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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM THE SOUTH CAROLINA
WORKERS' COMPENSATION COMMISSION

Gene McCaskill, Commissioner
Melody L. James, Commissioner
T. Scott Beck, Commissioner

W.C.C. FILE NO.: 2118178

Christine Tedder, ... Employee, Appellant,

vs.

Harris Teeter, Employer and Ace American Insurance Co., ... Carrier, Respondents.

APPELLANT'S INITIAL BRIEF

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January 21, 2025
Columbia, South Carolina

INDEX

TABLE OF AUTHORITIES

CASES

STATUTES

REGULATIONS

I. QUESTIONS PRESENTED FOR REVIEW

1. Did the appellate panel majority err in concluding Ms. Tedder "did not sustain an injury by accident arising out of the course and scope of her employment on October 30, 2021" when the undisputed/uncontradicted evidence of record firmly establishes: (a) prior to sustaining this injury, she had been consistently instructed by her employer to park her vehicle in a designated portion of a common area parking lot adjacent to the store; (b) during her twenty-six (26) year tenure as a customer service manager, in which she "did all the hiring" of employees, she repeatedly conveyed this store policy to incoming employees; (c) within seconds after exiting the Harris Teeter store through the only ingress/egress threshold referenced in the record and entering a common area crosswalk as she followed the most direct route to the designated parking area, she was struck by a motor vehicle; and (d) these uncontradicted facts establish her "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", rendering her resulting injuries compensable in accordance with principles referenced in Sola v. Sunny Slope Farms, 244 S.C. 6, 135 S.E. 2d 321, 326 (1964) and Davaut v. University of South Carolina, 418 S.C. 627, 795 S.E. 2d 678, 681 (2016)?

2. Did the appellate panel majority err in concluding Ms. Tedder "did not sustain an injury by accident arising out of the course and scope of her employment on October 30, 2021" when the undisputed/uncontradicted evidence establishes: (a) her injuries occurred within seconds of her passing through the store's ingress/egress threshold after traveling approximately 3-4 steps into the common area crosswalk situated immediately adjacent to this threshold area; (b) she had not only been instructed, but also expected, to use this common area pathway when walking to the designated employee parking area; (c) notwithstanding its lease-granted prerogative to restrict

employee use to common areas, Harris Teeter implemented a longstanding policy which necessarily required employees to traverse common areas in order to access the designated employee parking area; (d) "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" (Williams v. South Carolina State Hospital, 245 S.C. 377, 140 S.E. 2d 601, 603 (1965); Davaut, 795 S.E. 2d at 681; and (e) where, as here, she is "injured while passing, with the express or implied consent of the employer, . . . over [the premises] . . . 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 . . . ." (Id.)?

3. Did the appellate panel majority err in vacating Finding of Fact Nos. 4, 6 and 7 contained in the single commissioner's March 28, 2023 Decision and Order when: (a) despite parenthetic reference to these findings, exception number 3 contained in Respondents' March 30, 2023 Form 30 Request for Commission Review (which simply asserts "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 support by the evidence in the record") cannot be construed to challenge the substance of these three (3) factual findings ("credible testimony" of Ms. Tedder; "Harris Teeter directed Claimant and other employees to park in designated parking lot areas"; "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"; "she parked where her Employer instructed"); (b) general exceptions of this type do not satisfy the requirements of 8 S.C. Code Ann. Regs. 67-701 (3) (2012), which prescribe ". . . [e]ach question presented must be concise and concern one finding of fact, conclusion of law, or other proposition the appellant believes is in error"; (c) these

parenthetic references, in the absence of specific assertions of error, "do not preserve an issue for review" (Hilton v. Flakeboard America Limited, 418 S.C. 245, 791 S.E. 2d 719, 722 (2016); Rummage v. BGF Industries, 434 S.C. 441, 865 S.E. 2d 380, 387-388 (Ct. App. 2021)); and (d) these findings constitute the law of this case (Id.)?

II. STATEMENT OF THE CASE

This is an appeal from the July 17, 2024 Order of a divided appellate panel of the South Carolina Workers' Compensation Commission (panel), which concluded: (a) Appellant, Christine Tedder, "did not sustain an injury by accident arising out of the course and scope of her employment on October 20, 2021" when she was struck by a motor vehicle in a common area crosswalk within seconds after exiting Respondent's, Harris Teeter's, store following completion of her work shift; and (b) there are likewise no exceptions to the going and coming rule "which would bring . . . [Ms. Tedder's injuries] within the course and scope of her employment." (See, Record on Appeal, pp. __). Ms. Tedder similarly appeals the appellate panel majority's September 9, 2024 denial of her July 22, 2024 Motion for Reconsideration.

Following completion of her October 30, 2021 work shift, Ms. Tedder, a manager whose tenure with Harris Teeter spans over thirty-six (360 years: (a) exited the store through a front door which faced a common area parking lot; (b) was struck by a motor vehicle within seconds after passing through the store's threshold, after taking 3-4 steps into an adjacent crosswalk, while following the most direct route to a Harris Teeter – designated employee parking area; and (c) sustained multiple injuries, including a left knee and right ankle fractures, after being "flipped up in the air" upon impact with this vehicle. (See, Record on Appeal, pp. __). This trauma subsequently necessitated receipt of not only conservative treatment measures, but also right ankle surgery. (See, Record on Appeal, pp. __).

By Form 50 dated December 21, 2021, Ms. Tedder sought a hearing for the purposes of obtaining medical benefits for her causally related injury components, as well as temporary total disability compensation, per the South Carolina Workers' Compensation Act. (See, Record on Appeal, pp. __). Shortly thereafter, Harris Teeter and Co-Respondent, Ace American Insurance

Company, denied Ms. Tedder's entitlement to this relief through the filing of a January 19, 2022 Form 51, maintaining: (a) she had not "sustained an injury by accident arising out of the course and scope of her employment"; and (b) as she had "clocked out of work" and exited Harris Teeter's premises, her claim was barred by application of the "coming and going rule." (See, Record on Appeal, pp. __).

During an April 21, 2022 evidentiary hearing before the single commissioner, Ms. Tedder verified:

a) the thirty-six (36) year employment tenure with Harris Teeter comprised her entire work history (See, Record on Appeal, pp. __);

b) she had served as both a customer service manager and floral manager for approximately thirty-four 34 years of this period (See, Record on Appeal, pp. __);

c) she had been instructed by Harris Teeter to park her vehicle in an area of the parking lot beyond the cart corrals (See, Record on Appeal, pp. __);

d) this designated parking area was located "right in front of" the store (See, Record on Appeal, pp. __); and

e) while serving as "a customer service manager for 26 years", she was not only authorized to "do the hiring", but also charged with the responsibility of informing new hires "of DOs and DON'Ts and policies", including mandatory employee use of this designated parking area. (See, Record on Appeal, pp. __).

Ms. Tedder further explained:

a) given the location of this designated employment parking area, she was obliged to "walk through the parking lot in front of the store" (See, Record on Appeal, pp. __);

b) navigating the adjacent crosswalk was necessary to get into the store, as "there's no other way" (See, Record on Appeal, pp. __);

c) she had "never been told to not park in the parking lot" (See, Record on Appeal, pp. __); and

d) at the time of her injury, she was "doing what . . . [she] was supposed to do . . . ." (See, Record on Appeal, pp. __).

In conjunction with this testimony, Ms. Tedder submitted several photographs, which depicted: (a) the store entrance, including the adjacent crosswalk, from the front parking lot vantage point; (b) the common area crosswalk viewed from the Harris Teeter storefront; and (c) the width/span of the common area crosswalk.

The record likewise contains Harris Teeter's lease agreement with Charleston I, LP, which reflects the lessor's continued ownership of the common area parking lot and associated maintenance obligations. Inspection of this lease agreement 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" (See, Record on Appeal, pp. __);

(b) a portion of this common area was designated as Harris Teeter's "Primary Parking Field"/"Protected Parking Field", which included a specialized number of spaces per leased store floor area (See, Record on Appeal, pp. __);

(c) Harris Teeter specifically acknowledged these "common area[s]" would be used by not only its customers, licensees, and invitees but also its "employees" (See, Record on Appeal, pp. __);

(d) 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 (See, Record on Appeal, pp. __); and

(e) Harris Teeter contributed its "Pro Rata Share of Common Area Expenses" as a condition of their common area use. (See, Record on Appeal, pp. __).

After considering the contents of the evidentiary record, the single commissioner found as facts:

(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) "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";

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

(d) "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, Record on Appeal, pp. __).

The single commissioner further determined Ms. Tedder had provided "credible" testimony she and other employees had been directed by Harris Teeter to park their vehicles in this designated portion of the common area parking lot. (Id.).

Based upon these undisputed/uncontradicted facts, the single commissioner concluded: (a) the current scenario, particularly Harris Teeter's direction of Ms. Tedder to a designated parking area, was analogous to the scenario addressed by the Supreme Court in Davaut v. University of South Carolina, 418 S.C. 627, 795 S.E. 2d 678 (2006); and (b) Ms. Tedder had "sustained compensable injury by accident" within the meaning of S.C. Code Ann. Section 42-1-160 (2015) on October 30, 2021.

By Form 30 dated March 30, 2023, Respondents appealed the single commissioner's March 28, 2023 ruling to the appellate panel on several grounds, primarily contending she erred in: (a) "finding Claimant sustained compensable injuries by accident on October 30, 2021"; (b) applying the "divided premises" doctrine analyzed in Davaut; and (c) determining "Harris Teeter owns and maintains the parking lot where the injury occurred . . . ." (See, Record on Appeal, pp. __).

In this connection, while Respondents' exception number 3 parenthetically references Finding of Fact numbers 4, 6 and 7 contained in the March 28, 2023 Order, it did not specifically challenge the single commissioner's determinations: (a) "Defendant Harris Teeter directed Claimant and other employees to park in designated parking lot areas"; (b) "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"; (c) "she parked where her Employer instructed"; and (d) Ms. Tedder's testimony was "credible". (See, Record on Appeal, pp. __).

Following an August 28, 2023 review hearing, the appellate panel majority requested Respondent's counsel to submit a proposed Order reversing the single commissioner's ruling. Upon reviewing this proposed Order, Ms. Tedder's counsel respectfully apprised the panel members: (a) the parenthetic reference to the single commissioner's Finding of Fact numbers 4, 6 and 7 did not satisfy the requirements of 8 S.C. Code Ann. Regs. 67-701 (3) (2012); (b) the exception associated with these parenthetic references did not challenge the substance of Finding of Fact numbers 4, 6 and 7; and (c) as these Findings of Facts consequently constituted the law of this case, they needed to be included in the appellate panel majority's Order.

Per a July 17, 2024 Order, the divided appellate panel reversed the single commissioner's decision, ruling: (a) the "divided premises" doctrine recognized by the Supreme Court in Davaut was inapplicable in this instance, as Harris Teeter did not own the parking lot area; (b) ". . . [t]here are no applicable exceptions to the going and coming rule that would bring . . . [Ms. Tedder's] injury within the course and scope of employment"; and (c) she consequently "did not sustain an injury by accident arising out of the course and scope of her employment on October 30, 2021." (See, Record on Appeal, pp. __). The single commissioner's Finding of Fact numbers 4, 6 and 7 were not included in this Order.

The dissenting panel member recognized/reasoned: (a) the governing standard required liberal construction of the South Carolina Workers' Compensation Act in a fashion promoting inclusion, rather than exclusion, of employees from coverage: (b) the timing and location of Ms. Tedder's injuries fell within the time/space continuum of compensability afforded employees in connection with departure from the workplace; (c) Ms. Tedder's undisputed "credible confirmation her injury occurred while traversing a common area in compliance with Harris Teeter's directive brought it within the course and scope of her employment; and (d) application of controlling legal precedent to the undisputed facts of record "compels our concluding Ms. Tedder's injuries are compensable." (See, Record on Appeal, pp. __).

By Motion dated July 22, 2024, Ms. Tedder sought reconsideration of the appellate panel majority's ruling on numerous grounds. A similarly divided appellate panel subsequently denied this Motion on September 9, 2024. This appeal followed.

III. ARGUMENTS

A. THE APPELLATE PANEL MAJORITY ERRED IN CONCLUDING MS. TEDDER "DID NOT SUSTAIN AN INJURY BY ACCIDENT ARISING OUT OF THE COURSE AND SCOPE OF HER EMPLOYMENT ON OCTOBER 30, 2021" WHEN THE UNDISPUTED/UNCONTRADICTED EVIDENCE OF RECORD FIRMLY ESTABLISHES: (A) PRIOR TO SUSTAINING THIS INJURY, SHE HAD BEEN CONSISTENTLY INSTRUCTED BY HER EMPLOYER TO PARK HER VEHICLE IN A DESIGNATED PORTION OF A COMMON AREA PARKING LOT ADJACENT TO THE STORE; (B) DURING HER TWENTY-SIX (26) YEAR TENURE AS A CUSTOMER SERVICE MANAGER, IN WHICH SHE "DID ALL THE HIRING" OF EMPLOYEES, SHE REPEATEDLY CONVEYED THIS STORE POLICY TO INCOMING EMPLOYEES; (C) WITHIN SECONDS AFTER EXITING THE HARRIS TEETER STORE THROUGH THE ONLY INGRESS/EGRESS THRESHOLD REFERENCED IN THE RECORD AND ENTERING A COMMON AREA CROSSWALK AS SHE FOLLOWED THE MOST DIRECT ROUTE TO THE DESIGNATED PARKING AREA, SHE WAS STRUCK BY A MOTOR VEHICLE; AND (D) THESE UNCONTRADICTED FACTS ESTABLISH HER "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", RENDERING HER RESULTING INJURIES COMPENSABLE IN ACCORDANCE WITH PRINCIPLES REFERENCED IN SOLA V. SUNNY SLOPE FARMS, 244 S.C. 6, 135 S.E. 2D 321, 326 (1964) AND DAVAUT V. UNIVERSITY OF SOUTH CAROLINA, 418 S.C. 627, 795 S.E. 2D 678, 681 (2016).

"In determining whether a work-related injury is compensable, the Workers' Compensation Act is liberally construed towards 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); Patel v. BVM Motel, LLC, 433 S.C. 337, 857 S.E. 2d 564, 567 (Ct. App. 2021)("Workers' Compensation law is to be liberally construed in favor of coverage in order to serve the beneficent purpose of [the Act] . . . .").

"Upon admitted or established facts the question of whether an accident is compensable is a question of law and this is not an invasion of the fact-finding field of the Commission on the part of the Court." Jordan v. Dixie Chevrolet, 218 S.C. 73, 61 S.E. 2d 654, 656 (1950); Grant v. Grant Textiles, 372 S.C. 196, 641 S.E. 2d 869, 872 (2007). It is equally certain that "where the evidence gives rise to but one reasonable inference the question becomes one of law for the courts to decide."

Kinsey v. Champion American Service Center, 268 S.C. 177, 232 S.E. 2d 720, 722 (1977); Brooks v. Benore Logistics Systems, Inc., 442 S.C. 462, 900 S.E. 2d 436, 445 (2024). In essence, ". . . if the evidence is all one way, . . .then the issue becomes one of law for the court and not one of fact for the Commission." Herndon v. Morgan Mills, Inc., 246 S.C. 201, 143 S.E. 2d 376, 381 (1965); Brooks, supra.

"As a general rule, an employee going to or coming from the place where [the] . . . work is to be performed is not engaged in performing any service growing out of and incidental to [the] . . . employment, and, therefore an injury sustained by accident at such time does not arise out of and in the course of . . . employment." Medlin v. Upstate Plaster Service, 329 S.C. 92, 495 S.E. 2d 447, 449 (1998); Pratt v. Morris Roofing, Inc., 357 S.C. 619, 594 S.E. 2d 272, 274 (2004). "This is the well-known going and coming rule." Davaut, 795 S.E. 2d at 682. However, notwithstanding this general exclusion, our Appellate Courts have recognized several exceptions, including circumstances where "the place of an 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." Sola v. Sunny Slope Farms, 244 S.C. 6, 135 S.E. 2d 321, 326 (1964); Davaut, 795 S.E. 2d at 682 ("we refer to this as 'the fourth Sola exception'").

The uncontradicted evidence of record unquestionably verifies on October 30, 2021, Ms. Tedder: (a) exited the Harris Teeter store through the only threshold referenced in the record; (b) then proceeded down the "reasonably necessary and direct" common area route to reach the Harris Teeter – designated employee parking site (See, Record on Appeal, pp. __); and (c) was injured while walking through "an area over which the employer had a right of passage . . . along a route commonly used by employees to access and exit the work premises." Davaut, 795 S.E. 2d at 684.

Additionally, despite the absence of any mention by the appellate panel majority, review of the lease terms governing "common areas" undeniably confirms Ms. Tedder's employer: (a) acknowledged these areas encompass effectively all "improvements located adjacent" to the store, including, but not limited to, every step of the "reasonably necessary and direct" route between the store's exit threshold and the employer-designated parking area; (b) actually paid a distinct amount of consideration ("Pro Rata Share of Common Area Expenses") for the upkeep/maintenance of these "common areas", including the "Protected Parking Field" allocated to Harris Teeter; and (c) envisioned these "common areas" would be used by its employees, notwithstanding its prerogative to restrict employee access to these "common areas". (See, Record on Appeal, pp. __).

Ms. Tedder respectfully submits analysis of these uncontradicted facts, in light of governing case law, firmly establishes: (a) her injury occurred while 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; (b) this condition of her employment, with which she not only complied for decades, but also oriented new employees during her 26-year tenure as a customer service manager, was "anticipated at the end of her workday" (See, Davaut, 795 S.E. 2d at 683); and (c) her "place of injury was brought within the scope of employment by an express . . . requirement in the contract of employment of its use . . . [when] going to and coming from [her] . . . work." Sola, 135 S.E. 2d 326; Davaut, 795 S.E. 2d 682.

While Ms. Tedder's compliance with Harris Teeter's employee parking directive was, in and of itself, sufficient to satisfy the requirements of Sola, the common area control conveyed through the lease effectively transmutes the parking lot into this employer's premises. Specifically: (a) in addition to renting its store footage, Harris Teeter paid an additional sum which

is particularly earmarked for "Common Area Expenses" (See, Record on Appeal, pp. __); (b) these expenses included precisely the same items for which an owner would be responsible for the maintenance of the area Ms. Tedder routinely traversed to exit/enter the designated parking area (i.e., utility charges, lighting, maintenance/repair, snow/ice removal and cleaning/sweeping/pressure washing, as well as repairing/maintaining "curbs, pot holes and cracks in the parking lot and sidewalks, and re-striping the parking areas") (See, Record on Appeal, pp. __); and (c) this pro rata common area expense similarly encompassed trash removal and satisfaction of liability insurance premiums. (See, Record on Appeal, pp. __).

These facts are reflective of an essentially exclusive level of adjacent common area control, regardless of Harris Teeter's lack of actual ownership. As a consequence: (a) Ms. Tedder's injury occurred in an area which was "in practical effect a part of [her] . . . employer's premises"; (b) her "walking from the building where she worked to the . . . [designated] parking area was just as much a reasonable incident to her leaving the place of her work as walking from . . . [her work station] to the door of the building"; (c) the current circumstances warrant application of the "broad construction of course of employment" recognized by the Supreme Court in Williams and Davaut; and (d) the appellate panel majority's rejection of this concept not only hinges upon a distinction without a difference, but is also "anathema to the Grand Bargain" upon which workers' compensation laws are premised. See, Williams, 140 S.E. 2d at 603; Davaut, 795 S.E. 2d at 684; Brooks, 900 S.E. 2d at 440 n.1.

Accordingly, Ms. Tedder respectfully submits: (a) the dissenting appellate panel member correctly determined she sustained compensable injuries within the meaning of Section 42-1-160 on October 30, 2021; (b) the appellate panel majority's denial of her claim should be reversed; and

(c) this case should be remand to the Commission for the sole purpose of awarding appropriate disability compensation and medical benefits.

B. THE APPELLATE PANEL MAJORITY ERRED IN CONCLUDING MS. TEDDER "DID NOT SUSTAIN AN INJURY BY ACCIDENT ARISING OUT OF THE COURSE AND SCOPE OF HER EMPLOYMENT ON OCTOBER 30, 2021" WHEN THE UNDISPUTED/UNCONTRADICTED EVIDENCE ESTABLISHES: (A) HER INJURIES OCCURRED WITHIN SECONDS OF HER PASSING THROUGH THE STORE'S INGRESS/EGRESS THRESHOLD AFTER TRAVELING APPROXIMATELY 3-4 STEPS INTO THE COMMON AREA CROSSWALK SITUATED IMMEDIATELY ADJACENT TO THIS THRESHOLD AREA; (B) SHE HAD NOT ONLY BEEN INSTRUCTED, BUT ALSO EXPECTED, TO USE THIS COMMON AREA PATHWAY WHEN WALKING TO THE DESIGNATED EMPLOYEE PARKING AREA; (C) NOTWITHSTANDING ITS LEASE GRANTED PREROGATIVE TO RESTRICT EMPLOYEE USE TO COMMON AREAS, HARRIS TEETER IMPLEMENTED A LONGSTANDING POLICY WHICH NECESSARILY REQUIRED EMPLOYEES TO TRAVERSE COMMON AREAS IN ORDER TO ACCESS THE DESIGNATED EMPLOYEE PARKING AREA; (D) "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" (WILLIAMS V. SOUTH CAROLINA STATE HOSPITAL, 245 S.C. 377, 140 S.E. 2D 601, 603 (1965); DAVAUT, 795 S.E. 2D AT 681; AND (E) WHERE, AS HERE, AN EMPLOYEE IS "INJURED WHILE PASSING, WITH THE EXPRESS OR IMPLIED CONSENT OF THE EMPLOYER, . . . OVER [THE PREMISES] . . . 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 . . . ." (ID.).

As previously noted, inspection of the undisputed/uncontradicted evidence of record reveals Ms. Tedder's injury occurred: (a) within 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, Record on Appeal, pp. __). This evidence similarly verifies: (a) this threshold constituted her point of ingress/egress to the interior of the store; and (b) the absence of any evidence she was afforded the opportunity to access the building through another portal. Id.

In keeping with the 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.

Analysis of the undisputed/uncontradicted facts, in light of these governing rules, confirms: (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, 135 S.E. 2d at 326.

While the appellate panel majority equates 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 seconds 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.").

Further, 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. See, Williams, supra; Davaut, 795 S.E. 2d at 681. Given these irrefutable facts, it is respectfully submitted: (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.

Accordingly, Ms. Tedder respectfully requests the Court to: (a) reverse the appellate panel majority's denial of her claim per the Act; and (b) remand this case to the Commission for the sole purpose of awarding appropriate disability compensation and medical benefits per the Act.

C. **DID THE APPELLATE PANEL MAJORITY ERR IN VACATING FINDING OF FACT NUMBERS 4, 6 AND 7 CONTAINED IN THE SINGLE COMMISSIONER'S MARCH 28, 2023 DECISION AND ORDER WHEN: (A) DESPITE PARENTHETIC REFERENCE TO THESE FINDINGS, EXCEPTION NUMBER 3 CONTAINED IN RESPONDENTS' MARCH 30, 2023 FORM 30 REQUEST FOR COMMISSION REVIEW SIMPLY ASSERTS "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 SUPPORT BY THE EVIDENCE IN THE RECORD"; (B) THIS EXCEPTION CANNOT BE CONSTRUED TO CHALLENGE THE SUBSTANCE OF THESE THREE (3) FACTUAL FINDINGS ("CREDIBLE TESTIMONY" OF MS. TEDDER; "HARRIS TEETER DIRECTED CLAIMANT AND OTHER EMPLOYEES TO PARK IN DESIGNATED PARKING LOT AREAS"; "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"; "SHE PARKED WHERE HER EMPLOYER INSTRUCTED"); (C) GENERAL EXCEPTIONS OF THIS TYPE DO NOT SATISFY THE REQUIREMENTS OF 8 S.C. CODE ANN. REGS. 67-701 (3) (2012), WHICH PRESCRIBE ". . . [E]ACH QUESTION PRESENTED MUST BE CONCISE AND CONCERN ONE FINDING OF FACT, CONCLUSION OF LAW, OR OTHER PROPOSITION THE APPELLANT BELIEVES IS IN ERROR"; (D) THESE PARENTHETIC REFERENCES, IN THE ABSENCE OF SPECIFIC ASSERTIONS OF ERROR, "DO NOT PRESERVE AN ISSUE FOR REVIEW" (HILTON V. FLAKEBOARD AMERICA LIMITED, 418 S.C. 245, 791 S.E. 2D 719, 722 (2016); RUMMAGE V. BGF INDUSTRIES, 434 S.C. 441, 865 S.E. 2D 380, 387-388 (CT. APP. 2021)); AND (E) THESE FINDINGS CONSTITUTE THE LAW OF THIS CASE (ID.).**

"Only issues raised to the Commission within the application for review of the single commissioner's order are preserved for review." Hilton v. Flakeboard America Limited, 418 S.C. 245, 791 S.E. 2d 719, 721 (2016). In this regard, 8 S.C. Code Ann. Regs. 67-701 (3) (a) specifically provides each question (exception) contained in a Form 30 not only "must be set out in detail . . . [, but also] concern one finding of fact, conclusion of law, or other proposition the appellant believes is in error." Absent this level of specificity, an issue is not preserved for review and the single commissioner's factual findings "become and are the law of the case". Hilton, 791 S.E. 2d at 722; see also, Rummage v. BGF Industries, 434 S.C. 431, 865 S.E. 2d 380, 387-399 (Ct. App. 2021).

Although Respondents' Form 30 parenthetically identifies Finding of Fact numbers 4, 6 and 7, the assertion of error is limited to the single commissioner's "finding that Harris Teeter owns and

maintains the parking lot where the injury occurred . . . not [being] . . . supported by the evidence in the record." Although this question/exception reasonably captured an assertion of error in connection with Finding of Fact number. 5 of the single commissioner's order, it does not preserve for review any alleged deficiencies involving Finding of Fact numbers. 4, 6 or 7 (**credible testimony: "Harris Teeter directed Claimant and other employees to park in designated parking 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"**). See, Hilton, 791 S.E. 2d at 722.

While the undisputed/uncontradicted evidence of record wholly supports the contents of Finding of Fact numbers 4, 6 and 7, Ms. Tedder respectfully submits these findings actually constitute the law of this case. She consequently respectfully requests: (a) the appellate panel majority's deletion of these findings be reversed; and (b) the Commission be required to reinstate these factual findings, in conjunction with awarding her all appropriate disability compensation and medical benefits, on remand.

CONCLUSION

Ms. Tedder sustained substantial injuries within a proverbial "blink of an eye" after exiting the store of the only employer she's ever known. As she was simply following the same instructions she had dutifully relayed to new employees, Ms. Tedder expectedly assumed she would receive the same level of commitment from Harris Teeter as she had provided for nearly forty (40) years. Instead, she was greeted with a denial of the basic benefits afforded by the Act and what has become protracted litigation.

Although there are certainly scenarios which may justify claim denial based upon the "coming and going" rule, the current scenario clearly does not. Rather, it constitutes a nearly textbook example of not only the legal, but common-sense rationale for limiting an otherwise blanket application of this defense. Unfortunately, despite the presence of controlling authorities dating back roughly sixty (60) years, as well as a governing axiom demanding extension of the Act in the event reasonable doubt indeed existed, Ms. Tedder remains on the outside looking in.

Based upon the undisputed/uncontroverted evidence of record, it is hard to imagine how Ms. Tedder's injury did not occur within the time-space continuum which brings it within the course and scope of her employment. Harris Teeter's exertion of control over not only her activity at the time of injury, but also the actual ground she was walking on when stuck by the motor vehicle, is similarly validated by the record.

Ms. Tedder respectfully prays the Court reverse the appellate panel majority's denial of her claim, while remanding this matter to the Commission for the sole purpose of awarding her the disability compensation and medical benefits to which she is surely entitled per the Act.

Respectfully submitted,

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