

No. 21-5909

In The

SUPREME COURT OF THE UNITED STATES

SANDS COOPER,
APPLICANT/PETITIONER

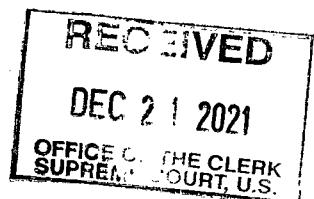
vs.

TRUMBULL INSURANCE COMPANY AND ADVANCED INTERNET
AUTOMATION, LLC, RESPONDENT(S)

**Application for an Extension of Time Within Which to File a
PETITION FOR WRIT OF CERTIORARI to the
Supreme Court of the United States**

Sands Cooper
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(703) 369-6455

December 17, 2021



APPLICATION FOR AN EXTENSION OF TIME

Pursuant to Rule 13.5 of the Rules of this Court, Applicant Sands Cooper hereby requests a 60-day extension of time for a response currently due on December 27, 2021 within which to file a petition for a writ of certiorari up to and including February 27, 2022.

JURISDICTION

This Court will have jurisdiction over any timely filed petition for certiorari in this case pursuant to 28 U.S.C. § 1254(1). Under Rules 13.1, 13.3, and 30.1 of the Rules of this Court, a petition for a writ of certiorari was due to be filed on or before October 5, 2021. In accordance with Rule 13.5, this application is being filed in at least 10 days before the date the petition is due.

JUDGEMENT SOUGHT TO BE REVIEWED

The judgment for which review is sought is *Sands Cooper v. Trumbull Insurance and Advanced Internet Automation, LLC*, No. 0597-20-4 (October 18, 2019) (attached as Exhibit 1). The Supreme Court of Virginia denied the Applicant's petition for rehearing on July 1, 2021 (attached as Exhibit 2).

REASONS JUSTIFYING AN EXTENSION

This is the petitioners' first request for an extension of time to file a petition upon learning that the motion for leave to proceed in *forma pauperis* was denied on December 6, 2021. Applicant respectfully requests an extension of time within which to file a petition for a for the following reasons:

1. Applicant has been unable to find an attorney to represent his case that would have brought the legal expertise to assist Applicant in preparing the petition as prescribed in Rule 33.

2. In order to allow time to find an affordable legal service to prepare the document, Applicant is requesting an extension of time. Due to the upcoming Christmas and New Year's holidays, the Applicant has been unable to find a legal process service by December 27, 2021. By allowing the Applicant with adequate time, he can ensure that the required booklet and copies are submitted.

3. Applicant has been denied a fair hearing of his claim to the Supreme Court of Virginia due to procedural defects of his brief without being given an opportunity to correct the defects. The lower court failed to respond to Applicant's motion for an extension to amend his brief to the court. Without an opportunity for a review by this Court, the decision by the lower court is based on fraud upon the court by the opposing counsel and the sitting official who knowingly accepted a false document to determine the outcome of my case. Applicant is seeking justice of the higher court to review his case.

CONCLUSION

For the foregoing reasons, Applicant respectfully requests that this Court grant an extension of 60 days within which to file a petition for a writ of certiorari in this case, up to and including February 27, 2022.

Respectfully submitted,



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EXHIBIT 1

VIRGINIA:
IN THE WORKERS' COMPENSATION COMMISSION

Opinion by SHERRILL
Deputy Commissioner

OCTOBER 18, 2019

SANDS COOPER v. ADVANCED INTERNET AUTOMATION, LLC
TRUMBULL INS CO, Insurance Carrier
TRUMBULL INSURANCE COMPANY, Claim Administrator
Jurisdiction Claim No. VA00001218501
Claim Administrator File No. Y66C 31937
Date of Injury June 12, 2016

Matthew Peffer, Esquire
For the Claimant.

Heather Bardot, Esquire
For the Employer.

Tenley Carroll Seli, Esquire
For the Insurer.

Hearing before Deputy Commissioner Sherrill in Manassas, Virginia, on January 23 and
May 3, 2019.

PRESENT PROCEEDINGS

This matter is before the Commission pursuant to the claimant's claims filed February 21, 2018 and April 4, 2018, alleging injuries by accident his neck, back, two ribs, head, brain, including a concussion, teeth, and right leg on June 12, 2016. The claimant is seeking temporary total disability benefits from June 12, 2016, and continuing, permanent partial disability benefits, and an award of medical benefits. The claimant requested that the claim for permanency benefits be reserved.

STIPULATIONS

The defendants stipulated that the Commission has jurisdiction; that the claimant provided timely notice; and that, subject to the defenses, he suffered two fractured ribs and was totally disabled from June 12 through July 25, 2016, as a result of the accident.

DEFENSES

The employer and insurer defended the claim on the following grounds: that there was no injury by accident arising out of or in the course of the employment; that the claimant was not injured to the extent alleged; that the injuries, medical treatment and disability, other than as stipulated, are not causally related to a compensable event; that the claimant is not disabled to the extent alleged, specifically that he was released to full duty as of July 25, 2016; that the medical evidence does not support the claimed total disability; and that, to the extent applicable, he has failed to market his residual capacity. Defendants also contest the average weekly wage asserted by the claimant.

SUMMARY OF THE EVIDENCE

The following evidence was introduced, admitted and considered in connection with the adjudication of the disputed issues: (1) Hearing testimony of the claimant, Sands Cooper, and the insurer's financial expert, Leslie Robson; (2) Claimant's Exhibit 1, Rule 2.2(B)(3) Medical Designation; (3) Claimant's Exhibit 2, photo of the car after the accident; (4) Claimant's Exhibit 3, Police Crash Report; (5) Claimant's Exhibit 4, 2016 1099 tax form; (6) Employer's Exhibit 1, Rule 2.2(B)(3) Medical Designation; (7) Employer's Exhibit 2, Designation of Deposition Testimony, all three depositions; (8) Employer's Exhibit 3, Claimant's Answers to

Interrogatories; (9) Employer's Exhibit 4, Articles of Organization for Advanced Internet Auto Sales, LLC; (10) Defendant's (Insurer's) Exhibit 1, Rule 2.2(B)(3) Medical Designation; (11) Defendant's Exhibit 2, Expert Report, with attachments; (12) Defendant's Exhibit 3, Claimant's deposition transcript, August 28, 2018; (13) Defendant's Exhibit 4, Claimant's deposition transcript, September 7, 2018; (14) Defendant's Exhibit 5, Certificate of Title For A Vehicle; (15) Defendant's Exhibit 6, Claimant's deposition transcript, June 5, 2017; (16) Defendant's Exhibit 7, Designation of June 5, 2017 deposition; (17) Defendant's Exhibit 8, Designation of August 28, 2018 deposition; (18) Defendant's Exhibit 9, Designation of September 7, 2018 deposition. The claimant proffered the business insurance policy, which was not admitted.

The record in this matter closed at the conclusion of the May 3, 2019 hearing.

ISSUES

1. Whether the claimant sustained a compensable accident arising out of and in the course of his employment.
2. The nature and extent of any causally related injuries.
3. The extent of the disability.
4. The pre-injury average weekly wage.

FINDINGS OF FACT AND RULINGS OF LAW

The first issue we address is whether the claimant sustained a compensable accident as defined by the Virginia Workers' Compensation Act (hereinafter "the Act"). The claimant is the CEO of Advanced Internet Automation, LLC. He also operated another business, TaxActs, and "got into the Ginseng business." The claimant testified that Advanced Internet Automation (hereinafter "AIA") was created to evaluate and analyze equipment, and to advise clients on the appraisal and value of equipment, primarily farm equipment and trucks. This was the claimant's

second business. His first business, TaxActs, was a business development and consulting venture. The claimant testified that he advised clients how to start a business, how to value assets and investments, and how to use business expenses to eliminate tax liability. With regard to AIA, the claimant testified it was a physical job at times, as he had to move things to look at and inspect equipment, crawl under equipment, and move and load equipment. He went to auctions, private homes and farms to look at equipment, and testified he travelled twice a month to do this. He also testified he worked seven days per week.

On June 12, 2016, a Sunday, at approximately 8:00 AM, the claimant testified he was leaving a farm property where he was inspecting equipment. He further testified that he was considering purchasing the farm to expand all of his businesses, that he wanted to grow ginseng on the property, and he wanted to start buying, repairing and selling equipment. He was driving a car purchased by TaxActs and titled in his wife's name. As he was driving home eastbound on Route 66, he was involved in a single car accident. He testified that he was "really cloudy" about the events, but stated that the front end got wobbly and the brakes failed. He testified he crashed into a bridge barrier at approximately 70 miles per hour, and the car flipped over. The Police Crash Report states that the claimant's vehicle "ran off the road, struck the end of the guardrail and overturned." The car came to rest on top of the guardrail. The claimant was charged with failure to maintain control of his vehicle. (Cl.'s Ex. 3.) The claimant testified that he did not know what caused the crash.

The claimant was taken by ambulance to Fauquier Hospital, where it was noted, "[h]e thinks he may have fallen asleep at the wheel." CT scans of the head and neck were normal, and he was diagnosed with two rib fractures.

"[I]n order for claimant to recover for [his] injuries, [he] must prove by a preponderance of the evidence an injury by accident 'arising out of and in the course of' [his] employment. . . ." *Sentara Leigh Hosp. v. Nichols*, 13 Va. App, 630, 633 (1992). "[A]n injury arises 'out of the employment, when there is apparent to the rational mind upon consideration of all the circumstances, a causal connection between the conditions under which the work is required to be performed and the resulting injury. . . ." *Bradshaw v. Aronovitch*, 170 Va. 329, 335 (1938). Virginia utilizes the "actual risk test" to make this determination. This requires "that the employment expose the workman to the particular danger from which he was injured, notwithstanding the exposure of the public generally to like risks." *Lucas v. Lucas*, 212 Va. 561, 563 (1972) (citing *Immar and Co. v. Brosnahan*, 207 Va. 720, 725 (1967)). The phrase "in the course of" refers to the continuity of time, space, and circumstances under which the injury occurred. *Bradshaw*. An injury is in the course of the employment if it takes place within the period of employment, at a place where the employee is reasonably expected to be, and while the employee is reasonably fulfilling the duties of, or doing something incidental to, the employment. *Baggett and Meador Cos. v. Dillon*, 219 Va. 633 (1978). "Whether an injury is incident to or connected with a particular business, that is, whether it arises out of and in the course of the employment, depends upon the peculiar circumstances of each case. No exact rule

can be formulated by which every case can be decided. . . ." *Railway Express Agency, Inc. v. Lewis*, 156 Va. 800, 809, 159 S.E. 188, 191 (1931).

In the present case, we find that the claimant failed to prove an injury by accident either arising out of or in the course of his employment. First, we are not persuaded that the claimant was in the course of his employment with AIA at the time of the accident. The Articles of Organization describe the purpose of the business as a "limited liability company involved in brokering, trading and transporting automobiles using an online marketing service." The claimant testified he was at a farm inspecting equipment in furtherance of this business. However, the claimant was not a credible witness; he was evasive, argumentative and even belligerent at times, and repeatedly referred to himself as the "potentate". Additionally, there were many inconsistencies and contradictions throughout his testimony. The claimant did not identify the equipment he allegedly went to inspect, did not tell the broker or anyone he was going to the farm, and did not talk to anyone while he was there. Thus, considering his testimony as a whole, we are persuaded that his trip to see the farm was personal, as he testified he was interested in buying a farm to enlarge all of his businesses and to start new ventures.

Furthermore, even if the claimant was in the course of his employment, we do not find that the accident arose out of his employment. The hospital records report that the claimant stated he thought he may have fallen asleep at the wheel, which he adamantly denied at the hearing. Regardless, and most significantly, he testified that he did not know what caused the crash. It is well settled that the claimant's case can rise no higher than his own uncontradicted testimony. *See Charlton v. Craddock-Terry Shoe Corp.*, 235 Va. 485 (1988) (citing *Massie v.*

Firmstone, 134 Va. 450 (1922)). Therefore, we find that the cause of the accident is unexplained. Unexplained accidents are not compensable.

For the foregoing reasons, the claimant's claims are DENIED. Accordingly, we do not need to address the remaining issues or summarize the other extensive testimony and voluminous documentary evidence submitted.

This case is removed from the hearing docket.

REVIEW

You may appeal this decision to the full Commission by filing a Request for Review with the Commission within thirty (30) days of the date of this Opinion.

EXHIBIT 2

VIRGINIA:

In the Supreme Court of Virginia held at the Supreme Court Building in the City of Richmond on Thursday the 1st day of July, 2021.

Sands Cooper,

Appellant,

against Record No. 210258

Court of Appeals No. 0597-20-4

Advanced Internet Automation, LLC, et al.,

Appellees.

Upon a Petition for Rehearing

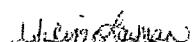
On consideration of the petition of the appellant to set aside the judgment rendered herein on May 5, 2021 and grant a rehearing thereof, the prayer of the said petition is denied.

A Copy,

Teste:

Douglas B. Robelen, Clerk

By:



Deputy Clerk