STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from South Carolina
Workers Compensation Commission

Case No. 2013-001778

Nathalie I. Davaut, Employee, Claimant, ... Appellant,

v.

University of South Carolina
and State Accident Fund, Defendants, ... Respondents.

FINAL BRIEF OF RESPONDENTS

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STATEMENT OF THE CASE

This matter comes before the Court upon an appeal by the Appellant, Nathalie I. Davaut, pursuant to the South Carolina Administrative Procedures Act from the Decision and Order of the South Carolina Workers' Compensation Commission. This case arose as a result of a motor vehicle versus pedestrian accident that took place on the late evening of February 16, 2012. Specifically, the Appellant was struck while crossing a public street by a third party that was charged as being at fault in the accident. At the time of the accident, the Claimant was in a public crosswalk that was not owned, constructed, or maintained by the University of South Carolina, the Respondent named herein. Shortly after the accident of February 16, 2012, the Appellant filed an SCWCC Form 50 on May 22, 2012 seeking benefits under the South Carolina Workers' Compensation Act as a result of the February 16 accident. The Respondents timely filed an SCWCC Form 51 and denied the claim maintaining that the Claimant had not sustained an injury by accident arising out of and in the course and scope of her employment within the meaning of the South Carolina Workers' Compensation Act. After discovery was completed in the claim, a Hearing was held before the Single Commissioner of the South Carolina Workers' Compensation Commission on September 25, 2012. Thereafter, the Single Commissioner found that the Appellant had failed to prove an injury by accident arising out of and in the course and scope of her employment and denied the claim in an Order dated November 6, 2012. (R. pp. 8-19, Single Commissioner Order).

The Appellant timely filed a Request for Commission Review, SCWCC Form 30, setting forth exceptions to the Decision and Order filed by the Single Commissioner. Oral arguments were held before the Appellate Panel of the South Carolina Workers' Compensation Commission on March 18, 2013. Following oral arguments in the claim, the Appellate Panel unanimously found

that the Claimant had not sustained an injury by accident within the meaning of the Workers Compensation Act and denied the claim by Order dated July 22, 2013. (R. pp. 1-7, Appellate Panel Order). On August 20, 2013, the Appellant filed Notice of Appeal with this Court. The Respondents maintain that the Decision and Order of the South Carolina Workers' Compensation Commission is supported by substantial evidence in the record and must be upheld by this Court.

STATEMENT OF THE FACTS

This claim arose by virtue of a pedestrian/motor vehicle accident that took place on Hubbard Drive in Lancaster, South Carolina on February 16, 2012 as the Claimant was in route home for the day. Hubbard Drive is a public highway and is not owned, maintained, or controlled in any fashion by the University of South Carolina. (R. p. 166, line 2). Hubbard Drive can more fairly be stated as running adjacent to the University of South Carolina/Lancaster Campus as opposed to dissecting it as suggested by the Appellant. A review of the campus map that was submitted into evidence shows that all of the classrooms, professor offices, and the Medford Library are located on the north side of Hubbard Drive. (R. p. 183). More importantly, **all** faculty designated parking is located on the south side of Hubbard Drive. (R. pp. 52, 177-178, and 183).

On the north side of Hubbard Drive there is a soccer field and an old renovated church building now known as the Carole Ray Dowling Center wherein the University offers therapy and other public health services to the general public. There is a parking lot adjacent to the Carole Ray Dowling building that is open to the general public. However, there are no faculty designated parking spaces whatsoever on the north side of Hubbard Drive. (R. p. 52, lines 16-19).

The Appellant was employed as a foreign language instructor at the University of South Carolina – Lancaster at the time of this accident and has held this position since 2008. With the

exception of attending classes the Appellant was scheduled to teach, the Claimant's work schedule was set at her discretion. (R. p. 53). Prior to the accident which gave rise to this claim, the Respondent was in the process of filling a vacant foreign language professor position. The Appellant had been asked to serve on the Search Committee along with her counterparts in the foreign language department. Service on the Committee was completely voluntary and no one was compensated for serving on the Committee. (R. p. 46). The resumes of the applicants for the vacant position were placed on reserve in the Medford Library which is located in the Medford Building on the south side of Hubbard Drive. The Appellant's office is located in the same building.

When the Claimant arrived at work on February 16, 2012, she testified that she did not immediately notice an empty faculty parking space available in the parking lot adjacent to Hubbard Hall which is located on the south side of Hubbard Drive. The Claimant admits that rather than check the remaining parking lots which contained faculty designated parking on the south side of Hubbard Drive she elected not to take the time to do so but instead decided to park in a parking lot on the north side of Hubbard Drive adjacent to the Carole Ray Dowling building where she noticed an empty space. (R. p. 108, lines 7-15). She testified that she made this decision even though it was not faculty parking. After parking her car, she taught her scheduled classes and at the end of the day decided to stay and review the resumes that had been placed on reserve at the Medford Library. When the library closed at 9:00 p.m. on February 16, 2012, the Claimant exited the library to go home for the evening. While in one of three crosswalks located on Hubbard Drive that were erected and maintained by the City of Lancaster and not the University of South Carolina, the Claimant was struck by a vehicle and sustained injuries. (R. pp. 36, 165 & 183).

The necessity to cross Hubbard Drive arose as a result of the Claimant's discretionary choice to park in a parking lot located on the north side of Hubbard Drive that did not contain any faculty designated parking spaces. (R. p. 4, Appellate Panel Order). It is undisputed that the University does not assign specific parking spaces to any faculty member. However, the University does designate faculty parking spaces and it is undisputed that all designated faculty parking spaces are located on the south side of Hubbard Drive where all of the classrooms, the library, and teacher offices are located. By the Claimant's own admission, she elected to park in a parking lot on the north side of Hubbard Drive rather than checking for available faculty parking in other parking lots located on the south side of Hubbard Drive which would not have required her to cross Hubbard Drive at all. (R. p. 108, lines 7-17).

The Appellant's version of the facts which implies that the Appellant was using a "designated crosswalk" at the time of her accident is inaccurate. As stated previously, there are three crosswalks on Hubbard Drive which were owned, constructed and maintained by the City of Lancaster. The University of South Carolina does not exercise any control over the crosswalks or Hubbard Drive. (R. p. 166). All traffic control, ticketing, and accident investigations relating to Hubbard Drive is conducted by the City of Lancaster exclusively. (R. p. 179).

The Appellant's statement of the facts also implies that she had some sort of deadline to meet with respect to reviewing resumes on reserve at the Medford Library and this is not accurate. The Appellant's supervisor testified that he did not direct the Appellant or any other members of the Search Committee to review the resumes by a certain deadline. (R. p. 222). A date for the first Search Committee meeting had not even been scheduled at the time of the accident herein. (R. p. 43). The Appellant even admitted that she could have reviewed the resumes on Friday, February 17

or at some other time at her discretion. (R. p. 47). It is undisputed that the Claimant was not on the Employer's premises at the time of her accident.

ARGUMENTS

I. STANDARD OF REVIEW.

A reviewing Court is prohibited from disturbing the findings of the Workers' Compensation Commission when its findings are supported by substantial evidence on the record as a whole. Lark v. Bi-Lo, Inc., 276 S.C. 130, 276 S.E. 2d 304 (1981). A reviewing Court may not substitute its judgment for that of an agency as to the weight of the evidence on questions of fact unless the agencies findings are clearly erroneous in view of the reliable, probative and substantial evidence on the whole record. Grayson v. Carter Road Furniture, 317 S.C. 306, 454 S.E. 2d 320 (1995). Substantial evidence has been defined as evidence which, considering the record as a whole, would allow reasonable minds to reach the conclusion that the Administrative Agency reached. Gibson v. Florence Country Club, 282 S.C. 283, 318 S.E. 2d 365 (1984). The possibility of drawing two inconsistent conclusions from the evidence does not prevent an Administrative Agency's finding from being supported by substantial evidence. Hoxit v. Michelin Tire Corp., 304 S.C. 461, 405 S.E. 2d 407 (1991).

Where there is conflicting evidence, the findings of the Commission are conclusive, Miller v. State Roofing Company, 441 S.E. 2d 323 (1994), and when factual findings are supported by substantial evidence, analogous to a jury's findings of fact on disputed issues, the Commission's conclusions must be affirmed. Hunter v. Patrick Construction Company, 289 S.C. 46, 344 S.E. 2d 613 (1986). Final determination of witness credibility and the weight to be accorded evidence is

reserved to the Commission. Ford v. Allied Chemical Corp., 252 S.C. 561, 167 S.E. 2d 564 (1969).

II. THE FINDINGS OF THE SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION THAT THE CLAIMANT DID NOT SUSTAIN AN INJURY BY ACCIDENT ARISING OUT OF AND IN THE COURSE AND SCOPE OF HER EMPLOYMENT IS SUPPORTED BY SUBSTANTIAL EVIDENCE.

A decision of the Workers' Compensation Commission cannot be overturned by a reviewing court unless it is clearly unsupported by substantial evidence in the record. Massey v. W.R. Grace & Company, 286 S.C. 434, 334 S.E. 2d 122 (1985). The Appellant attempts to avoid application of the substantial evidence rule by arguing that the Commission erred as a matter of law in denying her claim. The Decision and Order of the Commission is based on specific factual findings made by the Commission that support the Commission's ultimate ruling that the Claimant did not sustain a compensable accident. It is well settled in South Carolina that for an injury to be compensable under the Workers' Compensation Act, it must be caused by an accident, and arise out of and in the course of employment. S.C. Code Ann. §42-1-160 (2007). The going and coming rule states that "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 County School District #60, 332 S.C. 453, 504 S.E.2d 830 (Ct. App. 1998). There are five recognized exceptions to the going and coming rule and those consist of:

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;

4. That such injury incurred by a workman in the course of his travel to his place of work and not on the premises of his 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 servant in going to and coming from his work; or

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 Gas and Electric Company, 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).

The Respondents submit that the Commission properly applied the going and coming rule to the facts of this case. The general rule in South Carolina is that an injury sustained by the Employee while on his way to or from work does not arise out of and in the course of employment. Gallman v. Springs Mills, 201 S.C. 257, 22 S.E.2d 715. The undisputed facts in this case clearly show that the Claimant's injuries did not occur on the Employer's premises. In fact, the record reflects that the parties stipulated that the Claimant's accident occurred in a crosswalk located on Hubbard Drive that was not owned, erected or maintained by the Employer. (R. p. 36).

The evidence shows that Hubbard Drive is a public street that is owned and maintained by the town of Lancaster, South Carolina. In fact, the Director of Law Enforcement Security at the University of South Carolina – Lancaster, Mr. John Rutledge, testified that the Employer exercises no control over Hubbard Drive. (R. pp. 165-166). He further testified that traffic control on Hubbard Drive as well as all accident investigations are handled by the Lancaster Police Department. This included the investigation of the accident which resulted in the injuries sustained by the Claimant as well as the citation issued to the at fault driver that caused the Claimant's injuries. (R. p. 179).

A significant factor that cannot be disputed by the Claimant is that the Employer designated faculty parking spaces in the parking lots located on the south side of Hubbard Drive only. (R. p. 52). Furthermore, all of the witness testimony, including the Claimant's, established that the Claimant had full discretion to park in any parking space on campus other than handicapped parking.

The Claimant admitted that when she arrived on campus on the morning of February 16, 2012, she drove through the parking lot adjacent to Hubbard Hall located on the south side of Hubbard Drive. The Claimant testified that she did not see any available faculty parking spaces in that particular parking lot. Without checking the remaining parking lots located on the south side of Hubbard Drive for a vacant space which would have eliminated her need to physically cross Hubbard Drive, the Claimant instead elected to park across the street in a parking lot adjacent to the Carole Ray Dowling building located on the north side of Hubbard Drive. (R. p. 108, lines 7-17). The Claimant then crossed Hubbard Drive to teach her classes and engage in her normal work activities. Her accident occurred when she was returning to her automobile later that evening and

was struck in one of the three crosswalks located on Hubbard Drive.

The Claimant argues in her Brief that the Employer somehow dictated that she use the parking lot that she elected to use on the date of her accident because Thursday was a busier day of the week than normal implying that there was nowhere else to park. This assertion by the Claimant is speculative at best. By the Claimant's own admission, she never checked any of the other parking lots on the south side of Hubbard Drive which also contain faculty designated parking. When asked at the Hearing if other faculty ever parked in the parking lot she elected to utilize on the day of her accident on the north side of Hubbard Drive the Claimant testified "sometimes, probably not very often". (R. p. 39, line 9). Mr. Helwer, the Assistant Librarian, testified that prior to this accident the parking lot used by the Claimant meant nothing to him because there were always available spots in the other parking lots located on the south side of Hubbard Drive. (R. p. 261, lines 1-4). Mr. Helwer also testified that he always parked in the lots designated for faculty because it was his understanding that that was what he was supposed to use since he was staff at the University. (R. p. 259, lines 10-12).

The Claimant also attempts to argue that she selected the parking lot on the north side of Hubbard Drive because it was the closest parking lot to the building where her office and classes were located. A review of the campus map demonstrates that this simply is not accurate. (R. p. 152). Not only is there another parking lot on the north side of Hubbard Drive that would have been closer to the Medford Building there are several additional parking lots on the south side of Hubbard Drive that contain faculty designated parking that would have been closer to the building the Claimant was attempting to access. The Claimant admitted that it was possible that there were other parking lots that were closer . (R. p. 51).

The Claimant goes to great length to argue that the Supreme Court's decision in Howell v. Pacific Columbia Mills does not apply to the facts of this case. In Howell, the Supreme Court rejected a Claimant's attempt to argue one of the five exceptions to the going and coming rule after being injured in a crosswalk located on a public street between an Employer owned parking lot and the plant. In that case, the only Employer owned parking lot was on the other side of a public street that ran in front of the plant. In rejecting the Claimant's arguments that her claim was compensable, the Court noted that the Claimant was plainly free to cross Heyward Street at any point or not to cross it at all. The same is true in the case at hand. The Claimant was free to cross Hubbard Drive in any of the three crosswalks located on Hubbard Drive or not to cross it at all. The uncontroverted testimony establishes that all faculty designated parking spaces are located on the south side of Hubbard Drive as are all of the classrooms and the Medford Library as well as the Claimant's office. Because the Claimant did not want to take the time to locate an available parking space on the south side of Hubbard Drive she elected to park on the north side of Hubbard Drive which did not contain any faculty designated parking. In fact, by the Claimant's own admission, the parking lot that she used was open to the general public that visited the Carole Ray Dowling building to access the physical therapy and health services offered therein to the general public by the University. The Claimant's argument that her egress and ingress to and from her office and the library located in the Medford building across a public street to the parking lot that was maintained by the University are incident to her employment such that her injury occurred in the course of her employment is simply without merit. Had the University intended faculty to park in the parking lot the Claimant elected to use at her own discretion, it would have designated faculty parking in said parking lot. In fact, the Claimant even admitted that she was not aware of even a sign that

designated the parking lot she used as University parking. (R. p. 138, lines 10-11).

The Claimant's attempt to argue application of one of the five exceptions to the going and coming rule is not supported by the evidence in this case. She appears to argue that the place where her accident took place 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 and coming from his work. See Sola v. Sunny Slope Farms, 244 S.C. 6, 135 S.E.2d 321 (1964). All of the evidence presented refutes the Claimant's assertion. Every witness, including the Claimant, acknowledged that the University did not dictate where the Claimant parked her personal vehicle. All faculty designated parking was located on the south side of Hubbard Drive. There was no faculty designated parking on the north side of Hubbard Drive. The Claimant's unilateral decision to park on the north side of Hubbard Drive rather than take the time to check the remaining parking lots on the south side of Hubbard Drive cannot convert her discretionary choice into an express or implied requirement in her contract of employment.

The Appellant argues that the Court's decision in Howell v. Pacific Mills, 291 S.C., 469, 354 S.E.2d 384 (1987) does not apply to the facts of the case currently before this court because the Claimant in Howell was never on the premises of the Employer before she entered the crosswalk on the public street where she was injured. A review of the Howell decision reflects that it is analogous to the case currently before this Court. While the Court in Howell noted that the Claimant had not entered the parking lot across from the plant it did so in a discussion wherein the Court was summarily dismissing the "divided premises rule" argument advanced by the Claimant in that case.

In rejecting the claimant's argument that crossing the street in a crosswalk where her injury

occurred was an implied requirement in her contract of employment, the Court in Howell stated as follows:

> 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 or not to cross it at all. 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 cross the street on the crosswalk. Any injury occuring in that 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 is an implied requirement of their employment. All accidents occuring on the way to work are compensable. This kind of reasoning would permit the exceptions to swallow the rule.

Howell, 291 S.C. at 472, 354 S.E.2d 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 situations such as has been argued by the Appellant herein. The Court quoted Professor Larson who reminds us that "the 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." Larson, The Law of Workers' Compensation 15.12.

The Court in Howell also specifically rejected the argument advanced by the claimant that the case was on all fours with Williams v. South Carolina State Hospital, 245 S.C. 377, 140 S.E. 2d 601 (1965), stating "This contention is without merit. In Williams, the claimant was injured on the employer's premises. In the present case, appellant was injured on a public street." Howell, 291 S.C., at 474, 354 S.E.2d at 386. This is the very argument advanced by the Appellant herein.

In her Brief, the Appellant continuously asserts that she was "in the course of her

employment" because her path from her Employer's office building to her Employer's parking lot necessarily included traversing a public street. This assertion by the Appellant is simply not supported by the evidence of record and was rejected by the South Carolina Workers' Compensation Commission in this claim. As with the claimant in the Howell case, the Appellant herein was free to cross Hubbard Drive at any of three crosswalks constructed and maintained by the City of Lancaster or not to cross it at all. To quote the Claimant "I decided to just park the car, **even though it wasn't faculty parking**, to park the car there instead of trying to go all the way across campus to see if there were any other faculty spots available." (R. p. 108, lines 7-17). It is undisputed that the only faculty designated parking was located on the south side of Hubbard Drive which would not have required the Claimant to cross Hubbard Drive at all. As found by the South Carolina Workers' Compensation Commission, the Claimant's accident resulted because of the Claimant's discretionary choice to park in the parking lot located on the north side of Hubbard Drive that did not contain any faculty designated parking spaces. (R. p. 4, Appellate Panel Order - Finding of Fact No. 14).

The Appellant offers a hypothetical situation involving the USC Columbia campus as support for adopting a new exception to the going and coming rule. The Respondents submit that the hypothetical presented by the Appellant demonstrates the very reason such a rule should not be adopted. Under the Appellant's own example, the Employee assigned to work at the National Advocacy Center could decide to park in the parking lot of the Colonial Life Arena and cross as many as five or more public streets before actually arriving at the place where their work is to be performed and if injured crossing any of those public streets their claim would be compensable. Under the same line of reasoning, an employee working for an employer that has warehouse

facilities within walking distance of a manufacturing facility could elect to park in the parking lot of the warehouse and walk down a public street to enter the manufacturing facility even though parking is provided at the manufacturing facility and the claim would be compensable if the Employee was injured on the public highway while doing so. The South Carolina Workers' Compensation Commission properly rejected the Appellant's argument and applied the reasoning of the Court in Howell in reaching its decision in this case. The Decision and Order of the South Carolina Workers' Compensation Commission is supported by substantial evidence and must be affirmed.

III. THE COMMISSION CORRECTLY REJECTED THE APPELLANT'S ATTEMPT TO APPLY THE "SPECIAL ERRAND" DOCTRINE TO THE FACTS OF THIS CLAIM AND THE RULING OF THE COMMISSION IS SUPPORTED BY SUBSTANTIAL EVIDENCE.

The Appellant correctly states that our Courts have recognized the "special errand" doctrine as one of the five exceptions to the going and coming rule. The argument advanced by the Appellant on this issue is quite confusing. First, the Appellant sites confusion as to what the Commission intended in Finding of Fact No. 19 in the Order appealed from wherein the Commission specifically found the Claimant "was not engaged in a duty, task, or special errand for benefit of the Employer when the accident which gave rise to this claim occurred." (R. p. 5, Finding of Fact No. 19). The Appellant goes on to state that it is undisputed that the she had finished her work for the day and was simply heading home when the accident occurred. The

Appellant then concedes that it would be correct to hold that she was not on a special errand at the time of the injury. However, the Appellant then states that if the Commission's language could be construed as finding that she was not engaged in a work related duty, task, or special errand while she was reviewing the resumes in the library after her normal work hours, such a finding would not be supported by the evidence of record. The Appellant then concludes her argument by submitting that the "special errand" exception to the going and coming rule is irrelevant.

There is no confusion as to what the Commission intended with respect to its Finding of Fact regarding the "special errand" argument advanced by the Appellant before the Commission. In the Appellant's Brief to the Commission, she specifically argued that she was within the course of her employment when her accident occurred because she was engaged in a duty, task, or special errand for the benefit of her Employer. (R. p. 280). In support of this argument, the Appellant asserted that she had made notes while reviewing the resumes that were on reserve at the Medford library earlier in the evening on February 16, 2012. She then stated in her Brief that the notes were "obviously" with her at the time of the accident. She then speculated that because there would have been a meeting scheduled at a later date she would have had to use her notes at home in order to prepare herself for a meeting that had not even been scheduled. The Commission correctly rejected this argument. See, Whitworth v. Window World, Inc., Inc. 377 S.C. 637, 661 S.E. 2d. 333 (2008)(Court held that claim was barred by going and coming rule where accident occurred on public street even though claimant was carrying a tool needed for the job with him at time of accident).

The Appellant's argument that the case of Bickley v. South Carolina Gas and Electric

Company, 259 S.C. 463, 192 S.E.2d 866 (1972) and the special errand doctrine discussed in that case have application to this claim is without merit and was properly rejected by the Workers Compensation Commission. In Bickley, the Supreme Court discussed the narrow exception known as the special errand rule in detail. The very definition of the special errand rule set forth in that case demonstrates the lack of application to the facts of this claim. In Bickley, the Court stated that "where an Employee is obligated to make emergency calls or to perform service at times other than during his regular working hours and goes on a special errand or mission for the Employer, he is entitled to the protection of the Compensation law from the time he leaves home until his return thereto." In Bickley, the Employee who normally worked in Columbia, South Carolina was required to travel to Charleston, South Carolina as a result of an unexpected power outage that resulted from a storm. The injury occurred at 3:30 a.m. while the Claimant was in route to his home once his emergency services ended.

In the case currently before this Court, the Appellant was certainly not obligated to make any emergency calls or perform services outside of her normal working schedule. As stated earlier, the Claimant admitted that her service on the Search Committee was voluntary and she was not paid for serving on the Committee. Furthermore, the Claimant admitted that there was no time directive with respect to when she was to review the resumes in question. In fact, she admits that she could have reviewed the resumes on Friday, February 17, 2012, the day following her accident, or at other times when she did not have regularly scheduled class or office hours. (R. p. 119, lines 9-12). The Claimant's testimony in her deposition and at the Hearing demonstrates her complete discretion with respect to her hours of work and the review of the resumes in question. (R. pp. 104-105). She admitted that Dr. Nims was the only person that offered any directives with respect to the Search

Committee that she voluntarily served on. Dr. Bruce Nims testified that he did not direct the Claimant or any other Committee member to review the resumes by any certain deadline other than asking them to review them before the meeting to discuss applicants which had not even been scheduled at the time of the Claimant's accident on February 16, 2012. (R. pp. 222-223).

Claimant's counsel attempts to make significance of the fact that the Claimant is alleged to have carried a handwritten note home with her on the evening of February 16, 2012. There is absolutely no evidence in the record to suggest that the Claimant was asked by the Employer to take any notes home with her or engage in any activities away from campus with respect to the Search Committee. In fact, the Claimant admitted that the resumes she was reviewing were specifically placed on reserve in the Medford Library and she could not remove them from the library let alone remove them from campus. (R. p. 44). She also admitted that she could have left her notes in her office that was located in the Medford Building where the library was located. (R. pp. 57-58). Her attorney asserts that the Claimant intended to review her handwritten notes later that evening to be ready for the "upcoming meeting" with her supervisor and fellow committee members but the evidence contradicts this assertion. First of all the Claimant admitted in her deposition that she did not have a specific time that she intended to review her notes. In fact, she testified that she had made the notes so that she could use them to rank applicants prior to the meeting to discuss applicants by the Search Committee. The Claimant's testimony and the note in question demonstrate that the Claimant had not even finished reviewing half of the resumes at the time of her accident so the stated purpose for making her notes was yet to even become possible. More importantly, the meeting to discuss the applicants hadn't even been scheduled. The Claimant's supervisor had simply asked what dates the committee members would be available to meet between February 20

and February 29, 2012. Surely the act of an employee sticking a note made regarding work activity in their pocket does not trigger application of the special errand rule discussed in the Bickley decision. If so, an employee that sticks a work related note in their pocket, or takes a briefcase or smartphone home with them that contains reference to work would be entitled to workers compensation benefits if involved in an accident on the way home or perhaps even while at home under the Claimant's reasoning.

If the Claimant is arguing application of the Bickley decision because she was leaving campus at 9:00 p.m., the same absurd result would be possible. Under such an argument, an Employee asked to work overtime because of an unexpected order or machine malfunction could argue application of the Bickley decision if involved in a wreck while on their route home. Certainly this was not intended by our Supreme Court. The Workers Compensation Commission made a specific finding of fact that the Claimant was not engaged in a duty, task or special errand when the accident occurred and this finding is supported by substantial evidence.

CONCLUSION

To be entitled to an award under the South Carolina Workers' Compensation Act, an Employee must sustain an injury by accident that both "arose out of" and "in the course of" the employment. S.C. Code Ann. §42-1-160 ; Williams v. South Carolina State Hospital, 245 S.C. 377, 140 S.E.2d 601 (1965). The term "arising out of" has been held to refer to the origin or cause of the accident and the term "in the course of" has been held to refer to the time, place, and circumstances under which the accident occurred. In this case, the question of whether there is an injury by accident arising out of and in the course and scope of the Claimant's employment was a

question of fact to be decided by the South Carolina Workers' Compensation Commission as the fact finders. McDonald v. Kenneth Cotton Mills, 250 S.C. 51, 156 S.E.2d, 324 (1967). A review of the factual findings made by the South Carolina Workers' Compensation Commission is limited to determining whether those findings are supported by substantial evidence. Lark v. Bi-Lo, Inc., 376 S.C. 130, 276 S.E.2d 304 (1981). After reviewing all of the evidence submitted in this case, the South Carolina Workers' Compensation Commission concluded that the Claimant had failed to carry her burden of proving an injury by accident arising out of and in the course and scope of her employment. The Decision of the South Carolina Workers' Compensation Commission is supported by the substantial evidence of record and must be affirmed. It is submitted that the Supreme Court's Decision in Howell v. Pacific Mills, 291 S.C., 469, 354 S.E.2d 384 (1987) is directly on point with the facts of this case and dictates the very result reached by the Commission.

WHEREFORE, Respondents respectfully request that the Decision and Order of the South Carolina Workers' Compensation Commission be affirmed in its entirety.

Respectfully Submitted,

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April 7, 2014

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM South Carolina
Workers Compensation Commission

Case No. 2013-001778

NATHALIE I. DAVAUT, Employee, Claimant, ...Appellant,

v.

UNIVERSITY OF SOUTH CAROLINA
and State Accident Fund, Defendants, ...Respondents.

CERTIFICATE OF COUNSEL

The undersigned hereby certifies that the Final Brief of Respondents complies with Rule 211(b), SCACR.

Dated this the 7th day of April, 2014.

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STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from South Carolina
Workers Compensation Commission

Case No. 2013-001778

Nathalie I. Davaut, Employee, Claimant, ... Appellant,

v.

University of South Carolina
and State Accident Fund, Defendants, ... Respondents.

CERTIFICATE OF SERVICE

I, Paul L. Hendrix, do hereby certify that I have this day served a copy of the Final Brief of Respondents and Certificate of Counsel upon the following person by placing a copy of same in the United States Mail, First Class Mail, properly addressed and with the correct amount of postage affixed thereto:

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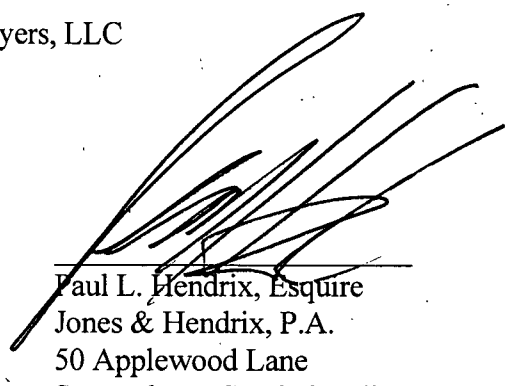
Dated this the 7th day of April, 2014.



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