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THE STATE OF SOUTH CAROLINA
In The Court of Appeals

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APR 07 2014

APPEAL FROM THE SOUTH CAROLINA
WORKERS' COMPENSATION COMMISSION
Appellate Panel

SC Court of Appeals

Susan S. Barden, Melody L. James, Avery B. Wilkerson, Jr., Commissioners

Appellate Case No. 2013-000358
WCC File No. 1110704

Claudia Bryant-Perreira, Claimant,.....Appellant,

v.

IMSCO/TFE Logistics Group, Employer, and
Zurich American Insurance Company, Carrier, Defendants,.....Respondents.

PETITION FOR REHEARING OR FOR A FULL OPINION

The Appellant, Claudia Bryant-Perreira, hereby files this Petition for Rehearing pursuant to Rule 221, SCACR on the grounds that the Court overlooked or misapprehended the following:

1. From a factual standpoint, the Court overlooked the lack of intent by the Claimant to violate any policy of the Employer, and the swift speed or spontaneous nature of the events that caused the accident. The Claimant said that she "didn't think about" her decision. (R. p. 179, lines 6-7; Hr. Tr. p. 17, lines 6-7). Her co-worker, Leslie Roberson, said [i]t happened so quick ... I didn't have time to say anything to her." (R. p. 197; Hr. Tr. p. 35).

2. In Wright v. Bi-Lo, Inc., 314 S.C. 152, 155, 442 S.E.2d 186 (Ct.App.1994) (quoting Johnson v. Merchants Fertilizer Co., 198 S.C. 373, 378-379, 17 S.E.2d 695, 697-698 (1941), the Court held that:

Not every violation of an order given to a workman will necessarily remove him from the protection of the Workers' Compensation Act ... "Certain rules concern the conduct of the workman within the sphere of his employment, while other limit the sphere itself. A transgression of the former class leaves the scope of his employment unchanged, and will not prevent the recovery of compensation, while the transgression of the latter sort carries the workman outside of the sphere of his employment and compensation will be denied."

Id. In the opinion issued by the Court, the Court did not consider any factors that would determine if the policy concerned the conduct of the worker within the scope of her employment, or did the policy limit the scope of her employment. In this case, the resolution of the issue is simple and straightforward. The Employer's policy concerned the conduct of the worker within the scope of her employment for the following reasons:

First, the Claimant was allowed by the management to operate a walkie-rider in the past. (R. pp. 175-176, 190; Hr. Tr. pp. 13-14, 28). Second, five (5) of the nine (9) workers in the Claimant's "work group" operated the walkie-riders. Third, the 2008 Safety Policy and 2009 Memorandum contain orders that do not remove the Claimant from her sphere of employment, and therefore, the Employer's policies on operation of power equipment did not intend to limit the scope of the Claimant's conduct. Fourth, the Safety Policy states that it is only a "guide" and it is "subject to change." Clearly, the Employer's order or safety policy concerns conduct within the scope of the Claimant's employment.

3. The Court failed to consider the tests used to determine if the employee's

conduct was within the scope of her employment, and in this case, the test would indicate that the Claimant's conduct was within the scope of her employment. The test is: Did the Claimant's actions provided a benefit to the Employer? Howell v. Kash & Karry, 264 S.C. 298, 214 S.E.2d 821 (1975). In Howell, the Court recognized that the Claimant's actions were within the scope of his employment if the Claimant's actions benefited the Employer ("there is obvious and substantial benefit flowing to a merchant") Howell, 264 S.C. 302. According to the Howell Court, the benefit to the Employer can either be a "financial interest" (the customer could spend her money with the Employer if her purse was returned) or through "increasing goodwill" in the community ("the employer ultimately profited as a result of the good will thus created"). Id.

In Portee v. South Carolina State Hospital, 234 S.C. 50, 106 S.E.2d 670 (1959), the Court found a claim compensable because the violation of the company policy created a benefit to the Employer ("ward off any possibility of passing the infection on to the patients"). A co-worker, in violation of hospital policy, gave an injection of penicillin to another co-worker and the co-worker died of acute anaphylactic shock.

In this case, the Claimant's alleged violation of company policy created a benefit to the Employer. She testified that she needed to move the walkie-rider two feet so that she could get her pallet of merchandise to her work station to begin inspecting the clothing. Her employer makes money though its employees sorting and inspecting clothing, and thus, the Claimant's conduct to keep the inspection process moving forward created a financial benefit to the Employer. Therefore, the conduct of the Claimant was within the scope of her employment.

In addition, the Courts have discussed another test to determine if the Claimant's conduct was within the scope of her employment. The test is: Was the Claimant's

conduct reasonably related to the accomplishment of the task for which the employee was hired? Pratt v. Morris Roofing, Inc., 353 S.C. 339, 577 S.E.2d 475 (Ct.App.2003), aff'd as modified 357 S.C. 619, 594 S.E.2d 272 (2004), referencing Hoyle v. Isenhour Brick & Tile Co., 306 N.C. 248, 293 S.E.2d 196 (1982), and noting that the opinions of the Supreme Court of North Carolina construing the Workers' Compensation Act are entitled to great weight. Hines v. Hendricks Canning Co., 263 S.C. 399, 405, 211 S.E.2d 220, 222-23 (1975). In this case, the Claimant's conduct of moving the walkie-rider two (2) feet so that she could get her clothing cart to her sorting station was conduct reasonably related to the accomplishment of the task for which the employee was hired. She was hired to move, sort, inspect, and box clothing, and she needed to move the walkie-rider out of the way to accomplish her tasks. Therefore, her conduct was in the scope of her employment.

4. The Court's decision fails to recognize that it is South Carolina's policy to resolve jurisdictional doubts in favor of inclusion rather than exclusion. White v. J.T. Strahan Co., 244 S.C. 120, 135 S.E.2d 720, 723 (1964). In this case, the parties stipulated that there was an Employer/Employee relationship in existence on July 15, 2011 and that the Claimant was injured on July 15, 2011 at work, and the Court converted those stipulations into Findings of Fact. (R. p. 6 ¶¶ 3, 7, R. p. 165, line 24 – p. 166, line 9; Appellate Decision, Findings of Fact Nos. 3 and 7, Stipulations at Hr. Tr. p. 3, line 24 to p. 4, line 9).

5. The Court's decision uses the wrong standard for review. In a case in which the facts are undisputed, whether an accident is compensable is a question of law. Hall

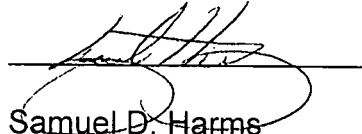
v. Desert Aire, Inc., 376 S.C. 338, 349, 656 S.E.2d 753, 759 (Ct.App.2007). The primary issue is whether the Claimant was acting in the course and scope of her employment, thus, the issue is jurisdictional and a question of law. Because the question is jurisdictional, the Court may take its own view of the preponderance of the evidence. Wilkinson v. Palmetto State Transportation Company, 382 S.C. 295, 676 S.E.2d 700 (2009). If the question before the Court is one of law, the Court is not bound by the substantial evidence standard and the Court is not bound by the Commission's findings of fact upon which jurisdiction is dependent. Lake v. Reeder Const. Co., 330 S.C. 242, 246, 498 S.E.2d 650, 653 (Ct.App.1998).

6. In the Decision of the Commission, the Commission uses the wrong legal standard to determine if the conduct of the Claimant removed her from the protections of the Workers' Compensation Act. Throughout the Decision, the Commission states in the Findings of Fact and Conclusions of Law that the Claimant "in direct contradiction of company policy" or "in direct violation of the employer's directions/instructions" operated the walkie-rider. (R. p. 6 ¶ 8, R. p. 7 ¶ 11, R. p. 8 ¶ 9; Appellate Decision Findings of Fact Nos. 8, 11, Conclusion of Law No. 9). The Commissioner essentially held that any violation of a company policy/instruction removed the Claimant from the course of her employment. This was an error of law. The decision of the Court does not consider that the Commission used the wrong legal standard.

7. Alternatively, Appellant hereby petitions this Court to issue a full opinion, as opposed to a "per curiam affirmed" opinion, so as to outline its reasoning with regard to Appellant's appeal.

April 5, 2014

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Samuel D. Harms", is written over a horizontal line.

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PROOF OF SERVICE

I certify that I have served the Petition for Rehearing or for a Full Opinion on IMSCO/TFE Logistics Group and Zurich American Insurance Company by depositing a copy of it in the United States Mail, postage prepaid, on April 5, 2014 addressed to their attorneys of record, as follows:

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