



OPINIONS
OF
THE SUPREME COURT
AND
COURT OF APPEALS
OF
SOUTH CAROLINA

ADVANCE SHEET NO. 38
October 26, 2022
Patricia A. Howard, Clerk
Columbia, South Carolina
www.sccourts.org

CONTENTS

THE SUPREME COURT OF SOUTH CAROLINA

PUBLISHED OPINIONS AND ORDERS

None

UNPUBLISHED OPINIONS

None

PETITIONS - UNITED STATES SUPREME COURT

28081 – Steven Louis Barnes v. State	Pending
28089 – State v. Jerome Jenkins, Jr.	Pending
28094 – State v. Justin Jamal Warner	Pending

EXTENSION TO FILE PETITION - UNITED STATES SUPREME COURT

None

PETITIONS FOR REHEARING

28095 – The Protestant Episcopal Church v. The Episcopal Church	Pending
28105 – Sullivan Management, LLC v. Fireman’s Fund Ins. Co.	Pending
28108 – Alicia Rudick v. Brian Rudick	Pending
28110 – Books-A-Million v. SCDOR	Pending
28114 – Patricia Damico v. Lennar Carolinas	Pending
28115 – Progressive Direct v. Shanna Groves	Pending
28117 – State v. Michael N. Frasier, Jr.	Pending

28118 – State v. Charles Brandon Rampey

Pending

THE SOUTH CAROLINA COURT OF APPEALS

PUBLISHED OPINIONS

5948 – Frankie Padgett v. Cast and Crew Entertainment

13

UNPUBLISHED OPINIONS

2022-UP-381 – SCDSS v. Edna Sprinkle
(Filed October 12, 2022)

2022-UP-382 – Mark Giles Pafford v. Robert Wayne Duncan, Jr.
(Filed October 19, 2022)

2022-UP-383 – Wanda Human v. AnMed Health
(Filed October 19, 2022)

2022-UP-384 – James Williams v. State
(Filed October 19, 2022)

2022-UP-385 – SCDSS v. Stephanie Schwan
(Filed October 18, 2022)

2022-UP-386 – SCDSS v. Janell Johnson
(Filed October 18, 2022)

2022-UP-387 – SCDSS v. Ceacer Gooding, III
(Filed October 18, 2022)

2022-UP-388 – SCDSS v. Debbie F. Beam
(Filed October 18, 2022)

2022-UP-389 – Robert Jackson v. State

2022-UP-390 – J.A. Seagraves v. North Regional III, LLC

2022-UP-391 – Buddy Newsome #220855 v. SCDC

2022-UP-392 – State v. John T. Basile

2022-UP-393 – State v. Jonathan A. Lincoln

2022-UP-394 – Rebecca Downing v. Richard Downing

PETITIONS FOR REHEARING

5906 – Isaac D. Brailey v. Michelin, N.A. Pending

5911 – Charles S. Blackmon v. SCDHEC Pending

5916 – Amanda Huskins v. Mungo Homes, LLC Pending

5926 – Theodore Wills, Jr. v. State Denied 10/20/2022

5931 – Stephen R. Edwards v. Scapa Waycross, Inc. Pending

5933 – State v. Michael Cliff Eubanks Denied 10/20/2022

5942 – State v. Joseph L. Brown, Jr. Denied 10/20/2022

5943 – State v. Nicholas B. Chhith-Berry Denied 10/20/2022

5946 – State v. Frankie L. Davis, III Pending

2022-UP-002 – Timothy Causey v. Horry County Pending

2022-UP-186 – William B. Justice v. State Pending

2022-UP-293 – State v. Malette D. Kimbrough Denied 10/20/2022

2022-UP-294 – Bernard Bagley v. SCDPPPPS (2) Pending

2022-UP-308 – Ditech Financial, LLC v. Kevin Synder Pending

2022-UP-321 – Stephen Franklin, II, v. Kelly Franklin Pending

2022-UP-326 – Wells Fargo Bank N.A. v. Michelle Hodges Pending

2022-UP-331 – Ex Parte: Donald L. Smith (in re: Battersby v. Kirkman)	Pending
2022-UP-336 – In the matter of Ronald MJ Gregg	Pending
2022-UP-337 – U.S. Bank, N.A. v. Rhonda Lewis Meisner (3)	Pending
2022-UP-338 – State v. Derrick J. Miles	Pending
2022-UP-340 – State v. Amy N. Taylor	Denied 10/20/2022
2022-UP-346 – Russell Bauknight v. Adele Pope (3)	Pending
2022-UP-347 – Vincent C. Carter v. Eagles Landing Restaurant	Denied 10/21/2022
2022-UP-353 – State v. Gabriel Betancourt, Jr.	Denied 10/20/2022
2022-UP-354 – Chicora Life Center v. Fetter Health Care	Pending
2022-UP-360 – Nationstar Mortgage LLC v. Barbara A. Gibbs	Pending
2022-UP-362 – Jonathan Duncan v. State	Pending

PETITIONS – SUPREME COURT OF SOUTH CAROLINA

5776 – State v. James Heyward	Pending
5794 – Sea Island Food v. Yaschik Development (2)	Pending
5824 – State v. Robert Lee Miller, III	Pending
5826 – Charleston Development v. Younesse Alami	Pending
5832 – State v. Adam Rowell	Pending
5834 – Vanessa Williams v. Bradford Jeffcoat	Pending

5839 – In the Matter of Thomas Griffin	Pending
5843 – Quincy Allen #6019 v. SCDC	Pending
5844 – Deutsche Bank v. Patricia Owens	Pending
5846 – State v. Demontay M. Payne	Pending
5849 – SC Property and Casualty Guaranty Fund v. Second Injury Fund	Pending
5855 – SC Department of Consumer Affairs v. Cash Central	Pending
5856 – Town of Sullivan's Island v. Michael Murray	Pending
5858 – Beverly Jolly v. General Electric Company	Pending
5860 – Kelaher, Connell & Conner, PC v. SCWCC	Pending
5861 – State v. Randy Collins	Pending
5871 – Encore Technology Group, LLC v. Keone Trask and Clear Touch	Pending
5877 – Travis Hines v. State	Pending
5882 – Donald Stanley v. Southern State Police	Pending
5888 – Covil Corp. v. Pennsylvania National Mut. Ins. Co.	Granted 10/11/2022
5892 – State v. Thomas Acker	Pending
5898 – Josie Bostick v. Earl Bostick, Sr.	Pending
5900 – Donald Simmons v. Benson Hyundai, LLC	Pending
5903 – State v. Phillip W. Lowery	Pending
5904 – State v. Eric E. English	Pending
5905 – State v. Richard K. Galloway	Pending

5907 – State v. Sherwin A. Green	Pending
5908 – State v. Gabrielle Olivia Lashane Davis Kocsis	Pending
5914 – State v. Tammy D. Brown	Pending
5915 – State v. Sylvester Ferguson, III	Pending
5922 – State v. Olandio R. Workman	Pending
5923 – Susan Ball Dover v. Nell Ball	Pending
5925 – Patricia Pate v. College of Charleston	Pending
5930 – State v. Kyle M. Robinson	Pending
5934 – Nicole Lampo v. Amedisys Holding, LLC	Pending
2021-UP-230 – John Tomsic v. Angel Tomsic	Pending
2021-UP-242 – G. Allen Rutter v. City of Columbia	Pending
2021-UP-252 – Betty Jean Perkins v. SCDOT	Pending
2021-UP-272 – Angela Bain v. Denise Lawson	Pending
2022-UP-274 – SCDSS v. Dominique G. Burns	Pending
2021-UP-277 – State v. Dana L. Morton	Pending
2021-UP-279 – State v. Therron R. Richardson	Pending
2021-UP-280 – Carpenter Braselton, LLC v. Ashley Roberts	Pending
2021-UP-281 – In the Matter of the Estate of Harriet Kathleen Henry Tims	Pending
2021-UP-283 – State v. Jane Katherine Hughes	Pending

2021-UP-288 – Gabriel Barnhill v. J. Floyd Swilley	Pending
2021-UP-298 – State v. Jahru Harold Smith	Pending
2021-UP-396 – State v. Matthew J. Bryant	Pending
2021-UP-418 – Jami Powell (Encore) v. Clear Touch Interactive	Pending
2021-UP-454 – K.A. Diehl and Assoc. Inc. v. James Perkins	Pending
2022-UP-022 – H. Hughes Andrews v. Quentin S. Broom, Jr.	Pending
2022-UP-025 – Nathenia Rossington v. Julio Rossington	Pending
2022-UP-028 – Demetrius Mack v. Leon Lott (2)	Pending
2022-UP-033 – E.G. and J.J. v. SCDSS	Pending
2022-UP-036 – John Burgess v. Katherine Hunter	Pending
2022-UP-051 – Ronald I. Paul v. SCDOT (2)	Pending
2022-UP-063 – Rebecca Rowe v. Family Health Centers, Inc.	Pending
2022-UP-081 – Gena Davis v. SCDC	Pending
2022-UP-085 – Richard Ciampanella v. City of Myrtle Beach	Pending
2022-UP-089 – Elizabeth Lofton v. Berkeley Electric Coop. Inc.	Pending
2022-UP-095 – Samuel Paulino v. Diversified Coatings, Inc.	Pending
2022-UP-097 – State v. Brandon K. Moore	Pending
2022-UP-113 – Jennifer McFarland v. Thomas Morris	Pending
2022-UP-114 – State v. Mutekis J. Williams	Pending

2022-UP-115 – Morgan Conley v. April Morganson	Pending
2022-UP-118 – State v. Donald R. Richburg	Pending
2022-UP-119 – Merilee Landano v. Norman Landano	Pending
2022-UP-161 – Denis Yeo v. Lexington Cty. Assessor	Pending
2022-UP-163 – Debi Brookshire v. Community First Bank	Pending
2022-UP-170 – Tony Young v. Greenwood Cty. Sheriff's Office	Pending
2022-UP-175 – Brown Contractors, LLC v. Andrew McMarlin	Pending
2022-UP-180 – Berkley T. Feagin v. Cambria C. Feagin	Pending
2022-UP-183 – Raymond A. Wedlake v. Scott Bashor	Pending
2022-UP-184 – Raymond Wedlake v. Woodington Homeowners Assoc.	Pending
2022-UP-189 – State v. Jordan M. Hodge	Pending
2022-UP-192 – Nivens v. JB&E Heating & Cooling, Inc.	Pending
2022-UP-197 – State v. Kenneth W. Carlisle	Pending
2022-UP-205 – Katkams Ventures, LLC v. No Limit, LLC	Pending
2022-UP-207 – Floyd Hargrove v. Anthony Griffis, Sr.	Pending
2022-UP-209 – The State v. Dustin L. Hooper	Pending
2022-UP-213 – Dr. Gregory May v. Advanced Cardiology	Pending
2022-UP-214 – Alison Meyers v. Shiram Hospitality, LLC	Pending
2022-UP-228 – State v. Rickey D. Tate	Pending
2022-UP-229 – Adele Pope v. Estate of James Brown (3)	Pending

2022-UP-236 – David J. Mattox v. Lisa Jo Bare Mattox	Pending
2022-UP-239 – State v. James D. Busby	Pending
2022-UP-243 – In the Matter of Almeter B.Robinson (2)	Pending
2022-UP-245 – State v. John Steen d/b/a John Steen Bail Bonding	Pending
2022-UP-251 – Lady Beaufort, LLC v. Hird Island Investments	Pending
2022-UP-252 – Lady Beaufort, LLC v. Hird Island Investments (2)	Pending
2022-UP-253 – Mathes Auto Sales v. Dixon Automotive	Pending
2022-UP-255 – Frances K. Chestnut v. Florence Keese	Pending
2022-UP-256 – Sterling Hills v. Elliot Hayes	Pending
2022-UP-269 – Steven M. Bernard v. 3 Chisolm Street	Pending
2022-UP-270 – Latarsha Docena-Guerrero v. Government Employees Insurance	Pending
2022-UP-274 – SCDSS v. Dominique G. Burns	Pending
2022-UP-296 – SCDOR v. Study Hall, LLC	Pending
2022-UP-298 – State v. Gregory Sanders	Pending
2022-UP-303 – Daisy Frederick v. Daniel McDowell	Pending
2022-UP-305 – Terri L. Johnson v. State Farm	Pending
2022-UP-309 – State v. Derrick T. Mills	Pending
2022-UP-312 – Guardian ad Litem, James Seeger v. Richland School Dt.	Pending
2022-UP-314 – Ronald L. Jones v. Rogers Townsend & Thomas, P.C.	Pending

2022-UP-316 – Barry Adickes v. Phillips Healthcare (2)	Pending
2022-UP-319 – State v. Tyler J. Evans	Pending
2022-UP-320 – State v. Christopher Huggins	Pending
2022-UP-333 – Ex Parte: Beullah and James Berlin	Pending

**THE STATE OF SOUTH CAROLINA
In The Court of Appeals**

Frankie Padgett, Claimant, Respondent,

v.

Cast and Crew Entertainment Services, Inc., Employer,
and American Zurich Insurance Company, Carrier,
Appellants.

Appellate Case No. 2019-001254

Appeal From The Workers' Compensation Commission

Published Opinion No. 5948
Heard June 7, 2022 – Filed October 26, 2022

AFFIRMED

Vernon F. Dunbar, of McAngus Goudelock & Courie,
LLC, of Greenville, for Appellants.

Stephen Benjamin Samuels, of Samuels Reynolds Law
Firm, LLC, of Columbia, for Respondent.

MCDONALD, J.: Cast and Crew Entertainment Services (Cast and Crew) and American Zurich Insurance Company (Carrier), appeal an order of the South Carolina Workers' Compensation Commission, arguing the Appellate Panel erred in reinstating Frankie Padgett's (Claimant) temporary total disability (TTD) compensation benefits for a 2015 injury. Appellants assert (1) Claimant's agreement settling a prior workers' compensation claim (the Settlement

Agreement) prohibited his future employment with Cast and Crew; and (2) Claimant was paid more than 500 weeks of benefits for the prior injury and in TTD payments for the present injury. We affirm.

Facts and Procedural History

On January 26, 2009, Claimant began working for Cast and Crew as a truck driver. On August 27, 2009, Claimant sustained compensable injuries to his left foot, leg, back, hips, and right leg. Claimant underwent six surgeries to repair his left ankle.

In 2012, Claimant and Appellants settled the claim. Appellants agreed to pay Claimant \$150,000—\$50,000 in attorney fees, \$1,466.91 for litigation costs, and \$98,533.09 as "compromise settlement for disputed permanent disability" at the rate of \$57.81 per week for 1,704.56 weeks. The Settlement Agreement ended all future compensation, including Claimant's right to seek a change of condition and his right to seek additional medical care, and extinguished all claims arising from the 2009 injury. The Settlement Agreement further provided, "The parties agree that the Claimant is no longer an employee of Cast & Crew Entertainment Services, Inc. and further agrees [sic] that he will not seek future employment with Cast & Crew Entertainment Services, Inc."

On March 30, 2015, Claimant began working through Cast and Crew as a driver for Danger Boy Productions. Claimant was hired through his membership in the Teamsters Union, which assigns drivers to various film productions.

On May 6, 2015, Claimant suffered a right Achilles tendon tear and ankle fracture at work. He required an initial reconstructive surgery and a second reconstructive surgery and debridement when the tendon re-ruptured. TTD benefits followed.

In 2017, Appellants filed a petition to terminate TTD and medical benefits for the 2015 workplace injury. The single commissioner found Claimant was an employee of Cast and Crew when he was injured, suffered a compensable injury to his right lower extremity within the course and scope of his employment, and was not at maximum medical improvement (MMI). The single commissioner further found Claimant received 1,704.56 weeks of benefits under the Settlement Agreement and thus had exceeded 500 weeks of compensation. The single commissioner held that even if Claimant's prior award did not exceed or reach 500 weeks, his TTD benefits (paid from May 7, 2015 to May 31, 2018) exceeded the

500-week cap. Thus, Appellants could terminate Claimant's TTD payments and Claimant was not entitled to continued TTD, temporary partial disability, permanent partial disability, permanent and total disability, or wage loss benefits.

The Appellate Panel vacated the single commissioner's finding that Claimant had exceeded 500 weeks of benefits. The Appellant Panel reinstated Claimant's TTD benefits, finding the determination of permanent benefits under section 42-9-170 of the South Carolina Code (2015) was premature because Claimant had not reached MMI.

Standard of Review

The Administrative Procedures Act (APA) establishes the standard for our review of Commission decisions. *Lark v. Bi-Lo, Inc.*, 276 S.C. 130, 135, 276 S.E.2d 304, 306 (1981). "An appellate court has the power upon review to reverse or modify a decision of an administrative agency if the findings and conclusions of the agency are (1) affected by an error of law, (2) clearly erroneous in view of the reliable and substantial evidence on the whole record, or (3) arbitrary or capricious or characterized by abuse of discretion or a clearly unwarranted exercise of discretion." *James v. Anne's Inc.*, 390 S.C. 188, 192, 701 S.E.2d 730, 732 (2010); S.C. Code Ann. § 1-23-380(5)(d)–(e) (Supp. 2022).

Law and Analysis

I. Employer-Employee Relationship

Appellants argue the Appellate Panel lacked subject matter jurisdiction to reinstate TTD benefits because there was no proper employer-employee relationship between Cast and Crew and Claimant. Under Appellants' theory, Claimant was not lawfully employed by Cast and Crew because the Settlement Agreement prohibited such future employment. Appellants claim "Padgett's use of a variation of his legal name on the withholding and employment eligibility forms clearly shows an intent to avoid discovery of his true identity." We disagree.

"Coverage under the Workers' Compensation Act depends on the existence of an employment relationship." *Edens v. Bellini*, 359 S.C. 433, 439, 597 S.E.2d 863, 866 (Ct. App. 2004). The Workers' Compensation Act defines "employee" as "every person engaged in an employment under any appointment, contract of hire,

or apprenticeship, expressed or implied, oral or written, including aliens and also including minors, whether lawfully or unlawfully employed" S.C. Code Ann. § 42-1-130 (2015). "Because the existence of an employer-employee relationship is a jurisdictional question, 'the [c]ourt may take its own view of the preponderance of the evidence.'" *Sellers v. Tech Serv., Inc.*, 421 S.C. 30, 36, 803 S.E.2d 731, 734 (Ct. App. 2017) (quoting *Shatto v. McLeod Reg'l Med. Ctr.*, 406 S.C. 470, 475, 753 S.E.2d 416, 419 (2013)).

Here, the Settlement Agreement's provision prohibiting future employment does not in and of itself void the employment relationship for purposes of the Workers' Compensation Act. *See* § 42-1-130 (defining employee to include "every person engaged in an employment . . . whether lawfully or unlawfully employed"). Notably, there is no evidence in the record to support the theory that Claimant misrepresented his identity in gaining employment with Cast and Crew. Nor is there evidence of a causal connection between any alleged deception and Claimant's workplace injury. *Cf. Cooper v. McDevitt & St. Co.*, 260 S.C. 463, 468, 196 S.E.2d 833, 835 (1973) ("The general rule is that the following factors must be present before a false statement in an employment application will bar benefits: (1) The employee must have knowingly and wilfully made a false representation as to his physical condition. (2) The employer must have relied upon the false representation and this reliance must have been a substantial factor in the hiring. (3) There must have been a causal connection between the false representation and the injury.").

Claimant's full name is Perry Frank Padgett, Jr. At the hearing before the single commissioner, Claimant testified he has always used the nickname Frankie Padgett, but he provides Perry Padgett as his name when documents require his full legal name. When Claimant completed his employment forms in 2015, he listed his name as Frankie Padgett. However, he also completed a Form I-9 Employment Eligibility Verification and provided copies of his social security card and South Carolina Driver's License. These government-issued identification cards would have contained Claimant's legal name. Therefore, when Cast and Crew submitted Claimant's I-9 to the Department of Homeland Security and when it entered his information into its payroll system, Cast and Crew had notice that Frankie Padgett and Perry Padgett were the same person. Thus, the substantial evidence in the record supports the Appellate Panel's finding that an employer-employee relationship existed between Claimant and Cast and Crew, despite the Settlement Agreement's prohibition on future employment.

II. Application of Section 42-9-170

Appellants argue the Appellate Panel lacked jurisdiction to reinstate TTD payments because Claimant had already been paid more than 500 weeks of benefits on the 2009 injury. Appellants further argue the Appellate Panel erred in finding permanent partial, permanent total, and/or wage loss benefits could be determined at a later date once Claimant achieved MMI. We disagree.

This appeal comes to us through a petition to terminate TTD benefit payments. The Appellate Panel properly found the application of § 42-9-170 premature because by its own terms, § 42-9-170 applies to *permanent* injuries under § 42-9-30 or § 42-9-10(B) after a Claimant has sustained "another permanent injury" in the same employment.¹ There has been no finding in this case as to whether Claimant sustained a permanent injury, either in 2009 or 2015. The Settlement Agreement specifically provides the settlement was for a "*disputed* permanent injury" and noted none of Claimant's physicians assigned him a disability rating. (emphasis added). No evidence was provided for the Appellate Panel to determine whether Claimant suffered a permanent injury in 2009. Likewise, there has been no finding as to the permanency of Claimant's 2015 injury. As we noted in *Lemon v. Mt. Pleasant Waterworks*, § 42-9-170 does not address temporary total disability payments—the only payments Claimant has received. See 429 S.C. 59, 67 n.8, 837 S.E.2d 738, 743 n.8 (Ct. App. 2019) (recognizing § 42-9-170 speaks to permanent injury and does not address TTD). Accordingly, we find no error of law here, and

¹ Section 42-9-170(A) provides, in pertinent part:

If an employee receives a permanent injury as specified in Section 42-9-30 or Section 42-9-10(B) after having sustained another permanent injury in the same employment, he is entitled to compensation for both injuries, but the total compensation must be paid by extending the period and not by increasing the amount of weekly compensation, and in no case exceeding five hundred weeks.

S.C. Code Ann. § 42-9-170(A) (2015).

substantial evidence supports the Appellate Panel's reinstatement of Claimant's TTD payments.

AFFIRMED.

THOMAS and HEWITT, JJ., concur.