State of South Carolina
Workers' Compensation Commission

APPELLATE PANEL DECISION AND ORDER

COMMISSION PANEL: The Honorable Gene McCaskill, The Honorable Melody L. James, and The Honorable T. Scott Beck

SCWCC File No.: 2118178
Christine Tedder,
Claimant,
v.
Harris Teeter,
Employer,
and
Ace American Insurance Company,
Carrier,
Defendants.

REVERSED

Hearing held in Columbia, South Carolina,
on August 28, 2023
Per notice timely and properly served upon all Parties of Interest.

Appearances: Robert "Trey" Clyde Limehouse, III, of Christmas Law Firm, appeared on behalf of Claimant/Respondent.

William H. Lyon, of Willson Jones Carter & Baxley, P.A., appeared on behalf of Defendants/Appellants.

Court Reporter: Sean Cary, Creel Court Reporting,
1230 Richland Street, Columbia, SC 29201

Filed: July 17, 2024

I. STATEMENT OF THE CASE

The parties were heard by Commissioner Aisha Taylor on April 21, 2022, in Charleston, South Carolina to determine the issues set forth on Forms 50 and 51. Respondent was struck by a car while walking to her vehicle in a parking lot. Respondent had clocked out of work and was walking through the parking lot to her vehicle to go home. It is undisputed that the Employer did not own the parking lot where the accident occurred. Respondent alleged she sustained an injury by accident arising out of the course and scope of her employment. Respondent maintained the "divided premises" rule set forth in *Davaut v. Univ. of S.C.*, 795 S.E.2d 678 (2016) brought Respondent's injury within the course and scope of employment. Respondent sought past and future medical treatment for injuries to her left and right legs, left arm, head, and feet. Respondent further requested payment of temporary total disability benefits for the period of October 30, 2021 – February 11, 2022.

Appellants denied that Respondent sustained an injury by accident arising out of the course and scope of her employment. Appellants asserted the employer neither owned nor maintained the parking lot where Respondent was injured. Appellants maintained the "divided premises" rule was not applicable in this case because Respondent was not injured while crossing from one portion of the employer's premises to another. Rather, Respondent was clocked out of work, and the injury occurred on property which was not owned, controlled, or maintained by her employer. Appellants also argued there were no applicable exceptions to the going and coming rule. Therefore, Respondent's injury did not occur within the course and scope of her employment.

II. SINGLE COMMISSIONER FINDINGS OF FACT AND CONCLUSIONS OF LAW

On March 28, 2023, Commissioner Taylor issued the following Decision and Order:

FINDINGS OF 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.

CONCLUSIONS OF LAW

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 IT IS SO ORDERED.

III. ISSUES ON APPEAL

Pursuant to S.C. Code Ann. § 42-17-50 and SC Reg. 67-701, Defendant/Appellants timely filed an application requesting the Appellate Panel of the Commission review the Hearing Commissioner's March 28, 2023 Decision and Order. In their application for review, Appellants submitted the following grounds for review:

1. Whether the Hearing Commissioner erred as a matter of fact and law in finding Claimant sustained compensable injuries by accident on October 30, 2021 as such finding is not supported by the greater weight of the evidence in the record. (FF #1, #2, #10, #11)

2. Whether the Hearing Commissioner erred as a matter of fact and law in finding *Devaut v. Univ. of S.C* and the "divided premises" doctrine is applicable to this case as such finding is an error of law. (FF #3, #8, #9)

3. Whether the Hearing Commissioner erred as a matter of law and fact in finding that Harris Teeter owns and maintains the parking lot where the injury occurred as such finding is not supported by the evidence in the record. (FF #4, #5, #6, #7)

4. Whether the Hearing Commissioner erred as a matter of law and fact in finding Claimant sustained injuries to her left arm and bilateral feet, as such finding is not supported by the evidence in the record.

5. Whether the Hearing Commissioner erred as a matter of law and fact in finding Claimant sustained injuries to "multiple body parts" and holding in abeyance whether such injuries are permanent or have affected other body parts as such finding is not supported by the evidence in the record, vague, and contrary to the Administrative Procedures Act. (FF #2)

6. Whether the Hearing Commissioner erred as a matter of law in finding Claimant is entitled to future medical treatment for her head, face, left arm and bilateral feet, as there is no evidence to support an award of medical treatment under S.C. Code Ann. § 42-15-60 and *Hartzell v. Palmetto Collision*, 796 S.E.2d 145 (S.C. Ct. App. 2016). (FF#10)

7. Whether the Hearing Commissioner erred as a matter of law and fact in finding Claimant is entitled to TTD benefits for the period of 10/30/2021 – 2/11/2022, as the evidence shows Claimant was only placed out of work from 10/30/2021 – 1/25/2022).

IV. DECISION OF THE APPELLATE PANEL

In an appellate review, the Appellate Panel shall, pursuant to S.C. Code Ann. § 42-17-50, review the award, weigh the evidence as presented at the initial hearing and, if good grounds be shown therefore, make its own Findings of Fact and reach its own Conclusions of Law consistent with or inconsistent with those of the Hearing Commissioner. Based upon a review of the foregoing, the majority of the Appellate Panel finds the Hearing Commissioner erred in finding that Respondent suffered an injury by accident arising out of the course and scope of her employment as such findings are not supported by the evidence in the record and applicable law.

The "Divided Premises" rule provides that an employee remains in the course of employment when the employee is injured while crossing from one portion of her employer's property *to another* over a reasonably necessary and direct route. Davaut v. Univ. of S.C., 795 S.E.2d 678 (S.C. 2017) In Davaut, the employee left the USC library and was injured while

crossing a public street enroute to a parking lot where her vehicle was parked. USC owned both the library and parking lot. Id. at 680. The Court determined that "because this case implicates the "divided premises rule in the context of an employer-maintained parking lot, we specifically hold that employees who must cross a public way that bisects an employer's premises, and who are injured on that public way while traveling a direct route between an employer's facility and parking lot are entitled to workers' compensation benefits." Id. (emphasis added).

The Divided Premises rule is not controlling in this case as the Respondent was not crossing from one portion of the Employer's property to another at the time of accident. Further, Harris Teeter does not own, maintain, or control the parking lot where the injury occurred. Harris Teeter is a tenant with several other retail businesses in a shopping center owned by, Charleston I, LP. (Ex. B) The lease agreement provides that common areas include sidewalks, curbs, ramps, and parking areas. (APA p. 242) The lease states that Charleston I, LP shall keep the common area in good order and repair, safe, secure, reasonably clean, adequately paved, lighted, and striped for traffic flow. (APA p. 244) Respondent testified she has never seen Harris Teeter employees repair, maintain, or paint the parking area. (H.T. pp. 26-27, ll. 21-4) The parking area is jointly used by Harris Teeter employees, employees of other businesses, and customers. (H.T. p. 24, ll. 7-19)

Respondent was struck by a vehicle after exiting Harris Teeter while walking to her vehicle in the parking area. At the time of accident, she was clocked out of work and heading home for the day. (HT. pp. 23, ll. 20-25) Respondent was not required to re-enter property controlled or maintained by Harris Teeter in order to get to the area where her car was parked and had no intention of returning to Harris Teeter property after leaving the store. (H.T. p. 27, ll. 10-18) In contrast, the employee in Devaut was required to re-enter her employer's premises after leaving in order to retrieve her car from the employer owned parking lot. The court specifically noted:

> **[W]e 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. Id. at 685.

Accordingly, the divided premises rule is not applicable in this case because Respondent left her employer's premises and was not required to re-enter Harris Teeter premises to retrieve her vehicle. Respondent was not injured on property which was owned, controlled, or maintained by Harris Teeter. Rather, Respondent was injured on property owned and maintained by Charleston I, LP.

Having determined that the "divided premises" rule is not the applicable law in this case, we must now look to whether any of the exceptions to the going and coming rule bring Respondent's injuries within the course and scope of employment.

South Carolina recognizes certain exceptions to the going and coming rule: (1) transportation is provided by the employer or travel time is included in wages; (2) the employee is charged with some duty or task in connection with his employment; (3) the way used is inherently dangerous and is either the exclusive way of ingress and egress to and from his work or constructed and maintained by the employer; (4) the place of injury was brought within the scope of employment by an express or implied requirement in the contract of employment of its use by the employee in going to and coming from work; or (5) an employee sustains an injury while performing a special task, service, mission, or errand for his employer, even before or after customary working hours, or on a day on which he does not ordinarily work. Matute v. Palmetto Baptist Health, 705 S.E.2d 472, 475 (S.C. Ct. App. 2011).

There are no exceptions to the going and coming rule which are applicable to the facts of this case.

1. Harris Teeter did not provide transportation or pay Respondent while traveling to and from work. It is undisputed that Harris Teeter did not provide transportation to Respondent to and from work. (H.T. p. 25, ll. 12-15)

2. Respondent was not fulfilling any task or duty on her way home from work. Respondent was clocked out of work and going home for the day. She was not performing any work-related tasks or duties after leaving the Harris Teeter store. (H.T. pp. 23-24, ll. 20-3) Respondent admits she was not collecting shopping cars or helping customers once she left the store. (H.T. p. 33, ll. 8-13)

3. The way used was neither inherently dangerous nor the exclusive ingress and egress. The parking lot and crosswalks are used by Harris Teeter employees, employees of other businesses, and customers. (H.T. p. 24, ll. 7-19) There is no evidence to suggest the parking lot was inherently more dangerous to the Respondent than what every person encounters going to the grocery store or retail shops. Respondent testified at the hearing there were multiple ways to get from the store out of her vehicle in the parking lot:

> *Q. And once you exit the store, there are multiple paths you can take to get to where your vehicle is parked; is that correct?*
>
> *A. Well, you still have to go across the parking lot. i mean, you could go out at the crosswalk, or you could walk down and buy something at another store and come over and across, but either way you have to step off the sidewalk to get to the parking lot.*
>
> *Q. Sure. In other words, you could walk down the sidewalk if your car was parked off to the side?*
>
> *A. Correct.*
>
> *Q. Rather than going across the crosswalk and then cut up through the parking lot; is that fair?*
>
> *A. Yes.* (H.T. pp. 24-25, ll. 24-12)

4. There was no express or implied requirement for that Respondent use a particular method of transportation or use the shopping center parking lot. Respondent testified:

> *Q. Does Harris Teeter direct you as to how you get to work? Do they tell you you have to - - you have to drive to work and park here or are you free to take a bus if you want, or an uber?*
>
> *A. However you want to get there.* (H.T. p. 27, ll. 5-9)

The parking lot is jointly shared with other business tenants. Employees of Harris Teeter, customers, and other retail businesses use the parking lot and crosswalks. (H.T. p. 24)

5. Respondent was not on a special task or errand related to her employment with Harris Teeter at the time of accident. Respondent testified at the hearing she had clocked out of work, exited the Harris Teeter store, and was headed home for dinner at the time of accident. She further confirmed she was not performing any work-related tasks after exiting Harris Teeter. (H.T. pp. 23-24, ll. 20-3)

FINDINGS OF FACT

WE, THE MAJORITY APPELLATE PANEL, FIND THE FOLLOWING AS FACT:

1. That all parties to this proceeding are subject to and bound by the terms and provisions of the South Carolina Workers' Compensation Act.
2. That venue is proper per stipulation of the parties.
3. That Respondent's average weekly wage is $961.53 with a correspondence compensation rate of $641.05 per stipulation of the parties.
4. That Notice of the hearing was timely and properly served upon all parties.
5. That Respondent is an employee of Harris Teeter and was struck by a car while walking through a crosswalk and parking lot to her vehicle to go home. (H.T. p. 13-14), Form 12A)
6. That Employer, Harris Teeter, is a tenant in the Wescott Shopping Center and shares a parking lot with several other business tenants. (Ex. A) The Wescott Shopping Center and common areas are owned by Charleston I, LP, and Harris Teeter leases store space as a tenant. (APA p. 284)
7. That the lease agreement defines "common areas" to include sidewalks, curbs, ramps, and parking lots." (APA p. 242) The lease agreement states that Charleston I, LP, as landlord,

is responsible for maintenance of the common areas which include the parking lot. (APA p. 244) Specifically, the lease agreement provides:

> Landlord shall keep (or cause to be kept) the Common Area in good order and repair, safe, secure, reasonably clean and free of refuse, ice, snow and standing water, adequately paved and striped for traffic flow, and lighted in accordance with Exhibit B-1 during hours of dusk and darkness when the Premises are open for business. Landlord's obligation shall include mowing any undeveloped Outparcels and keeping the same in a condition consistent with a first-class shopping center. (Ex. B, p. 244)

8. That Respondent testified she has never seen Harris Teeter employee's performing maintenance, repairs, or painting the parking lot areas or cross walks. (H.T. pp. 26-27, ll. 14-3)

9. That Appellants do not own, control, or maintain the parking lot where Respondent was injured. The lease agreement shows Charleston I, LP owns the parking lot and is responsible for maintenance of common areas which include the parking area where Respondent's injury occurred. (APA p. 242, 244) Respondent's testimony that she has never seen Harris Teeter Employees doing maintenance, repairs, or painting the parking lot areas or cross walks further supports that Appellants do not maintain the parking area. (H.T. pp. 26-27, ll. 14-3)

10. That the lease agreement allows Harris Teeter to erect cart corrals in the parking area immediately in front of the store (Ex. B). However, Respondent was not collecting shopping carts from the corrals or performing any work-related tasks at the time of accident. (H.T. p. 33, ll. 8-13)

11. That Appellants did not exercise control or maintain the parking area by merely exercising their right to erect cart corrals in the parking lot. Respondent was not collecting shopping carts at the time of accident.

12. That the "divided premises" rule is not controlling in this case because the accident occurred on property which was not owned or maintained by Appellants and Respondent did not have to re-enter Appellants' premises in order to get to her parked vehicle. The divided premises rule provides that an employee who must cross a public way that bisects an employer's premises, and who are injured on that public way while traveling a direct route between an employer's facility and parking lot are entitled to workers' compensation benefits. The Supreme Court found in Davaut, that divided premises rule was implicated "in the context of an *employer-maintained* parking lot." Davaut v. Univ. of S.C., 795 S.E.2d 678, 680 (S.C. 2017) (emphasis added). In fact, the Court also noted "[W]e 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." Id. at 685. As noted in the above-findings, Appellants do not own, maintain, or control the parking area. Claimant's testimony that she was neither required nor had any intention of re-entering Appellants' premises to retrieve her parked vehicle lends further evidence that the divided premises rule is not applicable to the facts of this case.

13. That, subject to certain exceptions, an employee going to or coming from the place where his work is to be performed is not engaged in performing any service growing out of and incidental to his employment, and, therefore, an injury sustained by accident at such time does not arise out of and in the course of his employment.

14. There are no applicable exceptions to the going and coming rule that would bring Respondent's injury within the course and scope of employment.

    a. Appellants did not provide transportation to and from work or pay Respondent for travel time going to and from work. (HT. pp. 23, ll. 20-25; H.T. p. 25, ll. 12-15)

b. Respondent was not performing any work-related tasks or duty in connection with her employment at the time of accident. (H.T. pp. 23-24, ll. 20-3)

c. There is no evidence in the record that route of ingress and egress was exclusive or inherently dangerous. Respondent agreed at the hearing Respondent agreed there were multiple routes available to reach her vehicle after leaving Appellants' premises and that customers of the various businesses also used the crosswalk while traveling through the parking lot. (H.T. p. 24-25, ll. 20-9)

d. Respondent admits Appellants did not direct her on how she traveled to and from work or dictate a particular pathway to enter or exit the store. (H.T. pp. 24-25, ll. 24-12; p. 27, ll. 5-9) Accordingly, there is no evidence of an express or implied requirement in the contract of employment which would bring Respondent's injury within the course and scope of her employment.

e. Respondent was not performing a special task, service, mission or errant for Appellants at the time of accident. Respondent conceded she was not performing any work-related tasks while walking to her vehicle. (H.T. pp. 23-24, ll. 20-3)

15. That Respondent did not sustain an injury by accident arising out of the course and scope of her employment on October 30, 2021. Respondent was not traveling between two portions of her Appellants' premises to retrieve her parked vehicle. Rather, Respondent clocked out of work and was not on Appellants' premises at the time of accident. As noted in the preceding findings, Claimant's testimony does not support there were any exceptions to the going and coming rule. Accordingly, Respondent is not entitled to benefits under the S.C. Workers' Compensation Act.

CONCLUSIONS OF LAW

As provided in S.C. Code Ann. § 42-17-40, WE, THE MAJORITY APPELLATE PANEL,

CONCLUDE THE FOLLOWING AS MATTERS OF LAW:

1. Under S.C. Code Ann. §§ 42-1-130 and 42-1-140, Respondent and Appellants are subject to and bound by the terms and provisions of the South Carolina Workers' Compensation Act with Respondent as Employee and Appellant/Employer as Employer.

2. Under S.C. Code Ann. § 42-1-40, Respondent's average weekly wage is $961.53 with a correspondence compensation rate of $641.05.

3. Under S.C. Code Ann. § 42-1-160, Respondent did not suffer an injury by accident arising out of the course and scope of her employment when she was struck by another vehicle while traveling through a common parking lot on October 30, 2021. Respondent was clocked out of work and was not on Appellants' premises at the time of accident. See Matute v. Palmetto Health Baptist, 705 S.E.2d 472 (S.C. Ct. App. 2011) (Benefits denied where injury occurred on public sidewalk after employee clocked out of work without any applicable exceptions to the going and coming rule.)

4. Under Matute v. Palmetto Health Baptist, 705 S.E.2d 472 (S.C. Ct. App. 2011) and Davaut v. Univ. of S.C., 795 S.E.2d 678 (S.C. 2017), none of the exceptions to the going and coming rule are applicable to the facts of this case.

    a. Appellants do not own or maintain the parking area where Respondent was injured.

    b. Appellants did not provide transportation to and from work or pay Respondent for travel time going to and from work. (HT. pp. 23, ll. 20-25; H.T. p. 25, ll. 12-15)

    c. Respondent was not performing any work-related tasks or duty in connection with her employment at the time of accident. (H.T. pp. 23-24, ll. 20-3)

d. There is no evidence in the record that route of ingress and egress was exclusive or inherently dangerous. Respondent agreed at the hearing Respondent agreed there were multiple routes available to reach her vehicle after leaving Appellants' premises and that customers of the various businesses also used the crosswalk while traveling through the parking lot. (H.T. p. 24-25, ll. 20-9)

e. Respondent admits Appellants did not direct her on how she traveled to and from work or dictate a particular pathway to enter or exit the store. (H.T. pp. 24-25, ll. 24-12; p. 27, ll. 5-9) Accordingly, there is no evidence of an express or implied requirement in the contract of employment which would bring Respondent's injury within the course and scope of her employment.

f. Respondent was not performing a special task, service, mission or errant for Appellants at the time of accident. Respondent conceded she was not performing any work-related tasks while walking to her vehicle. (H.T. pp. 23-24, ll. 20-3)

5. Under the holding of Davaut v. Univ. of S.C., 795 S.E.2d 678 (S.C. 2017), the "divided premises" rule is not controlling in this case. Appellants did not own or maintain the parking area where the injury occurred and Respondent was not traveling between Appellants' store toward an *employer-maintained* parking area. Instead, Respondent was clocked out of work and walking across a common parking area toward her vehicle to go home for the evening. The opinion in Davaut provides "[W]e 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." Id. at 685. Accordingly, Respondent is not entitled to benefits under the Act as the circumstances of her injury do not fall within

an exception to the going and coming rule, and Respondent's injury occurred while she was clocked out of work and off Appellants' premises.

ORDER

Based upon the foregoing Findings of Fact and Conclusions of Law,

IT IS HEREBY ORDERED that Respondent's claim for benefits under the S.C. Workers' Compensation Act is DENIED;

IT IS FURTHER ORDERED that Appellants are not responsible for any benefits under the Act as a result of the accident occurring on October 30, 2021;

IT IS FURTHER ORDERED that no hearing costs are assessed in this instance;

AND SO IT IS ORDERED.

_____**(date)**
Columbia, SC

Melody L. James, Commissioner

T. Scott Beck, Commissioner

DISSENT

I respectfully disagree with the majority's determination the Hearing Commissioner erred in finding/concluding Claimant, Christine Tedder, a thirty-six (36) year employee, suffered compensable injuries arising from and within the course/scope of her employment for Defendant, Harris Teeter, on October 30, 2021. I cannot accept the notion of injuries sustained when an employee is unquestionably traversing the most reasonable, necessary, and direct route from "the place where the work is to be done" through a common area crosswalk while enroute to another common area location designated for parking by her employer, does not fall within the purview of

S.C. Code Ann. Section 42-1-160 (2015).

I believe the majority's narrow interpretation/application of Section 42-1-160 to exclude injuries occurring within the time and proximity afforded an employee to exit the workplace is not only violative of the axiom mandating liberal construction of the South Carolina Workers' Compensation Act in this context but also the Supreme Court's consistent recognition the Act's coverage encompasses this time/space continuum.

Upon assessing the **credible** evidence of record, the Hearing Commissioner specifically **found**:

(a) "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";

(b) "Defendant Harris Teeter also maintained shopping cart corrals within the parking lot and that employees regularly maintain the parking lot by bringing carts from the corrals through the parking lot to the store";

(c) "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";

(d) Ms. Tedder "parked where her employer instructed"; and

(e) "Claimant was not on a public road when she was injured but was still in a crosswalk clearly marked and used for Defendant Harris Teeter's employees and customers to enter the store." (See, March 28, 2003 Decision and Order, p. 6).

Ms. Tedder's undisputed testimony similarly establishes:

(a) the substantial portion of her thirty-six (36) year employment tenure with Harris Teeter involved working as the store's customer service manager (See, Hearing Transcript, p. 15);

(b) while serving in this managerial role, she "did all the hiring" of employee "associates" (Id.);

(c) she was likewise charged with the responsibility of instructing the new employees as to "store policies" (Id.); and

(d) these "store policies" included informing Harris Teeter associates they were required to park in the same area where her vehicle was parked on the October 30, 2021, accident date (See, Hearing Transcript, pp. 15 and 19).

It is also uncontradicted Ms. Tedder's injury occurred within: (a) seconds of her passing through the store's threshold; (b) approximately 3-4 steps into the crosswalk situated immediately adjacent to this threshold area; and (c) at a spot which surely fell within the shadow of the store structure. See, Hearing Transcript, pp. 13, 15 and 16; See also, Claimant's APA Exhibit 5. Ms. Tedder's unrefuted credible testimony likewise verifies: (a) this threshold constituted her routine point of ingress/egress to the interior of the store throughout her nearly four decades of employment; and (b) the absence of any evidence she was afforded the opportunity to access the building through another portal. Id.

Inspection of Harris Teeter's lease agreement with Charleston I, LP further reveals:

(a) common areas of the property occupied by Harris Teeter encompass "facilities and improvements located adjacent" to the store, including, but not limited to, "sidewalks, curbs, ramps [and] . . . parking areas";

(b) Harris Teeter specifically acknowledged these "common area[s]" would be used by not only its customers, licensees, and invitees but also its "employees";

(c) Harris Teeter was specifically vested with the right to restrict access to these common areas in a manner consistent with the general joint use entitlement (conferred to other shopping center tenants) granted by the lease; and

(d) Harris Teeter contributed the "Pro Rata Share of Common Area Expenses" as a condition for their use. (See, Defendants' APA Exhibit A, pp. 242, 244 and 245-247).

"In determining whether a work-related injury is compensable, the Workers' Compensation Act is liberally construed toward providing coverage and any reasonable doubt as to the construction of the Act will be resolved in favor of coverage." Whigham v. Jackson Dawson Communications, 410 S.C. 131, 763 S.E. 2d 420, 422 (2014); Davaut v. University of South

Carolina, 418 S.C. 627, 795 S.E. 2d 678, 681 (2016). In keeping with this longstanding recognition the Act "should be given a liberal construction in furtherance of the beneficent purpose for which . . . [it was] enacted", the Supreme Court has likewise consistently held:

> employment includes not only the actual doing of the work, but a reasonable margin of time and space necessary to be used in passing to and from the place where the work is to be done. If the employee be injured while passing, with the express or implied consent of the employer, to or from his work by way over the employer's premises, **or over those of another in such proximity and relation as to be in practical effect a part of the employer's premises, the injury is one arising out of and in the course of the employment . . . .** (Emphasis added).

See, Layton v. Hammond-Brown-Jennings Co., 190 S.C. 425, 3 S.E. 2d 492, 495 (1939); Ex parte Horne, 437 S.C. 218, 877 S.E. 2d 798, 802 (Ct. App. 2022); See also, Williams v. South Carolina State Hospital, 245 S.C. 377, 140 S.E. 2d 601, 603 (1965); Davaut, 795 S.E. 2d at 681.

These authorities undoubtedly recognize: (a) employees are allowed "a reasonable margin of time and space" to transition from the workplace; (b) Ms. Tedder's "employment contemplated her entry upon and departure from the workplace as much as it contemplated her working there . . . include[ing] a reasonable interval of time for that purpose"; (c) " . . . [t]he fact the accident occurred shortly after . . . [she] had left her immediate place of work is not conclusive" (d) the minimal lapse of time which transpired, coupled with the modest distance she traveled, between exiting the routine ingress/egress threshold and being struck in the common area crosswalk certainly comport with the reasonable time/space continuum recognized by the Supreme Court; and (e) her October 30, 2021 trauma "was brought within the scope of [her] . . . employment." Williams, 140 S.E. 2d at 603; Davaut, 795 S.S. 2d at 683 - 684. See also Sola v. Sunny Slope Farms, 244 S.C. 6, 135 S.E. 2d 321, 326 (1964). I would consequently conclude Ms. Tedder's injuries satisfy the requirements of Section 42-1-160 as a matter of law.

While the majority likens the current circumstances to the scenario addressed by the South Carolina Court of Appeals in Matute v. Palmetto Health Baptist, 391 S.C. 291, 705 S.E. 2d 472

(Ct. App. 2001), this view unreasonably discounts several notable factual differences between the respective situations. Specifically, Ms. Matute: (a) left the hospital at the conclusion of her shift through an exit she chose because of its proximity to a nearby bus stop; (b) admittedly elected to forego the use of an alternative exit, which "was open to pedestrian traffic on the date of [her] . . . fall"; and (c) fell while navigating "the public sidewalk." Matute, 705 S.E. 2d at 475.

Conversely, Ms. Tedder: (a) exited Harris Teeter through the only threshold referenced in the record; (b) then proceeded down the same route she had not only been instructed to follow by her employer but also identified as the appropriate path to all new employees during her lengthy tenure as customer service manager; (c) was struck within moments after passing through this threshold; and (d) sustained this trauma while walking through an adjoining common area in a "reasonably necessary and direct route" to the employer-designated parking area. See, Davaut, 795 S.E. 2d at 679; See also, Camp v. Spartan Mills, 302 S.C. 348, 396 S.E. 2d 121, 122 (Ct. App. 1990) ("The act of leaving the employer's premises is in the course of one's employment if the employee leaves the premises as contemplated at the close of the work day.").

Unlike Ms. Matute, Ms. Tedder exercised no discretion in choosing an exit threshold. She then followed a route which Harris Teeter, per a prescribed policy and the very terms of its lease, obliged her to travel through an unavoidable common area "necessary to be used in passing to and from" her workplace. Given these irrefutable facts, I believe: (a) Ms. Tedder's injury unquestionably occurred within the "reasonable margin of time and space" contemplated by the terms of her employment; and (b) the Matute holding is both factually and legally inapposite to the only reasonable inference which may be gleaned from the contents of the hearing record.

Further, despite repeated references to the Harris Teeter lease agreement as the foundation for its ruling, the majority makes no mention of several essential terms governing "common areas" that validate the Hearing Commissioner's compensability determination. Significantly, although Harris Teeter does not own "common areas," it undeniably: (a) acknowledged these areas

encompass effectively all "improvements located adjacent" to the store, including, but not limited, every step of a direct route between the exit threshold and Ms. Tedder's car; (b) envisioned these "common areas" would be used by its employees; (c) possessed the authority to restrict its employees' access to these "common areas", including the designated parking area; and (d) paid a distinct amount of consideration ("Pro Rata Share of Common Area Expenses") which was directly earmarked for the upkeep/maintenance of these "common areas".

The majority also inadvertently overlooks: (a) notwithstanding a general reference to Finding of Fact Nos. 4, 6, and 7 in its Form 30, Defendants neither challenged the substance of these findings (credible testimony: "Harris Teeter directed Claimant and other employees to park in designated park lot areas"; "she parked where her Employer instructed"; "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") through specific exceptions nor disputed these point in their brief; (b) general exceptions of this nature not only fail to satisfy the requirements of 8 S.C. Code Ann. Regs. 67-701 (3) (2012), but also "do not preserve an issue for review" (Hilton v. Flakeboard America Limited, 418 S.C. 245, 791 S.E. 2d 719, 722 (2016)); and (c) these findings "become and are the law of the case" (Id.).

When analyzing the parties' dispute, we must recognize Harris Teeter explicitly instructed Ms. Tedder to park in this common area. We are similarly obliged to acknowledge that her injury occurred as Ms. Tedder was walking "a reasonably necessary and direct route to her car" through a common area over which Harris Teeter controlled her access per the explicit terms of the lease agreement. These facts certainly establish Ms. Tedder's "place of injury was brought within the scope of employment by an express . . . requirement in the contract of employment of its use by the [employee] . . . in going to and coming from [her] . . . work" (Sola, 135 S.E. 2d at 326; Davaut, 795 S.E. 2d at 682);

In this instance, Ms. Tedder, in accordance with Harris Teeter's longstanding instruction, was injured while traversing "an area over which the employer had a right of passage, and it was along a route commonly used by employees to access and exit the work premises." See, Davaut, 795 S.E. 2d at 684. ". . . [I]t is of no moment that [Harris Teeter] . . . did not require [her] . . . to use the . . . [common area] parking lot"; what is relevant is that [Harris Teeter] . . . allowed her to, and once she did, the necessity of . . . [entering the crosswalk] arose. (Id.). This condition of her employment, with which she not only complied for decades but also oriented new employees during her 26-year tenure as the store's customer service manager, was "anticipated at the end of her workday." See, Davaut, 795 S.E. 2d at 683.

We are surely required to "give . . . effect to the Court's broad construction of course of employment". See, Davaut, 795 S.E. 2d at 684. Application of this rule, including the Court's consistent recognition of a reasonable time/space latitude afforded an employee when leaving the workplace, to the facts which comprise the law of this case and the heretofore referenced undisputed facts of record compels our concluding Ms. Tedder's injuries are compensable. See, Davaut, 795 S.E. 2d at 684 – 685. I would, therefore, affirm the Hearing Commissioner's Award.

Gene McCaskill, Commissioner

Order Served via email:

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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 Eugenia Hollmon on July 17, 2024

BEFORE THE
SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION
WCC FILE NO. 2118178

Christine Tedder, Claimant, vs. Harris Teeter, Employer, Ace American Insurance Company, Carrier, Defendants	)	Motion Order

After careful consideration of Claimant's motion for reconsideration, the Commission is unable to discover that any material fact or principle of law had been either overlooked or disregarded, and hence, there is no basis for granting Claimant's motion to reconsider. Accordingly, the motion is denied.

T. Scott Beck, Chairman

Melody James, Commissioner

I dissent and would grant reconsideration.

Gene McCaskill, Commissioner

Date

Columbia, SC

Order Served via email:

William H. Lyon Wilson Jones Carter & Baxley whlyon@wjcblaw.com	Robert Clyde Limehouse, III Christmas Injury Lawyers trey@gchristmaslaw.com Andrew Safran Attorney at Law MSA6631@aol.com

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 Eugenia Hollmon on September 9, 2024