

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM THE WORKERS' COMPENSATION COMMISSION
Appellate Panel

W.C.C. File No.: 1118193
Appellate Case No.: 2012-213494

RECEIVED

MAR 27 2014

SC Court of Appeals

Patricia Johnson, EmployeeAppellant,

v.

Staffmark, Employer, and New Hampshire Insurance
Company, Carrier,.....Respondent.

**RESPONDENTS' RETURN TO APPELLANT'S
PETITION FOR REHEARING EN BANC**

Appellant's Petition for Rehearing and Suggestion for Rehearing *En Banc* should be denied based upon the following grounds.

1. The Appellant has not raised any new matters which were overlooked or misapprehended by the Court.

2. According to the Petition, the Appellant contends the Court's decision will be misinterpreted to impose a high burden on injured workers to establish a causal connection between the injury and employment. A review of the Court's decision, however, fails to reveal any evidence to support this contention. The Court determined that the substantial evidence in the record, including but not limited to, conflicting witness testimony regarding the condition of the concrete floor, supported the Commission's determination that the claimant failed to meet her burden of proving a

causal relationship between her injuries and employment. The Court appropriately determined the weight of evidence is a matter for the trier of fact. The burden of proof required of the Appellant in this case was no higher than that of any other employee seeking benefits under the Act.

3. The Appellant also contends the Court misapprehended existing South Carolina law requiring a causal connection between the conditions under which the work is performed and the resulting injury in order to prove an accident arose out of employment. To the contrary, a review of the Court's Order confirms the Court cited the appropriate legal standard required of an employee to prove entitlement to workers' compensation benefits. That is, that an employee must establish an injury by accident arising out of and in the course and scope of employment. Citing the *Crisp* case, the Court noted an injury arises out of employment when there is apparent to the rational mind, upon consideration of all the circumstances, a causal relationship between the conditions under which the work is to be performed and the resulting injury. *Crisp v. SouthCo., Inc.*, 401 S.C. 627,641, 738 S.E.2d 835, 842 (2013) (quoting *Rodney v. Michelin Tire Corp.*, 320 S.C. 515, 518, 466 S.E.2d 357, 358 (1996)). This is the specific legal standard the Appellant claims the Court overlooked or misapprehended.

Moreover, the Appellant argues the Court failed to address the actual cause of the injury by focusing on whether there was substantial evidence supporting the floor was wet and there was no evidence of an idiopathic injury. However, the Court correctly focused on the conflicting evidence surrounding the cause or mechanism of the injury as it is the claimant's burden to prove causation.¹ A review of all testimony and medical

¹ The Appellant further contends it was uncontested that the claimant was entering the building from the parking lot where it had been raining and that she stepped over a raised threshold. To the contrary, because there were no witnesses to the incident in question, the Respondents have contested all allegations from the outset.

evidence fail to support a consistent mechanism of injury, let alone an injury by accident. The medical evidence in the record reveals evidence of a pre-existing left ankle condition which was degenerative in nature. The medical evidence also confirms the claimant complained of a twisting sensation and pain while walking through a doorway. This is substantial evidence supporting an idiopathic injury. There is no mention of stepping on the ground and slipping with wet shoes.

4. The Appellant contends a reading of the Court's decision appears to impose a standard of proof required in premises liability and sets out an argument distinguishing the concepts of causation in workers' compensation and tort law, arguing it is not incumbent on the claimant to prove the existence of a hazardous condition. A thorough review of the Court's Decision reveals no indication or implication that the Court addressed any standard of proof other than that of the arising out of standard required by the Act. Nor was the claimant ever required to prove a hazardous condition. The claimant was only required to meet her burden of proving her injury arose out of her employment. The Court appropriately found that the substantial evidence in the record supported the Commission's decision that she did not meet her burden.²

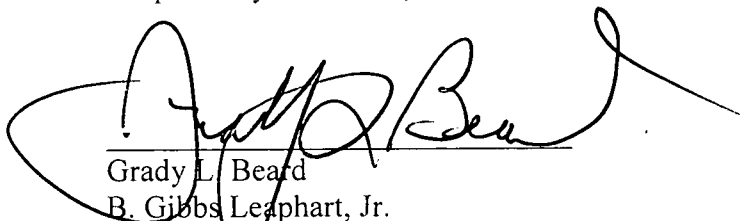
5. The Appellant further contends the Court's Decision failed to consider "the obvious causal connection between the fall which unquestionably resulted from a twisting motion when her foot came in contact with the floor as she stepped down over a raised threshold as she entered the building after her shoes had been in contact with the wet ground outside." To the contrary, there is no evidence supporting an obvious causal connection in this case, and there are certainly questions surrounding the mechanism of injury. In fact, the Appellant is improperly attempting for the first time to characterize

² The Respondents maintain that any argument or case law pertaining to the premises liability issue was not raised below and not properly preserved for review.

the fall as resulting from a violent twisting motion. According to the Appellant's inconsistent testimony during her deposition and at the Hearing, "she just slipped and went down" and "she slipped and fell." As previously noted the medical evidence in the record contradicts both of the mechanisms of injury and reveals evidence of an idiopathic fall; the employer witness testimony contradicted that of the claimant; and there were no witnesses to the fall to corroborate the claimant's testimony. The claimant provided no credible evidence to support a compensable injury by accident.

Any employee seeking to establish a compensable workers' compensation claim must prove the injury "arose out of" and "in the course of" their employment. *See* S.C. Code Ann. § 42-1-160 (Supp. 2007). The Court correctly found the substantial evidence in the record supported the Commission's determination that the claimant failed to meet her burden of proving she sustained a compensable injury by accident. For these reasons, the Respondent submits that the Petition for Rehearing and Petition for Rehearing *En Banc* be denied.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Grady L. Beard", written over a horizontal line.

Grady L. Beard
B. Gibbs Leaphart, Jr.
Sowell Gray Stepp & Laffitte, LLC
1310 Gadsden Street
Post Office Box 11449
Columbia, South Carolina 29211
(803) 929-1400
Attorneys for Respondent

March 27, 2014

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM THE WORKERS' COMPENSATION COMMISSION
Appellate Panel

W.C.C. File No.: 1118193
Appellate Case No.: 2012-213494

RECEIVED
MAR 27 2014
SC Court of Appeals

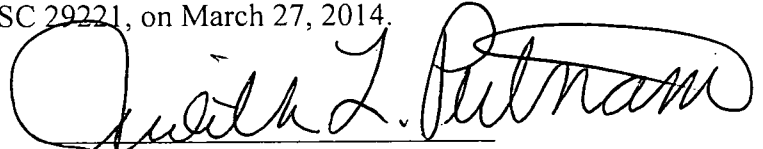
Patricia Johnson, Employee Appellant,

v.

Staffmark, Employer, and New Hampshire Insurance
Company, Carrier, Respondent.

PROOF OF SERVICE

I certify that I have served a copy of the Respondent's Return to Appellant's Petition for Rehearing En Banc on Patricia Johnson, by depositing a copy of it in the United States Mail, postage prepaid, addressed to her attorneys of record, Paula Howker Amick, Esquire and Patrick S. Scarlett, Esquire, George Sink, P.A., 1440 Broad River Road, Post Office Box 21567, Columbia SC 29221, on March 27, 2014.



Judith L. Putnam
Legal Assistant
Sowell Gray Stepp & Laffitte, LLC
1310 Gadsden Street
Post Office Box 11449
Columbia, South Carolina 29211
(803) 929-1400
Attorneys for Respondents Staffmark and
New Hampshire Insurance Company

March 27, 2014

March 27, 2014

VIA HAND DELIVERY

Honorable Jenny Abbott Kitchings
Clerk, South Carolina Court of Appeals
1015 Sumter Street
Columbia, SC 29201

RE: Patricia Johnson v. Staffmark
Appellate Case No.: 2012-213494
WCC File No.: 1118193
Date of Accident: 12/21/11
Claim No.: 20110010156939
Our File No.: 6179/8037

RECEIVED

MAR 27 2014

SC Court of Appeals

Dear Ms. Kitchings:

This law firm represents the Respondents, Staffmark and New Hampshire Insurance Company, in the above-referenced matter.

Enclosed for filing are an original and seven copies of Respondents' Return to Appellant's Petition for Rehearing En Banc, regarding the above-referenced matter. Please file the original and six copies and return a clocked-in copy to our courier.

By copy of this letter and aforementioned document to Paula Howker Amick, Esquire and Patrick S. Scarlett, Esquire, attorneys for the Appellant, we are serving them with a copy of the Respondents' Return to Appellant's Petition for Rehearing En Banc, as evidenced by the enclosed Proof of Service.

With kindest personal regards, I remain

Very truly yours,


Grady L. Beard

GLB:jlp
Enclosures

cc: Paula Howker Amick, Esquire and Patrick S. Scarlett, Esquire (w/enclosure)
Mr. Jerry Peebles (w/enclosure)(via e-mail only)
Ms. Terri Ousley (w/enclosure)(via e-mail only)