I see -- is -- is -- what kind of
22 business entity is S&A Construction and More?

23 A Is it -- I don't know what you mean by
24 entity.

25 Q S&A Construction and More is appearing on

1 some of your documentation as an LLC. Do you know who
2 the members of the LLC are?

3 A No sir.

4 Q Is Gage a member of the LLC?

5 A I don't know, sir.

6 Q Okay. And you don't know Randy's last name,
7 but he's here to testify?

8 A No I don't.

9 Q How long did you work with Randy?

10 A I have -- he come to work about two, maybe
11 three months before my accident.

12 Q Okay. And did -- you testified there's
13 another guy named Benny whose name you didn't know; is
14 that true?

15 A No verbal response.

16 Q You testified there was another man named
17 Benny, but you didn't know his last name; is that
18 true?

19 A No. No I don't -- I don't know Benny's last
20 name.

21 Q Okay. When did Benny come to work with you
22 guys?

23 A He's pretty much always been there.

24 Q So he -- he was there before you started?

25 A Yes sir.

1 Q Who did Randy replace, if anyone?

2 A Who did Randy -- excuse me?

3 Q Did Randy replace anyone on the crew?

4 A Ricky. Ricky Boyd.

5 Q Okay. So Ricky and Randy did not work at

6 the same time?

7 A No sir.

8 Q Okay. I -- I just wanted to make sure it's
9 straight for the record. Ricky and Randy did not work
10 at the same time; is that correct?

11 A Yes.

12 Q Okay. And Raymond Martinez, when did he
13 come to work with you guys?

14 A He was there before I started.

15 Q Okay. Was he there the entire time you were
16 there?

17 A Yes sir.

18 Q And what were your hours?

19 A Usually we started like 8:00 in the morning
20 and then we worked until whatever, you know, usually
21 about dark.

22 Q Did you have a set time to get to work?

23 A It was usually 8:00.

24 Q So is that a yes or no? Did you have a set
25 time to go to work -- get to work?

1 A Yes.

2 Q Okay. And who set that time?

3 A Scott did.

4 Q Okay. And you had your own tools, right?

5 A Just my basic hand tools.

6 Q Right.

7 A My tool belt, yes sir.

8 Q Stuff you needed as a carpenter, correct?

9 A Well, I didn't have a circular saw or

10 anything, you know, specialty tools, no.

11 Q Well, what kind of tools did Scott or the

12 company provide?

13 A A cordless drill, a cordless impact driver,

14 skill saw, crimpers.

15 Q And you needed those for every job?

16 A Yes sir.

17 Q And your testimony is you worked seven days

18 a week?

19 A Yes sir.

20 Q For two years?

21 A Not every day, sir, no, but pretty much

22 seven days a week, yeah.

23 Q Pretty much? How much is pretty much?

24 A I don't know, maybe -- not for two years,

25 probably the last eight months we worked seven days

1 because the other guys would work, you know, on the
2 weekends.

3 Q What other guys?

4 A Raymond and -- and those guys, they'd work
5 Saturday -- Friday, Saturday and Sunday because they
6 had other jobs.

7 Q Who did they have other jobs for?

8 A I don't -- I'm not -- I don't know, sir.

9 Q So Raymond and who else would work
10 separately?

11 A Benny.

12 Q Raymond and Benny, they had another job; is
13 that right?

14 A Right.

15 Q And they would work Friday, Saturday and
16 Sunday on their other job; is that right?

17 A I guess, yes.

18 Q Okay. Well, I -- I'm asking about you. How
19 many days did you personally, Mr. D'Espies, work a
20 week?

21 A Six or seven days a week.

22 Q Well, what does Raymond and Benny going to
23 work for somebody else on the weekend have to do with
24 this?

25 A Nothing really.

1 Q Well, why --

2 A I -- I can't hear you. I can't hear what
3 you're saying sometimes.

4 Q Well, please if you cannot hear me or if you
5 cannot understand me ask me to rephrase or ask it
6 louder. Is that fair?

7 A Yes sir.

8 Q Did you hear that?

9 A Yes sir.

10 Q Okay. Well, why did you testify that you
11 worked seven days a week because Raymond and Benny
12 were working for somebody else on Friday, Saturday and
13 Sunday?

14 MR. SNOOK: I -- I object. That's not what he
15 said. He said that -- that they worked with him on
16 Friday, Saturday and Sunday. He didn't say they
17 worked for someone else on those days.

18 MR. KILLEN: The record is what the record is.

19 THE COURT: Okay. Can you rephrase the question?

20 MR. KILLEN: Yes.

21 BY MR. KILLEN:

22 Q Why were you testifying about Raymond and
23 Benny working for somebody else on the weekends?

24 A I thought that was the question you asked.

25 Q Okay. Did you get my subpoena for your wage

1 records?

2 A No sir.

3 Q Do you have any documentation to show how
4 much you earned while working with -- for Scott or his
5 company?

6 A No.

7 Q Did you -- in the two years you worked for
8 Scott's company did you file income tax returns?

9 A No sir.

10 Q Do you have a bank account?

11 A No sir.

12 Q Have you ever had a bank account?

13 A Yes sir.

14 Q Has any doctor written you out of work?

15 A Can you say that again?

16 Q Has any doctor provided you written
17 documentation saying you cannot work?

18 A Any -- yes.

19 Q Okay.

20 MR. KILLEN: May I approach, Commissioner?

21 THE COURT: Sure.

22 Q This is the -- these are your APA
23 submissions Mr. Snook gave to me right before the
24 hearing. Do you have any -- show me in there where
25 the doctor has written you out of work.

1 A In the beginning when I first fell, yes, I
2 couldn't work.

3 Q Can you show me in there where the doctor
4 has written you out of work?

5 A I -- I don't know. I never --

6 Q Okay.

7 A I never --

8 Q Okay. So the doctor --

9 MR. SNOOK: I object. They speak for themselves.
10 If it's in there it's in there. If it's not, it's
11 not.

12 THE COURT: Okay.

13 BY MR. KILLEN:

14 Q So how long is your testimony that you were
15 written out of work for?

16 A Probably about six, seven months.

17 Q And when did you go back to work?

18 A I haven't gone back to work.

19 Q You testified that you have done some work
20 since you got hurt; is that correct?

21 A Yes.

22 Q Okay. And when did you go back to do some
23 work?

24 A Probably been maybe a month, month and a
25 half ago.

1 Q Okay. And who did you work for?

2 A Myself. It was just helping out a buddy.

3 It wasn't much work.

4 Q Who paid you?

5 A No, I didn't get paid for that. Actually I
6 did, I got a pack of cigarettes and he bought me
7 dinner.

8 Q What was the buddy's name?

9 A Junior.

10 Q What's Junior's full name?

11 A I don't know his last name, sir.

12 Q And what did you do for Junior whose name
13 you don't know?

14 A I laid some tile for him.

15 Q How long did that job take?

16 A It's still not done. I -- I worked there
17 for about four hours and I told him, I said if I get
18 back I'll come back and finish it.

19 Q And I believe you testified on direct that
20 someone had given you \$6 or \$700 after your accident?

21 A Yeah.

22 Q You said he, and I just want to make sure,
23 for the record, who was it that gave you that money?

24 A It was Scott.

25 Q Scott Caulder?

1 A Yes sir.

2 Q And what was that money for?

3 A I don't know what -- it was to help me out.

4 Q Okay. Are you a smoker?

5 A Yes.

6 Q Did your smoking have any role in your
7 conversation with your doctors?

8 A Yes.

9 Q And what is the impact of your continuing to
10 smoke on your treatment?

11 MR. SNOOK: I'll -- I'll object to that.

12 BY MR. KILLEN:

13 Q What's your understanding of your continuing
14 to smoke?

15 MR. SNOOK: I'll still object to that.

16 MR. KILLEN: Well --

17 THE COURT: I'll allow it. You can answer the
18 question. I'll allow it.

19 BY MR. KILLEN:

20 A It originally will impact me. One week he
21 said he would do it and the following week he said he
22 wouldn't. He said he would like me to quit smoking to
23 make sure that the foot injury heals.

24 Q Have you told any of your doctors that
25 you're having anxiety and depression?

1 A No sir, I -- I haven't been back to the
2 doctor.

3 Q Have you told any of your doctors that
4 you're having shoulder problems?

5 A I haven't been back to the doctor in a few
6 months, sir.

7 Q Have you told any doctors that you're having
8 shoulder problems?

9 A No sir.

10 Q Okay. S&A Construction and More, LLC is a
11 -- is it a roofing company, a general construction,
12 (inaudible); what is it?

13 A It's a construction company.

14 Q And on the jobsite where you were hurt who
15 was the general contractor?

16 A Scott.

17 Q Okay. Where was that?

18 A I don't remember the name of the road. It
19 was right off 701. As a matter of fact I -- Long -- I
20 believe it was Long Avenue Extension.

21 Q What county is that?

22 A Horry County.

23 Q How do you know Scott was the general
24 contractor?

25 A He was the boss, he was the guy that, you

1 know, that was there.

2 Q Does S&A Construction and More, LLC ever do
3 any work for other contractors?

4 A Not that I know of.

5 Q Do you have a contractors' license?

6 A No sir, I don't.

7 Q Have you ever had a contractors' license?

8 A Yes, in New Jersey I did.

9 Q Okay. When did you move from New Jersey?

10 A About ten years ago.

11 Q And do you complete the 11th grade or did
12 you drop out in the 11th grade?

13 A I completed the 11th grade.

14 Q Did you ever get your GED?

15 A No sir, I didn't.

16 Q Did you ever go back to any sort of formal
17 school?

18 A No sir.

19 Q I -- I thought you said you did some trim
20 work as well since your accident?

21 A Right.

22 Q Okay.

23 A It was just for a buddy, you know.

24 Q So is it this Junior again or a different
25 buddy?

1 A No, it was a different buddy of mine.

2 Q Who was that?

3 A Well actually that was Fred I guess.

4 Q That was what?

5 A My buddy Fred. I was trying to think of who
6 it was. It was for a friend of mine, Fred. I ran a
7 piece of trim along the bottom of his bar and another
8 little piece.

9 Q Of his what?

10 A Ran two pieces of trim along the bottom of
11 his bar.

12 Q Of his bar?

13 A Yes.

14 Q Okay.

15 A It's like a -- not a bar bar, a breakfast
16 bar.

17 Q Okay. In his residence?

18 A Yes.

19 Q Okay. And did he pay you or did he pay in
20 cigarettes?

21 A No, that was just, you know, as a friend.

22 Q So he didn't pay you any money?

23 A No sir.

24 Q Have you earned any income other than dinner
25 and a pack of cigarettes since you got hurt?

1 A No.

2 MR. KILLEN: That's all the questions I have.

3 THE COURT: Mr. Snook.

4 MR. SNOOK: I have nothing further, Your Honor.

5 THE COURT: Okay. I have a couple of questions
6 and I'll give both you guys an opportunity to
7 follow-up on the questions that I'm going to ask him.
8 Real quick, you testified just a moment ago that you
9 had been written out of work from a doctor. Do you
10 remember what doctor it was that wrote you out of
11 work? Do you remember the doctor's name?

12 A It was Dr. Whiteside that said I couldn't go
13 back to work right away.

14 THE COURT: So he actually gave you a note saying
15 that you couldn't go back to work?

16 A I believe so, sir.

17 THE COURT: Okay. And I just need clarification
18 on that. Also as far as the -- and I'm asking this so
19 I'm clear on everything. As far as the number of
20 Employees that worked there, you testified that there
21 were several that were working there. Were they all
22 working there at the same time that you were working
23 there with the exception of the gentleman that you
24 said had left and somebody had taken his place?

25 A Yes sir.

1 THE COURT: Okay. So do you know how they were
2 paid or do you have any knowledge of how they were
3 paid?

4 A I believe they were paid cash at the end of
5 the day also.

6 THE COURT: Okay. But do you know that for
7 certain?

8 A No sir.

9 THE COURT: That's all I have and I'll let y'all
10 follow-up on any of this.

11 MR. SNOOK: I don't have anything.

12 THE COURT: Okay. Mr. Killen.

13 RE-CROSS EXAMINATION

14 BY MR. KILLEN:

15 Q How many of the other guys that were working
16 worked for other people too?

17 A I don't know, sir.

18 Q At least Randy and Benny, correct?

19 A No sir. I said Raymond and Benny.

20 Q Raymond?

21 A Yes sir.

22 Q Thank you.

23 MR. KILLEN: That's it.

24 THE COURT: Do you want to call your next
25 witness?

1 MR. SNOOK: Yes sir. Thank you.

2 THE COURT: Sir, come on up here and have a seat. I
3 have a couple of quick things to run through with you
4 before we get started. First of all if you would
5 please speak up and speak clearly for us. It's
6 important that we all hear your responses to the
7 questions, but most importantly that the court
8 reporter get them for the record. If you're asked a
9 yes or no question please give us a verbal yes or no
10 answer. Try and stay away from things like uh-huh and
11 huh-uh just because that can be too easily
12 misunderstood on the record. So if you could help us
13 out with that we would appreciate it. Okay?

14 THE WITNESS: Yes, sir.

15 THE COURT: All right. Please raise your right
16 hand. Do you swear or affirm that the testimony
17 you're about to give is the truth, the whole truth and
18 nothing but the truth?

19 THE WITNESS: Yes, sir.

20 THE COURT: Please state and spell your name for
21 the record, sir.

22 THE WITNESS: My name is Randall Scott Allison.
23 R-A-N-D-A-L-L S-C-O-T-T A-L-L-I-S-O-N.

24 THE COURT: All right. Thank you, sir.
25 Appreciate it. Mr. Snook, your witness.

1 MR. SNOOK: Thank you, Your Honor.

2 Randall Scott Allison,

3 Having first been duly sworn, testified as follows:

4 DIRECT EXAMINATION

5 BY MR. SNOOK:

6 Q Mr. Allison, do you know my client --

7 A Yes I do.

8 Q -- Robert D'Espies? How do you know Mr.

9 D'Espies?

10 A I worked with him. He's a good friend of
11 mine.

12 Q And where did you work with Mr. D'Espies at?

13 A S&A Roofing.

14 Q Okay. And is that Scott Culver, is that the
15 same --

16 A Yes.

17 Q Okay. Now, how did you come to work for S&A
18 Construction?

19 A Through Rob. He got me -- the gentleman got
20 me my job.

21 Q The Claimant got you your job?

22 A Yes sir.

23 Q And did you work -- what type of work did
24 you do for him?

25 A I was on the roof with Rob and actually did

1 the roofing.

2 Q Okay. So you were actually -- you were a
3 roofer --

4 A Yes sir.

5 Q -- for S&A? Okay. And did S&A have other
6 roofers besides you that worked for them?

7 A Yes sir.

8 Q Okay. How many other roofers did S&A have?

9 A We have Raymond, we have Benny, we have
10 Gage, me, Rob and Scott.

11 Q Now those -- a question came up. I know
12 that you weren't in here when it happened, but do you
13 know a gentleman named Ricky Boyd?

14 A No sir, he was not working there when I came
15 there.

16 Q Okay. Now, when you were working for S&A
17 Construction how did you decide where you were going
18 to go work each day?

19 A By Scott.

20 Q And what -- and did you have any specific
21 work hours that you worked each day?

22 A Mainly like 8:00 a.m. to -- it varied. I
23 mean it could be 8:00 a.m. to 3:00 p.m. It could be
24 8:00 a.m. to 5:00 p.m. It could be 8:00 a.m. to dark,
25 it just varied.

1 Q How did you get paid?

2 A I got paid daily.

3 Q And how much did you get paid a day?

4 A \$80 a day.

5 Q Okay. Did you get paid every day at the end
6 of the day?

7 A Yes sir.

8 Q Okay. How many days a week did you work?

9 A Seven days a week, weather permitting.

10 Q And was that -- was that a common practice
11 for S&A to work its group or crew seven days a week
12 weather permitting?

13 A Yes sir.

14 Q Was that the case during the entire time you
15 were employed with S&A?

16 A Yes sir.

17 Q Are you still employed with S&A?

18 A No sir. I lost my job when he fell.

19 Q So you lost your job when he fell?

20 A Scott quit working me when Rob fell. I
21 never heard another word out of him.

22 Q And where were you at when Rob fell?

23 A I was on the roof with him.

24 Q Tell me what happened. How did -- did you
25 see him fall?

1 A Yes sir, I did.

2 Q And what happened?

3 A We both were on the roof. I was on a lower
4 level. We were on the same pitch -- the roof was the
5 same pitch but I was on a lower level. He was on a
6 higher pitch and then the pitch went up to a 12-12.
7 We were trying to cut the siding, which was wooded --
8 wood siding off the -- the wall part so we could put
9 flashing up for the new metal roof. He went to take a
10 step up to try to cut a little higher and he lost his
11 footing and he slid. And when he hit his clothes on a
12 wet roof, which I knew we shouldn't have been up there
13 anyway, when his clothes hit that wet roof there was
14 no stopping him. I reached out to grab him, I
15 hollered at him and I tried to grab him and I couldn't
16 get to him, and he was gone. I mean I watched him
17 slide right off the roof and I was the first one down
18 the ladder to him when he hit the ground.

19 Q But what -- did you assist him in getting
20 him medical attention?

21 A Yes sir, I did. When I got to the ground
22 and I got to him I immediately took his tool belt off
23 because he was -- actually he was trying to get his
24 boot off. And I said no, no, don't take your boot
25 off. Cause when I got to him his leg -- his foot I

1 think on his right leg -- his foot actually folded
2 over on the outside of his leg. And I said, do not
3 take your boot off. And Scott got to us and when I --
4 when Scott got to us I said please help me get him up.
5 And we got him up, me and Scott put him in his truck
6 and we drove him to Conway Hospital and we carried him
7 into the hospital and got him into the wheelchair.
8 And that's the last time I saw him until he came out
9 of the hospital.

10 Q Let's go back to S&A for just a second.

11 A Okay.

12 Q Who provided the tools at the jobsite?

13 A I have my own hand tools. The only thing he
14 really provided us was ladders and drill guns.

15 Q What about the compressor you nailed the --

16 A Yes sir, he did have them.

17 Q Those are important to roofers aren't they?

18 A Yes. Well, yes sir, to an extent.

19 Q How many people were working on the job the
20 day Rob fell?

21 A I want to say five I think. I'm not real
22 sure, I want to say five.

23 Q Do you remember who those five were?

24 A I believe it was -- I might be wrong. I
25 think it was me, Rob -- I think it was only four. It

1 was me, Rob, Scott and Gage I believe, sir. I think
2 it was only four.

3 MR. SNOOK: I believe that's all I have, sir.
4 Thank you.

5 THE COURT: Okay. Thank you. Mr. Killen.

6 MR. KILLEN: Thank you, Your Honor.

7 CROSS EXAMINATION

8 BY MR. KILLEN:

9 Q Mr. Allison, my name is Tim Killen.

10 A Nice to meet you.

11 Q I represent the South Carolina Uninsured
12 Employers Fund. I do not represent S&A Construction
13 or Scott Caulder. Mr. D'Espies is your good friend
14 you testified; is that right?

15 A Yes, sir.

16 Q How long have you been friends -- good
17 friends with him?

18 A Maybe two years. About two years.

19 Q And you said you worked for S&A Roofing; is
20 that -- is that a name of a business?

21 A Yes sir.

22 Q Is that the name of the business?

23 A S&A, yes sir. I worked for Scott, that's
24 all I know.

25 Q Does Scott have any signage on his trucks or

1 anything?

2 A No sir, not while I was working for him, but
3 I did see like they had shirts that said S&A and stuff
4 on them.

5 Q S&A what?

6 A Roofing or something like that. I don't
7 know. They were yellow looking. High fluorescent --
8 high fluorescent.

9 Q How long did you work for him?

10 A Maybe a month, two months.

11 Q And who hired you?

12 A Scott did.

13 Q Okay. Now, you testified earlier that there
14 was Raymond working for Scott. Now who -- what is
15 Raymond's last name?

16 A I have no idea.

17 Q Okay. There was you?

18 A He was a jujitsu martial arts artist out of
19 Conway; that's all I know.

20 Q Okay. And you?

21 A Yes sir.

22 Q And Rob, which is Mr. D'Espies, correct?

23 A Yes sir.

24 Q Scott was -- Scott Culver, he's the boss?

25 A He was the boss.

1 Q And Gage?

2 A Gage is his son.

3 Q Gage is Scott's son?

4 A Yes sir.

5 Q And do you know the business relationship

6 between Gage and Scott?

7 A Not really, I mean.

8 Q Do you know --

9 A Father and son.

10 Q Do you know whether or not Gage was a member

11 of Scott's LLC?

12 A I -- I don't know. No.

13 Q You were paid \$80 a day; is that right?

14 A Yes sir.

15 Q How much was -- were the other people paid?

16 A I don't know about the other guys. I know

17 Rob, I think he made like I think like \$100 a day.

18 That's the only one I know. I mean, you know, when

19 you're on the job you don't discuss pay.

20 Q Yeah. Well, when did you discuss that with

21 Rob?

22 A I just knew because when me and Rob a lot of

23 times rode with Scott and he took us back and forth to

24 work and he paid us at the same time and I was right

25 there when he got paid and he was right there when I

1 got paid, so.

2 Q So you don't know how much Raymond got paid
3 do you?

4 A No sir, I do not. I don't --

5 Q You don't know Gage got paid?

6 A No sir, I do not. And I don't --

7 Q Scott --

8 A -- and Benny I don't either, sir.

9 Q -- Scott was the boss?

10 A Scott's the boss.

11 Q You don't know how much he got paid?

12 A I have no idea.

13 Q Or where his money came from?

14 A I guess the person he did the roof for.

15 Q Okay. You said you worked seven days a week
16 weather permitting.

17 A Yes.

18 Q How many days does that work out to?

19 A It -- like I said, it varies. I mean most
20 of the time we worked five, six days a week.
21 Sometimes we worked three days a week. It's just
22 according to whether it was pouring down rain. I mean
23 -- I mean -- I mean by hours we might go to work one
24 day and it pour down rain, we might work three hours.

25 Q You still get paid?

1 A I don't make \$80. I only get paid for them
2 three hours or I might get paid for four hours, I
3 might get paid for six hours.

4 Q Okay. Okay. So if you work three hours how
5 much do you -- did you get paid by Scott?

6 A Probably about \$40, \$50 bucks.

7 Q Okay. All right. Would you be surprised to
8 learn that Mr. D'Espies was getting a full amount of
9 pay for a half day?

10 A That has no concern to me. He was ahead of
11 me.

12 Q Sure. And --

13 A I look -- I looked at him as kind of like my
14 -- I wouldn't say Employer, but like a supervisor to
15 me, because I was --

16 Q Did he ever pay you?

17 A Huh?

18 Q Did he ever pay you?

19 A Who, Rob?

20 Q Rob?

21 A No sir. But I mean he was -- I was like
22 under him. I mean you know. I was the last --, I was
23 the last one on the totem pole, let's put it that way.

24 Q Okay. And you were good friends with him?

25 A Yes sir.

1 Q And you never went back to work after he got
2 fired so you're angry at Scott, correct?

3 A I don't have any hard feelings.

4 Q Have you gotten a job since then?

5 A No -- I have, I've been working for a golf
6 course. That's what I used to do and I went back to
7 Long Bay Founders Group, but now they laid me off
8 again, now I'm out of work again. I went to Scott --
9 S&A for a fulltime job. When he got hurt the man
10 never called me again and I don't know if it's because
11 we was friends or what.

12 Q Did you ever call him?

13 A Yes sir, I have.

14 Q Okay. Did he answer your call?

15 A Yes sir, he did, told me he would call me
16 and he never has, and I know he's worked since then.

17 Q Now, on the day of the accident where was
18 Raymond?

19 A I have no idea.

20 Q He wasn't there?

21 A No sir.

22 Q So he didn't work every day?

23 A No sir, he mainly worked -- him and Benny
24 mainly worked on the weekends. He's got -- Raymond's
25 got his own company doing metal house -- Florida rooms

1 and stuff like that, screened rooms.

2 Q So Raymond and Benny worked together for his
3 other company; is that right?

4 A I don't think Benny did. Benny had his
5 another company doing construction work, framing.

6 Q Okay. So Benny had his own company; is that
7 right?

8 A I don't know if he had his company or not,
9 but I know he was doing other work. I don't know if
10 he had his own company.

11 Q So he -- when you worked on the weekends who
12 would be there?

13 A There would be me, Benny, Rob, Raymond, Gage
14 and Scott.

15 Q But the rest of the week -- the weekdays --

16 A Weekdays it would be me, Rob, Gage and
17 Scott.

18 Q Okay. So five days a week --

19 A And if the other -- and if Benny and Raymond
20 didn't have nothing to do they would be there.

21 Q Okay. But mostly five days a week there
22 were four guys working? Two of them were Caulders?
23 Members of the Caulder family, Scott and Gage Caulder?

24 A Yes.

25 Q Okay. Now you testified you shouldn't have

1 been up on that roof the day he got hurt anyway. Why
2 were you up on that roof?

3 A Because the boss man told us go get it done.

4 Q That would be Scott?

5 A That would be Scott.

6 Q But you didn't think it was a good idea at
7 the time?

8 A I didn't think it was safe.

9 Q Okay. Is that -- do you blame that decision
10 for the -- Mr. D'Espies' injuries?

11 A Yes sir, I do.

12 MR. KILLEN: That's all the questions I have.
13 Thank you.

14 THE COURT: All right. Mr. Snook.

15 MR. SNOOK: Nothing further.

16 THE COURT: And here I'll give you an opportunity
17 to respond. You testified that they had some yellow
18 shirts that people -- who wore the shirts?

19 A Gage had one, Scott had one and I think Rob
20 might have had one I seen a couple of times.

21 THE COURT: Did he --

22 A I didn't.

23 THE COURT: Did he ever offer one to you?

24 A No sir.

25 THE COURT: Do you have knowledge if he ever

1 offered one to anybody else?

2 A No sir.

3 THE COURT: That's all I have. I appreciate it.

4 Anything more?

5 MR. SNOOK: No, Your Honor.

6 MR. KILLEN: Nothing, Your Honor.

7 THE COURT: Thank you. I appreciate your
8 testimony. There being nothing further then that
9 concludes today's proceeding.

10 (The hearing concluded at 1:09 p.m.)

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STATE OF SOUTH CAROLINA)
)
 COUNTY OF LEXINGTON) CERTIFICATE

BE IT KNOWN THAT I TOOK THE FOREGOING WORKERS'
 COMPENSATION HEARING;

THAT I WAS THEN AND THERE A NOTARY PUBLIC IN AND FOR
 THE STATE OF SOUTH CAROLINA-AT-LARGE;

THE FOREGOING TRANSCRIPT CONSISTING OF 54 TYPEWRITTEN
 PAGES REPRESENTS A TRUE, ACCURATE AND COMPLETE
 TRANSCRIPTION OF THE TESTIMONY SO GIVEN AT THE TIME AND
 PLACE AFORESAID TO THE BEST OF MY SKILL AND ABILITY;

THAT I AM NOT RELATED TO NOR AN EMPLOYEE OF
 ANY OF THE PARTIES HERETO, NOR A RELATIVE OR EMPLOYEE OF
 ANY ATTORNEY OR COUNSEL EMPLOYED BY THE PARTIES HERETO, NOR
 INTERESTED IN THE OUTCOME OF THIS ACTION.

WITNESS MY HAND AND SEAL THIS 31ST DAY OF DECEMBER,
 2017.

CORA ELLIS BRUTON
 NOTARY PUBLIC FOR SOUTH CAROLINA
 MY COMMISSION EXPIRES DECEMBER 31, 2024

Cora Bruton
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December 31, 2017

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INVOICE FOR SERVICES

Re: Robert J. D'Espies v. S&A Construction
WCC 1622756
September 14, 2017
Georgetown, SC

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Transcript of hearing 55 pages @ \$5.00 per page \$ 275.00
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Thank you very much.

STATE OF SOUTH CAROLINA
BEFORE THE
SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION
WCC No. 1622756

Robert J. D'Espies,)
)
Claimant,)
)
v.)
)
S & A Construction)
and More, LLC,)
)
Employer,)
)
and)
)
SC Uninsured Employer's Fund,)
)
Carrier/Defendants.)
)
-----)

FULL COMMISSION HEARING

Tuesday, February 20, 2018
2:08 p.m. - 2:35 p.m.

The Full Commission Hearing was heard before Commissioners Gene McCaskill, Susan S. Barden and Aisha Taylor, Chair, at the Workers' Compensation Commission, 1333 Main Street, Suite 500, Columbia, South Carolina, on the 20th day of February, 2018, before M. Sean Cary, Court Reporter and Notary Public in and for the State of South Carolina.



CREEL COURT REPORTING, INC.
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(803) 252-3445 / (800) 822-0896

APPEARANCES

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Also present:

Scott Calder, Pro se Second Appellant

INDEX

	<u>PAGE</u>
<u>CALL TO ORDER:</u>	
COURT REPORTER.	3
<u>FIRST APPELLANT ARGUMENT:</u>	
MR. KILLEN.	4
<u>SECOND APPELLANT ARGUMENT:</u>	
MR. CALDER.	8
<u>RESPONDENT ARGUMENT:</u>	
MR. SNOOK.	14
<u>FIRST APPELLANT REBUTTAL:</u>	
MR. KILLEN.	22
<u>SECOND APPELLANT REBUTTAL:</u>	
MR. CALDER.	23
Certificate	25

EXHIBITS

(There were no exhibits marked during the hearing.)

STIPULATIONS

It is stipulated and agreed that this deposition is being taken pursuant to the Administrative Procedures Act and the South Carolina Rules of Civil Procedure.



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CALL TO ORDER:

COURT REPORTER: Today is Tuesday, February 20th, 2018. This is South Carolina Workers' Compensation case number 1622756. This is the case of Robert J. D'Espies, the Claimant, versus S & A Construction & More, the Employer, and the Uninsured Employer's Fund, the Carrier. The Respondent is represented by Craig A. Snook. This is a cross-appeal. The first appellant is the South Carolina Uninsured Employer's Fund, represented by Timothy B. Killen; the second appellant is the pro se employer, rep- -- which is Scott Calder. Each side is allowed ten minutes for oral argument and the appellant three minutes in reply. You are requested to argue the grounds of exceptions and stay within the record.

CHAIR: I will just note for the record that the second appellant in this matter is Scott Calder doing business as S & A Construction & More. Prior to going on the record I did have a brief discussion with Mr. Calder wherein I questioned whether he was the sole member of this LLC or whether he had another member. Based upon his assertion that he is 99 percent sure that he is



1 the sole member of the LLC, I will allow him to
2 argue here today. I do want to place him under
3 oath, though. Mr. Cary, would you do that for
4 me please, sir.

5 COURT REPORTER: Mr. Calder, would you please raise
6 your right hand?

7 MR. CALDER: (Witness complies.)

8 COURT REPORTER: Do you solemnly swear that the
9 testimony you plan to give will be the truth,
10 the whole truth and nothing but the truth so
11 help you God?

12 MR. CALDER: I do.

13 COURT REPORTER: Thank you, sir.

14 CHAIR: And Mr. Calder, just to recite now for the
15 third time, it is my understanding that you
16 believe that you are the sole member of your
17 LLC, is that correct?

18 MR. CALDER: Yes, ma'am.

19 CHAIR: And that you are in fact Mr. Calder doing
20 business as S & A Construction and More, is
21 that correct?

22 MR. CALDER: Yes, ma'am.

23 CHAIR: All right. Thank you, sir. All right, Mr.
24 Killen.

25 FIRST APPELLANT ARGUMENT:



1 MR. KILLEN: Thank you, Commissioner. May it please
2 the Commission. Good afternoon, I'm Tim Killen
3 representing the Workers' Compensation
4 Uninsured Employer's Fund in this case. The
5 first issue that we have is -- has to do with
6 a stipulation that appeared in the Order that
7 didn't actually take place. A stipulation is
8 noted that all appearing parties stipulated
9 that proper notice of the hearing was given to
10 all parties. There was no such stipulation
11 made at -- in the hearing. And that's
12 important to the Fund for a couple of reasons.
13 First is because the employer is going to
14 assert today that it was not given notice of
15 the hearing, it did not receive notice of the
16 hearing. And the second is the claim is
17 compensable and the UEF pays out against -- on
18 this case, later on down the line in a
19 collection's action that could really be a
20 hindrance to State's ability to get some of its
21 expenditures back. So I would just like to
22 request that that stipulation be deleted from
23 any subsequent Order or reversed insofar that
24 is concerned. Next, the single Commissioner
25 did find that the Claimant was an employee of



1 S & A Construction & More, and that S & A
2 Construction & More regularly employed four or
3 more employees. But in doing so, the single
4 Commissioner also awarded temporary total
5 disability benefits, a running award since the
6 date of accident. But there's no out-of-work
7 note from any doctor in evidence. Clearly the
8 Claimant has the burden of proof to show that
9 he was out of work here, and that his
10 incapacity -- his capacity for work was --
11 incapacity for work was total. In here there's
12 no expert or medical opinion to that effect.
13 All we have is the Claimant's own testimony,
14 which serves -- is self-serving at best. And
15 there was a failure to award credit for salary
16 paid in lieu of temporary total disability.
17 The Claimant was asked his attorney, have you
18 been paid for any of the time that you haven't
19 been able to work. His answer was, no. And
20 then he modified it, he said he -- I -- in the
21 beginning he gave me a little bit of money but
22 I think it was like six or seven hundred
23 dollars and that was it. So there's six or
24 seven hundred dollars that was paid in lieu of
25 benefits that was -- there was no credit given



1 for. And additionally, the Claimant has gone
2 back to work. The testimony on that is real
3 sketchy though. He testified that he has done
4 trim work and tile work since the accident.
5 That's on page 20 of the transcript. And then
6 he later on cross-examination testified that he
7 was, quote, just helping out a buddy. That's
8 at page 33 of the transcript. However, he
9 didn't even know his buddy's last name. He
10 also later testified that on the trim work he
11 was -- "It was just for a buddy, you know."
12 Page 36. I asked him who that buddy was and he
13 said, "Fred, I guess." So clearly at that
14 point in time ---

15 **COMMISSIONER McCASKILL:** And what did Fred pay him?

16 **MR. KILLEN:** Oh, he was just doing the tile work, it
17 was for a buddy. He wasn't getting paid.
18 According to his own testimony.

19 **COMMISSIONER McCASKILL:** For the trim work, as I
20 remember reading the transcript, he didn't get
21 anything.

22 **MR. KILLEN:** That's what ---

23 **COMMISSIONER McCASKILL:** Correct?

24 **MR. KILLEN:** That's what he testified to.

25 **COMMISSIONER McCASKILL:** And for the tile work he



1 got cigarettes and a meal maybe?

2 MR. KILLEN: That sounds right.

3 COMMISSIONER McCASKILL: The cigarettes I remember.

4 MR. KILLEN: Yes, Commissioner, that's correct. And
5 he also testified that he was able to do that
6 work starting by six or seven months after the
7 accident. S, in sum, Commissioners, I'd just
8 like to request that --I would echo anything
9 that the employer is asserting as the Fund is
10 secondary liable for payment of benefits in
11 this case and our liability stems directly from
12 the employer, I would echo any position they
13 have regarding the failure to receive notice of
14 the hearing. I would request that the
15 stipulation in the single Commissioner's Order
16 be reversed. I would request that the -- if
17 compensable that the Claimant be given no TTD
18 as he failed to provide out-of-work notes from
19 a doctor, and request that the -- if he is
20 granted TTD that it stops six or seven months
21 after the accident when the Claimant was able
22 to do the tile and trim work. Thanks very
23 much.

24 CHAIR: Thank you. All right, Mr. Calder.

25 SECOND APPELLANT ARGUMENT:



1 MR. CALDER: Good morning -- well, afternoon. My
2 request for Commission review was based on was
3 I, Scott Calder, S & A Construction properly
4 notified of the hearing date given to -- giving
5 me due process. I was never served with
6 anything as far as paperwork, never received
7 anything in the mail as far as a hearing date.

8 COMMISSIONER McCASKILL: What is your correct mailing
9 address, sir?

10 MR. CALDER: It is 296 Highway 66, Conway, South
11 Carolina, 29526.

12 COMMISSIONER McCASKILL: How long has it been your
13 correct mailing address? Roughly.

14 MR. CALDER: I'd say six, seven years maybe.
15 Something like that.

16 COMMISSIONER McCASKILL: It hasn't changed?

17 MR. CALDER: It has not changed, no, sir.

18 COMMISSIONER McCASKILL: Thank you.

19 MR. CALDER: And in speaking to one of the witnesses
20 for the Claimant I was told that there was a
21 hearing coming up that he was going to attend
22 with the Claimant; Mr. Randy Allison, which was
23 in the first -- at the first hearing appeal.
24 And I contacted the letter I received earlier
25 in the year from Mr. Killen. I got his phone



1 number and I called him to check with him on
2 what was going on because I was scared I was
3 out of the loop and I wasn't sure what was
4 going on and I didn't know what I had missed.
5 So I contacted his office and was told that
6 there was some depositions coming up, could I
7 be scheduled to meet at Mr. Snook's office for
8 some depositions. And I agreed with them that
9 I would -- I could meet for the depositions.
10 On the week of the depositions I received an
11 email back telling me that the depositions were
12 going to be cancelled, they were not able to be
13 heard. Well I still was not sure of the
14 hearing date. I assumed once I got to the
15 depositions and we went through all that I
16 would know what was going on, so I thought I
17 was in the loop. Well the day Mr. Randy
18 Allison was in the first hearing as the
19 Claimant's witness, contacted me a day or so
20 after the hearing by phone asking me if I had
21 any work or anything I needed done. And I
22 explained to him no, and asked him had he been
23 working and he said that he had been working --
24 well anyway, within the conversation he told me
25 that he had been to a hearing with Mr. D'Espies



1 for the case. So then I contacted Mr. Killen's
2 office again, I think by email or by telephone,
3 wanting to know what was the results of the
4 hearing. And then I received some paper work
5 later telling me that I was at fault and that
6 I was required to carry Workmen's Comp
7 insurance. And Mr. D'Espies was -- I am not --
8 well, Mr. D'Espies was not an employee of S &
9 A. He rarely helped me around the house. He's
10 helped several of my neighbors in the area, and
11 he's helped me off and on a couple of weekends
12 doing side-work because I do work a full time
13 job and -- and he has helped me, I am not
14 denying that whatsoever. But he's not a full-
15 time employee. I do not have any full-time
16 employees because I work -- ninety percent of
17 the time I work is on Saturdays and Sundays and
18 most people don't want to work on Saturdays and
19 Sundays. So, Mr. D'Espies cannot provide any
20 payroll or anything from S & A Construction
21 because it -- it does not exist. He probably
22 ---

23 COMMISSIONER McCASKILL: He's never worked for you?

24 MR. CALDER: Yes, sir. He did. From about ---

25 COMMISSIONER McCASKILL: How did you pay him?



1 MR. CALDER: I paid him in cash. Yes, sir. And he
2 worked with me, when I went back and counted,
3 probably about ten to twelve days total is how
4 many days he has worked for me: doing random
5 things, building decks, putting roofs, you
6 know, whatever the job may be. Because, like
7 I said, I -- S & A does not have any full-time
8 employees. Mr. D'Espies mentions full-time
9 employees, which is Gage, which is my son, he's
10 15 years old. He does go with me on the
11 weekends sometimes but he's not an employee of
12 S & A Construction. And the two other
13 employees that he states are full-time
14 employees with me, they work full-time jobs and
15 one of the,'s here today with me. So -- and on
16 the day of the accident, which the date of the
17 injury was stated, I think, 12/21 when it was
18 actually 12/22. Mr. D'Espies was supposed to
19 help me that morning, and showed up for work,
20 and he -- Mr. Raymond Martinez gave him a ride
21 to work. And as soon as he got to work,
22 Raymond told me, he said, Scott, do not let Rob
23 work. See, we stopped at the store and he has
24 drunk Twisted Teas on the way to work. So I,
25 in return, told Rob, I said, let's hold off,

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1 I'll get you a ride back home, we're not going
2 to do anything today. We're not going to work.
3 And I went over, cleaning some stuff up,
4 putting it in the truck, and he had climbed up
5 on the roof, and the roof was still wet from
6 the dew. He did not climb up on the roof with
7 a harness, which they're required to do if they
8 get on the roof, and slipped and fell off. I
9 took Mr. D'Espies to the hospital. Because I
10 was there, took him to the hospital. Now when
11 we got there I asked, you know, could he be
12 given an alcohol test or anything and they told
13 me that they could not do that for me because
14 Rob had told them that he fell off of a buddy's
15 roof and -- I asked him why did he tell them
16 that, and he said that, you know, for lack of
17 better terms, he would get a lot more free
18 stuff by telling them that. So I was not
19 allowed to get an alcohol test or anything at
20 the hospital. And, you know, I put in my claim
21 did -- Mr. D'Espies commit fraud. Because all
22 the testimony was false and -- so I do not have
23 full-time employees. So without -- under four
24 full-time employees I was not required to carry
25 Workman's Comp. And he shouldn't have been on

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1 the roof anyway. And I know I'm nervous to
2 death but I'm trying. But -- and I would just
3 like, you know, to be noted that I would like
4 my evidence and statement entered in the
5 appeals for review. Thanks.

6 CHAIR: All right. Mr. Snook, do you have an
7 argument?

8 MR. SNOOK: I do.

9 RESPONDENT ARGUMENT:

10 MR. SNOOK: Thank you. May it please the
11 Commission. I'm Craig Snook, I represent the
12 Claimant, Respondent Robert D'Espies.

13 COMMISSIONER McCASKILL: Mr. Snook, before you get
14 started. Is there an out-of-work note in this
15 case?

16 MR. SNOOK: There's none, Your Honor.

17 COMMISSIONER McCASKILL: Thank you.

18 MR. SNOOK: Since you went ahead and asked me that,
19 I would ask the Commission to not place form
20 before substance and let the absence of a quote
21 unquote out-of-work note be the decisive factor
22 in a claim like this. I think the record is
23 replete with the records of the original injury
24 at the Conway Medical Center and the subsequent
25 orthopaedic treatment from Dr. Whiteside that



1 indicate that the Claimant was injured. And
2 with -- the injury to at least with respect to
3 his right foot that -- and he testified at the
4 hearing, and he actually showed Commissioner
5 Campbell his right foot goes off like this
6 (indicating). And as a roofer you can't climb
7 a ladder, you can't do anything like that. Dr.
8 Whiteside's records also reflect the fact that
9 he had prescribed a perspective treatment
10 regimen to him to begin with physical therapy
11 before surgical intervention. Of course none
12 of that came about because we have an uninsured
13 employer here and so he was put on self-pay by
14 the providers with no means to pay for it. And
15 as such he was unable to continue with his
16 medical care. So if there's any other
17 questions on that -- on the out-of-work notice.
18 With respect to one of the arguments of the UEF
19 and the argument of the uninsured employer,
20 they stem around this whole notice, due
21 process, right to be heard issue, so I'd like
22 to address that first. For some reason the UEF
23 argued in its brief that it learned after the
24 hearing that the Claimant -- I mean the
25 uninsured employer said he was never served



1 with the Form 50 and nothing could be further
2 from the truth. He was clearly served with it,
3 and in fact he made it an attachment to his
4 Form 30 and to his 59. He made arguments for
5 it, one of which he just made to you today that
6 the date of injury on my Form 50 was wrong.

7 CHAIR: Well, I don't ---

8 MR. SNOOK: And ---

9 CHAIR: He attached it now. He just made the
10 argument he learned about the hearing two days
11 later, so that doesn't necessarily negate the
12 argument at the original hearing that he hadn't
13 received notice as of that hearing date.

14 MR. SNOOK: Not notice, Your Honor ---

15 CHAIR: Okay.

16 MR. SNOOK: --- the Form 50, service of the Form 50.
17 With respect to the notice of the hearing, he
18 never challenges the fact that the Commission
19 mailed the Order properly under the
20 regulations. And the regulations do not
21 require receipt, they require proper mailing.
22 And the notice of hearing is part of the
23 Commission's file. That Commission's file was
24 made part of the record as it always is without
25 objection except for self-serving statements,



1 and that notice of the hearing is absolutely
2 correct. Now you question him about what his
3 correct address is, I have the notice of
4 hearing here, that's the exact address that it
5 was mailed to on the notice of hearing. And it
6 seems a little odd to me that he finds out
7 about everything else including his opportunity
8 to be deposed before the hearing but he
9 doesn't find out about the actual notice of the
10 hearing itself. That just strains credibility.
11 And just one thing further on that, with the
12 whole deposition scenario, he attached six
13 emails as exhibits to his Form 30. Six emails
14 between Mr. Killen's office and the uninsured
15 employer, trying to schedule depositions. The
16 last attempt to schedule a deposition was for
17 September 13th, the day before the hearing, and
18 that deposition could not be held the day
19 before the hearing. My question is this, why
20 is there no ac- -- see, if they didn't know
21 that that was the hearing date, why -- why
22 aren't there no emails back and forth to
23 reschedule another deposition day? Why did
24 they stop with that day, which was the day
25 before the actual hearing itself? Mr. Killen's



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1 argument about this -- the notice and
2 everything, while he bootstraps his position
3 onto that of the Claimant vis-a-vis the UEF's
4 ---

5 **COMMISSIONER BARDEN:** Well now didn't he speak to a
6 stipulation, and isn't a stipulation when all
7 parties agree. And his being a party means
8 that you're saying he was a party to that
9 stipulation. Regardless of whether the notice
10 issue is the employer's issue or not there's a
11 stipulation.

12 **MR. SNOOK:** And he was -- as I argued in my brief,
13 he -- he is a party to that stipulation albeit
14 not directly because he was given the
15 opportunity to object to the inclusion to the
16 inclusion of the Commission's file as part of
17 the record. It was made part of the record
18 without objection, and the -- clearly the
19 notice of hearing is always a part of the
20 Commission's file. So when he agreed that the
21 Commission's file would be made part of the
22 record without objection, he agreed and
23 stipulated to that notice of the hearing, and
24 that notice of the hearing is properly
25 addressed to the uninsured employer.



1 CHAIR: So the argument is that he stipulated by
2 omission because he wasn't there? If he wasn't
3 there, how can he stipulate to that?

4 MR. SNOOK: No, Commissioner, I'm talking about Mr.
5 Killen on behalf of the UEF is the one who
6 raised that issue.

7 COMMISSONER BARDEN: What does it say, all parties
8 to the matter or all parties present at the
9 hearing stipulated?

10 MR. SNOOK: All parties.

11 COMMISSONER BARDEN: All parties are ---

12 MR. SNOOK: The language used was all parties..

13 COMMISSONER BARDEN: All right. And that would
14 include the employer would it not?

15 MR. SNOOK: That would be correct.

16 COMMISSONER BARDEN: Okay.

17 MR. SNOOK: Now I think that we can't -- we can't go
18 too far afield with the uninsured employer's
19 argument about the hearing notice. If mailing
20 a notice of a hearing to my office is
21 sufficient to bind me, then mailing of a notice
22 to the uninsured employer is sufficient to bind
23 him. The regulation makes no distinction
24 between the two in that respect. Sauce for the
25 goose is sauce for the gander. I was at the



1 hearing. Mr. Killen was at the hearing. We all
2 got the same notice of the hearing all
3 addressed in the same fashion. So I don't
4 think that we can just carte blanche extend a
5 privilege to an uninsured employer because he
6 is in fact an uninsured employer. And I think
7 that it also, as I mentioned before, strains
8 credibility to think that he actually did not
9 know about the hearing. One thing I didn't
10 learn until his testimony today was that he
11 spoke to Mr. D'Espies' witness before the
12 hearing. And that witness, Randy Allison, told
13 him that there's a hearing coming up. So, now
14 we have he was told there's a hearing coming
15 up, the depositions, and so I just don't find
16 -- think we can go that far with this,
17 especially since the regulations were complied
18 with. And they should apply levelly, equally,
19 all the way across the board in that respect.
20 And the last thing I have to say with respect
21 to evidence of him being an employee, evidence
22 of his injury, evidence of being -- not being
23 able to work, all the things the Claimant
24 testified to at the hearing. Mr. Killen's
25 office was trying to take the deposition of the

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1 uninsured employer. That didn't happen.
2 Certainly it would seem to me if I were in that
3 position, I would subpoena the uninsured
4 employer as my witness to come and testify at
5 the hearing, and I would be asking him who else
6 was there who can get me evidence that what you
7 say is true, that this gentleman who's been
8 injured is not an employer. But you see, none
9 of that happened. And so it's just not
10 believable, it's not sound trial practice to do
11 things like that. So, that raises kind of a
12 red flag for me. The rest of my position is
13 already in my brief and I would rely on that.
14 Last, just in an abundance of caution, I'll
15 move to strike all the testimony from Mr.
16 Calder.

17 **CHAIR:** Okay. And with regard to the motion to
18 strike, I will note a lot of it was hearsay
19 testimony but I'll rule -- I guess I'll go
20 ahead and rule that it will be admitted just
21 for the purpose of his reason for not attending
22 the hearing and not necessarily for the truth
23 of the matter in those particular statements.

24 **MR. SNOOK:** Thank you, Commissioner.

25 **CHAIR:** All right. Rebuttal, Mr. Killen?



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FIRST APPELLANT REBUTTAL:

1
2 **MR. KILLEN:** Thank you, Commissioner. First off,
3 the -- it's his burden to prove that the
4 Claimant is unable to work. It's his Form 50.
5 There's no out-of-work slip, there's no
6 questionnaire. Secondly, I think receipt of
7 the hearing notice is necessary to establish
8 that due process for all parties -- and do you
9 really think that this couple would travel from
10 Conway ---

11 **MRS. CALDER:** Myrtle Beach.

12 **MR. KILLEN:** --- Myrtle Beach to Columbia, and pay
13 \$150 and do an Appellate Panel Hearing when for
14 some reason they wouldn't go to Georgetown for
15 the actual single Commissioner Hearing? I
16 don't know, that doesn't strike me as something
17 that someone would do, something that someone
18 who would come up here and do this -- I don't
19 think they would just blow off the hearing.
20 And as far as a purported implicit stipulation,
21 I don't think that agreeing to the submission
22 of the Commission's file without objection,
23 which contains the notice of hearing, is
24 agreeing that it was served properly or whether
25 or not the employer actually received it.



1 Those are two different -- two different
2 issues. And that's all, any questions?

3 **CHAIR:** Thank you. Mr. Calder, you have three
4 minutes in rebuttal if you want to address any
5 of the arguments that Mr. Snook made.

6 **SECOND APPELLANT REBUTTAL:**

7 **MR. CALDER:** That's fine. I'd like to reiterate I
8 never -- being -- you know, talking about the
9 hearing after the depositions. Once I found
10 out the day after the hearing I had no reason
11 to contact Mr. Killen's office about
12 rescheduling depositions or anything because I
13 found out the hearing had already happened. So
14 that's why there was no -- no more emails or no
15 more communication because the hearing was over
16 and I wasn't there and, you know, there was no
17 need to, you know, worry about scheduling
18 depositions. So, I just wanted to, you know,
19 clear -- clear that up or why the emails
20 stopped or anything. I had no other reason to
21 send email. But I would just like for the
22 Commission to review my -- my testimony today
23 and that's all I have. Okay. Thank you.

24 **CHAIR:** Okay. Thank you, sir. All right. That
25 concludes this matter. We'll be in touch via



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1 mail, thank you.

2 (There being nothing further, the hearing concluded
3 at 2:35 p.m.)
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THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM SOUTH CAROLINA
Workers' Compensation Commission

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JUN 24 2019

Appellate Case No.: 2018-001477

SC Court of Appeals

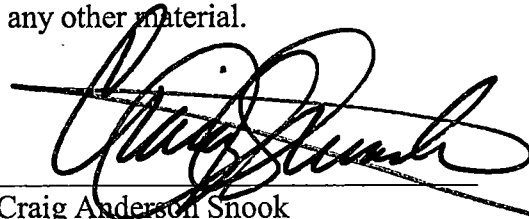
Robert J. D'Espies, ... Claimant, Appellant,

v.

S&A Construction & More, LLC, Employer, and the SC Workers
Compensation Uninsured Employers Fund, ... Respondents.

CERTIFICATE OF COUNSEL

Counsel for Appellant hereby certifies that the Record on Appeal contains all material
proposed to be included by any of the parties and not any other material.



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June 21, 2019