

**APPELLATE PANEL
DECISION AND ORDER
OF THE
SOUTH CAROLINA WORKERS' COMPENSTION COMMISSION
W.C.C. FILE NO. 1203664**

Nathalie I. Davaut,

EMPLOYEE,
CLAIMANT/APPELLANT.

-v-

UNIVERSITY OF SOUTH CAROLINA,

and

STATE ACCIDENT FUND,

DEFENDANTS/RESPONDENTS.

Appellate Panel Review held in Columbia,
South Carolina on March 18, 2013 per notices
timely and properly served on all parties of interest.

Appellate Panel Decision and Order filed
7/22, 2013.

APPEARANCES:

Claimant/Appellant represented by Paul L.
Reeves, Esquire of Columbia, South
Carolina.

Defendant/Respondent represented by Paul L.
Hendrix, Esquire, of Spartanburg, South
Carolina.

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SC COURT OF APPEALS

STATEMENT OF CASE

The parties were heard by Commissioner Derrick L. Williams on September 25, 2012 in Columbia, South Carolina. On November 6, 2012, he issued the following Order:

IT IS, THEREFORE, ORDERED; 1) The Claimant failed to prove an injury by accident arising out of and in the course and scope of her employment on February 16, 2012. 2) That all benefits under the S.C. Workers' Compensation Act are hereby denied. Howell-v. Pacific Columbia Mills, 291 S.C. 469, 354 S.E. 2d 384 (S.C. 1987). 3) That the Claimant's spouse, Angela M. Bourne, is the deceased Employee's next of kin that was dependent upon him for support at the time of his death.

IT IS SO ORDERED.

Within the statutory period, counsel for the Claimant filed an Application for Review in the case setting forth his reasons, copies of which were furnished to all interested parties, prior to oral argument presented before the Appellate Panel on March 18, 2013. All proffered testimony has been taken. Such, together with all documentary evidence, has been delivered by oral argument to the individual members of the Full Commission and has since been under study and consideration.

By appeal, the Claimant respectfully submits the following:

1. Whether the Single Commissioner erred as a matter of law in holding the mere act of crossing a public street within the boundaries of the Employer's property removed the Employee from the course and scope of her employment even though: (A) the Employee had not yet left her place of employment; and (B) the employee was still engaged in a duty, task or special errand for the benefit of the employer.

2. Whether the Single Commissioner erred as a matter of law in holding the factual situation was controlled by Howell v. Pacific Mills, 291 S.C., 469, 354 S.E.2d 384

(1987).

3. Whether the Single Commissioner erred as a matter of law in failing to award benefits for medical treatment and temporary total disability compensation.

4. Whether the Single Commissioner erred as a matter of law in failing to make specific and detailed findings of fact sufficient for appellate review.

FINDINGS OF FACT

Based upon the witness testimony, the documentary evidence submitted by the respective parties pursuant to the South Carolina Administrative Procedures Act, and the file of the Workers' Compensation Commission relative to this claim, we make the following Findings of Fact:

1. The Claimant seeks benefits under the South Carolina Workers' Compensation Act based upon an accident that occurred on February 16, 2012, while employed by the Employer/Defendant and therefore, the South Carolina Workers' Compensation Commission has jurisdiction of the case.

2. Venue, set in Columbia, South Carolina, is proper.

3. Notice of the Hearing was timely and properly served upon all parties of interest.

4. Claimant has a compensation rate of \$725.47.

5. The Claimant is 45 years of age and has multiple degrees including three Master's Degrees and a Ph.D.

6. The Claimant is a credible witness, and we have no reason to disbelieve her. However, the Claimant's own testimony supports the findings set forth herein.

7. The Claimant's work history includes work in the educational field at the collegiate level where the Claimant has taught multiple courses in foreign languages. The Claimant was employed as a professor of French and Spanish at the time of the accident which gave rise to this

claim.

8. The medical evidence submitted by the parties confirms that the Claimant sustained physical injuries as a result of a pedestrian/motor vehicle accident on February 16, 2012.

9. The Claimant's accident occurred in a crosswalk located on Hubbard Drive, a street that ran through campus at the University of South Carolina – Lancaster. The Employer did not own or maintain Hubbard Drive or the crosswalk on Hubbard Drive where the accident occurred.

10. The Claimant was leaving the Medford Library located on the south side of Hubbard Drive and was walking to her personal vehicle that she had parked in one of the parking lots maintained by the Employer on the north side of Hubbard Drive.

11. The Claimant had been reviewing resumes that were placed on reserve at the Medford Library just prior to her accident.

12. The Employer did not assign parking to staff/faculty or dictate what parking lots could be used by staff or faculty and the selection of parking was left to the discretion of employees.

13. The parking lot selected by the Claimant was adjacent to the Carole Ray Dowling Building on the north side of Hubbard Drive. The evidence establishes that other parking lots were located on the north side of Hubbard Drive as well as the south side of Hubbard Drive. By the Claimant's own admission, she did not check all of the parking lots located on the south side of Hubbard Drive or a second parking lot located on the north side of Hubbard Drive before making her decision to park her car in the parking lot she selected.

14. The necessity to cross Hubbard Drive arose as a result of the Claimant's discretionary choice to park in a parking lot located on the north side of Hubbard Drive that did not contain any faculty designated parking spaces.

15. All parking spaces designated as faculty parking by the Employer are located on the

south side of Hubbard Drive and would not require crossing Hubbard Drive to reach the Medford Library, classrooms or teacher offices.

16. The burden is on the Claimant to establish that an accident arose out of and in the course and scope of her employment.

17. The Claimant has failed to carry her burden of proof that the accident which gave rise to this claim arose out of and in the course and scope of her employment. The Claimant's injuries occurred in a public street that was not owned or maintained by the Employer.

18. The Claimant is not entitled to any benefits under the Workers' Compensation Act as a result of the accident alleged herein.

19. The Claimant was not engaged in a duty, task or special errand for the benefit of the Employer when the accident which gave rise to this claim occurred.

CONCLUSIONS OF LAW

Under the foregoing Findings of Fact, and accordingly, as provided in the South Carolina Code, as amended, the following Conclusions of Law are made:

1. The parties to this proceeding are subject to and bound by the provisions of the South Carolina Workers' Compensation Act.

2. The Claimant failed to carry her burden of proving an injury by accident within the course and scope of her employment on February 16, 2012. S.C. Code Ann. §42-1-160 (1976).

3. After careful review of the case law cited by both Parties, we find there is no case precisely on point. However, as in Howell v. Pacific Columbia Mills, 291 S.C. 469, 354 S.E. 2d 384 (S.C. 1987), the Claimant was on a public street when she was injured. We decline to extend the current law to premises not controlled by the Employer; particularly when other parking areas are available to the Employee. Deseth does not apply. The injury in that case occurred in a parking

lot which was not under control of the Employer.

4. All benefits under the S.C. Workers' Compensation Act are hereby denied. Howell v. Pacific Columbia Mills, 291 S.C. 469, 354 S.E. 2d 384 (S.C. 1987).

ORDER

IT IS, THEREFORE, ORDERED;

1. The Order of the Single Commissioner filed in the above-captioned matter on November 6, 2012 is hereby affirmed as amended by the Panel and the same shall constitute the Decision and Order of the Appellate Panel.

2. The Claimant failed to prove an injury by accident arising out of and in the course and scope of her employment on February 16, 2012. Furthermore, the Claimant was not engaged in a duty, task or special errand for the benefit of the Employer when the accident occurred.

3. That all benefits under the S.C. Workers' Compensation Act are hereby denied. Howell v. Pacific Columbia Mills, 291 S.C. 469, 354 S.E. 2d 384 (S.C. 1987).

4. No hearing costs are assessed in this matter.

AND IT IS SO ORDERED.

South Carolina Workers'
Compensation Commission


Susan S. Barden, Commissioner


Avery B. Wilkerson, Commissioner


Gene McCaskill, Commissioner

AFFIRMED AS AMENDED

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 mail addressed to any unrepresented party.

By Valerie Deller on July 22, 2013