

State of South Carolina
Workers' Compensation Commission

DECISION AND ORDER

THE HONORABLE AISHA TAYLOR

SCWCC File No.: 2118178

Christine Tedder,

Claimant,

v.

Harris Teeter,

Employer,

and

Ace American Insurance Company

Carrier,

Defendants.

District 4

Hearing held in Charleston, South Carolina,
on April 21, 2022

Per notice timely and properly served upon all Parties of Interest.

Appearances: Robert C. "Trey" Limehouse, III, of Christmas Law Firm, LLC,
appeared on behalf of Claimant.

William H. Lyon, of Willson, Jones, Carter & Baxley, PA,
appeared on behalf of Defendants.

Purpose of Hearing: To determine issues set forth on Claimants Form 50.

Court Reporter: Timmi Parrish, Court Reporting Services, P.O. Box 551,
Roebuck, SC, (864) 921-8743

Filed: March 28, 2023

I. STATEMENT OF THE CASE

This matter was heard before the undersigned Commissioner on April 21, 2022, pursuant to Claimant's Form 50, Request for Hearing. Claimant alleges she suffered a compensable injury by accident while employed by Defendant Harris Teeter when she was struck by a car in a delineated crosswalk upon exiting Defendant Harris Teeter's store. Claimant suffered significant injuries, including, but not limited to, a lateral tibial plateau fracture, for which she underwent an open reduction internal fixation surgery with Dr. Shasta Henderson at Trident Orthopedic Specialists. Thereby, Claimant sought a determination whether she suffered compensable injuries by accident while employed by Defendant Harris Teeter pursuant to the South Carolina Supreme Court's holding of *Davaut v. Univ. of S.C.*, 418 S.C. 627, 795 S.E.2d 678 (2016), and any applicable case law because Claimant was struck by a car in a delineated crosswalk in close proximity and relation to be a part of Defendant Harris Teeter's premises.

Claimant further sought a determination concerning whether she was entitled to past temporary total disability (TTD) compensation pursuant to S.C. Code Ann. Regs. 67-503 for October 30, 2021, through February 11, 2022, whether she is entitled to past and future medical care and treatment pursuant to S.C. Code Ann. § 42-15-60, and a lump sum payment of any award.

Defendants contend Claimant did not sustain an injury arising out of the course and scope of employment based upon the "Going and Coming" rule. Defendants maintained that Claimant was clocked out of work and was not on property owned or maintained by Harris Teeter at the time of the accident. Defendants assert the divided premises ruling in *Davaut* is not applicable in this case as Claimant was not crossing over one portion of Harris Teeter's Property to another at the time of the accident. Rather, Claimant had left Harris Teeter's premises on the way to her vehicle in a parking lot not owned or maintained by Harris Teeter. Defendants point to language in the *Davaut* case stating, "we do not view today's holding as creating another exception to the going and coming rule, which continues to preclude recovery for injuries incurred *before an employee reaches* and *after an employee leaves* her employer's premises." Defendants rely on *Matute v. Palmetto Health Baptist*, 705 S.E.2d 472 (S.C. Ct. App. 2011) in support of their position that the going and coming rule applies to the facts of this case.

II. STIPULATIONS

Counsel for all parties stipulated the following issues at the hearing:

1. The South Carolina Workers' Compensation Commission has jurisdiction over this case.
2. Venue is proper in Charleston County, South Carolina.
3. The Claimant's average weekly wage (AWW) is \$961.53, with a corresponding compensation rate (CR) of \$641.05.

III. APA SUBMISSIONS

The following records were submitted pursuant to the South Carolina Administrative Procedures Act:

Claimant's Submissions:

1. Trident Orthopedic Specialists Medical Records and Questionnaire, dated 11/02/2021 to 01/25/2022, consisting of twenty (20) pages;
2. Trident Medical Center Medical Records, dated 10/30/2021 to 11/09/2021, consisting of one hundred thirty-nine (139) pages;
3. Employer's First Report of Injury, dated 12/06/2021, consisting of two (2) pages;
4. Collision Report and FR-10 dated 10/30/2021, consisting of four (4) pages;
5. Photos of the Employer's Parking Lot and Security Cameras, consisting of six (6) pages; and
6. Claimant's Wages, dated 2011 to 2021, consisting of three (3) pages.

Defendants' Submissions:

7. Trident Orthopedics, dated 11/02/2021 to 01/25/2022, consisting of fourteen (14) pages;
8. SC Sports Medicine & Orthopedics, dated 09/13/2021 to 09/30/2021, consisting of eleven (11) pages; and
9. Palmetto Primary Care, dated 05/14/2021 to 10/24/2021, consisting of five (5) pages.

Defendants' Exhibits:

- A. Ground Lease Agreement – Wescott Plantation Shopping Center, dated 04/07/2021, consisting of sixty-four (64) pages; and
- B. Ground Lease Assignment to North Charleston I, LP, dated 11/05/2021, consisting of seven (7) pages.

IV. EVIDENCE OF THE CASE

The evidentiary record includes the hearing testimony of Claimant, Christine Tedder, dated April 21, 2022. Further, both parties submitted medical records and evidence through APA Submissions and Exhibits.

HEARING TESTIMONY

Hearing Testimony of Claimant, Christine Tedder:

Claimant was sworn in and testified that she exited Defendant Harris Teeter, went on the delineated crosswalk in front of the store, and was struck by a car. (Hr. Tr. p. 13, ll. 15-22). She

agreed that Defendant Harris Teeter did not require her or other employees to use the crosswalk. (Hr. T. p. 24, ll. 4-6). She testified that the car impacted her left knee and hit her head on the vehicle's hood before she flipped and landed on her right ankle, fracturing her left knee, right talus, and right fibula. (Hr. T. p. 14, ll. 7-15). She testified she had clocked out of work and was heading home for the day when she was struck by the other vehicle. (Hr. T. p. 23, ll. 20-25). She agreed that she was not performing any work-related tasks after leaving the store. (Hr. T. p. 24, ll. 1-3). Upon leaving work, she agreed she intended to walk to her car in the parking lot in front of the store and go home and did not plan on returning to Defendant Harris Teeter after exiting the store. (Hr. T. p. 28, ll. 10-18). She testified she could not undergo surgery for approximately a week because of the swelling and bruising. (Hr. T. p. 14, ll. 16-23).

Claimant testified she worked at Defendant Harris Teeter for over thirty-six (36) years and is currently a floral manager. (Hr. T. p. 15, ll. 2). She testified that it is her understanding concerning the parking lot that associates park beyond the cart corrals and that the close-up parking spots are for customers. (Hr. T. p. 15, ll. 11-13). She further testified that she was a customer service manager for twenty-six (26) years and that it was a policy to advise that parking spaces up front are for customers and that associates are to park beyond the cart corral. (Hr. T. p. 15, ll. 14-23). She testified that Defendant Harris Teeter employees, employees of other businesses, and customers used the same parking lot. (Hr. T. p. 24, ll. 7-19). She testified there is only one way to enter the store besides the front. (Hr. T. p. 16, ll. 4-7). She testified she would have been struck by the vehicle regardless of whether she parked in front or behind the cart corral. (Hr. T. p. 33-34, ll. 14-2).

Claimant testified that there are cart corrals in the parking lot and that employees collect carts from the cart corrals frequently at the direction of Defendant Harris Teeter. (Hr. T. p. 18, ll. 17, 20, 24-25). She testified that she was not collecting shopping carts or helping customers at the time of the accident. (Hr. T. p. 33, ll. 8-13) She testified that it was her understanding that she was supposed to park in the parking lot in front of the store. (Hr. T. p. 19, ll. 4). She testified there was no way to enter Defendant Harris Teeter besides the crosswalk. (Hr. T. p. 31, ll. 3-4). She testified that Defendant Harris Teeter told employees to park beyond the cart corrals. (Hr. T. p. 31, ll. 9-10). She testified that Defendant Harris Teeter has a company policy stating that if an employee's car is parked in a designated parking space, Defendant Harris Teeter may pay part of the damage. (Hr. T. p. 31, ll. 22-24). She testified that Defendant Harris Teeter never told her not to park in the parking lot. (Hr. T. p. 32, ll. 10).

Claimant testified that her left leg injury has resolved, and she no longer has symptoms in the left leg. (Hr. T. p. 25-26, ll. 21-2). She testified that she has a mark on her forehead from the accident, but this is not painful or sensitive. (Hr. T. p. 29, ll. 1-6). She testified that her right leg was the only injury and still had some lingering symptoms. (Hr. T. p. 32, ll. 11-14). However, she further testified that she walks with a limp all the time and that it has caused her back pain. (Hr. T. p. 32, ll. 16-23).

Claimant testified that there are security cameras in front of Defendant Harris Teeter's store but that there is no video footage of her accident. (Hr. T. p. 22, ll. 12-24). She further testified that

based on her experience working for Defendant Harris Teeter over the past thirty-six (36) years that it is the protocol that video footage be maintained and kept. (Hr. T. p. 22-33, ll. 25-3).

MEDICAL EVIDENCE

A review of the medical evidence reveals Claimant presented to Trident Medical Center on October 30, 2021, and was diagnosed with a right acute fracture through the talar neck with significant medial and superior displacement and offset, right comminuted fractures of the distal fibula and sustentacular tali, and a left acute impacted fracture involving lateral tibial plateau. (Claimant's APA 2, p. 52). She was discharged home on October 30, 2021, until she returned to Trident Orthopedic Specialists on November 2, 2021. (Claimant's APA 1, p. 13).

Dr. Shasta Henderson diagnosed Claimant with a closed nondisplaced fracture of the neck of the right talus and a closed fracture of the left tibial plateau. (Claimant's APA 1, p. 14). She followed up with Dr. Henderson on November 5, 2021, where she was instructed to follow up after her surgery for the right talar avulsion fracture. (Claimant's APA 1, p. 17). She subsequently underwent a percutaneous skeletal fixation of a talus fracture on November 8, 2021. (Claimant's APA 1, p. 19).

Claimant had her first post-operative appointment for her open reduction internal fixation surgery (ORIF) with Dr. Henderson on November 23, 2021, and was instructed to remain non-weight bearing for four (4) weeks until her next follow-up appointment. (Claimant's APA 1, p. 23). She returned to Dr. Henderson on December 21, 2021, and was placed in a Cam walker boot until her next appointment in six (6) weeks. She was seen again on January 25, 2022, where Dr. Henderson progressed her weight-bearing status, provided a work note, and asked her to follow up in three (3) months. (Claimant's APA 1, p. 27).

The medical evidence further reveals that Dr. Henderson completed a questionnaire on March 16, 2022, stating, "(1) To a reasonable degree of medical certainty, it is my opinion that Ms. Tedder's injuries to her head and face, including facial lacerations, left lower extremity, including lateral tibial plateau fracture, right lower extremity, including acute talar neck fracture and comminuted distal fibula fractures, are causally related to her October 30, 2021, accident at work. (2) To a reasonable degree of medical certainty, it is my opinion that Ms. Tedder should have been completely out of work from October 30, 2021, through January 25, 2022, because of her October 30, 2021, accident at work. (3) To a reasonable degree of medical certainty, it is my opinion that Ms. Tedder currently has light-duty work restrictions because of her October 30, 2021, accident at work. (4) To a reasonable degree of medical certainty, it is my opinion that Ms. Tedder is not at maximum medical improvement for her October 30, 2021, accident at work and requires ongoing medical treatment." (Claimant's APA 1, p. 11-12).

V. FINDINGS OF FACT

On November 13, 2022, the Single Commissioner issued a Decision and Order containing the following Findings of Fact and Conclusions of Law:

IT IS FOUND AS A FACT:

1. Claimant sustained compensable injuries by accident on October 30, 2021, when she was struck by a vehicle while leaving work.
2. Claimant sustained injuries to multiple body parts, including her head, face, left arm, bilateral legs, and bilateral feet. The issue of whether these compensable injuries are permanent or have affected other body parts is premature as Claimant is not at maximum medical improvement.
3. *Davaut v. Univ. of S.C.* controls this set of facts in this instance, specifically that Defendant Harris Teeter sufficiently maintained the parking area and the crosswalk, and the “Divided Premises” exception to the “Going and Coming” rule applies.
4. Defendant Harris Teeter directed Claimant and other employees to park in designated parking lot areas so customers would have the parking spaces closest to the front entry. This finding is based on the testimony of Claimant, which I find credible.
5. Defendant Harris Teeter also maintained shopping cart corrals within the parking lot and that employees regularly maintained the parking lot by bringing carts from the corrals through the parking lot and to the store. This finding is based on the testimony of Claimant, which I find credible.
6. Claimant took a reasonably necessary and direct route from Defendant Harris Teeter’s store and across the designated crosswalk in front of Defendant Harris Teeter’s store on her way to her car in her designated parking area.
7. Defendants’ argument that Claimant could have parked anywhere she wanted despite her Employer’s instructions is not persuasive, as she testified that she parked where her Employer instructed.
8. Given the South Carolina Supreme Court’s analysis of *Davaut*, the facts of this case support a finding of compensability even more so than *Davaut* in that Claimant was not on a public road when she was injured but was still in the crosswalk clearly marked and used for Defendant Harris Teeter’s employees and customers to enter the store.
9. This case is distinguishable from the North Carolina cases of *Deseth v. LensCrafters, Inc.*, 160 N.C. App. 180, 184, 585 S.E.2d 264, 267 (2003) and *Glassco v. Belk-Tyler*, 69 N.C. App. 237, 316 S.E.2d 334 (1984), as both cases involved shopping malls where the

employer stores did not operate or maintain any part of the parking premises and did not instruct the employees where to park.

10. Claimant is not at maximum medical improvement (MMI) for her work-related injuries and is entitled to additional medical treatment at the direction of Defendants until she is placed at MMI.
11. Claimant is entitled to a lump-sum back payment of TTD benefits from October 30, 2021, through February 11, 2022, when she returned to light duty. The back payment shall be made payable to Claimant through her attorney of record.

VI. CONCLUSIONS OF LAW

Accordingly, as provided in S.C. Code Ann. § 42-17-40, this Commissioner determines that:

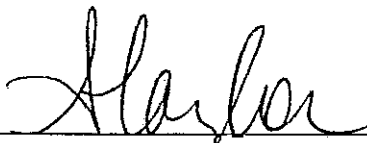
1. Pursuant to S.C. Code Ann. § 42-1-130, Claimant was a covered employee at the time in question, and under S.C. Code Ann. § 42-1-140, Defendant Harris Teeter was a covered employer under the Act.
2. Pursuant to *Davaut v. Univ. of S.C.*, Claimant sustained compensable injuries by accident on October 30, 2021, when she was struck by a vehicle while leaving work.
3. Pursuant to S.C. Code Ann. § 42-15-60, Claimant is entitled to future medical treatment for the injuries she sustained to her head, face, left arm, bilateral legs, and bilateral feet, at the direction of Defendants until she is placed at MMI.
4. Pursuant to S.C. Code Ann. Regs. 67-103, Claimant is entitled to a lump-sum back payment of TTD benefits from October 30, 2021, through February 11, 2022.

ORDER

IT IS HEREBY ORDERED that Claimant is entitled to future medical treatment for the compensable injuries she sustained pursuant to *Davaut* to her head, face, left arm, bilateral legs, and bilateral feet at the direction of Defendants until she is placed at MMI.

IT IS FURTHER ORDERED that Claimant is owed a lump-sum back payment of TTD benefits from October 30, 2021, through February 11, 2022.

AND SO IT IS ORDERED.



Commissioner Aisha Taylor

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.

March 29, 2023

By: Renee Smith, Administrative Assistant to Commissioner Taylor

Order Served via Email 3-29-23:

William H. Lyon whlyon@wjcblaw.com

Robert C. Limehouse, III trey@gchristmaslaw.com