

THE STATE OF SOUTH CAROLINA  
In The Supreme Court

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ON WRIT OF CERTIORARI TO THE COURT OF APPEALS

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Appellate Case No. 2014-000329  
Opinion No. 27478 (Filed January 14, 2015)

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Carolyn M. Nicholson, Claimant,

Appellant,

v.

S.C. Dep't. of Social Services, Employer, and  
State Accident Fund, Carrier, Defendants,

Respondents/Petitioners.

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**REPLY TO RETURN TO PETITION FOR REHEARING**

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Pursuant to Rule 221 and Rule 240, SCACR, Respondents/Petitioners South Carolina Department of Social Services and State Accident Fund (collectively, "SCDSS") respectfully submit this Reply to Claimant's/Appellant's ("Nicholson's") Return to Petition for Rehearing.

**ARGUMENTS**

In her Return to the Petition for Rehearing, Nicholson incorrectly asserts the following:

DSS conceded at oral argument that Ms. Nicholson's trip and fall would have been compensable if her errand had been designed for her own personal comfort, e.g., going to the bathroom. DSS has yet to articulate any rational basis for denying compensability for the same accident when the goal is the furtherance of the employer's business. The argument is absurd.

Appellant's Return, p. 2.

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**S.C. SUPREME COURT**

*This assertion is patently inaccurate.* At no point in this claim has SCDSS accepted or conceded that Nicholson's fall would be compensable if she had been on her way to the restroom.<sup>1</sup> (See Respondents' Brief, pp. 25 – 26)

On the contrary, SCDSS maintains that the analysis of this claim would be no different if Nicholson had been on her way to the restroom when her fall occurred; she would still be required to prove her injuries "arose out of" her employment. Decades of South Carolina jurisprudence has established that an injury is not compensable merely because an employee is in the course of her employment when the accident occurs. It is axiomatic that an employee does not remove herself from the "course of employment" during a restroom break. An employee is still paid during necessary occasions of personal comfort; therefore, the "course of employment" requirement would be satisfied. However, South Carolina Code § 42-1-160 still requires that the injury "arise out of" the employment.

For the sake of completeness, South Carolina Code § 42-1-160 (A) provides, in relevant part: "'Injury' and 'personal injury' mean only *injury by accident arising out of and in the course of employment* ...." (emphasis added) Based on the plain and ordinary wording of the statute, an injury is compensable only if four elements are satisfied: (1) The employee sustains an injury, (2) The injury was occasioned by an accident, (3) The injury arose out of the employment, and (4) The injury occurred in the course of the employment.

The Personal Comfort Doctrine increases the scope of employment to allow for acts such as smoking and going to the restroom to fall within the course of employment. However, the mere fact that an injury occurs while an employee is engaged in an act of personal convenience

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<sup>1</sup> Counsel for Respondents in the case of Barnes v. Charter 1 Realty, App. Case No. 2012-212389, apparently conceded this contention in oral argument, as noted in Footnote #2 in that opinion. However, the SCDSS maintains this concession is incorrect and firmly disagree with the contention that such a fall is compensable.

does not immediately render the injury compensable. The proper analysis of the Personal Comfort Doctrine is provided by Professor Larson:

Employees who, within the time and space limits of their employment, engage in acts which minister to personal comfort do not thereby leave *the course of employment*, unless the extent of the departure is so great that an intent to abandon the job temporarily may be inferred, or unless, in some jurisdictions, the method chosen is so unusual and unreasonable that the conduct cannot be considered an incident of the employment.

*Larson's Workers' Compensation Law*, § 21.00 (2013) (emphasis added). Thus, the Personal Comfort Doctrine is designed to bring certain acts within the "course of employment." Yet, the other elements of South Carolina Code § 42-1-160 (A) must still be met to adjudge compensability.

SCDSS has at no time conceded that Nicholson's fall would be compensable if she had been walking to the restroom. To so concede would artificially disrupt the logical requirements of compensability. In order for the workers' compensation system to operate effectively and efficiently for both the employee and employer, the elements establishing compensability must logically connect the injury to the employment.

Based on the arguments above and the arguments outlined in the Petition for Rehearing, SCDSS respectfully requests the Court grant the Petition for Rehearing, rehear this matter, withdraw its previous decision, and issue a new opinion affirming the Court of Appeals' decision.

February 10, 2015



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**CERTIFICATE OF SERVICE**

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I certify that the Reply to Return to Petition for Rehearing was served on Appellant, Carolyn M. Nicholson, on February 10, 2015, by depositing a copy in the U.S. Mail, postage prepaid, addressed to her attorney of record:

Kathryn Williams, Esquire  
Kathryn Williams, P.A.  
619 N. Main Street  
P.O. Box 10693  
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February 10, 2015



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February 10, 2015

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

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**S.C. SUPREME COURT**

Re: Carolyn M. Nicholson vs. SCDSS  
**Appellate Case No.: 2014-000329**  
WCC File No.: 0901585 DOI: 2/26/2009  
Carrier: State Accident Fund - Claim No.: 2009-733  
WJC&B File No.: 0385.00406

Dear Mr. Shearouse:

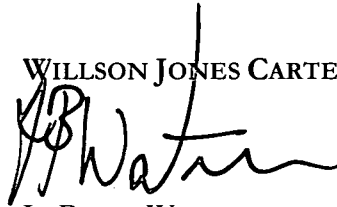
Enclosed herein, please find the following items for filing in the above-referenced matter:

1. Reply to Return to Petition for Rehearing (original and six copies);
2. Certificate of Service.

By copy of this letter, we are serving a copy of the same on Kathryn Williams, Attorney for Appellant.

With kindest regards,

WILLSON JONES CARTER & BAXLEY, P.A.



L. Brenn Watson

Enclosures

cc: Kathryn Williams, Esq.  
Ms. Page Snyder (*via e-mail*)