THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM THE SOUTH CAROLINA
WORKERS' COMPENSATION COMMISSION

Appellate Case No. 2024-001685

Christine Tedder, Claimant, Appellant,

v.

Harris Teeter, Employer,

and

Ace American Insurance Company, Carrier, Respondents.

INITIAL BRIEF OF RESPONDENTS

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STATEMENT OF THE CASE

This is a denied claim arising out of an alleged accident on October 30, 2021, when Claimant/Appellant (hereinafter "Appellant") was struck by a vehicle when she was clocked out of work and walking through a strip mall parking lot to her car. Defendants/Respondents (hereinafter "Respondents") denied the claim on the basis that Appellant did not sustain an injury by accident arising out of and in the course and scope of her employment; Appellant was off the clock and off premises at the time of her accident and none of the exceptions to the "coming and going" rule are applicable in this case.

Appellant asserted that the claim is compensable based on the divided premises rule. However, it was the Respondents' position that a plain reading of Harris Teeter's lease agreement clearly demonstrates that Respondents do not own, maintain, or control the parking lot in which Appellant was injured. As such, Respondents asserted that the divided premises rule is not applicable as Appellant had already left Harris Teeter premises, with no plans to return to or reenter Harris Teeter premises, at the time of the accident. Respondents further contended that no exceptions to the "coming and going" rule are applicable in this case.

The Hearing Commissioner found Appellant's claim compensable based upon the divided premises rule. Respondents appealed to the Appellate Panel of the South Carolina Workers' Compensation Commission (hereinafter "Appellate Panel"). After consideration of the evidence and oral argument, the Appellate Panel reversed the Hearing Commissioner and found that

Appellant failed to prove that she sustained a compensable injury by accident arising out of and in the course and scope of her employment on October 30, 2021, and her claim for benefits under the South Carolina Workers' Compensation Act was denied. Specifically, the Appellate Panel found that, because Appellant was off the clock and had left Respondents' premises with no intention of returning at the time of the accident, the divided premises rule was inapplicable and no exception to the coming and going rule applied. This denial of Appellant's workers' compensation claim has now been appealed to this Court.

STATEMENT OF THE FACTS

Appellant is employed with Harris Teeter as a Floral Manager. The store is located in the Wescott Shopping Center and shares one, continuous parking lot with several other business tenants. (Exh. 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). Harris Teeter does not own, maintain or control the parking lot where the injury occurred. The lease agreement defines "common areas" to include sidewalks, curbs, ramps, and parking lots." (APA p. 242). The lease allows Harris Teeter to erect cart corrals but specifically provides that Charleston I, LP, as Landlord, is solely responsible for maintenance of the common areas which include the parking lot. (APA p. 244). Specifically, the lease agreement provides:

> (a) 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).

Appellant 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 the customers,

employees, and invitees of Harris Teeter and the other businesses located in the expansive shopping center. (H.T. p. 24, ll. 7-19). The parking lot abuts the communal sidewalk.

After clocking out on October 30, 2021, Appellant was struck by a vehicle after exiting Harris Teeter and while walking to her vehicle in the shopping center's parking area. Appellant agreed she would have been struck by the car regardless of where she parked that day. (H.T. p. 33, ll. 14-25). At the time of accident, Appellant was clocked out of work and heading home for the day. (HT. pp. 23, ll. 20-25). Harris Teeter did not provide transportation to Appellant or pay for travel time. (H.T. p. 25, ll. 12-15). Harris Teeter did not direct Appellant 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) Appellant conceded she was not performing any work-related tasks at the time of the accident. (H.T. pp. 23-24, ll. 20-3).

STANDARD OF REVIEW

The South Carolina Administrative Procedures Act (APA) governs the standard of judicial review in workers' compensation cases. Lark v. Bi-Lo, Inc., 276 S.C. 130, 135, 276 S.E.2d 304, 306 (1981); Hargrove v. Titan Textile Co., 360 S.C. 276, 288, 599 S.E.2d 604, 610 (Ct. App. 2004). Under the APA, an appellate court's review is limited to deciding whether the Appellate Panel's decision is unsupported by substantial evidence or is controlled by an error of law. Hargrove v. Titan Textile Co., 360 S.C. 276, 289, 599 S.E.2d 604, 610–11 (Ct. App. 2004). "Substantial evidence is not a mere scintilla of evidence nor evidence viewed from one side, but such evidence, when the whole record is considered, as would allow reasonable minds to reach the conclusion the [Appellate Panel] reached." Shealy v. Aiken Cty., 341 S.C. 448, 455, 535 S.E.2d 438, 442 (2000); Pratt v. Morris Roofing, Inc., 357 S.C. 619, 622, 594 S.E.2d 272, 274 (2004). An appellate court may not substitute its judgment for that of the agency as to the weight of the

evidence on questions of fact. Bentley v. Spartanburg County, 398 S.C. 418, 421, 730 S.E.2d 296, 297 (S.C. 2012) (citing S.C. Code Ann. § 1-23-380(5)). Specifically, "[i]n workers' compensation cases, the Appellate Panel is the ultimate fact finder." Shealy v. Aiken County, 341 S.C. 448, 455, 535 S.E.2d 4381 442 (S.C. 2000) (citing Hunter v. Patrick Constr. Co., 289 S.C. 46, 344 S.E.2d 613 (1986)). "The final determination of witness credibility and the weight to be accorded evidence is reserved to the Full Commission." Id. (citing Ford v. Allied Chem. Co., 252 S.C. 561, 167 S.E.2d 564 (1969)). It is not the task of the appellate court to weigh the evidence as found by the Full Commission. Id. (citing Ellis v. Spartan Mills, 276 S.C. 216, 277 S.E.2d 590 (1981)). This Court must affirm the findings of fact made by the Full Commission if they are supported by substantial evidence. Jordan v. Kelly Co., 381 S.C. 483, 486, 674 S.E.2d 166, 168 (2009).

Further, an appellate court may not substitute its judgment for that of the agency as to the weight of the evidence on questions of fact. Bentley, 398 S.C. at 41, 730 S.E.2d at 298 (citing S.C. Code Ann. § 1-23-380(5)). It has long been held by our courts that the Commission is empowered to adjudicate credibility of witnesses and weight of evidence, and the courts will not disturb those judgments. "It is not for this court to balance objective against subjective findings of medical witnesses, or to weigh the testimony of one witness against that of another. That function belongs to the Appellate Panel alone." Potter v. Spartanburg Sch. Dist. 7, 395 S.C. 17, 24, 716 S.E.2d 123, 127 (Ct. App. 2011) (quoting Roper v. Kimbrell's of Greenville, 231 S.C. 453, 461, 99 S.E.2d 52, 57 (1957)).

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ARGUMENT

I. THE APPELLATE PANEL CORRECTLY FOUND THAT APPELLANT DID NOT SUSTAIN AN INJURY BY ACCIDENT ARISING OUT OF AND IN THE COURSE AND SCOPE OF HER EMPLOYMENT.

To be compensable under the South Carolina Workers' Compensation Act, an injury by accident must be one "arising out of and in the course of employment." S.C. Code Ann. § 42-1-160(A) (2015). "In general, whether an accident arises out of and is in the course and scope of employment is a question of fact for the [Appellate Panel]." Whigham v. Jackson Dawson Commc'ns, 410 S.C. 131, 135, 763 S.E.2d 420, 422 (2014); Hartzell v. Palmetto Collision, 406 S.C. 233, 796 S.E.2d 145 (Ct. App. 2016).

A. Because Appellant was off the clock and had left Harris Teeter's premises at the time of her accident, the well-established coming and going rule applies.

"The general rule in South Carolina is that an injury sustained by an employee away from the Employer's premises while on his way to or from work does not arise out of and in the course of employment." Howell v. Pacific Columbia Mills, 291 S.C. 469, 470, 354 S.E.2d 384, 385 (1987). This is because "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 or incidental to his employment, and therefore, an injury suffered by accident at such time does not arise out of and in the course of his employment". Aughtry v. Abbeville School District #60, 332 S.C. 453, 504 S.E.2d 830 (Ct.App. 1998).

Necessarily then, the inquiry first turns to the threshold question of whether Appellant was on Harris Teeter's premises at the time of her accident. An employer's "premises" encompasses

only the property owned, maintained, or controlled by the employer.[1] See e.g., Holston v. Allied Corp., 300 S.C. 174, 386 S.E.2d 793 (1989). Whether the parking lot is the premises of the employer is an issue of fact to be found by the Appellate Panel of the Workers' Compensation Commission. See e.g., Whigham v. Jackson Dawson Commc'ns, 410 S.C. 131, 135, 763 S.E.2d 420, 422 (2014); Hartzell v. Palmetto Collision, 406 S.C. 233, 796 S.E.2d 145 (Ct. App. 2016); Davaut v. Univ. of S.C., 418 S.C. 627, 795 S.E.2d 678 (2016).

Here, the substantial evidence in the record supports the Appellate Panel's finding that the situs of Appellant's accident, the communal parking lot, was not the premises of Harris Teeter, as Harris Teeter did not own, maintain, or control the parking lot. (FC Order). A plain reading of Harris Teeter's lease agreement clearly demonstrates that Harris Teeter did not own the common areas in the vast shopping center; rather, Harris Teeter is a tenant alongside several other retail businesses in a shopping center owned by Charleston I, LP. (Ex. B, lease). Moreover, under the lease agreement, Harris Teeter's "Premises" is explicitly defined as and limited to the building pad and does not include any common areas such as the sidewalk and/or parking lot. (lease, p. 1). Harris Teeter assumes liability for the Premises, whereas Charleston I, LP solely assumes liability for the common areas. (lease).

Likewise, Charleston I, LP, is solely responsible for the maintenance of the common areas, including the parking lot. (APA p. 244). Specifically, the lease agreement provides:

> (a) 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

[1] Other jurisdictions also analyze parking lot injuries on whether an employer owned, maintained, or controlled the lot. See Tate v. Bruno's, Inc./Food Max, 408 S.E.2d 456, 458 (Ga. Ct.App. 1991) (holding that an employee's injury was not compensable under the Act because it occurred after the end of an employee's shift in a public parking lot that served several businesses in a shopping center and was not owned, controlled, or maintained by the employer); Barham v. Food World, Inc., 266 S.E.2d 676 (N.C. 1980) (denying benefits where injury occurred in shared parking lot loading zone that employer did not own or maintain and parking lot and loading zone was jointly used by customers and employees of all stores).

> 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)

While Harris Teeter and the other businesses in the shopping center agree to contribute a pro rata share for limited expenses incurred by Landlord related to the common areas, the responsibility of maintaining the common areas explicitly and unquestionably rests solely with Landlord. Harris Teeter has no control over when, how, or by whom said maintenance is performed, nor does Harris Teeter have any responsibility or liability for the common areas. (Lease). This is supported by Appellant's hearing testimony that she has never seen Harris Teeter employees upkeep, repair, maintain, or paint the parking area. (H.T. pp. 26-27, ll. 21-4).

Analogous to this case is the North Carolina case of Deseth v. LensCrafters, Inc.. 160 N.C. 180, 585 S.E.2d 264 (N.C. Ct.App. 2003). Of course, the opinions of the North Carolina Court are entitled to great weight in South Carolina on matter of workers' compensation. Carter v. Penney Tire & Recapping Co., 261 S.C. 341, 200 S.E.2d 64 (1973). In Deseth, the employee was struck by a vehicle driven by a co-worker while walking through a mall parking lot from his parking spot to LensCrafters, his place of employment. 160 N.C. at 180. Unfortunately, the employee died days later from resulting injuries. Id. The lease between LensCrafters and the mall provided LensCrafters a non-exclusive right to use the parking lot and specifically indicated that control and responsibility for all common areas – including the parking lot – remained with the mall as landlord. Id. Notably, the lease also obligated LensCrafters to share in the maintenance costs of the common areas along with the other tenants, though the mall remained responsible for the maintenance of the lot. Id. Ultimately, the Court found that payment of a "common area charge" for upkeep and maintenance of the parking area and a non-exclusive right to use the parking area

did not amount to sufficient control over the parking lot to be deemed LensCrafters's premises. Id. As such, the claim was found to be not compensable. Id.

Harris Teeter equally did not control the parking lot, which was one, continuous lot shared by all businesses in the large shopping center. Contrary to Appellant's contention, Harris Teeter did not "occupy" the common areas. (Brief of Appellant, p. 6). In fact, Harris Teeter is charged with ensuring its business does not impede of the common areas. (Lease). The lease agreement clearly states that the area within Harris Teeter's control is limited to the building itself; control of the parking area and all other common areas is reserved for Landlord. (Lease – "...areas under their control (the Premises for [Harris Teeter], and the Shopping Center for Landlord)"). Accordingly, Harris Teeter has no right to exclude any other customer, employee, invitee, or the like, of Harris Teeter or any other business in the shopping center from using any part of the parking lot. (Lease, p. 16). Harris Teeter likewise has no right to consent to or require the use of any part of the parking lot by any individual.

Appellant contends that Harris Teeter has control over the parking lot because it erected limited shopping cart corrals pursuant to the lease agreement. However, the lease is exceptionally clear that cart corrals do not cause the parking area to be subsumed into the premises of the Harris Teeter. (Lease, p. 17). In fact, the lease requires that Harris Teeter take great care to ensure that the carts remain in the building and do not impede pedestrian or vehicular traffic in the parking lot. (Lease). The simple placement of the shopping cart corrals in the parking lot does not grant Harris Teeter any control or ownership of the shared parking lot. Id. The installation of cart corrals pursuant to the lease is done simply to ensure that shopping carts do not impede pedestrian or vehicular traffic; they do not establish any control by Harris Teeter of the common areas. This is

set forth plainly in the lease and is supported by the testimony of Claimant that no employee of Harris Teeter ever exerted any control over the parking lot.

Even assuming *arguendo* that Harris Teeter was afforded *some* control of the cart corral space, that control would be limited to the physical corrals and shopping carts therein. Because Appellant was admittedly not undertaking any action related to the shopping carts, was not in or around a cart corral, and her injury was not caused by the corrals or shopping carts, this point would be moot. This accident occurred in a crosswalk in the communal parking area that abuts the communal sidewalk. There is no evidence of any control by Harris Teeter of the sidewalk, the crosswalk, or the parking lot where the accident occurred. Substantial evidence in the record supports that Harris Teeter did not have sufficient control over the parking area where the accident occurred for it to be considered its premises.

Appellant further asserts that she was instructed by Harris Teeter to park beyond the shopping corrals and was injured on her way to the "employee designated parking area." Despite Appellant's contention that this was a "policy," there is no evidence in the record beyond her own testimony that this was the case. There were no markings or signs to indicate that the area was designated for store employees; any customer or employee of Harris Teeter or any other business could park in the same area. In fact, Appellant' testimony indicates that employees at Harris Teeter parked throughout the communal parking lot. (Hrg. Tr. p 15, ll. 23-25; p. 24, ll. 7-19). The lease does not grant Harris Teeter any authority to instruct drivers where to park, nor did Harris Teeter mandate or control where employees parked. Appellate contends that Harris Teeter would not pay for damage caused to a car by shopping carts if it was parked in front of the cart corrals. Even taking this as true, this is vastly different from requiring employees to park in a specific area; incentivizing employees to park beyond the shopping cart corrals to decrease the possibility of a

cart causing damage to her vehicle only demonstrates Harris Teeter's effort to mitigate its liability for damage caused by its shopping carts[2] – it does not amount to control of the parking lot.

Again, this issue has been addressed by the North Carolina courts and their logic and reasoning are instructive. In Glassco v. Belk-Tyler Co. of Goldsboro, Inc., the North Carolina Court of Appeals found that a mall parking lot was not controlled by the employer despite instructing employees where to park when the parking lot was shared by all businesses of the mall, there was no marked parking exclusively for employees, and the lease provided no authority to the employer to instruct drivers where to park. 316 S.E.2d 334 (N.C. Ct.App. 1984). The Court of Appeals noted that the risk to employee was common to the neighborhood, and that employee was injured while performing no duties for her employer on premises which were neither owned or maintained or controlled by her employer. Id. In Barham v. Food World, the North Carolina Supreme Court decided a similar case. 266 S.E.2d 676 (N.C. 1980). In that matter, the injured worker had parked her car and was walking to start her shift. Id. She slipped on ice just outside the front of the store in the common parking lot that was shared by eight or nine stores. Id. The North Carolina Supreme Court noted that workers compensation was not intended to protect an employee against all perils of the journey to and from work, and they adopted the so-called "premises rule" which establishes a real and tangible connection between an injury and employment. Id. In that particular case, the North Carolina Supreme Court noted that the employer did not own or lease the sidewalk in front of the store, it had no responsibility for upkeep or maintenance of those areas, and all stores and patrons had access to those areas. Id. The Court concluded that the facts established that the parking lot and loading zone where the accident happened were not sufficiently

[2] Per the lease agreement, Harris Teeter's liability for the common areas is limited to damage caused by its shopping carts; Landlord is not responsible for damage caused to Harris Teeter's property (i.e. the shopping carts or corrals) unless the damaged is actuated by Landlord or its agents or assigns. (Lease, p. 17).

under the control of the employer to permit the conclusion that those areas constituted part of the employment premises. Id. Finally, in Grady v. Hillandale Med. Ctr., the North Carolina Court of Appeals examined a lease agreement for a medical center located in a shopping center and found that the Employer was not responsible for maintenance of the common areas, and that payment for its pro rata share of the common area costs was not evidence of an exercise or control such to establish that the parking lot was the employer's premises. 573 S.E.2d 772 (N.C. Ct.App. 2002). In fact, the Court of Appeals noted that the employer did not own or lease the parking lot, was not responsible for maintenance or upkeep of the parking lot, was responsible for paying its pro rata share of the common area cost, and could reserve spaces for patient parking and direct employees to parking areas not reserved for patients; the North Carolina Court of Appeals found that these factors did not operate to impute tenant control over any specific area of the parking lot. Id.

The substantial evidence in the record supports the Appellate Panel's finding that Harris Teeter did not own, maintain, or control the parking lot in which Appellant was injured. The fact that Harris Teeter erected court corrals to ensure that their shopping carts did not impede pedestrian or vehicular traffic is insufficient to impute any ownership or control by Harris Teeter of the communal parking lot. Substantial evidence in the record supports the Appellate Panel's finding that Appellant was not injured on Harris Teeter's premises.

Appellant incorrectly contends that the lease's acknowledgement of a "protected parking field" is proof positive of Harris Teeter's control. This is a misstatement of the lease agreement. Again, there is no exclusive right granted to Harris Teeter with regard to any part of the parking lot. Rather, the "protected parking field" is simply a term of the lease agreement wherein the Landlord agrees to provide and maintain a sufficient number of parking spaces in the shopping center based upon the square footage of each building. (Lease, p. 17). This provision is applicable

to each business in the shopping center to ensure adequate parking consistent with applicable laws. As Appellant testified at the hearing, customers and employees of all the other businesses in the shopping center utilize all parts of this parking lot jointly and without distinction. (Hrg. Tr. p. 24, ll. 7-19).

The facts of this case are easily distinguishable from those in Williams v. State Hospital and Davaut v. University of South Carolina. 245 S.C. 377, 140 S.E.2d 601 (1965); 418 S.C. 627, 795 S.E.2d 678 (2016). Appellant's argument is flawed in that Williams involved an employer owned and maintained parking lot. Here, Harris Teeter did not own the parking lot and was not responsible for maintenance or upkeep of the parking area. (APA p. 244).

The South Carolina Supreme Court addressed this distinction in Howell v. Pacific Columbia Mills. 291 S.C. 469, 354 S.E.2d 384 (1987). In Howell, an employee was denied benefits after sustaining an injury in a public crosswalk that connected the mill with the employer-maintained parking facilities. Id. The Court distinguished Williams, noting that "[i]n Williams, the claimant was injured on the employer's premises...[i]n the [Howell case], Appellant was injured on a public street." Id. at 472. The Davaut court also recognized the distinction between employer owned and maintained parking areas and parking lots not owned or maintained by an employer. Davaut, 418 S.C. at 637 ("[t]his case implicates the divided premises rule *in the context of an employer-maintained parking lot*..."). The divided premises rule adopted in Davaut merely recognizes that an employee traveling between two portions of the employer's premises remains within the course and scope of employment, as she had already arrived on the premises and not yet left due to her intention to reenter the employer's premises at the parking garage. Id., at 638. Here, 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 intentions of returning to Harris

Teeter property after she left the store. (H.T. p. 27, ll. 10-18). In contrast, the employee in Davaut was required to re-enter her employer's premises after leaving her place of work 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 638 (emphasis added).

Accordingly, the divided premises rule is not applicable in this case as Appellant was not on Harris Teeter premises at the time of accident and was not required to re-enter Harris Teeter premises to retrieve her vehicle. Further, she was clocked out of work, she was admittedly not performing any work-related tasks at the time of accident, and she had left her employer's premises at the time of the accident.

B. The Appellate Panel correctly found that no exception to the coming and going rule applies.

Once the applicability of the coming and going rule has been established, the inquiry then turns to whether an exception to the coming and going rule applies. There are five recognized exceptions to the coming and going rule in South Carolina:

1. Where, in going to and returning from work, the means of transportation is provided by the employer, or the time that is consumed is paid for or included in the wages;
2. Where the employee, on his way to or from his work, is still charged with some duty or task in connection with his employment;
3. Where the way used is inherently dangerous and is either (a) the exclusive way of ingress and egress to and from his work, or (b) constructed and maintained by the employer; or
4. That such injury incurred by a workman in the course of his travel to or from his place of work and not on the premises of his employer but so close in proximity thereto is not compensable unless 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 servant in going to or coming from his work;

5. Where the employee sustains an injury while performing a task, service, mission, or special errand for his employer, even before or after customary working hours or on a day of which he does not ordinarily work.

Bickley v. South Carolina Electric & Gas Co., 259 S.C. 463, 192 S.E.2d 866 (1972); Sola v. Sunny Slope Farms, 244 S.C. 6, 135 S.E.2d 321 (1964).

Based on the evidence in this case, it is clear that none of the exceptions apply. Appellant's own hearing testimony establishes that, at the time of the accident, she was not provided transportation or paid for travel by Harris Teeter, she was not charged with some duty or task connected to her job with Harris Teeter, she was not undertaking a special errand for Harris Teeter, and she was not utilizing an exclusive means of ingress or egress. (Hrg. Tr. p. 23, ll. 20-25; p. 24, ll. 1-3; p. 25, ll. 1-15; p. 27, ll. 5-9, 16-21). Furthermore, it cannot be said that walking in a parking lot in a large retail shopping center is inherently dangerous activity.

Appellant argues that the parking lot was brought within the scope of employment by an express or implied requirement in the contract of employment of its use in going to and coming from work. This is not supported by the evidence in this case or the relevant case law. This exception to the coming and going rule was first contemplated in Eargle v. South Carolina Electric & Gas Co., 205 S.C. 423, 32 S.E.2d 240 (1944). In Eargle, the employee was killed while traveling by boat to work because the two customary ways of ingress were impassable. Id. Citing the U.S. Supreme Court decision in Bountiful Brick Co. v. Giles, the Eargle court pronounced that "under the peculiar and unusual facts of [the] case, an injury incurred while coming to and going from work and not on the premises of the employer, but in close proximity thereto, is not compensable unless 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 and going to and coming from work. Id. at 431 (citing Bountiful Brick Co. v. Giles, 276 U.S. 154, 48 S.Ct. 221 (1928)).

Importantly, the Court goes on to state that, for an accident to arise out of the employment, "the injury of the employee must be reasonably incidental to his employment". Id. at 432. In cases where the danger is one to which the general public is likewise exposed, the danger must "be one to which the employee, by reason of and in connection with his employment, is subjected peculiarly or to an abnormal degree". Id. In other words, the danger cannot be "a risk common to the neighborhood," which is not the case here. Id., at 433. Here, Appellant was simply walking in a crosswalk in a quasi-public parking lot when she was unfortunately hit by a third-party vehicle. Walking in a parking lot under any circumstance presents some risk of a vehicular incident, whether as a customer, employee, or member of the public; is a risk present for every person walking in or out of any business in the shopping center. Appellant was parked in the same area of the parking lot as all other customers, employees, and visitors of the shopping center. Her injury was not occasioned by any express or implied requirement of her employment, but rather by a distracted driver not obeying basic traffic laws. Because Appellant was off the clock and off Harris Teeter's premises at the time of the accident, the long-held coming and going rule establishes that Appellant's remedy is against the tortfeasor who injured her (or even the owner of the parking lot) – not against her employer. As discussed, *supra*, the lease provided that Harris Teeter employees (along with anyone else coming to the shopping center) may park in the shopping center lot, but provided with equal force that all control, responsibility, and liability for the parking lot is the Landlord's alone. As such, there was no express or implied contract of use of the parking lot such to bring the accident into the scope of her employment. Moreover, Appellant was not "peculiarly or to an abnormal degree" subjected to vehicular accidents in a large, communal parking lot as the result of her employment. Consequently, the Appellate Panel properly found that no exceptions to the coming and going rule apply and Appellant's accident is not compensable.

The Court's decision in Howell v. Pacific Mills is most analogous to this case. 291 S.C. 469, 354 S.E.2d 384 (1987). Like Appellant – and unlike in Davaut and Williams – the claimant in Howell was off the clock and not on or reentering the employer's premises at the time of the accident. In rejecting the claimant's argument that crossing the street in the crosswalk where her injury occurred was an implied requirement in her contract of employment, the Court in Howell held:

> The employer exercised no control over which route the appellant chose to use in coming and going from work... appellant was plainly free to cross Heyward at many points...The logic behind appellant's argument appears to be that since she had to cross Heyward Street to get to the mill and since there was a crosswalk in front of one entrance, it was an implied requirement of her employment that she crossed the street on the crosswalk. Any injury occurring in the crosswalk, therefore, is compensable. There would be nothing to prevent this line of reasoning from being extended to mean that all employees must leave home in order to come to work, coming to work as an implied requirement of their employment. All accidents occurring on the way home to work are compensable. This kind of reasoning would permit the exceptions to swallow the rule.

Id. At 385. The Court went on to warn against extending the area of coverage in order to accommodate claimants in cases with sympathetic facts or unfortunate situations. The court quoted Professor Larson, who astutely states that:

> [T]he real reason for the premises rule is and always has been, the impracticality of drawing another line at such a point that the administrative and judicial burden of interpreting and applying the rule would not be unmanageable." Id. (quoting Larson, The Law of Workers' Compensation § 15.12).

Here, Appellant admits that, similar to Howell, there were multiple types of transportation by which she could have traveled to work and multiple routes she could have taken to get inside Harris Teeter's building; Harris Teeter did not require one method or route to travel to or from work. (Hrg. Tr. p. 24, ll. 20-25; p. 25, ll. 1-15). Unlike in Davaut, Harris Teeter does not have the

ability to "allow" Appellant, or anyone else, to park in the shopping center parking lot because it was not Harris Teeter's premises.

Appellant argues that the "grand bargain" of workers' compensation requires a finding of compensability. This is categorically false. The grand bargain of workers' compensation exists to limit the tort liability of employers while providing no-fault coverage for employees whose injuries arise out of and are sustained in the course and scope of her employment. It does not exist to expand the limited coverage of workers compensation laws. In fact, Professor Larson, the foremost authority on workers' compensation laws in the United States, has asserted in his treatise that the premises rule should be adopted as the line of compensability, which directly contradicts the argument made by Appellant. The premises rule, which has been adopted with a surprising degree of unanimity by courts in the United States, establishes that injuries sustained by employees going to and coming from work is covered only on the employer's premises. As noted by Professor Larson, "when a line of this kind is drawn, there are always cases very close to each side of the line." Professor Larson noted that compensation has been denied by a variety of courts within the distance from the entrance to the premises was 50 feet, 30 feet, 28 feet, 20 feet, 10 feet, 6 feet, 4 feet, 3 feet, 2 feet, and three or four steps. Professor Larson, in advocating for adoption of the premises rule also noted the inherent problems with extending the line due to a "reasonable distance," which is essentially what is being argued by Appellant:

> It is a familiar problem in law, when a sharp, objective, and perhaps somewhat arbitrary line has been drawn, producing the kind of distinctions just cited, to encounter demands that align be blurred a little to take care of the closest cases. For example, one writer says that there is no reason in principle why states should not protect employees "for a reasonable distance" before reaching or after leaving the employer's premises. This, however, only raises a new problem without solving the first. It raises a new problem because it provides no standard by which the reasonableness of the distance can be judged. It substitutes the widely varying subjective interpretation of "reasonable distance" by different administrators and judges for the physical fact of a boundary line... It is just such questions as these

> that have led the great majority of courts, for reasons that are perhaps as much administrative necessity as logic, to adopt the premises rule. There is logic in the rule, of course, in that, while the employee is on the employer's premises, the connection with the employment environment is physical and tangible. Moreover, the rule has stood the test of time, and any court which is tempted to forsake it for some supposedly more equitable rule would do well to ponder the following passage from Sinbad the Sailor: And, lo, the master of the ship vociferated and called out, threw down his turban, slapped his face, plucked his beard, and fell down in the hold of the ship by reason of the violence of his grief and rage. So all the merchants and other passengers came together to him and said to him, "O master, what is the matter?" And he answered them: "Know, O Company, that we have wandered from our course, having passed forth from the sea in which we were, and entered a sea of which we know not the routes." Larson, The Law of Workers' Compensation §13.01 [1] and [2].

II. THE APPELLATE PANEL PROPERLY REVIEWED AND VACATED THE SINGLE COMMISSIONER'S FINDINGS OF FACT #4, 6, AND 7.

To request Appellate Panel review of a Hearing Commissioner's decision, "the grounds for appeal must be set out in detail on the Form 30 in the form of questions presented" and "each question must be concise and concern one finding of fact, conclusion of law, or other proposition the appellant believes is in error". S.C. Regulation 67-701(3). The purpose of the notice of appeal is just that – to provide notice to the opposing party of what questions are raised on appeal. Jones v. Anderson Cotton Mills, 205 S.C. 247, 256, 31 S.E.2d 447, 450 (1944). As such, the Supreme Court has held that "general exceptions, such as 'the commission erred in making an award,' are too ambiguous… and do not preserve an issue for review". Hilton v. Flakeboard Am. Ltd., 418 S.C. 245, 250, 791 S.E.2d 719, 722 (2016). Notably, however, this Court has long held that an issue is preserved for appeal where the issue to be raised by the exceptions was reasonably clear, timely raised, and ruled on by the single commissioner. See Holston v. Allied Corp., 300 S.C. 174, 386 S.E.2d 793 (Ct.App. 1989); c.f. Rummage v. BGF Indus., 434 S.C. 441, 865 S.E.2d 380 (Ct.App. 2021) (finding an issue is not preserved for review when the argument was first raised

during the hearing before the Appellate Panel). A finding of fact by the single commissioner does not become the law of the case when those findings are within the scope of the exception(s). Id.

Appellant incorrectly contends that the Appellate Panel erred in reviewing the Single Commissioner's Findings of Fact #4, 6, and 7 as the issues were not preserved for appellate review. Such a contention does not comport with the evidence in the record or the relevant case law; these issues were each explicitly raised in Respondents' exceptions, timely raised, and ruled on by the Single Commissioner. (Form 30). Respondents' Form 30 raises seven (7) grounds for appeal, including the question of "[w]hether 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)." Id.

Indeed, Respondents' Form 30 specifically raised each of these findings of fact to include reference by number, which on its own provides unquestionable notice that the issues are being raised for appellate review. (Form 30). Moreover, the question presented clearly takes exception to Findings of Fact #4, 6, and 7, as each finding makes reference to a "designated parking area" and the supposed control that Harris Teeter had over the parking lot. It was upon these findings of fact that the Single Commissioner ultimately based her conclusion that the parking lot was the premises of Harris Teeter. Appellant's brief and arguments therein are inarguable proof that the issues to be raised by Respondents' exceptions were exceptionally clear.[3] Consequently, Findings of Fact #4, 6, and 7 were preserved for review and the Appellate Panel, in its role as ultimate fact finder, properly vacated the findings in its order.

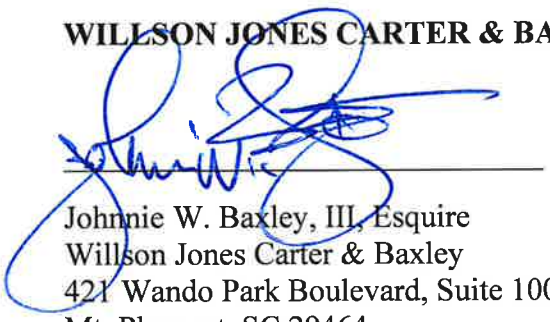
[3] c.f. Holston, 300 S.C. at 176 (holding an issue was preserved for appellate review where "the issue to be raised was reasonably clear from the arguments and was ruled on by the single commissioner…[i]ndeed, a review of the record shows both parties understood [the issue] to be the basic point of contention")

CONCLUSION

Based on the foregoing, this Court should affirm the Decision and Order of the Appellate Panel of the South Carolina Workers' Compensation Commission dated August 28, 2023.

Respectfully submitted,

WILLSON JONES CARTER & BAXLEY, P.A.



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