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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

APPELLATE CASE NO.: 2024-001685

Christine Tedder, ... Employee, Appellant,

vs.

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

APPELLANT'S FINAL REPLY BRIEF

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I. MS. TEDDER'S INJURY OCCURRED WITHIN THE COURSE OF HER EMPLOYMENT.

While Respondents maintain Ms. Tedder's actions became purely personal in nature upon her exiting the Harris Teeter store, this assertion not only conveniently ignores: (a) the uncontradicted fact she was simultaneously acting in full compliance with her employer's longstanding parking directive; but also (b) employer's exercise of this control necessarily brought the ensuing accidental trauma within the course of her employment, regardless of its occurrence outside regular work hours and within a crosswalk adjacent to the store's threshold area.

It is axiomatic "employment within the purview of the South Carolina Workers' Compensation Act" is premised upon the employer's "right to control the claimant in the performance of [the] . . . work." Wilkinson ex rel. Wilkinson v. Palmetto State Transportation Company, 382 S.C. 295, 676 S.E. 2d 700, 702 (2000); Ramirez v. May River Roofing, Inc., 433 S.C. 519, 860 S.E. 2d 680, 684 (Ct. App. 2021) (employment "focuses on the issue of control"). In this regard, control contemplates possessing "the power or authority to manage, direct or oversee. . . ." Black's Law Dictionary (12th ed. 2024).

"The rule often recognized in . . . [workers'] compensation cases is that an employee, to be entitled to compensation, need not be in the actual performance of the duties for which . . . [he/she] was expressly employed in order for [the] . . . injury or death to be in the 'course of employment' and thus compensable." Beam v. State Workmen's Compensation Fund, 261 S.C. 327, 200 S.E. 2d 83, 86 (1973); McGriff v. Worsley Companies, Inc., 376 S.C. 103, 654 S.E. 2d 856, 860 (Ct. App. 2007). It is equally certain the provisions of S.C. Code Ann. Section 42-1-160 (2015) do "not confine the injuries which it embraces to those arising out of and in the course of the employment during regular work hours; but, by its very terms, embraces all injuries by accident

arising out of and in the course of the employment." Eargle v. South Carolina Electric & Gas Company, 205 S.C. 423, 32 S.E. 2d 240, 244 (1944); Baldwin v. Pepsi-Cola Bottling Company, 234 S.C. 320, 108 S.E. 2d 409, 411 (1959). The course of employment similarly "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." Holston v. Allied Corporation, 300 S.C. 174, 386 S.E. 2d 793, 795 (Ct. App. 1989); Davaut v. University of South Carolina, 418 S.C. 625, 795 S.E. 2d 678, 681 (2016).

Additionally, our Appellate Courts have recognized an employer: (a) may ". . . limit the sphere of employment by specific prohibitions . . . [, to the extent] injuries incurred while violating these prohibitions are not in the scope of employment and, therefore, not compensable"; and (b) similarly exert control in a fashion which expands a worker's course of employment in a fashion which renders potentially excludable activities compensable. See, Wright v. Bi-Lo, Inc., 314 S.C. 152, 442 S.E. 2d 186, 188 (Ct. App. 1994); Pratt v. Morris Roofing, Inc., 357 S.C. 619, 594 S.E. 2d 272, 274 (2004). See also, Baldwin, supra.

In Baldwin, the employee: (a) "was a helper upon a truck of his employer, . . . and worked under the supervision of the driver of the truck"; (b) had overslept, resulting in his not arriving at the employer's plant prior to the truck's departure; (c) encountered his supervisor driving the truck "about two city blocks from the plant"; (d) was recognized by "the driver of the truck . . . [who,] stopped it on its right of the street", prompting stoppage of the car in which Baldwin was riding on the other side of the street "about opposite the truck, so that [he] . . . could go to it"; (e) had, on a previous occasion, encountered the truck driven by his supervisor under the same scenario (i.e., where "he was on his way, late, to work . . . [and the supervisor] had stopped for him to board the

truck"); and (f) while attempting to cross the street and board the truck on the second occasion, "he was struck by another vehicle and seriously injured." Baldwin, 108 S.E. 2d at 410.

Upon considering "the authorities and peculiar facts of this case", the Supreme Court reasoned:

> Respondent was simply going to work, within the exclusionary rule, until his car was stopped opposite the truck of the employer, upon which respondent worked. When the truck, driven by his superior, was stopped for him to board it, it was an implied direction of the employer to him to cross the street and do so; he was no longer the master of his movements. The crossing of the street thereby became incidental to the employment and injury there incurred was in the course of his employment and arose out of it. The street became, for the time being, a part of respondent's work environment; he was not a mere member of the public, traveling upon it.

Baldwin, 108 S.E. 2d at 410-411.

Although the Court acknowledged these circumstances presented a "close case", it further held: (a) ". . . [w]here it has been possible to do so, without violence to either logic or the language of the statute, there has been an evolutionary process of liberalism in decisions affecting injured workers to meet the beneficent purpose of the Act"; and (b) adherence to this rule properly prompted resolution of any "doubts . . . in favor of compensability." Baldwin, 108 S.E. 2d at 412.

In this instance, the only reasonable inference arising from the evidence of record (including what legitimately constitutes the law of this case) establishes: (a) Ms. Tedder was specifically instructed by her employer to park her vehicle in a common area some distance from the store entrance; (b) she, in turn, when exercising managerial duties conferred on her by this employer, relayed this particular directive to various individuals she was authorized to hire; (c) within moments after completion of her October 20, 2021 work shift, Ms. Tedder exited the store through the only point of ingress/egress referenced in the record; and (d) after walking

approximately 3-4 steps from this threshold, following "a reasonably necessary and direct route" to the parking area designated by her employer, she was struck by the offending vehicle.

Although Respondents attempt to minimize the import of employer's specific parking directive, they backhandedly acknowledge the record is devoid of any conflicting evidence. This concession validates not only an expansion of Ms. Tedder's course of employment, but also highlights the inadequacy of Respondents' attempt to justify extinguishment of factual findings which properly constitute the law of this case.

In essence, absent her employer's specific instruction to park her vehicle in a designated common area, Ms. Tedder "was simply . . . [leaving] work, and within the exclusionary rule . . . ." Baldwin, 108 S.E. 2d at 410. However, when she was explicitly required by her employer to park in this designated area: (a) it was an implied direction "of [her] . . . employer to" traverse the crosswalk; (b) navigating this crosswalk in route to the designated parking area "became incidental to the employment and injury there incurred was in the course of [her] . . . employment and arose out of it"; (c) this crosswalk "became, for the time being, a part of . . . [Ms. Tedder's] work environment"; and (d) she "was not a mere member of the public, traveling upon it." Baldwin, 109 S.E. 2d at 410-411.

Given these particular facts, it is respectfully submitted: (a) Ms. Tedder was injured while in the process of "leav[ing] . . . the premises as contemplated at the close of the workday"; (b) she did so within "a reasonable margin of time and space necessary to be used in passing . . . from the place where the work [was] . . . done"; (c) "the place of entry was brought within the scope of employment by an express . . . requirement in the contract of employment of its use by . . . [Ms. Tedder] in going to and coming from . . . work"; (d) any doubts as to the applicability of the Act to the present circumstances should be resolved "in favor of coverage in order to serve the

beneficent purpose of" the Act; and (e) the injuries she sustained on October 20, 2021 arose out of and within the course of her employment. Davaut, supra; Williams v. South Carolina State Hospital, 245 S.C. 377, 140 S.E. 2d 601,603 (1965); Sola v. Sunny Slope Farms, 244 S.C. 6, 135 S.E. 2d 321, 326 (1964); Baldwin, 108 S.C. 2d at 410-411; Patel v. BVM Motel, LLC, 443 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).

She consequently respectfully requests this Court to: (a) reverse the appellate panel majority's denial of her claim; and (b) remand this claim to the Commission for the sole purpose of awarding appropriate disability compensation and medical benefits.

II. APPLICATION OF SHOPPING CENTER PARKING LOT COROLARY LIKEWISE ESTABLISHES MS. TEDDER'S INJURY AROSE OUT OF THE COURSE OF HER EMPLOYEMNT.

In Davaut, the Supreme Court recognized: (a) "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 workday"; (b) the exiting process could potentially include "traveling from one portion of the premises to another"; (c) where employer-owned parking was situated on a different parcel, "the employer creates the need for the employee to cross" over a bisecting non-owned parcel; and (d) having "avail[ed] . . . itself of the benefits that come from providing its employees a place to park . . . [, an employer] cannot . . . then disclaim responsibility for the consequences of that decision." Davaut, 795 S.E. 2d at 681-684.

The Court consequently: (a) "join[ed] . . . the majority of jurisdictions that have adopted the divided premises rule"; and (b) specifically held "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 the employer's . . . facility and parking lot, are entitled to workers' compensation benefits." Davaut, 795 S.E. 2d at 683.

Significantly, the Court did not hinge its ruling on a mandatory parking directive of the nature encountered by Ms. Tedder. Rather, compensability was premised upon the fact her employer "allowed her . . . to use the parking lot", which, in turn, brought the ultimate mechanism of injury within the course of her employment.

In assessing the concept of "premises" in the context of shopping centers, Larson's recognizes:

> As to parking lots owned by the employer, or maintained by the employer for its employees, practically all jurisdictions now consider them part of the premises," whether within the main company premises or separated from it. This rule is by no means confined to parking lots owned, controlled, or maintained by the employer. The doctrine has been applied when the lot, although not owned by the employer, was exclusively used, or used with the owner's special permission, or just used, by the employees of this employer. Thus, if the owner of the building in which the employee works provides a parking lot for the convenience of all tenants, **or if a shopping center parking lot is used by employees of businesses located in the center, the rule is applicable**. 2 Larson's Workers' Compensation Law § 13.04 (2024). (Emphasis added).

Upon considering the feasibility of requiring "actual ownership or control" by an employer as a condition for compensability in a shared shopping center parking lot setting, the Court in Frishkorn v. Flowers, 26 Ohio App. 2d 165, 167, 270 N.E. 2d 366, 368 (1971), *abrogated in part on other grounds,* Brown v. B.P. Am., Inc., 85 Ohio App. 3d 194, 619 N.E. 2d 479 (1993), explained:

> It would be impractical and illogical to apply this principle to a shopping plaza consisting of multiple independent businesses, each of which would have to be an owner in common with all the other tenants in order to share a nebulous control over its geographical confines and simulate a joint zone of employment. See also, May

> Department Stores Company v. Harryman, 307 Md. 692, 517 A. 2d 71, 73 (1986).

The Supreme Court of Nebraska subsequently endorsed this rationale, while recognizing the "reality":

> . . . the employer and the other tenants of the . . . [s]hopping [c]enter . . ., having reciprocal rental rights and privileges, were also accorded the common use and access of the parking area. Logically, to that extent, this was tantamount to an essential expansion of their respective premises for the purpose of adequately serving and furthering their business interest. It follows that the . . . employees of the . . . [respective shopping center tenants] derived their similar rights and privileges from the shopping center by virtue of a vested privity in the objectives of their employers. Zoucha v. Touch of Class Lounge, 269 Neb. 89, 690 N.W. 2d 610, 616 (2005) (quoting Frishkorn, 270 N.E. 2d at 369).

Each of these Courts consequently "concluded that parking lots in shopping malls are part of the premises of employers whose main premises are located within the mall." Zoucha, supra; see also, Frishkorn, supra; May Department Stores Company, supra.

The New Jersey Supreme Court similarly reasoned: (a) the absence of employer ownership, maintenance or exclusive use of a parking lot did not negate the compensability of injuries sustained while traversing this area; (b) employer's "power to designate an otherwise under-used area of a shopping center parking lot for use by its employees . . . was effectively equivalent to an employer-owned lot"; (c) employer's "ability to direct its employees to park in the designated area", as well as employer's power to facilitate use of this parking area for its own employees, constituted sufficient indicia of "control"; and (d) ". . . [e]ven though [employer] . . . lacked control in the formal property law sense, it possessed, factually, almost the identical attributes of control, which are sufficient to satisfy . . . [governing] principles . . . ." Livingstone v. Abraham & Strauss, Inc., 111 N.J. 89, 543 A. 2d 45, 53-54 (1988).

The "divided premises" rule adopted by our Supreme Court was conceived, in large part, to address the increased potential for "encountering the particular hazards of the trip between a non-continuous parking lot and the working plant itself." Davaut, 795 S.E. 2d at 684 (quoting Epler v. N. Am. Rockwell Corp., 482 Pa. 391, 393 A. 2d 1163, 1168 (Pomeroy, J. concurring). As the shopping center parking lot corollary to "course of employment" likewise stems from a legitimate need to address the same increased hazard occasioned by shopping center commerce, this doctrine constitutes a reflection, rather than an extension, of the jurisprudence enunciated by the Supreme Court in Davaut.

Inspection of the underlying facts, in light of these authorities, firmly establishes: (a) the circumstances surrounding Ms. Tedder's injury, which were the product of her employer's mandatory parking directive, wholly satisfy all requirements of the shopping center parking lot corollary; (b) her injuries occurred at a location which was either actually or "in practical effect a part of the employer's premises"; (c) these injuries occurred during the time-space continuum contemplated by the terms of her employment; and (d) 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." See, Davaut, 795 S.E. 2d at 681-682; Sola, 135 S.E. 2d at 326.

Ms. Tedder would finally note: (a) North Carolina has declined to recognize the divided premises rule (See, Royster v. Culp, Inc., 343 N.C. 279, 470 S.E. 2d 30 (1996)); (b) the North Carolina cases cited by Respondents are materially irreconcilable with the Davaut holding; and (c) "our courts are not bound by North Carolina precedent." See, Nelson v. Yellow Cab Company, 343 S.C. 102, 538 S.E. 2d 276, 284 (Ct. App. 2000), overruled on other grounds by Wilkinson, 676 S.E. 2d at 702 n. 3.

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

III. THE SINGLE COMMISSIONER'S FACTUAL FINDING NUMBERS 4, 6 AND 7 CONSTITUTE THE LAW OF THIS CASE.

Relying on this Court's ruling in Holston, Respondents argue exception number 3 contained in their March 30, 2023 Form 30 Request for Commission Review "provides unquestionable notice" Finding of Fact Nos. 4, 6 and 7 contained in the single commissioner's March 28, 2023 Order "were raised for appellate review". In Holston, this Court determined the issue raised by two exceptions contesting the single commissioner's findings ("there was no injury arising in and out of the scope and cause of employment" and "there was no compensable injury even though the evidence clearly establishes otherwise") "could readily be determined . . . ." Holston, 386 S.E. 2d at 794. In this instance, Respondent's exception number 3 simply states:

> 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. (See, Record on Appeal, p. 150).

This exception was followed by parenthetic references to Finding of Fact Nos. 4, 6 and 7. These findings specifically state:

> --- 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. (Finding of Fact No. 4)(See, Record on Appeal, p.146);
>
> -- 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. (Finding of Fact No. 6)(Id.); and

> -- Defendants' argument that Claimant could have parked anywhere she wanted despite her Employer's instruction is not persuasive, as she testified that she parked where her Employer instructed. (Finding of Fact No. 7)(Id.).

In this regard, Ms. Tedder respectfully submits: (a) the substance of exception number 3 in no way challenges any aspect of Finding of Fact Nos. 4, 6 and 7, but instead speaks exclusively to the assertion Harris Teeter **neither owns nor maintains the parking lot** where the injury occurred; (b) the contents of Respondent's Brief to the Appellate Panel likewise **do not challenge the substance** of Finding of Fact Nos. 4, 6 and 7; (c) Respondents neither preserved nor advanced any arguments which warranted vacating these findings; and (d) these findings became and are the law of this case.

Respectfully submitted,

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CERTIFICATE OF COUNSEL

The undersigned hereby certifies that this Final Reply Brief complies with Rule 211(b), SCACR.

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CERTIFICATE OF SERVICE

Paula F. Bregovi, paralegal for the firm of Andrew N. Safran, LLC, Attorney at Law, with offices at Columbia, South Carolina, hereby certifies that on the 25th day of June, 2025, she served Appellant's Final Reply Brief in the following fashion:

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