

THE STATE OF SOUTH CAROLINA
In The Supreme Court

Appeal From The South Carolina
Workers' Compensation Commission

WCC File No. 0916088

RECEIVED

JUL 31 2012

S.C. Supreme Court

Brandon Bentley,

Appellant,

v.

Spartanburg County, and S.C. Association
of Counties SIF,

Respondents,

RETURN TO PETITION FOR REHEARING

Appellant sets forth in his Petition for Rehearing four grounds as a basis for this Court to reconsider its decision, Opinion No. 27140, filed July 11, 2012. However, none of Appellant's grounds for rehearing are sufficient for this Court to grant the Petition for Rehearing, and the Petition should be denied.

Appellant's first argument that this Court failed to follow its policy to liberally construe the Workers' Compensation Act in favor of coverage is without merit. As this Court stated, "[i]n determining whether a work-related injury is compensable, the Workers' Compensation Act...is liberally construed toward the end of providing coverage rather than denying coverage in order to further the beneficial purposes for which it was designed." However, while any reasonable

doubt as to the construction of the Act will be resolved in favor of coverage, “a construction should not be adopted that does violence to the specific provisions of the Act.” White v. J.T. Strahan Co., 244 S.C. 120, 125, 135 S.C. 720, 723 (1964).

The General Assembly provides the standard for recovering benefits for mental-mental injuries in Section 42-1-160, which states:

- (B) Stress, mental injuries, and mental illness arising out of and in the course of employment unaccompanied by physical injury and resulting in mental illness or injury are not considered a personal injury unless the employee establishes, by a preponderance of the evidence:
 - (1) that the employee's employment conditions causing the stress, mental injury, or mental illness were extraordinary and unusual in comparison to the normal conditions of the particular employment; and
 - (2) the medical causation between the stress, mental injury, or mental illness, and the stressful employment conditions by medical evidence.

S.C. Code Ann. § 42-1-160.

The General Assembly has placed heightened restrictions on recovery in mental-mental claims by requiring that the precipitating stressor be “unusual and extraordinary” compared with normal working conditions of the particular employment. By arguing that this Court should liberally construe Section 42-1-160 to afford compensability in this case, Appellant is merely attempting to stretch the policy of liberal construction to the point of having this Court judicially legislate. While this Court may not agree with the General Assembly’s heightened restrictions for mental-mental recovery, it properly concluded “we are interpreters not legislatures and are bound by the language of section 42-1-160 as written.” Citizens’ Bank v. Heyward, 135 S.C. 190, 204, 133 S.E.2d 709, 713 (1925)(“The primary source of the declaration of the public policy of the state is the General Assembly [, and] the courts assume this prerogative only in the absence of legislative declaration.”); State v. Breech, 308 S.C. 356, 359, 417 S.E.2d 873, 875

(1992)(any change in a statute must come from the legislature). In construing Section 42-1-160, this Court appropriately took into consideration the purpose of the General Assembly's decision to assign heightened restrictions to mental-mental claims. Harris v. Anderson County Sheriff's Office, 381 S.C. 357, 673 S.E.2d 423 (2009)(the cardinal rule of statutory construction is to ascertain and effectuate the intent of the legislature); Davis v. NationsCredit Fin. Servs. Corp., 326 S.C. 83, 484 S.E.2d 471 (1997)(a statute should be given a reasonable and practical construction consistent with the purpose and policy expressed in the statute). Further, this Court correctly determined that Section 42-1-160 refers to *conditions* of employment and not the frequency of an event occurring during the course of employment and that it further requires those conditions to be unusual and extraordinary in comparison to the conditions of the particular job. As such, this Court correctly concluded that Appellant's use of deadly force, which may result in fatalities, is not an unusual and extraordinary condition of employment as a Spartanburg County Sheriff's Deputy.

While Appellant next contends that this Court misapprehended his argument regarding what constitutes "extraordinary and unusual" conditions of the particular employment, this is obviously not the case. Appellant has asserted from the beginning of the claim that the issue is whether the *event of killing a suspect* is extraordinary and unusual for a Spartanburg County Sheriff's Deputy. (See R.pp. 11-12)(Emphasis added). However, both the Appellate Panel and hearing Commissioner disagreed with Appellant's framing of the issue and concluded that the issue was whether it "was an unusual and extraordinary condition for a police officer in Spartanburg County *to have to use deadly force* in the course and scope of his employment." (R. pp. 5 & 30).

Appellant argued before this Court that the issue is whether “*killing a suspect* is an extraordinary and unusual *event* for a Spartanburg County Sheriff’s Deputy.” (Brief of Appellant, p. 1). This Court clearly understood and comprehended Appellant’s argument. In fact, it was specifically noted in the Opinion that “Appellant would like this court to reframe the issue.” However, this Court refused to reframe the issue and properly considered and affirmed the Appellate Panel’s framing of the issue – whether *the use of deadly force* is an unusual and extraordinary *condition* of Appellant’s particular profession. It is well settled that “the construction of a statute by the agency charged with its administration will be accorded the most respectful consideration and will not be overruled absent compelling reasons.” Dunton v. S.C. Board of Examiners in Optometry, 291 S.C. 221, 353 S.E.2d 132 (1987)(citing Emerson Electric Co. v. Wasson, 287 S.C. 294, 339 S.E.2d 118 (1986))

In his Petition, Appellant once again argues that *killing a suspect* is an extraordinary and unusual *event* for a Spartanburg County Sheriff’s Deputy. Section 42-1-160(B) requires the condition of employment to be extraordinary **and** unusual when compared to the normal conditions of the particular employment. Appellant states in his second ground for rehearing that he “never asserted that the taking of human life, by itself, makes this circumstance extraordinary and unusual.” However, Appellant seems to contradict this statement later in his Petition when he asserts “that given the ordinary and usual conditions a Spartanburg County Sheriff’s Deputy faces – conditions which Sheriff Chuck Wright described as including the avoidance of deadly force ‘at all costs,’ where preservation of life is always the first objective, and where killing another human being is one of the worst things one of his deputies could do – the killing of a human being represents something extraordinary and unusual. [Cit.]” Further, while Appellant contends on one hand that he has not argued that the frequency of killings is the decisive factor

in this analysis, Appellant nevertheless asserts that “killing a suspect is an *unusual event* for a Spartanburg County Sheriff’s Deputy *because it almost never happens.*” Thus, the frequency of killings is inherently a decisive factor in his argument, since a mental-mental injury is not compensable unless both the “extraordinary” prong and the “unusual” prong in Section 42-1-160(B)(1) are satisfied. However, this Court correctly held that Section 42-1-160 and the applicable case law speak of *conditions* of employment and not the frequency of an event occurring in determining what constitutes unusual and extraordinary. See Shealy v. Aiken Cnty., 341 S.C. 448, 456, 535 S.E.2d 438, 442 (2000).

As to the third ground, Appellant argues that this Court misapprehended S.C. Code Ann. § 42-1-160 in concluding that because shooting and killing a suspect was foreseeable or possible for a Spartanburg County Sheriff’s Deputy, the actual occurrence of such an event is therefore ordinary and usual. While Appellant specifically argues that “there is nothing in § 42-1-160 dealing with foreseeability, possibility or expectation that a particular event might occur,” this argument is inherently flawed. When a claimant establishes by a preponderance of the evidence all of requirements of Section 42-1-160(B), the mental illness or injury is considered a “personal injury.” S.C. Code Ann. § 42-1-160(B). “Personal injury” is defined as “only *injury by accident* arising out of and in the course of employment.” S.C. Code Ann. § 42-1-160(A) (Emphasis added). The word “accident” means an unlooked for and untoward event which is not expected or designed by the person who suffers the injury. Dickert v. Metropolitan Life Ins. Co., 311 S.C. 218, 428 S.E.2d 700 (1993); See also Yates v. Life Insurance Co. of Georgia, 291 S.C. 301, 353 S.E.2d 297 (S.C. App. 1987). When Section 42-1-160 is read in its entirety, it clearly deals with foreseeability, possibility and expectation. As such, this Court appropriately included

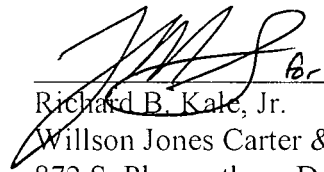
foreseeability, possibility and expectation in its analysis of whether the use of deadly force is an extraordinary and unusual condition of employment for a Spartanburg County Sheriff's Deputy.

Finally, the Appellant argues that this Court overlooked the significance of the required comparison between the subject event and what is "normal" for a Spartanburg County Sheriff's Deputy. Appellant contends that "it is crucial to ascertain whether killing suspects is a 'normal condition' of being a Spartanburg County Sheriff's Deputy." However, as outlined above, the issue is not whether *killing a suspect* is an extraordinary and unusual condition of employment as a Spartanburg County Sheriff's Deputy. Instead, the issue is whether *the use of deadly force* is an extraordinary and unusual condition of employment when compared to the normal conditions of employment of a Spartanburg County Sheriff's Deputy. This Court's decision that the Appellate Panel's finding that the use of deadly force was not an extraordinary and unusual condition of employment as a Spartanburg County Sheriff's Deputy was supported by substantial evidence in the record was clearly correct. An appellate court's review of the Commission's findings of fact is limited to determining whether the findings are clearly unsupported by substantial evidence in the record. Lark v. Bi-Lo, Inc., 276 S.C. 130, 276 S.E.2d 304 (1981); See also Coleman v. Quality Concrete Products, Inc., 245 S.C. 265, 142 S.E.2d 43 (1965)(the Supreme Court's review of factual findings by the Commission is limited to the determination of whether or not there is any evidence to sustain such). As detailed in this Court's opinion, there is substantial evidence in the record to support the Appellate Panel's decision, including Appellant's own testimony that he "might be in a situation where he might have to shoot someone," Sheriff Wright's testimony that Spartanburg County Sheriff's Deputies are aware of the possibility that they might have to shoot and kill someone, Appellant's training in the use of deadly force, and Spartanburg County Sheriff's Department's policy addressing when deadly force should be used.

Therefore, based on the foregoing, Appellant's Petition for Rehearing fails to include a sufficient ground for rehearing, and the Petition should be denied.

Respectfully submitted,

July 27, 2012



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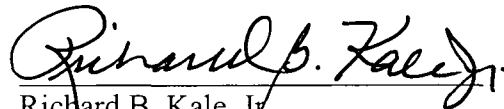
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PROOF OF SERVICE

I certify that I have served the Return to Petition for Rehearing on Brandon Bentley by depositing a copy of it in the United State Mail, postage prepaid, on July 27, 2012, addressed to his attorney of record, Jeremy A. Dantin, Esquire, Harrison, White, Smith & Coggins, P.C., P.O. Box 3547, Spartanburg, South Carolina 29304 and have served a copy on Grady L. Beard, Esquire, Sowell Gray Stepp & Lafitte, LLC, P.O. Box 11449, Columbia, South Carolina 29211.

July 27, 2012



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The Honorable Daniel D. Shearouse
The South Carolina Supreme Court
P.O. Box 11330
Columbia, SC 29211

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S.C. Supreme Court

Re: Brandon Bentley vs. Spartanburg County
Opinion No.: 27140
Case Tracking #: 2011183206
WCC File No.: 0916088 DOI: 10/21/2009
Claim No.: 58-228866
WJC&B File No.: 0560.00312

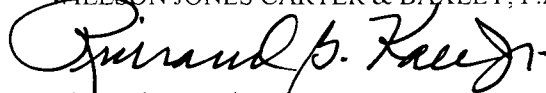
Dear Mr. Shearouse:

Pursuant to Rule 240(e), SCRAP, enclosed for filing are the original and six copies of the Return to Petition for Rehearing in the above-referenced case. As indicated on the enclosed Proof of Service, copies of the Return are being served on all parties.

With cordial best wishes, I am

Very truly yours,

WILLSON JONES CARTER & BAXLEY, P.A.



Richard B. Kale, Jr.

RBK, Jr/jw
Enclosures

cc: Jeremy A. Dantin, Esquire
Grady L. Beard, Esquire