

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM THE
WORKERS' COMPENSATION COMMISSION

Court of Appeals Case No. 2012-206507
Op. No. 5171, filed September 4, 2013

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S.C. Supreme Court

Carolyn M. Nicholson, Claimant, ... Petitioner,

vs.

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

APPENDIX

Kathryn Williams
Kathryn Williams, P.A.
P.O. Box 10693
Greenville, SC 29603
(864) 235-6254
Attorney for Petitioner

L. Brenn Watson
Zachary M. Smith
Willson Jones Carter & Baxley, P.A.
872 S. Pleasantburg Dr.
Greenville, SC 29607
(864) 527-3292
Attorneys for Respondents

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THE STATE OF SOUTH CAROLINA
In The Court Of Appeals

APPEAL FROM THE SOUTH CAROLINA
WORKERS' COMPENSATION COMMISSION

SCWCC No. 0901585

Carolyn M. Nicholson, Employee,

Respondent,

v

SC Dept. of Social Services, Employer, and
State Accident Fund, Carrier,

Appellants.

BRIEF OF APPELLANTS

L. Brenn Watson, Esquire
Zachary M. Smith, Esquire
872 S. Pleasantburg Drive
Greenville, South Carolina 29607
(864) 527-3292
Attorneys for Appellants

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STATEMENT OF ISSUES ON APPEAL

- I. DID THE SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION ERR AS A MATTER OF LAW IN FINDING THAT NICHOLSON SUSTAINED A COMPENSABLE INJURY "ARISING OUT OF" HER EMPLOYMENT WITH SCDSS ON FEBRUARY 26, 2009?
- II. DID THE SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION ERR AS A MATTER OF LAW IN ITS INTERPRETATION AND RELIANCE UPON SIGMON V. DAYCO CORP. AND CREECH V. DUCANE CO.?

STATEMENT OF THE CASE

On January 3, 2011, Respondent Carolyn Nicholson ("Nicholson") filed a Form 50, Request for Hearing, alleging that she sustained an injury to her neck, left shoulder, and back by accident arising out of and in the course of her employment with the South Carolina Department of Social Services ("SCDSS") on February 26, 2009. (R. p. 27). Appellants, SCDSS and the State Accident Fund, filed a Form 51 on January 31, 2011 denying that Nicholson sustained a compensable injury by accident arising out of and in the course of her employment. (R. p. 29). A hearing was scheduled before Commissioner Derrick L. Williams on March 16, 2011 in Greenville, South Carolina. (R. p. 17).

At the hearing, Nicholson maintained that she sustained a compensable injury by accident arising out of and in the course of her employment on February 26, 2009 when she fell while walking down a hallway. (R. p. 19). Nicholson sought payment of past causally related medical treatment, as well as additional medical treatment to her neck, left shoulder, and back. Id. Nicholson also sought temporary total disability benefits for her time out of work. Id. SCDSS continued to deny that Nicholson sustained a compensable injury by accident arising out of and in the course of her employment. Id.

On April 26, 2011, Commissioner Derrick L. Williams issued a Decision and Order finding that Nicholson failed to prove by a preponderance of the evidence that her alleged injury arose out of her employment with SCDSS. (R. p. 25). Commissioner Williams specifically found that Nicholson failed to prove a causal connection between her fall on February 26, 2009 and her employment with SCDSS. (R. p. 24). Additionally, Commissioner Williams found that Nicholson's fall was "wholly unrelated to her employment," that Nicholson's employment with SCDSS was not a contributing cause of

STATEMENT OF THE FACTS

The facts of this case are undisputed. Nicholson worked as a supervisor in the investigations department at SCDSS. (R. p. 49, lines 21-23). As a part of her job with SCDSS, Nicholson attended internal audit meetings every Thursday to review and update the case files. (R. p. 51, lines 4-9). On Thursday, February 26, 2009, Nicholson was scheduled for a regular, internal audit meeting, which was held on the lower floor of SCDSS's building. (R. p. 51, lines 4-16). That day, Nicholson grabbed her files, left her office, signed out on the sign out board, and began walking down the hallway to the audit meeting. (R. p. 55, line 15-p. 56, line 1). While walking down the hallway, Nicholson's shoe "frictioned" the carpet, causing her to fall. (R. p. 52, lines 7-13). As a result of her fall, Nicholson alleged that she sustained injuries to her neck, left shoulder, and back. (R. p. 47, lines 19-21).

Nicholson testified that there was nothing peculiar about the hallway or floor in SCDSS's building that caused her to fall on February 26, 2009. (R. p. 57, lines 7-13). The floor in the hallway was a normal, level, carpeted floor. (R. p. 56, lines 2-12). The carpet on the floor in the hallway was free from defect, and there was no debris on the floor. (R. p. 56, lines 13-22). Nicholson testified that the sole reason for her fall on February 26, 2009 was that her shoe "frictioned" the carpet. (R. p. 57, lines 17-21). While Nicholson was carrying case files in her hands at the time of her fall, the files she was carrying had nothing to do with her fall. (R. p. 64, lines 2-7; p. 65, lines 18-21). Finally, Nicholson specifically testified that her fall could have happened on any level, carpeted surface outside of SCDSS's building and that the only thing connecting her fall

STANDARD OF REVIEW

In workers' compensation cases, the South Carolina Workers' Compensation Commission is the trier of fact. Hunter v. Patrick Construction Co., 289 S.C. 46, 344 S.E.2d 613 (1986). The appellate court's review of these 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); Howell v. Pacific Columbia Mills, 291 S.C. 469, 354 S.E.2d 384 (1987). The appellate court is not permitted to re-weigh the evidence and to substitute its own findings of fact for those of the Commission. Brown v. Jordan Oil Co., 291 S.C. 272, 353 S.E.2d 280 (1987). However, an award from the Commission cannot be based upon mere possibilities, probabilities, surmise or conjectures. Broughton v. South Carolina Game & Fish Dept., 219 S.C. 50, 64 S.E.2d 152 (1951).

Section 1-23-380(A)(5) of the South Carolina Code also provides:

The Court may reverse or modify the decision if substantial rights of the Appellant have been prejudiced because the administrative findings, inferences, conclusions or decisions are . . . (d) affected by other error of law; (e) clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record. . . .

S.C. Code Ann., § 1-23-380(A)(5) (2007)(Emphasis added).

The issue of whether a particular event constitutes a compensable accident is for the court. Sturkie v. Ballenger Corp., 268 S.C. 536, 235 S.E.2d 120 (1977). The question of whether an injury arose out of or in the course of the employment is one of law where the facts are admitted. Williams v. City of Columbia, 218 S.C. 287, 62 S.E.2d 469 (1950). Additionally, if the findings of the Commission are based on surmise, speculation or conjecture, then the issue becomes one of law for the court and not of fact.

ARGUMENTS

I.

THE COMMISSION ERRED IN FINDING THAT
NICHOLSON SUSTAINED A COMPENSABLE INJURY
"ARISING OUT OF" HER EMPLOYMENT WITH
SCDSS ON FEBRUARY 26, 2009.

In order to be entitled to workers' compensation benefits, the employee must show that he or she sustained an injury by accident arising out of and in the course of the employment. Owings v. Anderson County Sheriff's Dept., 315 S.C. 297, 433 S.E.2d 869 (1993). The mere fact that an injury occurred in the course of employment is not a basis for an award. Lorick v. South Carolina Elec. & Gas, 245 S.C. 513, 141 S.E.2d 662 (1965); Evans v. Jones-Wilson, Inc., 235 S.C. 219, 110 S.E.2d 851 (1959); Bagwell v. Ernest Burwell, Inc., 227 S.C. 444, 88 S.E.2d 611 (1955)(Emphasis added). To sustain an award under the Workmen's Compensation Act, it must appear that the injury resulted from an accident which both "arose out of" and "in the course of" employment. Williams v. South Carolina State Hospital, 245 S.C. 377, 140 S.E.2d 601 (1965) (Emphasis added). Although the "arising out of" and "in the course of" employment requirements are somewhat overlapping, they are not synonymous and both must exist simultaneously to allow the claimant to recover. Hall v. Desert Aire, Inc., 376 S.C. 338, 656 S.E.2d 753 (Ct. App. 2007).

The words "arising out of" refer to the origin of the cause of the accident. Douglas v. Spartan Mills, 245 S.C. 265, 140 S.E.2d 173 (1965). An injury which cannot fairly be traced to the employment as a contributing proximate cause, and which comes from a hazard to which the workmen would have equally been exposed apart from the employment, does not arise out of the employment. Id. Under the "increased risk

doctrine". for workers' compensation purposes, an injury arises out of the employment if some risk inherent to the employment was a contributing cause of the injury; however, the risk must be one to which the general public would not be equally exposed. Simmons v. City of Charleston, 349 S.C. 64, 562 S.E. 2d 476 (S.C. App. 2002)(Emphasis added). Thus, in order for an injury to arise out of the employment, the causative danger must be peculiar to the work and not common to the neighborhood. See Hicks v. Piedmont Cold Storage, Inc., 324 S.C. 628, 479 S.E.2d 831 (S.C. App. 1996); Cyrus v. Miller Tire Service, 208 S.C. 545, 38 S.E.2d 761 (1946).

In the present case, substantial evidence in the records does not support the Commission's finding that Nicholson sustained a compensable injury by accident arising out of and in the course of her employment with SCDSS. While it is undisputed that Nicholson's incident occurred at work during working hours, Nicholson's injury did not "arise out of" her employment as required by the Act. There was no causal connection between Nicholson's alleged injury on February 26, 2009 and her employment with SCDSS. Further, Nicholson's employment with SCDSS did not increase the risk of her fall.

First, Nicholson's own testimony explicitly establishes that there was no causal connection between her fall on February 26, 2009 and her employment and that her fall was wholly unrelated to her employment. Nicholson testified that her fall occurred while she was walking down the hall to her weekly, in-house case file audit. (R. p. 51, line 4 - p. 52, line 13). Upon questioning by her attorney, Nicholson described exactly how her February 26, 2009 fall occurred:

Q: [Ms. Williams] Okay. And then what did you do?

Q: And I think you told me at your deposition that the carpet was free from defect?

A: As far as I know.

Q: You don't recall seeing anything -

A: No, sir.

Q: - even after your accident that would have caused you to think, "Hey, I might have tripped over that."?

A: No, sir. No debris.

Q: It was just simply level floor, carpeted level floor?

A: Yes, sir.

(R. p. 56, lines 2-22). Additionally, when questioned by the Hearing Commissioner, Nicholson confirmed that the carpet did not buckle or move and that the cause of her fall was solely the friction between her shoe and the carpet that caused her fall:

Q: [Commissioner Williams] In terms of - now, when you say your foot frictioned, did the carpet kind of buckle up or did the carpet move at all when you frictioned?

A: Not that the carpet, it's just that the friction from it caught my shoe. It wasn't that it moved or anything.

(R. p. 65, lines 12-17). Based on Nicholson's own testimony, it is clear that there was nothing peculiar about the flooring in SCDSS's building that caused her to fall. In fact, it is undisputed that the floor was a level, carpeted floor, which was free from any defect or debris.

Importantly, Nicholson also testified that her fall could have occurred on any level, carpeted floor free from defect and that her fall could have happened anywhere, including the hearing room, *which had the same type of carpet*:

Q: [Mr. Watson] ... Would you agree with me that since you were walking down a normal hallway on a level floor on carpet free of

defect, that this event, your foot frictioning against the carpet thus causing you to fall, could have happened anywhere? It could happen here in this room.

A: That's possible.

(R. p. 60, lines 1-7).

Q: [Mr. Watson] . . . So it could have happened anywhere?

A: It could have happened anywhere.

(R. p. 61, lines 2-4). Nicholson's testimony that her fall "could have happened anywhere" clearly illustrates that her accident did not "arise out of" her employment as required by the Act.

In determining that Nicholson sustained a compensable injury by accident arising out of her employment, the Commission specifically found that the risk associated with her employment that caused her fall was "that she was required to work in a carpeted area." (R. p.10). However, there is no evidence that Nicholson's employment with SCDSS increased her risk of falling.

The Commission's decision that working on a carpeted area was a sufficient risk of employment to render Nicholson's fall and subsequent injuries compensable clearly ignores the South Carolina Supreme Court's decision in Bagwell v. Ernest Burwell, Inc., 227 S.C. 444, 88 S.E.2d 611 (1955). In Bagwell, the claimant, while in the performance of his duties on the premises of his employer, suddenly fell backward on a concrete floor, lost consciousness, and later died as a result of a subdural hemorrhage. Id. at 447, 88 S.E.2d at 612. The Supreme Court affirmed the Circuit Court's denial of compensability on the basis that the claimant's accident did not arise out of his employment with his employer. Id. at 457, 88 S.E.2d at 617. The Supreme Court held that there was no causal

connection between the claimant's fall and the claimant's employment. Id. at 452, 88 S.E.2d at 614. Furthermore, the Supreme Court held that the claimant's employment was not a contributing cause of the claimant's alleged injury. Id. at 454, 88 S.E.2d at 615. In fact, the Supreme Court addressed the issue of whether a level, concrete floor was a hazard of employment. The Supreme Court specifically stated that:

We are not prepared to accept the contention that, in the absence of special condition or circumstance, a level floor in a place of employment is a hazard. Cement floors or other hard floors are as common outside industry as within it. The floor in the instant case did not create a hazard which would not be encountered on a sidewalk or street or in a home where a hard surface of the ground or hard floor existed.

Id. (Emphasis added). Furthermore, citing Cinmino's case, 251 Mass. 158, 146 N.E. 245, the Supreme Court stated:

To hold a concrete floor in a place of employment is a danger which effects the risks which an employee encounters and is a hazard which arises out of an employment, would require a further holding, when the occasion arose, that any flooring of any material is a hazard of employment against which the statute gives compensation whenever there is a causal relation between the hazard and the injury. The causal relation in such a case is too remote and speculative for practical application.

Id. at 455, 88 S.E.2d 616. (Emphasis added).

Much like the level, concrete floor in Bagwell, the level, carpeted floor in SCDSS's building, which was free from any defect or debris, is as common outside of industry as within it, and the floor in SCDSS's building did not create a hazard or increase a risk that would not be encountered on any other level, carpeted floor outside of SCDSS's building. Walking on carpet is an activity that is common to general public, and the risk of "frictioning" a shoe and falling while walking on carpet is a risk that the

general public is constantly and equally exposed to. As such, the Commission erred in finding that walking on a carpeted area was a sufficient risk of employment to render Nicholson's fall and subsequent injuries compensable.

Finally, the Commission concluded that the Supreme Court's decision in Pierre v. Seaside Farms, Inc., 386 S.C. 534, 689 S.E.2d 615 (2010), forecloses SCDSS's argument that Nicholson's fall is not compensable because it could have happened on any carpeted floor at home or in some other place. (See R. p. 14). However, the Commission's interpretation of Pierre is clearly erroneous.

In Pierre, the Court held that the claimant sustained a compensable injury arising out of and in the course of his employment and reversed "the Commission's finding that the risk was not associated with Pierre's employment because the sidewalk was no different in character from other sidewalks." Id. at 548, 689 S.E.2d at 622. The Court specifically held that "Pierre's accident occurred as a result of a hazard that existed on the employer's premises, i.e., Pierre slipped and fell on a wet sidewalk just outside the employees' housing facility." Id. (Emphasis added). The Court specifically noted that "the sidewalk was wet because another person was using the outside sink and the water ran down the sidewalk." Id. The Court held that "the employer's placement of the sink and the apparent lack of drainage created the wet conditions that caused Pierre to fall." Id. (Emphasis added).

The claimant's accident in Pierre, unlike Nicholson's accident in the present case and unlike the claimant's accident in Bagwell, was caused by a *special condition and circumstance* – the wet conditions on the sidewalk from the employer's outside sink. See Pierre, 386 S.C. at 548, 689 S.E.2d 622. Despite the Commission's conclusion to the

contrary, the Pierre decision clearly does not cast any doubt on SCDSS's argument. Instead, the Pierre decision actually reinforces the Supreme Court's previous decision in Bagwell and further supports SCDSS's contention that Nicholson's alleged injury did not "arise out of" her employment.

As noted above, the Supreme Court in Bagwell, 227 S.C. at 454, 88 S.E.2d at 615, stated: "We are not prepared to accept the contention that, in the absence of special condition or circumstance, a level floor in a place of employment is a hazard." (Emphasis added). Because the claimant in Pierre fell on a level sidewalk, which he would have encountered outside of his employment, the Supreme Court had to find a "special condition or circumstance" (i.e., the wet conditions) in order to hold that the claimant in Pierre sustained a compensable injury by accident arising out of his employment. While there was a special condition in Pierre that was sufficient to justify a finding of a hazard to which the claimant would not have been exposed to outside of his employment (the water on the sidewalk from the employer's outside sink), there is absolutely no evidence in the present case of any such "special condition or circumstance." As noted above, Nicholson's fall simply occurred as the result of her shoe "frictioning" a normal, level, carpeted floor that she would be equally exposed to outside of her employment with SCDSS.

As the Supreme Court of South Carolina has previously held, the mere fact that an injury occurred at work does not necessarily make an alleged accident compensable. See Bagwell, 227 S.C. 444, 88 S.E.2d 611; Lorick, 245 S.C. 513, 141 S.E.2d 662. Thus, the mere fact that Nicholson's fall occurred at work does not necessarily make her alleged accident compensable. Nicholson also has the burden to establish that there was a causal

relationship between her employment with SCDSS and her fall. See Jennings v. Chambers Development Co., 335 S.C. 249, 516 S.E.2d 453 (Ct. App. 1999). However, substantial evidence in the record clearly establishes that there was no causal connection between Nicholson's employment with SCDSS and her fall on February 26, 2009. In fact, Nicholson's own testimony shows that there was nothing about the floor in SCDSS's building that increased the risk of her fall or caused her fall. Instead, it is clear that Nicholson's alleged injury occurred as the result of her simply failing to lift her foot a sufficient distance from the floor as she was walking, which caused her foot to "friction" the carpet and fall. There is no evidence of any defect in the carpeting which created a particular or increased risk of employment. Additionally, there is no evidence that the type of carpet in SCDSS's building presented any specific risk greater than that to which the general public is exposed. In fact, Nicholson specifically testified that her fall "could have happened anywhere," including the hearing room, which had the same type of carpet.

Therefore, based on the foregoing, Appellants SCDSS and State Accident Fund respectfully request that the Court reverse the Commission's decision that Nicholson sustained a compensable injury by accident arising out of and in the course of her employment on February 26, 2009.

II.

THE COMMISSION ERRED AS A MATTER OF LAW IN ITS INTERPRETATION AND RELIANCE ON *SIGMON V. DAYCO CORP. AND CREECH V. DUCANE CO.*

In reversing the Hearing Commissioner's decision that Nicholson did not sustain a compensable injury by accident arising out of and in the course of his employment, the Commission concluded that the facts in the present case are analogous to the facts in *Sigmon v. Dayco Corp.*, 316 S.C. 260, 449 S.E.2d 497 (Ct. App. 1994), and *Creech v. Ducane Co.*, 320 S.C. 559, 467 S.E.2d 114 (Ct. App. 1995). (See R. pp. 13-14). However, the Commission's reliance on *Sigmon* and *Creech* is obviously misplaced. The Commission specifically noted that:

In *Sigmon*, it was determined that the injured worker sustained a compensable injury when his knee locked when he stood after bending to tighten a bolt on a machine, and in *Creech*, it was determined that the injured worker sustained a compensable injury by accident where he injured [his] back when bending over to pick up a one pound filter rack. Both of these injuries could have happened if the workers had performed similar activities at home or at some other place, but the injuries were compensable because they happened at work due to actions the employees undertook to perform their required work duties and because of the conditions under which they were required to work.

(R. pp. 13-14).

In *Sigmon*, the claimant alleged that he sustained a compensable injury by accident arising out of and in the course of his employment when he attempted to stand up after kneeling to tighten bolts on a machine that his employer assigned him to rebuild. *Id.* at 261, 449 S.E.2d at 498. The Single Commissioner held that the claimant did not sustain "an injury by accident" because "there was no causative event which produced

the onset of disability in [the claimant's] knee." Id. at 262, 449 S.E. 2d at 498. The Full Commission affirmed; however, the Circuit Court reversed finding that the claimant had sustained an injury by accident. Id. The Court of Appeals held that the Circuit Court correctly concluded that the Commission's denial was based on an error of law because the phrase "injury by accident" does not necessarily require a "causative event." Id. The Court cited Stokes v. First Nat'l Bank, 306 S.C. 46, 410 S.E.2d 248 (1991), and held that the "unexpected result or industrial injury is itself considered the compensable accident." Sigmon, 316 S.C. at 262, 449 S.E.2d at 498. However, the Court did not address whether the claimant's alleged accident arose out of his employment with. Id. Instead, the Court remanded the case to the Commission "for it to determine anew, based on the present record, Sigmon's claim for workers' compensation benefits." Id. at 263, 449 S.E. 2d at 499.

Similarly, in Creech, the Court also cited Stokes, and once again determined that the lower courts erred as a matter of law in finding that the claimant did not suffer an "injury by accident" within the meaning of the Act because the claimant failed to establish a causative event. Creech, 320 S.C. at 563, 467 S.E.2d at 116. In Creech, like in Sigmon, the Court remanded the case the Commission to determine if the claimant sustained a compensable injury by accident pursuant to the Supreme Court's decision in Stokes. See Creech, 320 S.C. at 563, 467 S.E.2d at 116.

The Commission's decision is based on a belief that this Court determined in Sigmon and Creech that the claimants sustained compensable injuries by accident arising out of their employment. (See R. pp. 13-14). However, as noted above, this is clearly not the case. This Court, in both Sigmon and Creech only determined that the phrase "injury

by accident" does not require a "causative event." In both cases, this Court did not address whether the claimants alleged injuries arose out of their employment. Instead, this Court remanded both cases to the Commission to determine whether the claimants sustained compensable injuries by accident pursuant to Stokes.

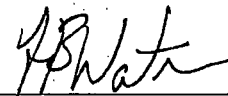
While it is true, pursuant to the decisions in Sigmon, Creech, and Stokes, that a claimant need not establish a specific event causing the injury, he or she still must establish a causal connection or relationship between the injury and the employment. *See Crosby v. Wal-Mart*, 330 S.C. 489, 499 S.E.2d 253 (Ct. App. 1998). In the present case, as argued above, Nicholson clearly failed to establish a causal connection between her alleged injuries and her employment. Therefore, the Commission erred as a matter of law in determining that Nicholson sustained a compensable injury by accident arising out of and in the course of her employment with SCDSS.

CONCLUSION

Based on the foregoing, Appellants SCDSS and State Accident Fund respectfully request that the South Carolina Court of Appeals reverse the Decision and Order of the South Carolina Workers' Compensation Commission finding that Nicholson sustained a compensable injury by accident arising out of and in the course of her employment on February 26, 2009.

Respectfully submitted,

WILLSON JONES CARTER & BAXLEY, P.A.

BY: 

L. Brenn Watson, Esquire
Zachary M. Smith, Esquire
872 S. Pleasantburg Drive
Greenville, South Carolina 29607
(864) 527-3292
Attorney for Appellants

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BRIEF OF RESPONDENT

Kathryn Williams
Kathryn Williams, P.A.
619 North Main St.
P.O. Box 10693
Greenville, SC 29603
(864) 235-6254

Attorney for Respondent

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STATEMENT OF ISSUES ON APPEAL

- I. Did the Commission err in finding and ruling Nicholson sustained compensable injury by accident on February 26, 2009?
- II. Did the Commission correctly reject SCDSS's argument that Nicholson's fall is not compensable because it could have happened on any carpeted floor at home or in some other place?
- III. Did the Commission correctly reject SCDSS's argument that the holding of Bagwell v. Ernest Burwell, Inc., 227 S.C. 444, 88 S.E.2d 611 (1955) has application under the facts of this case?

STATEMENT OF THE CASE

This is an appeal from the Workers' Compensation Commission. Carolyn Nicholson filed a claim under the Workers' Compensation Act alleging that she sustained a compensable injury by accident on or about February 26, 2009 when she fell while working for the South Carolina Department of Social Services. Nicholson contended that she sustained injuries to her neck, back, and left shoulder as a result of the fall and that she is entitled to payment of medical expenses and temporary total disability compensation. The Department of Social Services ("SCDSS") and its insurance carrier, State Accident Fund, admit Nicholson fell at work but deny that the fall constitutes a compensable injury by accident.

By Order dated April 26, 2011, the single Commissioner determined that Nicholson fell when her shoe scuffed the carpet while she was walking to a meeting with a stack of files in her hands; however, citing Bagwell v. Ernest Burwell, Inc., 227 S.C. 444, 88 S.E.2d 611 (1955), he found that the claim was not compensable. (R. pp. 17-26)

Nicholson appealed to the Full Commission Panel, and by Order dated December 29, 2011, an Appellate Panel of the Full Commission reversed the single Commissioner, found the claim compensable, and awarded benefits. (R. pp. 1-16)

SCDSS now appeals to this Court.

STATEMENT OF FACTS

At the hearing in Greenville on March 16, 2011, Nicholson testified that she is 50 years old and has a B.S. in business management. She was employed by SCDSS for about 20 years, though she was no longer working there at the time of the hearing for reasons unrelated to this claim. Nicholson stated that she worked in the child protective services area and was a supervisor of investigations. (R. p. 49, lines 4-23)

Nicholson testified that on February 26, 2009 she was preparing for an in-house audit of her files. She stated that she left her office carrying a stack of files for the meeting and was walking down the hall when "the friction from my foot caught me and I fell, files and all, [onto] my left side." (R. p. 51, line 4-p. 52, line 13) She stated that her leg did not give way, that she is in good health, and had not any previous problems with her legs giving way. (R. p. 52, lines 14-19) Nicholson was asked specifically what she thought caused her to fall, and she answered as follows:

Q. So, what is it that you think caused you to fall?

A. Friction from the carpet.

Q. Did your foot get stuck?

A. Yes, from the friction. As I went to walk, the friction from the carpet just grabbed me and I fell.

(R. p. 52, lines 20-24)

Nicholson further testified that SCDSS sent her to Exigent-Wade Hampton for medical treatment for pain in her left side, left shoulder, neck, and leg. She eventually underwent an MRI examination of her neck, was evaluated by neurosurgeon Dr. Philip Hodge, and received a cervical epidural steroid injection from Dr. John Haasis. (R. p. 52, line 25-p. 53, line 17) Nicholson was out of work from February 26, 2009 until April 13, 2009, when she returned to her regular work duties. (R. p. 53, line 18-p. 54, line 2) She specifically asked the Commission for compensation for her time out of work and for payment of her medical treatment.

The medical records show that Nicholson reported to Exigent-Wade Hampton on February 26, 2009 complaining of pain in her left side, left shoulder, neck, and leg after "she tripped on the carpet, fell and landed on her left side." She was diagnosed with contusions and strains, treated with medications, and restricted to light duty work. (R. pp. 85-86) Nicholson continued to attend appointments at Exigent for treatment of problems with her left shoulder, left arm, and neck through March 24, 2009, though on March 16, 2009, the notes indicate that the workers' compensation insurance company had denied the claim and bills were being sent to Nicholson's health insurance provider. (R. pp. 87-101)

Nicholson reported to her primary care physician, Dr. Stanley Coleman, on March 25, 2009 for continued care, and Dr. Coleman noted on that date that she was complaining of left arm and shoulder pain after falling at work. After noting continued neck and arm pain on April 6, 2009 and reviewing an MRI scan, Dr. Coleman referred Nicholson for evaluation with neurosurgeon Dr. Philip Hodge. (R. pp. 102-103)

Dr. Hodge saw Nicholson on May 18, 2009 and noted that she was complaining of continued neck and left arm pain after she "[t]ripped and fell on floor" while at work on

February 26, 2009. (R. p. 104) After evaluation, Dr. Hodge diagnosed cervical radiculopathy and recommended an epidural steroid injection. (R. pp. 104-106) He later opined that Nicholson's problems "were caused and/or aggravated by her fall at work on February 23, 2009." (R. p. 107)

Pain management physician Dr. John Haasis saw Nicholson on May 28, 2009 for evaluation on referral from Dr. Hodge. Dr. Haasis noted Nicholson complained of neck, left shoulder, and left upper extremity pain after "she fell at work." (R. p. 108) He recommended a trial of physical therapy before attempting an injection. (R. pp. 108-112) On June 20, 2009, Dr. Haasis noted that Nicholson reported "minimal benefit" from the therapy, and he then provided the epidural steroid injection. (R. pp. 113-114)

Medical records from Dr. Coleman's office dated prior to the incident at work show that Nicholson was treated for low back pain in 2001, syncope in 2002, chest pain in 2002, a pulled muscle in her arm in 2006, and bilateral knee pain in 2006. (R. pp. 116-124)

ARGUMENTS

In Brown v. Greenwood Mills, Inc., this Court explained at length the standard of review in workers' compensation cases.

The South Carolina Administrative Procedures Act ("APA") establishes the standard for judicial review of decisions of the workers' compensation commission. A reviewing court may reverse or modify a decision of an agency if the findings, inferences, conclusions, or decisions of that agency are "clearly erroneous in view of the reliable, probative and substantial evidence on the whole record." Under the scope of review established in the APA, this Court may not substitute its judgment for that of the appellate panel as to the weight of the evidence on questions of fact, but may reverse where the decision is affected by an error of law.

The substantial evidence rule of the APA governs the standard of review in a workers' compensation decision. Pursuant to the APA, this Court's review is limited to deciding whether the appellate panel's decision is unsupported by substantial evidence or is controlled by some error of law. Substantial evidence is not a mere scintilla of evidence, nor the evidence viewed blindly from one side of the case, but is evidence which, considering the record as a whole, would allow reasonable minds to reach the conclusion the administrative agency reached in order to justify its action.

The appellate panel is the ultimate fact finder in workers' compensation cases and is not bound by the single commissioner's findings of fact. The final determination of witness credibility and the weight to be accorded evidence is reserved to the appellate panel. The possibility of drawing two inconsistent conclusions from the evidence does not prevent an administrative agency's findings from being supported by substantial evidence. Where there are conflicts in the evidence over a factual issue, the findings of the appellate panel are conclusive.

The findings of an administrative agency are presumed correct and will be set aside only if unsupported by substantial evidence. It is not within our province to reverse findings of the appellate panel which are supported by substantial evidence.

Brown v. Greenwood Mills, Inc., 366 S.C. 379, 391-93, 622 S.E.2d 546, 553-54 (Ct. App. 2005)(citations omitted).

I. The Commission committed no error in finding and ruling Nicholson suffered compensable injury by accident entitling her to medical and compensation benefits.

The essential facts of this case are not in dispute. As the Commission found, Nicholson fell when her shoe scuffed the carpet while she was walking to a meeting with a stack of files in her hands. It is apparent from the medical records that the fall caused the injuries she suffered, and there is no dispute between the parties on that issue. At the hearing, Nicholson described the fall as follows:

I stacked [files] from my desk and went around to go out the door. I was speaking to a worker on my way there that stopped me. And by the time I got midway from my office to going down the hall, the friction from my foot caught me and I fell, files and all, my left side. That was the gist of the story.

Q. Okay. Did your leg give way or anything like that? Did anything happen?

A. No. I'm in good health. No.

Q. Okay. Have you ever had any problems with your legs before with giving way or anything like that?

A. No.

Q. So, what is it that you think caused you to fall?

A. Friction from the carpet.

Q. Did your foot get stuck?

A. Yes, from the friction. As I went to walk, the friction from the carpet just grabbed me and I fell.

(R. p. 52, lines 8-24) The question before the Commission was whether these admitted facts constitute compensable injury by accident, and the Commission ultimately determined that they did. The Commission's pertinent findings are as follows:

7. Claimant's accident occurred when her shoe fractioned [sic] the carpet causing her to trip and fall while walking to a scheduled audit meeting on February 26, 2009. ...
10. The floor on which claimant fell was carpeted, level, and free from any apparent defect.
11. There was a specific, non-internal reason for claimant's fall in that she tripped when her foot scuffed or caught in the carpet due to the friction of the carpet against her shoe.
12. There is no evidence claimant suffered any internal breakdown which caused her fall, as the medical records do not suggest any personal medical reason for the fall and claimant testified she is in good health and her leg did not give way or anything of that nature.
14. Claimant's fall was not an "idiopathic fall" as there is no evidence that a non-occupational heart attack, epileptic fit, fainting spell, or any other personal medical problem caused the fall.
15. Claimant's fall was not an "unexplained fall" as she identified a specific, non-internal reason for her fall, specifically that she tripped when her foot scuffed or caught in the carpet due to the friction of the carpet against her shoe.
16. Claimant has proven that a causal connection exists between her fall on February 26, 2009 and her employment with employer-defendant.

17. Claimant's fall on February 26, 2009, arose out of her employment in that it bore a special relation to her work and the conditions under which her work was performed, specifically that she was required to work in a carpeted area, while walking across the carpet her foot scuffed or caught in the carpet due to the friction of the carpet against her shoe, and this scuffing or catching in the carpet caused her to trip and fall.
18. Claimant's fall on February 26, 2009 occurred in the course of her employment with employer-defendant in that she was then at her place of employment and engaged in the performance of her regular work duties.
19. Claimant's employment with employer-defendant was a contributing cause to her fall and subsequent injuries.
20. It is irrelevant that this circumstance could have occurred and this fall could have happened on any other level, carpeted surface outside of employer-defendant's building as the fall did not happen in any other place but happened in employer-defendant's building as a result of a risk associated with the conditions under which claimant was required to work, specifically that she was required to work in a carpeted area, while walking across the carpet her foot scuffed or caught in the carpet due to the friction of the carpet against her shoe, and this scuffing or catching in the carpet caused her to trip and fall.
21. It is also irrelevant that claimant's fall would have carried the same consequences had she fallen on any other level, carpeted surface outside of employer-defendant's building, as the same can be said of a great many compensable workplace injuries such as a knee injury occurring when standing after bending to tighten a bolt on a machine or a back injury when bending over to pick up a filter rack.
22. Claimant has proven by a preponderance of the evidence that her injury arose out of her employment with employer-defendant.

(R. pp. 7-11) Because the Commission's determination is supported by substantial evidence on the record and is not affected by any error of law, it should be affirmed by this Court.

The Workers' Compensation Act provides that "[i]n order to be entitled to workers' compensation benefits, the employee must show he or she sustained 'injury by accident arising out of and in the course of employment.'" Owings v. Anderson Co. Sheriff's Dep't, 315 S.C. 297, 299, 433 S.E.2d 869, 871 (1993); S.C. Code Ann. § 42-1-160 (2009).

The phrase 'arising out of' refers to the origin of the cause of the accident. '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.'

Clade v. Champion Lab., 330 S.C. 8, ___, 496 S.E.2d 856, 857 (1998). "An accident 'arises out of employment' when the employment is a contributing proximate cause." Beam v. State Workers' Comp. Fund, 261 S.C. 327, ___, 200 S.E.2d 83, 85 (1973). An injury "arises 'in the course of employment' . . . when it occurs within the period of employment at a place where the employee reasonably may be in the performance of his duties and while fulfilling those duties or engaged in something incidental thereto." Id.

In South Carolina, it has not mattered that the injury is the result of normal or routine performance of work activities. In Holley v. Owens Corning Fiberglass Corp., 301 S.C. 519, 392 S.E.2d 804 (Ct. App. 1990), the injured worker's heart attack was found to be a compensable injury by accident where normal working conditions exposed claimant to extreme heat. The Court succinctly stated that "(a)n accident . . . arises when there is apparent to the rational mind, upon consideration of all the circumstances, a causal connection between the conditions under which the work is required to be performed and the resulting injury." Holley, at p. 523. Further, in Creech v. Ducane Co., 320 S.C. 559, 467 S.E.2d 114 (Ct. App.

1995), the injured worker suffered a back injury when simply reaching down to lift a one-pound filter rack. The Commission determined the injury was not compensable, specifically finding that

The claimant has failed to prove that he sustained an injury by “accident” to his back arising out of and in the course of his employment on July 12, 1993. The claimant describes picking up a filter rack weighing less than one pound *but describes no slip, trip, sudden effort, etc.* Further, the claimant does not describe a hazard to which he is not equally exposed apart from the work.

Creech, 467 S.E.2d at 115 (emphasis in original). This Court reversed, looking to the Supreme Court’s language in Stokes v. First Nat’l Bank, 306 S.C. 46, 410 S.E.2d 248 (1991) and this Court’s own holding in Sigmon v. Dayco Corp., 316 S.C. 260, 449 S.E.2d 497 (Ct. App. 1994) to re-affirm that “*injury by accident*” includes an injury in which the means or cause is an accident, such as a slip, trip, or sudden exertion, but also includes an injury which is itself an accident, such as an injury occurring unexpectedly from the operation of internal or subjective conditions, without any external, accidental event.

Therefore, there can be no question that a claimant sustains a compensable injury by accident arising out of and in the course of employment when she trips and falls while performing her work duties. See e.g. Sanders v. Litchfield Country Club, 297 S.C. 339, 377 S.E.2d 111 (Ct. App. 1989)(compensable injury where employee tripped and fell on bolt sticking out of a crosstie in the parking lot). The evidence here shows that while walking across the carpet, Nicholson’s foot scuffed or caught in the carpet due to the friction of the carpet against her shoe and that this scuffing or catching in the carpet caused her to trip and fall. Such a trip and fall is clearly compensable under our Worker’s Compensation Act, as

interpreted by the appellate courts. The Commission committed no error in so finding.

Of note, in a very similar case, the Appellate Court of Illinois affirmed a decision of that state's Industrial Commission awarding benefits to a claimant whose foot got caught or tangled in carpeting causing her to fall. The Commission found it "it reasonable that a rubber sole would stick to the texture of the carpeting" and specifically noted that

claimant fell while working, carrying out a task that was quite foreseeable and necessary to her job. Accordingly, her injury necessarily arose out of and in the course of her employment. Additionally, the risk of injury to which claimant was exposed was connected to her employment.

Tinley Park Hotel & Conv. Ctr. v. Indus. Comm'n, 826 N.E.2d 1043, 1048 (Ill. App. 2005).

The reasoning employed by the Illinois court in Tinley Park has similar application here and supports the Commission's determination.

SCDSS's argument that this injury could have happened anywhere. SCDSS

argues that this claim cannot be compensable since this fall could have happened anywhere, on any carpeted floor at home or in some other place. However, the Supreme Court's decision in Pierre v. Seaside Farms, Inc., 386 S.C. 534, 689 S.E.2d 615 (2010) casts significant doubt on such argument.

In Pierre, the Commission determined that the injured worker's injuries were not compensable because, among other reasons, "the risk was not associated with [his] employment because the sidewalk [on which he fell] was no different in character from other sidewalks." However, the Court rejected that finding as not supported by substantial evidence since "the source of the injury was a risk associated with the conditions under which the employees were required to live." Pierre, 689 S.E.2d at 622-623. In doing so, the Court noted

that Pierre slipped and fell on a wet sidewalk outside the employer's housing facility, the sidewalk was wet because another employee was using the sink and water ran across the sidewalk, and the employer's placement of the sink and apparent lack of drainage created the conditions that caused him to fall.

In the present case, Nicholson testified that she fell because her foot caught in the carpet due to static electricity created by the carpeting. (R. p. 52, lines 7-24) Thus, as in Pierre, the source of the injury was a risk associated with the condition under which Nicholson was required to work. Nicholson was required to work, and to walk as she performed her work, on a carpeted floor and that carpeted floor was the source of the static electricity which caught her foot, tripped her, and caused her fall.

Furthermore, the injuries described in Creech and Sanders could obviously have happened if those workers had performed similar activities at home or at some other place. In fact, a great number of injuries that happen at work, such as a back injury with lifting, could have happened at home. However, the injuries in each of the cases discussed above happened at work because of actions the employees were involved with in order to perform their required work duties and because of the conditions under which they were required to work, i.e., bending down in Creech and walking across a parking lot in Sanders. The idea that the injury could have happened at some other place cannot be dispositive, and the Commission properly rejected that argument.

SCDSS's argument based on Bagwell v. Ernest Burwell, Inc. SCDSS argues that the holding of Bagwell v. Ernest Burwell, Inc., 227 S.C. 444, 88 S.E.2d 611 (1955) should be determinative in this case because Nicholson fell on a level floor. However, a review of the undisputed facts of the present case makes clear that this is not in any way an "idiopathic"

injury, and for that reason, the “level floor” jurisprudence is irrelevant to this case.

Contrary to the idea of an “idiopathic” injury, Nicholson here gave a specific reason for her fall. An “idiopathic/level floor” fall is defined by Larson as the situation where “an employee, solely because of a nonoccupational heart attack, epileptic fit, or fainting spell, falls and sustains a skull fracture or other injury.” 1-9 Larson's Workers' Compensation Law § 9.01 (2011).

When an employee, solely because of a nonoccupational heart attack, epileptic fit, or fainting spell, falls and sustains a skull fracture or other injury, the question arises whether the skull fracture (as distinguished from the internal effects of the heart attack or disease, which of course are not compensable) is an injury arising out of the employment.

The basic rule, on which there is now general agreement, is that the effects of such a fall are compensable if the employment places the employee in a position increasing the dangerous effects of such a fall, such as on a height, near machinery or sharp corners, or in a moving vehicle. The long-standing controversial question is whether the effects of an idiopathic fall to the level ground or bare floor should be deemed to arise out of the employment.

Id. Of course, it is solely this “long-standing controversial question” of the compensability of a “idiopathic” fall onto a level floor which is answered in the negative by the Supreme Court in Bagwell. Cf. Turner v. Campbell Soup Co., 252 S.C. 446, 166 S.E.2d 817 (1969)(claim compensable where claimant’s head struck a pipe during her fall); Holly v. Spartan Grain & Mill Co., 210 S.C. 183, 42 S.E.2d 59 (1947)(claim compensable where claimant fell from catwalk into open bin causing injury).

The deceased worker in Bagwell fell over for some unknown reason while standing completely still, though there was the suggestion of either a fainting spell or a subarachnoid

hemorrhage. Because the witnesses to the incident could not give a work-related reason for the fall and because of the suggestion that the cause of the fall was some personal health problem of the deceased, the deceased's family argued that the claim was compensable because the hard, concrete floor on which he fell added to the effects of the fall. The Supreme Court rejected that argument, stating

We are not prepared to accept the contention that, in the absence of special condition or circumstances, a level floor in a place of employment is a hazard. Cement floors or other hard floors are as common outside industry as within it. The floor in the instant case did not create a hazard which would not be encountered on a sidewalk or street or in a home where a hard surface of the ground or a hard floor existed.

Bagwell v. Ernest Burwell, Inc., 227 S.C. 444, 454, 88 S.E.2d 611, 615 (1955).

However, it is clear from both the holding in Bagwell and Professor Larson's treatise that there must first be an "idiopathic" fall before the question of whether the floor or some object struck on the way down contributed to the effects of the fall. In other words, if there is no evidence of "a nonoccupational heart attack, epileptic fit, or fainting spell" or some other personal medical problem causing the fall, or if there is evidence that something about the conditions of the work led to the fall, then there is no reason to either raise the argument or reach the question of whether the floor or some object struck on the way down contributed to the effects of the fall.

Here, there is absolutely no lay or medical evidence that any medical condition of any type caused the fall in question. Nicholson testified that she is in good health and that her leg did not give way or anything of that nature. A review of the medical records does not suggest any personal medical reason either. Therefore, because there is no suggestion of a personal

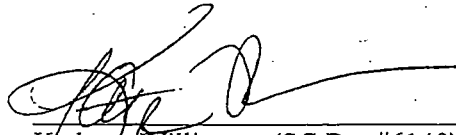
medical reason for the fall, this claim does not meet the definition of an “idiopathic” fall and there is no reason to consider whether the floor played any role in the injury. Furthermore, contrary to the facts in Bagwell, the facts in the present case show that the cause of the fall was related to the work or the working conditions. See Bagwell, 88 S.E.2d at 613 (“It must be shown that the cause of the fall . . . bore some special relation to the work *or to the conditions under which it was performed.*”)(emphasis added). Nicholson clearly testified that there was a specific, non-personal reason for her fall in that her foot caught in the carpet due to static electricity, tripping her, and causing her to fall. (R. p. 52, lines 7-24) This was a risk akin to the wet sidewalk in Pierre. The Commission correctly rejected SCDSS’s argument based on Bagwell.

Nicholson’s injuries happened at work, while she was performing her work duties in walking to a meeting while carrying files in her hands. Her injury occurred as a result of a condition under which she was required to work, specifically that she was required to work in a carpeted area and her walking across that carpet caused static buildup which grabbed her foot, tripped her, and led to her fall. Therefore, as in the cases discussed above, this claim is compensable, and the Commission committed no factual or legal error in so finding.

CONCLUSION

It is, therefore, respectfully submitted that the Commission committed no factual or legal error in finding as fact and ruling as a matter of law that Nicholson sustained compensable injury by accident arising out of and in the course of her employment when while walking across the carpet at her place of employment to attend a meeting to discuss her files, her foot scuffed or caught in the carpet due to the friction of the carpet against her shoe causing her to trip, fall, and sustain injuries. Such a trip and fall is clearly compensable under our Worker's Compensation Act, as interpreted by the appellate courts. The Commission committed no error in so finding, and this Court should affirm that finding.

Respectfully submitted,



Kathryn Williams (SC Bar #6140)
Kathryn Williams, P.A.
619 North Main St.
P.O. Box 10693
Greenville, S.C. 29603
(864) 235-6254
Attorney for Respondent

Date: 6/30/12

THE STATE OF SOUTH CAROLINA
In The Court Of Appeals

APPEAL FROM THE SOUTH CAROLINA
WORKERS' COMPENSATION COMMISSION

SCWCC No. 0901585

Carolyn M. Nicholson, Employee,

v.

Respondent,

SC Dept. of Social Services, Employer, and
State Accident Fund, Carrier,

Appellants.

REPLY BRIEF OF APPELLANTS

L. Brenn Watson, Esquire
Zachary M. Smith, Esquire
872 S. Pleasantburg Drive
Greenville, South Carolina 29607
(864) 527-3292
Attorneys for Appellants

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ARGUMENTS

I.

NICHOLSON'S FEBRUARY 25, 2009 INJURY DOES NOT MEET ALL OF THE NECESSARY REQUIREMENTS OF A COMPENSABLE INJURY UNDER THE ACT.

The South Carolina Workers' Compensation Act ("Act") defines 'injury' and 'personal injury' as "only injury by accident arising out of and in the course of employment..." S.C. Code Ann. § 42-1-160(A) (2007). There are three criteria that are required for an 'injury' to be compensable: (1) accident, (2) arising out of employment, and (3) arising in the course of employment. *See Doe v. South Carolina State Hosp.*, 285 S.C. 183, 328 S.E.2d 652 (Ct. App. 2007)(Emphasis added).

The only issue before this Court is whether Nicholson's injury on February 25, 2009 "arose out of" her employment. SCDSS does not dispute that Nicholson's injury on February 25, 2009 was the result of an "accident" that occurred "in the course of" her employment. Further, as Nicholson noted in her brief, the essential facts of this case are not in dispute. (*See* Brief of Respondent, p. 7). As such, the question of whether Nicholson's injury on February 25, 2009 "arose out of" her employment is a question of law and is for this Court. *See Williams v. City of Columbia*, 218 S.C. 287, 62 S.E.2d 469 (1950)(The question of whether an injury arose out of or in the course of the employment is one of law where the facts are admitted); *Jordan v. Dixie Chevrolet, Inc.*, 218 S.C. 73, 61 S.E.2d 654 (1950)(Upon admitted or established facts the question of whether an accident is compensable is a question of law, and review thereof is not an invasion of the fact-finding field of the Commission on part of the court).

A. This Court's decision in Creech v. Ducane Co. is not applicable to the current case.

Like the Commission, Nicholson erroneously relies on this Court's decision in Creech v. Ducane Co., 320 S.C. 559, 467 S.E.2d 114 (Ct. App. 1995) to support her position that she sustained a *compensable* injury under the Act. In Creech, the claimant alleged that he sustained a compensable injury to his back when he reached down to pick up a filter rack from the floor. Id. at 561, 467 S.E.2d at 115. The single Commissioner found, in part:

The claimant failed to prove that he sustained an injury by "accident" to his back arising out of and in the course of his employment on July 12, 1993. The claimant describes picking up a filter rack weighing less than one pound *but describes no slip, trip, sudden effort, etc.* Further, the claimant does not describe a hazard to which he is not equally exposed apart from work.

Id. (Emphasis added). The Full Commission and the Circuit Court affirmed the single Commissioner's decision that the claimant did not sustain an "injury by accident." Id. at 562, 467 S.E.2d at 115. On appeal, this Court cited Stokes v. First Nat. Bank, 306 S.C. 46, 410 S.E.2d 248 (1991), and Sigmon v. Dayco Corp., 316 S.C.260, 449 S.E.2d 497 (Ct. App. 1994), and noted that "no slip, fall or other fortuitous event or accident in the cause of the injury is required; the unexpected result or industrial injury is itself considered the compensable accident." Creech at 563, 467 S.E.2d at 116. As such, the Court held that the lower courts erred as a matter of law in ruling that the claimant did not sustain an "injury by accident" within the meaning of the Act because he failed to establish a "slip, trip, sudden effort, etc." Id. The Court then remanded the case back to the Commission to determine whether the claimant sustained a *compensable* "injury by accident" within the meaning of Stokes and Sigmon. Id.

This Court's decision in Creech only reiterates the fact that an "injury by accident" does not require a causative event and that the injury itself can be an accident. This Court did not address whether the claimant's injury "arose out of" and "in the course of" his employment. Instead, this Court remanded the case to the Commission to determine whether the claimant sustained a *compensable* "injury by accident," i.e. whether it "arose out of" and "in the course of" his employment.

As noted above, the issue in the present case is not whether Nicholson sustained an "injury by accident." SCDSS admits that her injury on February 25, 2009 was an "injury by accident" as defined by the Act and interpreted by the Courts. Rather, the issue is whether Nicholson's injury "arose out of" her employment. Since this Court's decision in Creech does not address the requirement that an injury must arise out of the employment, it is not applicable or pertinent to the present case. As such, Nicholson's reliance on Creech is misplaced and unsound.

B. The facts of the present case clearly establish that Nicholson's injury did not "arise out of" her employment with SCDSS.

An injury "arises out of" one's employment when there is a causal connection between the conditions under which the work is required to be performed and the resulting injury. Stone v. Traylor Brothers, Inc., 360 S.C. 271, 600 S.E.2d (2004). An injury which cannot be traced to the employment as a contributing proximate cause, and which comes from a hazard to which the workmen would have been equally exposed apart from the employment, does not arise out of the employment. Douglas v. Spartan Mills, 245 S.C. 265, 140 S.E.2d 173 (1965); Beam v. State Workmen's Compensation Fund, 261 S.C. 327, 200 S.E.2d 83 (1973)(Emphasis added).

In her brief, Nicholson contends that "there can be no question that a claimant sustains a compensable injury by accident arising out of and in the course of employment when she trips and falls while performing her work duties." (Respondent's Brief, p. 11). In support of her position, Nicholson cites Tinley v. Park Hotel & Conv. Ctr. v. Indus. Comm'n, 826 N.E.2d 1043 (Ill. App. 1st 2005), a decision from the Illinois Court of Appeals, as a persuasive opinion. However, the present case is clearly distinguishable from Tinley.

In Tinley, the claimant, a waitress, alleged that she sustained a compensable injury when she tripped on the carpet at the employer's restaurant and fell. Id. at 1044. When the claimant began working at the restaurant, approximately a year before her accident, the flooring was painted concrete with no carpeting. Id. However, two weeks before her accident, carpet was installed at the restaurant. Id. at 1045. The carpet was glued directly to the concrete and no padding was used. Id. at 1046. When asked about the condition of the concrete floor prior to the carpeting being installed, the claimant testified that the concrete was unlevel and had waves in it. Id. at 1045. The claimant also testified that the employer required her to wear "black, closed in, rubber soled shoes." Id. With regards to her accident, the claimant testified: "I tripped on the carpet. When I was walking, my right foot got stuck like on the carpet; and I just went down." Id. She further testified that she did not see any food, liquid, or foreign objects on the carpet before or after her accident and that the carpet did not have any frayed edges or worn spots. Id. Another witness testified that she did not consider the carpet to be flat because there were lumps. Id. at 1046. The witness also testified that she had "noticed several different people stumble" on the carpet. Id.

The arbitrator found that the claimant's injuries did not arise out of her employment, that there was no risk of injury connected with the claimant's employment, and that she was not exposed to a greater risk than the general public as a result of her employment. Id. at 1047. The Commission reversed the arbitrator's decision and found that the claimant's injury arose out of and in the course of her employment. Id. In support of its decision, the Commission noted (1) *that the concrete floor was uneven and contained waves prior to the carpet being installed on it*, (2) *that the shoes the claimant was required to wear would stick to the texture of the carpeting*, and (3) *that the newly installed and different working surface increased her risk of injury*. Id. (Emphasis added). The circuit court affirmed the arbitrator, and the employer appealed to the Appellate Court of Illinois. Id. at 1048.

On appeal, the Court noted that the only issue was whether the claimant's injury arose out of her employment. Id. The employer argued that there were no factual disputes and that the claimant was simply walking on carpet that was clean, flat, and free from defect. Id. However, the Court concluded that there was conflicting evidence regarding the condition of the carpeting; thus, the question of whether the claimant did or did not catch her foot in the newly installed carpeting that posed an increased risk was a question of fact for the Commission. Id. at 1049. The Court specifically noted that the concrete under the carpet was uneven and contained waves, that the shoes the claimant was required to wear contributed to her fall, and that other people had stumbled on the newly-installed carpeting. Id. In affirming the Commission's decision, the Court held that "there was sufficient evidence in the record to support the Commission's determination that the condition of the carpeting caused the claimant to fall" and that "the

record supports a finding that claimant would have been more likely to fall at work than while in her living room.” Id. at 1051.

The facts of this case are obviously different from the facts in Tinley. While the employer’s floor in Tinley was uneven and contained waves, Nicholson testified that the floor at SCDSS was level and free from defect:

Q: [Mr. Watson] And it was a level floor; is that right?

A: Yes, sir.

Q: And I think you told me at your deposition that the carpeting was free from defect?

A: As far as I know.

Q: You don’t recall seeing anything –

A: No, sir.

Q: – even after your accident that would have caused you to think, “Hey, I might have tripped over that.”?

A: No, sir. No debris.

Q: It was just simply level floor, carpeted level floor?

A: Yes, sir.

(R. p. 56, lines 11-22). Additionally, while the employer in Tinley required the claimant to wear “black, closed in, rubber soled shoes,” which contributed to her fall, SCDSS did not require Nicholson to wear a certain type of shoe. In fact, Nicholson testified that she was wearing her “normal, regular shoes.”

Q: [Mr. Watson] And when I asked at your deposition what kind of shoes you were wearing that day, I think you told me just normal, regular shoes.

A: Yes, sir.

(R. p. 56 line 23–p. 57, line 1). Finally, while the Court in Tinley noted that the claimant would have been more likely to fall at work than at another place due to the condition of

the carpet, Nicholson's own testimony shows that her fall could have happened anywhere and that the only thing connecting her fall to her employment was that it happened at work:

Q: [Mr. Watson]...So it could have happened anywhere?

A: It could have happened anywhere.

Q: All right. Fair enough. The only thing connecting this fall to your employment was that you happened to be at your job at the time; is that right?

A: Yes.

(R. p. 61, lines 2-8).

In Tinley, the claimant's injury was compensable because her employment, specifically the condition of the employer's floor and the employer's required foot wear, presented her with a greater risk of injury than the general public. However, in the present case, Nicholson's injury did not result from the condition of SCDSS's premises, and there is no evidence that the flooring in SCDSS's building was hazardous or defective. Nicholson was not subjected to a greater degree of risk than the general public due to her employment with SCDSS. The general public has the same risk of "frictioning" a foot on a normal, level, carpeted floor and falling. Therefore, Nicholson's injury did not "arise out of" her employment as required by the Act.

Nicholson also argues in her brief that the Supreme Court's decision in Pierre v. Seaside Farms, Inc., 386 S.C. 534, 689 S.E.2d 615 (2010), "casts significant doubt" on SCDSS's argument that her injury is not compensable because it could have happened on any level, carpeted floor at home or in some other place. (See Brief of Respondent, p. 12). However, as previously discussed in SCDSS's Brief of Appellants, the Supreme Court's decision in Pierre that the claimant sustained a compensable injury was based on

the fact that "Pierre's accident occurred as a result of a hazard that existed on the employer's premises, i.e., Pierre slipped and fell on a wet sidewalk just outside of the employees' housing facility." (386 S.C. at 548, 689 S.E.2d at 622; *See also* Brief of Appellants, p. 15). While the wet sidewalk in Pierre was a hazard on the employer's premises that increased the claimant's risk of injury, Nicholson's own testimony establishes that there was no such hazard on SCDSS's premises that increased her risk of injury. Thus, the Supreme Court's decision in Pierre actually supports SCDSS's position that Nicholson's injury is not compensable because it could have happened on any level, carpeted floor at home or in some other place argument.

Finally, Nicholson also cites Sanders v. Litchfield Country Club, 297 S.C. 339, 377 S.E.2d 111 (Ct. App. 1989), to support her position that "there can be no question that a claimant sustains a compensable injury by accident arising out of and in the course of employment when she trips and falls while performing her work duties." (Respondent's Brief, p. 11). In Sanders, the Commission found that the claimant sustained a compensable injury to her back when she was cleaning up a parking lot, tripped over a bolt sticking out of a "crosstie," and fell. Id. at 340-41, 377 S.E.2d at 112. The Commission's decision was affirmed by the Circuit Court. Id. The defendants subsequently appealed to this Court, which simply held that substantial evidence in the record supported the Commission's decision. Id. at 343, 377 S.E.2d at 113. This Court's opinion in Sanders does not offer an analysis into its reason for concluding that the claimant's injury "arose out of" her employment; however, like Pierre, it is clear that the claimant's injury in Sanders was caused by a hazard that existed on the employer's premises – the bolt sticking out of a "crosstie." *See* 297 at 343, 377 S.E.2d at 113. Once

again, there was no such hazard on SCDSS's premises that increased Nicholson's risk of injury.

Therefore, since Nicholson's employment with DSS clearly did not increase the risk of injury and since there is not a causal relationship between her employment with SCDSS and her injury, Nicholson's accident on February 25, 2009 did not "arise out of" her employment as required by S.C. Code Ann. § 42-1-160.

CONCLUSION

Based on the foregoing and based on the arguments in SCDSS's Brief of Appellants, SCDSS respectfully requests that the South Carolina Court of Appeals reverse the Decision and Order of the South Carolina Workers' Compensation Commission finding that Nicholson sustained a compensable injury by accident arising out of and in the course of his employment with SCDSS.

Respectfully submitted,

WILLSON JONES CARTER & BAXLEY, P.A.

BY: 

L. Brenn Watson, Esquire
Zachary M. Smith, Esquire
872 S. Pleasantburg Drive
Greenville, South Carolina 29607
(864) 527-3292
Attorneys for Appellants

August 17, 2012

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

Carolyn M. Nicholson, Claimant, Respondent,

v.

South Carolina Department of Social Services,
Employer, and State Accident Fund, Carrier, Appellants.

Appellate Case No. 2012-206507

Appeal From The Workers' Compensation Commission

Opinion No. 5171

Heard February 12, 2013 – Filed September 4, 2013

REVERSED

L. Brenn Watson and Zachary M. Smith, both of Wilson,
Jones, Carter & Baxley, P.A., of Greenville, for
Appellants.

Kathryn Williams, of Kathryn Williams, P.A., of
Greenville, for Respondent.

GEATHERS. J.: South Carolina Department of Social Services (DSS) appeals the Appellate Panel of the South Carolina Workers' Compensation Commission's (the Commission) finding that Carolyn Nicholson sustained compensable injuries to her neck, back, and left shoulder when she fell while walking in a carpeted hallway of her workplace. DSS argues the Commission erred because Nicholson's injuries did not arise out of her employment, as the Workers' Compensation Single Commissioner (Single Commissioner) previously found. We reverse.

FACTUAL/PROCEDURAL HISTORY

The facts in this case are undisputed. Nicholson worked as a supervisor in the investigations department of DSS. As a part of her job with DSS, she attended weekly audit meetings to review and update case files. On February 26, 2009, Nicholson was scheduled for an audit meeting, which was held on the lower floor of DSS's building. She grabbed a stack of files and began walking down the hallway to the meeting. While walking down the hallway, Nicholson's shoe scuffed the carpet, and she fell onto her left side. As a result of the fall, Nicholson sustained injuries to her neck, back, and left shoulder.

On January 3, 2011, Nicholson filed a Form 50, alleging she sustained compensable injuries by accident arising out of and in the course of her employment as a result of the fall. Nicholson sought payment for past medical treatment, additional medical treatment for her neck, back, and left shoulder, and temporary total disability benefits from February 26, 2009, to April 13, 2009, the days she was out of work. DSS and its insurance carrier, State Accident Fund, admitted Nicholson fell at work but denied she sustained compensable injuries by accident arising out of her employment.

A hearing before the Single Commissioner was held on March 16, 2011. At the hearing, Nicholson testified her leg did not give way, and she had no health problems that would cause her to fall. During direct examination, Nicholson was specifically asked if she could offer any opinion as to the cause of her fall, and she answered as follows:

Q. So, what is it that you think caused you to fall?

A. Friction from the carpet.

Q. Did your foot get stuck?

A. Yes, from the friction. As I went to walk, the friction from the carpet just grabbed me and I fell.

Nicholson further testified the hallway had a normal, level, carpeted floor that was free from defect, and there was no debris on the floor. Although Nicholson was carrying ten case files weighing approximately fifteen pounds at the time of her fall, she testified that the files did not cause her to fall.

On April 26, 2011, the Single Commissioner issued an order finding Nicholson did not prove by a preponderance of the evidence that her alleged injuries arose out of her employment. Specifically, the Single Commissioner found Nicholson did not prove a causal connection between her fall and her employment because the fall was "wholly unrelated to her employment with [DSS]." The Single Commissioner found the floor was carpeted, level, and free from defect and, therefore, concluded Nicholson's employment was not a contributing cause because "there was nothing peculiar about the floor at [DSS]'s building that caused her to fall." Additionally, the Single Commissioner determined Nicholson's employment did not contribute to the effect of her fall because the fall "would have carried the same consequences had she fallen on a carpeted floor outside" the DSS building. In support, the Single Commissioner referenced Nicholson's own testimony that the files she carried did not cause or contribute to her fall. Based on these findings, the Single Commissioner denied Nicholson's claim for benefits. The Single Commissioner discussed *Bagwell v. Ernest Burwell, Inc.*, 227 S.C. 444, 88 S.E.2d 611 (1955), in support of his conclusion.

Nicholson appealed to the Commission, which reversed the Single Commissioner's determination that Nicholson did not sustain compensable injuries. The Commission discussed *Pierre v. Seaside Farms, Inc.*, 386 S.C. 534, 689 S.E.2d 615 (2010), in support of its findings. As to the specific findings, the Commission found that Nicholson's injuries did not result from an idiopathic¹ or unexplained fall because Nicholson identified a specific, non-internal reason for the fall—her shoe scuffing the carpet. The Commission, therefore, concluded that because the fall was not idiopathic, the analysis in *Bagwell* was inapplicable. The Commission also determined "the files did not cause or contribute to [Nicholson's] fall." Nevertheless, the Commission found Nicholson's employment was a contributing cause to her fall, and it was irrelevant that the fall could have happened on any other level, carpeted surface because the fall happened as a result of a risk associated with the conditions under which she worked. As a result, the Commission determined that the fall arose out of Nicholson's employment because "it bore a special relation to her work and the conditions under which she worked," because "she was required to work in a carpeted area." This appeal followed.

¹ An idiopathic fall arises from some physical or mental condition personal to the claimant. Mark A. Rothstein et al., *Employment Law* § 7.18 (4th ed. 2009).

ISSUE ON APPEAL

Did the Commission err in finding Nicholson sustained compensable injuries arising out of her employment with DSS, thus entitling her to medical and compensation benefits?

STANDARD OF REVIEW

The South Carolina Administrative Procedures Act establishes the standard for judicial review of decisions of the Commission. *Pierre*, 386 S.C. at 540, 689 S.E.2d at 618. This court can reverse or modify the Commission's decision if it is affected by an error of law or is clearly erroneous in view of the reliable, probative, and substantial evidence in the whole record. *Fishburne v. ATI Systems Intern.*, 384 S.C. 76, 85, 681 S.E.2d 595, 599-600 (Ct. App. 2009) (citing S.C. Code Ann. § 1-23-380). "Substantial evidence is not a mere scintilla of evidence, but evidence which, considering the record as a whole, would allow reasonable minds to reach the conclusion the agency reached." *Pierre*, 386 S.C. at 540, 689 S.E.2d at 618 (quoting *Tennant v. Beaufort Cnty. Sch. Dist.*, 381 S.C. 617, 620, 674 S.E.2d 488, 490 (2009)). Despite the significant deference that the substantial evidence standard affords the Commission as to the weight of the evidence on questions of fact, "[w]here there are no disputed facts, the question of whether an accident is compensable is a question of law." *Grant v. Grant Textiles*, 372 S.C. 196, 201, 641 S.E.2d 869, 872 (2007); see also *Langdale v. Harris Carpets*, 395 S.C. 194, 200-01, 717 S.E.2d 80, 83 (Ct. App. 2011) (stating a reviewing court may not substitute its judgment for that of the Commission as to the weight of the evidence on questions of fact, but it may reverse a decision affected by an error of law).

LAW/ANALYSIS

DSS argues the Commission erred in concluding that Nicholson's injuries arose out of her employment. DSS contends there was no causal connection between Nicholson's injuries and her employment because the carpet on which she fell was level and free from defect, and Nicholson testified that the files she was carrying did not cause her fall.

To be entitled to workers' compensation benefits, a claimant must show he or she sustained an "injury by accident arising out of and in the course of employment." S.C. Code Ann. § 42-1-160(A) (Supp. 2012). "The two parts of the phrase 'arising out of and in the course of employment' are not synonymous." *Broughton v. South of the Border*, 336 S.C. 488, 496, 520 S.E.2d 634, 638 (Ct. App. 1999). Rather,

both parts must exist simultaneously before recovery is allowed. *Id.* This court has explained the distinction between the two parts as follows:

An accidental injury is considered to arise out of one's employment when there is a causal connection between the conditions under which the work is required to be performed and the resulting injury. An injury occurs within the course of employment when it occurs within the period of employment, at a place where the employee reasonably may be in the performance of his duties, and while fulfilling those duties or engaged in something incidental thereto.

Eaddy v. Smurfit-Stone Container Corp., 355 S.C. 154, 161, 584 S.E.2d 390, 394 (Ct. App. 2003) (internal citations omitted). In this matter, there is no dispute that Nicholson sustained her injuries in the course of her employment, as she was at work at the time of the fall. Thus, the sole issue raised on appeal is whether Nicholson's injuries arose out of her employment.

The term "arising out of" refers to the origin or cause of the accident. *Crosby v. Wal-Mart Store, Inc.*, 330 S.C. 489, 493, 499 S.E.2d 253, 255 (Ct. App. 1998). "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)). However, an injury is excluded from compensability under the Workers' Compensation Act when it "comes from a hazard to which the workmen would have been equally exposed apart from the employment." *Crosby*, 330 S.C. at 493, 499 S.E.2d at 255. Therefore, a claimant's injury is only compensable if the source of the injury was a risk "peculiar to the work and not common to the neighborhood." *Douglas v. Spartan Mills, Startex Div.*, 245 S.C. 265, 269, 140 S.E.2d 173, 175 (1965).

The question of whether an injury arises out of employment is largely a question of fact for the Commission. *Ervin v. Richland Mem'l Hosp.*, 386 S.C. 245, 249, 687 S.E.2d 337, 339 (Ct. App. 2009). However, "[w]here there are no disputed facts, the question of whether an accident is compensable is a question of law." *Grant*, 372 S.C. at 201, 641 S.E.2d at 872; *Jordan v. Dixie Chevrolet*, 218 S.C. 73, 77, 61 S.E.2d 654, 656 (1950) ("Upon admitted or established facts the question of

whether an accident is compensable is a question of law and this is not an invasion of the fact-finding field of the Commission on the part of the Court."). We acknowledge the substantial evidence standard generally applies in this type of situation. Nonetheless, under *Grant*, when the facts are undisputed, as they are here, we must examine whether the Commission's decision that Nicholson's injuries arose out of her employment was affected by an error of law. Moreover, "[w]hile the appellate courts are required to be deferential to the full commission regarding questions of fact, this deference does not prevent the courts from overturning the full commission's decision when it is legally incorrect." *Grant*, 372 S.C. at 202, 641 S.E.2d at 872.

On appeal, DSS presents several arguments that the Commission did not apply the correct legal standard in considering whether Nicholson's injuries arose out of her employment. First, DSS argues the Commission erred in finding Nicholson's injuries arose out of her employment in light of the supreme court's decision in *Bagwell*. Additionally, DSS contends the Commission misinterpreted the holding in *Pierre* because the Commission did not focus its analysis on whether Nicholson's injuries were caused by a special condition or hazard. Lastly, DSS argues Nicholson's injuries are not compensable because she was not subjected to a greater degree of risk than the general public due to her employment. We address each of these arguments in turn.

I. The Applicability of *Bagwell*.

Initially, DSS contends the Commission erred in finding Nicholson's injuries arose out of her employment in light of the supreme court's decision in *Bagwell*.

In *Bagwell*, our supreme court confronted the issue of an idiopathic fall, wherein an employee suddenly fell backward on a level, concrete floor, lost consciousness, and later died as a result of a subdural hemorrhage. 227 S.C. at 447, 88 S.E.2d at 612. The fall was unexplained because the claimant had died and the only witness could not give a work-related reason for the fall; however, there was a suggestion the fall was caused by a personal health problem of the claimant. *Id.* at 447-50, 452-53, 88 S.E.2d at 612-13, 614-15. Thus, the issue was whether compensation should be awarded when the cause of the fall was unrelated to the employment but the cement floors contributed to the effect of the fall. *Id.* at 452-53, 88 S.E.2d at 614-15. Our supreme court affirmed the circuit court's denial of compensation, stating:

We are not prepared to accept the contention that, in the absence of special condition or circumstances, a level floor in a place of employment is a hazard. Cement floors or other hard floors are as common outside industry as within it. The floor in the instant case did not create a hazard which would not be encountered on a sidewalk or street or in a home where a hard surface of the ground or a hard floor existed.

Id. at 454, 88 S.E.2d at 615 (emphasis added).

A special condition was required in *Bagwell* because the fall could not be tied to the employment without otherwise proving a special condition of the employment contributed to the effect of the fall. In Nicholson's case, however, there was a specific, non-personal reason for her fall—Nicholson's shoe scuffing the carpet. Moreover, there was no evidence Nicholson suffered any internal breakdown. Thus, her fall was neither idiopathic nor unexplained.

Although the facts of this case are distinguishable from *Bagwell*, our supreme court has made clear that its decision in *Bagwell* was consistent with its previous interpretation of the term "arising out of." See *Bagwell*, 227 S.C. at 454, 88 S.E.2d at 615 (stating the "conclusion [to deny compensation] is more in harmony with the definition which this Court has consistently given the phrase 'arising out' of the employment"). Hence, *Bagwell* reinforces our court's interpretation of the term "arising out of" as requiring a causal connection between the conditions under which the work is required to be performed and the resulting injury. See *Pierre*, 386 S.C. at 548-49, 689 S.E.2d at 622 (finding an employee's injuries from slipping on a wet sidewalk at the employer's on-site housing facility arose out of employment because the source of the injury was a risk associated with the conditions under which the employee was required to live). Therefore, notwithstanding the fact that *Bagwell* is predicated on the existence of an idiopathic condition, the holding in *Bagwell* is instructive in determining whether an employee's injuries from an unexplained, non-idiopathic fall arose out of employment. Accordingly, we find that as in *Bagwell*, the carpet in DSS's building was not a hazard that caused or contributed to Nicholson's injuries in the case at bar. See *Bagwell*, 227 S.C. at 454, 88 S.E.2d at 615 ("We are not prepared to accept the contention that, in the absence of special condition or circumstances, a level floor in a place of employment is a hazard.").

II. The Commission's Interpretation of *Pierre*.

Next, DSS argues the Commission misinterpreted the holding in *Pierre* because it did not focus its analysis on whether Nicholson's fall was caused by a special condition or hazard on the carpet.

In *Pierre*, our supreme court addressed whether an employee's injuries from an explained, non-idiopathic fall arose out of employment. Therein, the employee fell on a wet sidewalk outside his employer's on-site housing facility. 386 S.C. at 538, 689 S.E.2d at 617. The Single Commissioner concluded that the employee's injuries did not arise out of employment, stating the following:

[T]he wet sidewalk where Pierre fell was not different in character or design from other sidewalks, and the risk associated with slipping on the sidewalk was not one uniquely associated with his employment; rather, it was one he would have been equally exposed to apart from his employment.

Id. at 539, 689 S.E.2d at 617. The Commission subsequently upheld the Single Commissioner's order and incorporated it by reference. *Id.* The Commission determined the employee did not sustain a compensable injury arising out of his employment because the sidewalk on which he fell was no different in character than other sidewalks. *Id.* However, the supreme court rejected the Commission's finding as not supported by substantial evidence because the accident occurred "as a result of a hazard that existed on the employer's premises, i.e., [the employee] slipped and fell on a wet sidewalk just outside the employees' housing facility." *Id.* at 548, 689 S.E.2d at 622. The court specifically noted that the sidewalk was wet because another person was using the outside sink and the water ran down the sidewalk. *Id.* In addition, the court found that the wet condition of the sidewalk resulted from the employer's placement of the sink and the apparent lack of drainage. *Id.* Based on this evidence, the court concluded that the employee's injury arose out of his employment because the source of the injury, i.e., the wet sidewalk, was a risk associated with the conditions under which the employee was required to live. *Id.* at 549, 689 S.E.2d at 622-23.

The court in *Pierre* examined whether there was evidence that "the source of the injury was a risk associated with the conditions under which the employees were required to live." *Id.* at 549, 689 S.E.2d at 622. Under the analysis used by the court, the wet condition of the sidewalk was only relevant to determine whether the

source of the injury was a risk associated with the employment. *Id.* at 549, 689 S.E.2d at 623 (holding the "[employee's] injury is causally related to his employment in that it was due to the conditions under which he lived, i.e., a wet sidewalk outside of his building"). Thus, *Pierre* recognized that a special condition or hazard can be used as a basis for establishing causation when it is a risk associated with the employment. In the present case, unlike *Pierre*, no special condition or hazard existed on the carpet that caused or contributed to Nicholson's injuries.

III. The Increased-Risk Doctrine.

Finally, DSS contends Nicholson's fall is not compensable because she was not subjected to a greater degree of risk than the general public due to her employment.

DSS essentially argues that the Commission should have applied the increased-risk doctrine in determining whether Nicholson's injuries arose out of her employment.² The increased-risk doctrine is the prevalent doctrine in the United States. Mark A. Rothstein et al., *West's Employment Law* § 7.18 (4th ed. 2009). However, a majority of courts that have recently addressed the issue of whether compensation should be awarded to employees who have suffered non-idiopathic falls have adopted the positional-risk doctrine, with a minority of jurisdictions employing the actual-risk doctrine. *Id.* Nonetheless, South Carolina has not formally adopted or

² Courts have taken various approaches to interpreting the "arising out of" requirement. *Simmons v. City of Charleston*, 349 S.C. 64, 71, 562 S.E.2d 476, 479 (Ct. App. 2002) (citing 1 Arthur Larson & Lex K. Larson, *Larson's Workers' Compensation Law* § 3.01 (2001)). The three most common lines of interpretation of the phrase "arising out of" are: (1) the increased-risk doctrine; (2) the positional-risk doctrine; and (3) the actual-risk doctrine. *Id.* Under the increased-risk doctrine, an injury arises out of employment when the employment increases the risk of an injury. *Id.* The positional-risk doctrine provides that "[a]n injury arises out of the employment if it would not have occurred *but for* the fact that the conditions and obligations of the employment placed claimant in the position where he was injured." *Id.* at 71, 562 S.E.2d at 479 (quoting 1 Larson § 3.05). The actual-risk doctrine ignores whether the risk is common to the public and focuses on whether it is a risk of the particular employment. *Id.* at 71, 562 S.E.2d at 479-80 (citing 1 Larson § 3.04). Under this doctrine, an injury arises out of employment as long as the employment subjected the claimant to the actual risk that caused the injury. *Id.* at 71, 562 S.E.2d at 480.

rejected any of these doctrines, and we do not presume to do so today. *Simmons*, 349 S.C. at 72, 562 S.E.2d at 480. Rather, we must look to our extant jurisprudence to determine the proper standard for evaluating whether Nicholson's injuries from an explained, non-idiopathic fall arose out of her employment.

For an injury to arise out of employment, "a causal connection must exist between the conditions under which the work is required to be performed and the resulting injury." *Ervin*, 386 S.C. at 249, 687 S.E.2d at 339. Our supreme court has explained the requisite causal connection for an injury to arise out of employment as follows:

[I]f the injury can be seen to have followed as a natural incident of the work and to have been contemplated by a reasonable person familiar with the whole situation as a result of the exposure occasioned by the nature of the employment, then it arises 'out of the employment. *But it excludes an injury which cannot fairly be traced to the employment as a contributing proximate cause and which comes from a hazard to which the workmen would have been equally exposed apart from the employment. The causative danger must be peculiar to the work and not common to the neighborhood.* It must be incidental to the character of the business and not independent of the relation of master and servant. It need not have been foreseen or expected, but after the event it must appear to have had its origin in a risk connected with the employment, and to have flowed from that source as a rational consequence.

Douglas, 245 S.C. at 269, 140 S.E.2d at 175 (emphasis added) (citation omitted); see also *Ervin*, 386 S.C. at 250, 687 S.E.2d at 339-40 (denying compensation because exposure to perfume fragrances while at work was a common causative danger); *Shuler v. Gregory Elec.*, 366 S.C. 435, 448, 622 S.E.2d 569, 576 (Ct. Ap. 2005) (Kittredge, J., dissenting) (proposing to deny compensation where an employee was driving her own vehicle on a public road because she would have been equally exposed to a car accident outside the employment). Therefore, we must consider whether the Commission correctly applied this legal standard in determining whether Nicholson's injuries arose out of her employment.

Here, the Commission found that *Pierre* foreclosed DSS's argument that Nicholson's injuries were not compensable because it could have happened on any normal, level, carpeted floor. However, under the standard enunciated in *Douglas*, a claimant's injury is only compensable if the source of the injury was a risk "peculiar to the work and not common to the neighborhood." 245 S.C. at 269, 140 S.E.2d at 175 (citation omitted). Therefore, it was not only relevant, but essential that the Commission determine whether there was evidence that the purported causative danger—the carpet—was a risk that was common to the neighborhood and not peculiar to the employment. Accordingly, we find the Commission's decision was affected by an error of law because the Commission did not properly apply the law to the facts of this case.

Although Nicholson was injured while at work, the alleged causative danger, the carpet, is very common. Nicholson testified that the carpet at DSS was level and free from defect and that it did not buckle or move when her foot scuffed it. She further testified her fall could have happened on any level, carpeted surface outside of DSS's building. For example, she admitted that her fall could have happened in the hearing room, which had the same type of carpeting as the DSS building. Moreover, the Commission made no finding that the carpet on which Nicholson fell was distinguishable in character from other carpets. Instead, in finding of fact number ten, the Commission found "[t]he floor on which [Nicholson] fell was carpeted, level, and free from any apparent defect." Based on Nicholson's testimony and the Commission's findings, we cannot conclude that the carpet was peculiar to DSS and not common to the neighborhood.

Furthermore, the Commission did not find that any other condition or obligation of Nicholson's employment contributed to her fall or subsequent injuries. While she was carrying ten files that together weighed fifteen pounds at the time of her fall, Nicholson testified that the files she was carrying did not cause her fall. Additionally, in finding of fact number nine, the Commission specifically found, "[the] files did not cause or contribute to her fall." The fact that Nicholson's injuries occurred in the carpeted area, in itself, is insufficient to establish the requisite causal connection between her injuries and her employment. See *Bagwell*, 227 S.C. at 454, 88 S.E.2d at 615. ("To say that an injury arises out of the employment in every case where an employee was required to be at the place where the injury occurred would effectively eliminate an essential requirement of the statute."); *Pierre*, 386 S.C. at 549, 689 S.E.2d at 623 ("[M]erely being on an employer's premises, without more, does not automatically confer compensability for an injury."); *Bright v. Orr-Lyons Mills*, 285 S.C. 58, 60, 328 S.E.2d 68, 70 (1985) ("An accidental injury is not rendered compensable by the mere fact that it

occurred on the employer's premises. To so hold, would be to abandon the requirement that an accident bear some logical causal relation to the employment.").

In this instance, Nicholson had the burden of providing facts that would bring her injuries within the workers' compensation law. *See Jennings v. Chambers Dev. Co.*, 335 S.C. 249, 254, 516 S.E.2d 453, 456 (Ct. App. 1999) (stating, "[t]he claimant has the burden of proving facts that will bring the injury within the workers' compensation law, and such award must not be based on surmise, conjecture, or speculation"). Nicholson testified that the sole reason for her fall was that her shoe "frictioned" the carpet. The Commission also identified the "specific" reason for Nicholson's fall was "that she tripped when her foot scuffed or caught in the carpet due to the friction of the carpet against her shoe." Thus, the only fact connecting Nicholson's fall to her employment is that her injuries occurred while she was working in a carpeted area of DSS's building. The carpet on which Nicholson tripped and fell was not a hazard, a special condition, or peculiar to her employment. Accordingly, based on the findings of fact in the record, Nicholson failed to show a causal connection between her injuries and her employment. Therefore, we conclude Nicholson did not sustain an injury by accident arising of her employment.

CONCLUSION

Based on the foregoing, we hold Nicholson's injuries did not arise out of her employment and, therefore, are not compensable under our workers' compensation law. Consequently, the decision of the Commission is

REVERSED.

LOCKEMY, J., concurs.

FEW, C.J., dissenting: The events that led to Nicholson's fall are undisputed. However, the factual inferences to be drawn from those events are disputed. The commission's ruling that Nicholson sustained compensable injuries is based on the factual finding that Nicholson's fall arose out of her employment, which in turn is based on factual inferences the commission drew from the events of Nicholson's fall.

I would affirm the commission because there is substantial evidence in the record to support its findings. See *Ervin v. Richland Mem'l Hosp.*, 386 S.C. 245, 248, 687 S.E.2d 337, 338 (Ct. App. 2009) (stating "this court will affirm findings of facts made by the [commission] if those findings are supported by substantial evidence"). The evidence shows that while walking to a meeting and carrying a stack of files, Nicholson's foot caught in the carpet due to the carpet's friction against her shoe, causing her to trip and fall. Because Nicholson's workplace was carpeted, the source of her injury was a risk associated with the conditions under which she was required to work. I believe this constitutes substantial evidence to support the commission's factual finding of a causal connection between Nicholson's injury and her employment.

The majority quotes *Douglas v. Spartan Mills, Startex Division*, 245 S.C. 265, 269, 140 S.E.2d 173, 175 (1965), "But [the workers' compensation act] excludes an injury which cannot fairly be traced to the employment as a contributing proximate cause. . . . The causative danger must be peculiar to the work and not common to the neighborhood." (emphasis omitted). However, whether an injury can be fairly traced to the employment and is peculiar to the work and not common to the neighborhood is a factual determination for the commission, not the courts. See *Shealy v. Aiken Cnty.*, 341 S.C. 448, 455, 535 S.E.2d 438, 442 (2000) ("In workers' compensation cases, the [commission] is the ultimate fact finder."); *Ervin*, 386 S.C. at 249, 687 S.E.2d at 339 (stating "the question of whether an accident arises out of . . . employment is largely a question of fact for the [commission]"). Our task is not to make conclusions based on the evidence before the commission, but to apply our standard of review to the commission's conclusions. Thus, the majority violates our standard of review when it states, "[W]e cannot conclude that the carpet[] was peculiar to DSS and not common to the neighborhood." See S.C. Code Ann. § 1-23-380(5) (Supp. 2012) ("The court may not substitute its judgment for the judgment of the agency as to the weight of the evidence on questions of fact.").

The majority relies on *Grant v. Grant Textiles*, 372 S.C. 196, 641 S.E.2d 869 (2007), for the proposition that in this case we may decide a factual dispute as a matter of law. I disagree that *Grant* applies to this case because in *Grant*, unlike here, there were no disputed factual inferences to be drawn from the events that led to the claimant's injury. It was undisputed that the vice-president of sales for a textile business was traveling to meet with clients when he stopped to remove debris along the highway near the entrance to the site of the meeting and was struck by a passing vehicle. 372 S.C. at 198-99, 641 S.E.2d at 870. The issue in the case was whether, under those undisputed circumstances, his action of

removing debris from along the highway arose out of and was in the course of his employment. The commission found it was not, and the court of appeals agreed with the commission's finding that the cause of the accident had no relation to his employment duties. 372 S.C. at 200, 641 S.E.2d at 871. The supreme court disagreed stating,

The accident would not have happened but for Claimant's business trip . . . to meet his employer's customers. Because removing road hazards was not part of Claimant's job duties, he could have ignored the hazard in the road; however, he chose to remove the hazard to benefit himself, his co-worker father, and his customers. . . . Claimant's act, while outside his regular duties, was undertaken in good faith to advance his employer's interest and, therefore, was within the course of his employment.

372 S.C. at 201-02, 641 S.E.2d at 872.

Thus, the decision in *Grant* turned on whether the cause of the accident—deciding to remove the hazard from the road—was sufficiently connected to the employment for purposes of satisfying the arising out of and within the scope of prongs. Once the court ascertained the accident would not have happened if the employee had not traveled to the business meeting and stopped to remove the road hazard, all of which was undisputed, the legal conclusion that his actions arose out of and were in the course of employment necessarily followed. Here, despite no dispute about the events of Nicholson's fall, there remains a factual dispute as to whether "frictioning" the carpet of the hallway while walking to a meeting was caused by the employment. The commission made a factual finding that it was because the fall occurred as a result of a risk associated with the conditions under which she worked. That factual finding should be addressed under the substantial evidence standard.

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM
THE WORKERS' COMPENSATION COMMISSION

Appellate Case No.: 2012-206507
Op. No. 5171, Filed September 4, 2013

Carolyn M. Nicholson, Claimant, ... Respondent,

vs.

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

PETITION FOR REHEARING AND
SUGGESTION FOR REHEARING *EN BANC*

Respondent Carolyn Nicholson respectfully petitions the Court for a rehearing *en banc* pursuant to Rule 221, SCACR and a suggestion for rehearing *en banc* pursuant to Rule 219(b), SCACR. This case involves a question of exceptional importance because the Court's current decision introduces fault into the no-fault system fundamental to workers' compensation. It is further respectfully submitted the Court overlooked or misapprehended South Carolina law that an accident "arises out of" the employment under S.C. Code Ann. § 42-9-160 when there is apparent to

a rational mind, considering all the circumstances, a causal connection between the conditions under which the work is performed and the resulting injury. The language on which the Court based its decision – “a claimant’s injury is only compensable if the source of the injury was a risk ‘peculiar to the work and not common to the neighborhood’” – has been disfavored and modified by our Supreme Court in favor of the requirement that to “arise out of” the employment under § 42-9-160, there need only be apparent to a rational mind, considering all the circumstances, a causal connection between the conditions under which the work is performed and the resulting injury.

Arising out of the Employment.

The term “peculiar to the work” used by the Court in its decision appeared in South Carolina case law in 1944 when the Supreme Court quoted at length from a 1913 decision by the Supreme Judicial Court of Massachusetts when defining the Workers’ Compensation Act’s “arising out of” requirement. See Eargle v. South Carolina Elec. & Gas Co., 205 S.C. 423, 32 S.E.2d 240 (1944), quoting In Re Employers’ Liability Assurance Corp., 102 N.E. 697 (Mass. 1913)(also known as McNicol’s Case).

It (the injury) arises “out of” the employment, when there is apparent to the rational mind upon consideration of all the circumstances, a causal connection between the conditions under which the work is required to be performed and the resulting injury. Under this test, if the injury can be seen to have followed as a natural incident of the work and to have been contemplated by a reasonable person familiar with the whole situation as a result of the exposure occasioned by the nature of the employment, then it arises “out of” the employment. But it excludes an injury which cannot fairly be traced to the employment as a contributing proximate cause and which comes from a hazard to which the workmen would have been equally exposed apart from the employment. The causative danger must be peculiar to the work and not common to the neighborhood. It must be incidental to the character of the business and not independent of the relation of master and servant. It need not have been foreseen or expected, but after the

event it must appear to have had its origin in a risk connected with the employment, and to have flowed from that source as a rational consequence.

Eargle, 32 S.E.2d at 242-43. While the Eargle decision did not turn on this language from the Massachusetts court, it introduced this language into South Carolina's jurisprudence.

However, some years after the In Re Employers' Liability Assurance Corp. decision, the Massachusetts court itself abandoned this language. In Caswell's Case, the court held that "[a]n injury arises out of the employment if it arises out of the nature, conditions, obligation or incidents of the employment; in other words, out of the employment looked at in any of its aspects." Caswell's Case, 26 N.E.2d 328, 330 (Mass. 1940):

Unquestionably, the injury was received in the course of his employment. The only other requirement is that the injury be one "arising out of" his employment. **It need not arise out of the nature of the employment. An injury arises out of the employment if it arises out of the nature, conditions, obligations or incidents of the employment; in other words, out of the employment looked at in any of its aspects.** Thom or Simpson v. Sinclair, [1907] A.C. 127, 142, 143. An employee who, in the course of his employment, is hurt by contact with something directly connected with his employment, receives a personal injury arising out of his employment, even though the force that caused the contact was not related to his employment. Thom or Simpson v. Sinclair, [1917] A.C. 127, 134-136. Lord Atkin, in Brooker v. Thomas Borthwick & Sons (Australasia), Ltd. [1933] A.C. 669, 677, stated the principle thus: "If a workman is injured by some natural force such as lightning, the heat of the sun, or extreme cold, which in itself has no kind of connection with employment, he cannot recover unless he can sufficiently associate such injury with his employment. This he can do if he can show that the employment exposed him in a special degree to suffering such an injury. **But if he is injured by contact physically with some part of the place where he works, then, apart from questions of his own misconduct, he at once associates the accident with his employment and nothing further need be considered. So that if the roof or walls fall upon**

him, or he slips upon the premises, there is no need to make further inquiry as to why the accident happened.”

Id. (emphasis added). Based on this broader language, the Massachusetts court has on at least two occasions considered whether a fall at work arose out of employment. In Bator's Case, the court held that an injury that occurred when the worker fell while attempting to climb onto a box to sit was within the scope of employment and arose out of the nature, conditions, obligations or incidents of the employment looked at in any of its respects. The court noted that “[a]ll that is required is that his activity be incidental to and not inconsistent with his employment.” Bator's Case, 153 N.E.2d 765, 767 (Mass. 1958). Also, in Ware's Case, the court held that a fall from a sidewalk where the employee had walked several stores away from the employer's premises during lunch did not arise from “any aspect of the job—the nature, conditions, obligations or incidents of the employment.” Ware's Case, 282 N.E.2d 673, 674 (Mass. 1972)(quoting Caswell's Case, 26 N.E.2d 328, 330 (Mass. 1940)). The court noted that “[t]he question is whether the claimant's employment brought her in contact with the risk which actually caused her injuries.” Id.

The South Carolina Supreme Court embraced this change in the definition of “arising out of” by quoting approvingly from Caswell's Case in its decision in Jordan v. Dixie Chevrolet, 218 S.C. 73, 61 S.E.2d 654 (1950). The Court noted that this was “the more modern” view and that Caswell's Case

is a landmark in Massachusetts law as it avoided the paralyzing effect of the earlier decision in McNicol's Case requiring ‘peculiar’ exposure, and ‘denial of compensation for common risks.’ . . . ‘Under such a broad definition, as well as under narrower rules, it is not necessary that the injury be one which ought to have been foreseen or expected. Even unusual or extraordinary consequences of the employment may well be compensable. The risk insured is not

only the foreseeable one, but the risk which, after the event, can be seen to have its origin the nature, conditions, obligations, or incidents of the employment.'

Jordan, 61 S.E.2d at 657. And it is apparent from Jordan that the purpose in moving away from the more restrictive definition of "arising out of" was that workers' compensation laws were intended to be free of the fault-based determinations of tort law and that the "peculiarity" requirement of In Re Employers' Liability Assurance Corp. improperly required this search for fault. See Jordan, 61 S.E.2d 657-660.

While the case on which the Court of Appeals relies in its underlying decision, Douglas v. Spartan Mills, 245 S.C. 265, 140 S.E.2d 173 (1965), refers to In Re Employers' Liability Assurance Corp. and does not mention the change in the law found in Caswell's Case or Jordan, neither the language quoted in Jordan nor the broadening of the "arising out of" requirement found therein has been reversed or expressly disfavored by any subsequent decision of our Supreme Court. And, as noted in Jordan, it is this broader definition that fits within the stated purposes of the Workers' Compensation Act.

Under this broader language of Caswell's Case and Jordan, the injury in the present case is compensable, as the fall occurred well within the conditions, obligations or incidents of the employment. Walking across the carpet and scuffing her shoe on the carpet were natural incidents of the work and not inconsistent with the employment but a result of the exposure occasioned by the employment. As in Jordan, it is not necessary that the more remote cause of the injury, the carpet, be peculiar to the work under South Carolina law following Jordan. The risk here clearly had its origin the nature, conditions, obligations, or incidents of the employment. The employment brought her in contact with the risk. The Commission's determination that the injury here was compensable should

have been affirmed.

The Introduction of Fault into Workers' Compensation.

The Court's decision in this case introduces fault and premises liability concepts into the no-fault workers' compensation system, where the express purpose of workers' compensation is the absence of such fault-based determinations. It is vitally important to distinguish a "causal connection" to employment from the concept of causation as developed and applied in tort law.

Professor Larson in his treatise, Workers' Compensation Law, § 3.06 (2005), discusses this important distinction at length. Larson reminds us that, "[i]t is instantly apparent that 'arising out of the employment' does not mean exactly the same thing as 'legally caused by the employment.'" Id. He distinguishes the phrases by noting, "proximate cause or legal cause is out of place in compensation law, because, as developed in tort law, it is a concept that is itself thoroughly suffused with the idea of fault; that is, it is a theory of causation designed to bring about a just result when starting from an act containing some element of fault." Id.

Fault has no place in workers' compensation. "One of the purposes of the Workmen's Compensation Act is to protect and partially compensate employees who are injured while engaged in the regular course of their employment irrespective of mishap, independent of the injury itself, and/or negligence on the part of either the employee or employer." Layton v. Hammond-Brown-Jennings Co., 190 S.C. 425, 3 S.E.2d 492, 496 (1939). "The American concept of workmen's compensation is founded upon recognition of the advisability, from the standpoint of society as well as of employer and employee, of discarding the common law idea of tort liability in the employer-employee relationship and of substituting therefor the principle of liability on the part of the employer, regardless of fault" Case v. Hermitage Cotton Mills, 236 S.C. 515, 115 S.E.2d 57, 65

(1960). Negligence and contributory negligence are of no consequence in workers' compensation cases. Jordon, *supra*. at 656; Allsep v. Daniel Const. Co., 216 S.C. 268, 57 S.E.2d 427 (1950).

The right to compensation benefits depends on one simple test: Was there a work-connected injury? Negligence, and, for the most part, fault, are not in issue and cannot affect the result. **Let the employer's conduct be flawless in its perfection, and let the employee's be abysmal in its clumsiness, rashness and ineptitude; if the accident arises out of and in the course of the employment, the employee receives an award. Reverse the positions, with a careless and stupid employer and a wholly innocent employee and the same award issues.** Thus, the test is not the relation of an individual's personal quality (fault) to an event, but the relationship of an event to an employment. The essence of applying the test is not a matter of assessing blame, but of marking out boundaries.

Larson, Workers' Compensation Law, § 1.03 (2005).

Here, the Court has reintroduced fault into the equation by erroneously requiring some fault or hazard in the flooring in order to find a trip or fall on a level floor compensable under the Workers' Compensation Act. To the contrary, as often stated in workers' compensation law, it is the unexpected result of work activity that is the compensable injury. Pee v. AVM, Inc., 352 S.C. 167, 573 S.E.2d 785 (2002). The Supreme Court in Pee specifically stated:

Under § 42-1-160, a claimant is entitled to benefits for an "injury by accident arising out of and in the course of employment." In Layton v. Hammond-Brown-Jennings Co., 190 S.C. 425, 3 S.E.2d 492 (1939), we interpreted for the first time the meaning of "injury by accident" under the newly enacted Workman's Compensation Act. We noted that two lines of cases had evolved in other jurisdictions: some jurisdictions, including North Carolina upon which our Act is modeled, held there must be some unusual or unlooked-for mishap resulting in injury to constitute an accident; other jurisdictions held no mishap was required for an accident so long as there was an unexpected injury occurring while the employee was performing his usual duties in his customary manner. **We chose the latter**

definition, focusing on the unexpected nature of the *injury* rather than requiring that the event causing the injury be unexpected. This definition of accident as an unexpected injury has been reiterated in a long line of cases. See, e.g., Colvin v. E.I. DuPont De Nemours Co., 227 S.C. 465, 88 S.E.2d 581 (1955) (injury by accident is an injury occurring unexpectedly without the prior occurrence of any external event of an accidental nature); Hiers v. Brunson Const. Co., 221 S.C. 212, 70 S.E.2d 211 (1952) (injury by accident is an injury that is accidental in that it is unforeseen and unexpected).³

3 In Hiers, we noted the policy reason for adopting such a definition: **If [the injury] results from the conditions under which the work is carried on, there is no reason why it should not be held compensable.** In such case, it is one of the casualties of business; and it is the purpose of the compensation statutes to place the burden of casualties upon the business and not upon the unfortunate employee. [Hiers.] 70 S.E.2d at 221.

As we more recently stated, “in determining whether something constitutes an injury by accident the focus is not on some specific event, but rather on the injury itself.” Stokes v. First Nat’l Bank, 306 S.C. 46, 50, 410 S.E.2d 248, 250 (1991). Further, an injury is unexpected, bringing it within the category of accident, if the *worker* did not intend it or expect it would result from what he was doing. Colvin, 227 S.C. at 468-69, 88 S.E.2d at 582 (emphasis added). Therefore, if an injury is unexpected from the worker’s point of view, it qualifies as an injury by accident.

Pee v. AVM, Inc., 352 S.C. 167, 170-71, 573 S.E.2d 785, 787 (2002). Stated succinctly, “no slip, fall or other fortuitous event or accident in the cause of the injury is required; the unexpected result or industrial injury is itself the compensable accident.” Sigmon v. Dayco Corp., 316 S.C. 260, 262, 449 S.E.2d 497, 498 (1994). See also Sturkie v. Ballenger Corp., 268 S.C. 536, 235 S.E.2d 120 (1977); Creech v. Ducane Co., 320 S.C. 559, 467 S.E.2d 114 (Ct. App. 1996); Clade v. Champion Lab., 330 S.C. 8, 496 S.E.2d 856 (1998); Pee v. AVM, Inc., 344 S.C. 162, 543 S.E.2d 232 (Ct. App. 2001). In these cases and Jordan, the law is clear: so long as 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, the injury arises out of the employment.

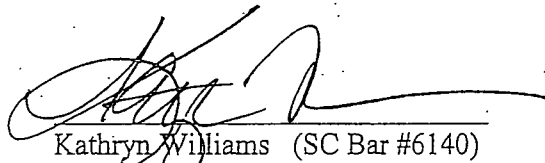
Here, Nicholson was clearly undertaking her work activities at the time she tripped and fell. Her activities at the time of her trip and fall were incidental to and consistent with her employment and arose from an aspect of her job, specifically walking to her meeting. When all the circumstances here are considered, the causal relationship between the work Nicholson was performing and her injury is abundantly apparent. Her injury arose out of her employment. Fault – whether on her part, the employers part, or even in the flooring – is not relevant.

The Court's decision reversing the Workers' Compensation Commission's ruling overlooks or misapprehends this settled law. The decision is contrary to decisions of both this Court and the Supreme Court of South Carolina. The Court should grant this Petition, rehear this matter, withdraw its previous decision, and issue a new opinion affirming the Commission's ruling in its entirety.

The illogical result of the Court's decision in this case is perhaps best illustrated by the comparison with our appellate court decisions regarding the personal comfort doctrine. This doctrine has been consistently used to supply the "arising out of" requirement to bring such activities as eating, drinking, seeking relief from discomfort, and even smoking within the purview of workers' compensation. See e.g. Mack v. Post Exchange, 207 S.C. 258, 35 S.E.2d 838 (1945); Osteen v. Greenville Co. School Dist., 333 S.C. 43, 508 S.E.2d 21 (1998). Under the Court's opinion in this case, we are left with the unjustifiable result that had Nicholson been on her way to the bathroom at the time of her injury, compensation would have been allowed under the personal comfort doctrine; but since she was engaged in actual productive work activity, compensation is denied.

Furthermore, because of the exceptional importance of this issue, pursuant to Rule 219(b), SCACR, Nicholson suggests that such rehearing be considered *en banc*. This published decision will be used by the members of the Workers' Compensation Commission, workers' compensation defense attorneys, and workers' compensation insurance adjusters to deny benefits for any and all falls at work and demand proof of some fault on the part of the employer or employer's premises. Further, it is not difficult to see how this decision could be used to argue for a showing of fault in a wide number of situations beyond falls where the injury could arguably have occurred in some setting outside the place of employment. The importance of this issue to the workers' compensation bar cannot be overstated due to the significant change in the law it represents.

Respectfully submitted,



Kathryn Williams (SC Bar #6140)
Kathryn Williams, P.A.
P.O. Box 10693
Greenville, SC 29603
(864) 235-6254

Attorney for Petitioner

9/18/13

THE STATE OF SOUTH CAROLINA
In The Court Of Appeals

APPEAL FROM THE SOUTH CAROLINA
WORKERS' COMPENSATION COMMISSION

SCWCC No. 0901585

Carolyn M. Nicholson, Claimant,

v.

Respondent,

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

Appellants.

RETURN TO PETITION FOR REHEARING

Respondent Carolyn M. Nicholson ("Nicholson") sets forth in her Petition for Rehearing two grounds as a basis for this Court to reconsider its decision, Opinion No. 5171, filed September 4, 2013. However, as discussed in detail below, neither of Nicholson's grounds for rehearing is sufficient for this Court to grant her Petition for Rehearing, and the Petition should be denied.

I. The Court properly defined and interpreted the "arising out of" the employment requirement in S.C. Code Ann. § 42-1-160.

Nicholson's first argument is that the Court misapprehended the "arising out of" the employment requirement because it concluded that "a claimant's injury is only compensable if the source of the injury was a risk *peculiar to the work and not common to the neighborhood.*"

(Emphasis added). Nicholson contends that this language has been rebuffed and modified by our Supreme Court in favor of a requirement that to meet the "arising out of" the employment prong, "there need only be apparent to a rational mind, considering all the circumstances, a causal connection between the conditions under which the work is performed and the resulting injury." However, Nicholson's argument is clearly without merit.

In Eargle v. South Carolina Elec. & Gas Co., the Supreme Court of South Carolina quoted with approval the following definition of "arising out of" the employment:

It [the injury] arises "out of" the employment, when there is apparent to the rational mind up on consideration of all the circumstances, a causal connection between the conditions under which the work is required to be performed and the resulting injury. Under this test, if the injury can be seen to have followed as a natural incident of the work and to have been contemplated by a reasonable person familiar with the whole situation as a result of the exposure occasioned by the nature of the employment, then it arises "out of" the employment. But it excludes an injury which cannot fairly be traced to the employment as a contributing proximate cause and which comes from a hazard to which the workmen would have been equally exposed apart from the employment. *The causative danger must be peculiar to the work and not common to the neighborhood.* It must be incidental to the character of the business and not have been foreseen or expected, but after the event it must appear to have had its origin in a risk connected with the employment, and to have flowed from that source as a rational consequence.

205 S.C. 423, 32 S.E.2d 240 (1944)(quoting Re Employers' Liability Assurance Corp., 102 N.E. 697 (Mass. 1913)(Emphasis added).

In her Petition, Nicholson attempts to cast doubt on the Supreme Court's definition of "arising out of" in Eargle by referencing decisions from the Supreme Judicial Court of Massachusetts. Nicholson specifically highlights the fact that years after its decision in Re Employers' Liability Assurance Corp. (the case from which the Eargle Court quoted), the Massachusetts Court subsequently abandoned the requirement that "the causative danger must be

peculiar to the work and not common to the neighborhood.” See Caswell’s Case, 26 N.E.2d 328 (Mass. 1940). Nicholson notes that the Massachusetts Court broadened its definition of “arising out of” by holding that “an injury arises out of the employment if it arises out of the nature, conditions, obligation or incidents of the employment; in other words, out of the employment looked at in any of its aspects.” Id. However, the Massachusetts Court’s decision in Caswell’s Case has absolutely no effect on our Supreme Court’s decision in Eargle, and since this Court is bound by the decisions of the Supreme Court of South Carolina, any decision from the Massachusetts Court has absolutely no bearing on this Court’s decision.

That being said, it should be noted that while Nicholson dedicates approximately two pages of her Petition to citing and outlining irrelevant decisions from the Massachusetts Courts regarding the definition and interpretation of “arising out of” the employment, she fails to point out that Caswell’s Case was decided four years *prior to* the Supreme Court of South Carolina’s decision in Eargle. Thus, when deciding Eargle, our Supreme Court could have adopted the broader definition of “arising out of” by quoting the Massachusetts Court’s decision in Caswell’s Case. However, it instead chose to quote the definition enunciated in Re Employers’ Liability Assurance Corp., which included the language that “the causative danger must be peculiar to the work and not common to the neighborhood.”

Additionally, even though Nicholson asserts that “[t]he South Carolina Supreme Court embraced this change [*i.e.*, the removal of the requirement that ‘the causative danger must be peculiar to the work and not common to the neighborhood’] in the definition of ‘arising out of’ by quoting approvingly from Caswell’s Case in its decision in Jordan v. Dixie Chevrolet,” her assertion is clearly misplaced and unsound.

In Jordan, the claimant, who worked in a paint and body shop and who had been idle all day because he had not been assigned any work by his employer, was sitting in the front seat of a police car that had been brought to the shop for repairs. Jordan v. Dixie Chevrolet, 218 S.C. 73, 76, 61 S.E.2d 654, 655 (1950). While another employee was working on the police car, the claimant removed an object from the glove compartment. Id. Not knowing that the object was a tear gas bomb, the claimant pulled the cotter pin, which released the contents of the bomb, and as a result, the claimant sustained an injury to his eye. Id. The Commission denied the claimant's claim for benefits on the grounds that he did not sustained an injury arising out of his employment because "his handling of the tear gas bomb was merely to pass the time and his pulling of the cotter pin thereof was in pursuit of natural curiosity which resulted so unfortunately to himself." Id. at 77, 61 S.E.2d at 656. On appeal, the Supreme Court reversed the Commission's decision and found the claim compensable. Id. at 86, 61 S.E.2d at 660. The Court noted that the case fell into a specific class of cases, "where one, while awaiting a work assignment during working hours at his place of employment in idle curiosity tampers with a strange object, *which is present by reason of the nature of the employer's business*, is injured, bearing in mind that negligence and contributory negligence are of no consequence in Workmen's Compensation cases." Id. at 77, 61 S.E.2d at 656. (Emphasis added). The Court noted that since this was the first 'curiosity' case to come before the Court, it looked at other jurisdictions for guidance. Id.

During its thorough review of other jurisdictions, the Court cited and quoted directly from several cases, including Caswell's Case. Id. However, while Nicholson contends that the Supreme Court "embraced" the removal of the necessity that "the causative danger must be peculiar to the work and not common to the neighborhood" in the definition of "arising out of"

by quoting Caswell's Case and while she alleges that this Court "overlooked or misapprehended" this change in the definition, it appears that Nicholson overlooked or misapprehended the Supreme Court's decision in Jordan. First, before divulging into its review of case law from other jurisdictions, the Court stated: "It is obvious in the instant case that without the employment the injury would not have occurred, as it arose from a danger which was part of the work environment and not common to the neighborhood." Id. at 77, 61 S.E.2d at 656. (Emphasis added). Additionally, the Court noted that the "most recent and enlightening decision in point" was the Maryland District Court's decision in Bethlehem Steel Co. v. Parker, D.C., 64 F.Supp. 615,¹ which held that a claimant's injury, which occurred while looking up a ship's dump waiter shaft out of curiosity, was compensable because it arose out of her employment since "her action was not in any sense a striking or intentional departure from her duties but at most a slight and casual one occasioned apparently by not unnatural curiosity on her part to see something which attracted her in her unusual environment arising in the course of her general duty to return to her work on the upper deck." Id. at 81-84, 61 S.E.2d at 658-59. (Emphasis added).

It is clear that the Supreme Court's decision in Jordan did not alter or modify its prior interpretation of the "arising out of" the employment requirement. Moreover, following its decision in Jordan, the Supreme Court restated and affirmed the necessity that "the causative danger must be peculiar to the work and not common to the neighborhood" in order for an injury to "arise out of" the employment. See Douglas v. Spartan Mills, 245 S.C. 265, 140 S.E.2d 173 (1965). Accordingly, despite Nicholson's argument to the contrary, this Court correctly stated

¹ This case involved the Federal Longshoremen's and Harbor Workers' Compensation Act, which our Supreme Court noted "is identical with the requirement of our Compensation Act that a compensable accident must be one which arises out of and in the course of employment." Jordan, 218 S.C. at 81, 61 S.E.2d at 658.

that “under the standard enunciated in *Douglas*, a claimant’s injury is only compensable if the source of the injury was a risk ‘peculiar to the work and not common to the neighborhood.’”

Applying this standard to the present case, this Court appropriately determined that Nicholson’s injury did not “arise out of” her employment because the alleged causative danger – the carpet – was not peculiar to her employment and was a risk that was common to the neighborhood. The sole reason for Nicholson’s fall was that her shoe “frictioned” the carpet. Nicholson’s own testimony establishes that the carpet in SCDSS’s building was very common and that it was level, free from defect, and did not buckle or move when her foot scuffed it. Additionally, there were no other conditions or obligations of her employment that contributed to her fall or subsequent injuries.

II. The Court’s current decision does not introduce fault into the workers’ compensation system.

Nicholson also argues that the Court’s decision in this case introduces fault and premises liability concepts into the no-fault workers’ compensation system; however, this argument is nothing more than an attempt to confuse the issue in this claim. SCDSS has never argued negligence or fault as a defense to her claim, and it is undisputed that negligence and contributory negligence are of no consequence in workers’ compensation cases. See *Jordan*, 218 at 77, 61 S.E.2d at 656.

Additionally, in her Petition, Nicholson specifically states:

Here, the Court has reintroduced fault into the equation by erroneously requiring some fault or hazard in the flooring in order to find a trip or fall compensable under the Workers’ Compensation Act. To the contrary, as often stated in workers’ compensation law, it is the unexpected result of the work activity that is the compensable injury. *Pee v. AVM, Inc.*, 352 S.C. 167, 573 S.E.2d 785 (2002).

However, Nicholson's reliance on this Court's decision in Pee is misplaced. In Pee, the employer admitted causation, and the sole issue before this Court was whether the claimant's repetitive trauma injury was an "injury by accident." Pee, 352 at 170, 573 S.E.2d at 787. The issue in the present case was not whether Nicholson sustained an "injury by accident," but rather whether her injury "arose out of" her employment. Thus, since this Court was not asked to address the "arising out of" requirement in Pee, its holding is not applicable or pertinent to the present case.

Further, while Nicholson argues that her injury should be compensable simply because she was undertaking her work activities at the time she tripped and fell, her position is obviously debunked by our Supreme Court's prior decisions. See Bagwell v. Ernest Burwell, Inc., 227 S.C. 444, 88 S.E.2d 611 (1955) ("To say that an injury arises out of the employment in every case where an employee was required to be at the place where the injury occurred would effectively eliminate an essential requirement of the statute."); Pierre v. Seaside Farms, Inc., 386 S.C. 534, 689 S.E.2d 615 (2010) ([M]erely being on an employer's premises, without more, does not automatically confer compensability for an injury."); Bright v. Orr-Lyons Mills, 285 S.C. 58, 328 S.E.2d 68 (1985) ("An accidental injury is not rendered compensable by the mere fact that it occurred on the employer's premises. To so hold, would be to abandon the requirement that an accident bear some logical causal relation to the employment.").

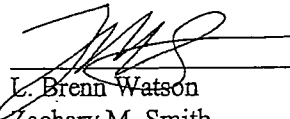
As indicated by this Court's decision in the present case, if Nicholson's interpretation of the "arising out of" the employment prong was the actual law in South Carolina, then the Supreme Court in Pierre would not have examined whether there was evidence that "the source of the injury was a risk associated with the conditions under which the employees were required to live," and the Court would have held that the claimant's injury was compensable because he

was on the employer's premises performing activities that were incidental to and consistent with his employment. Instead, in determining that the claimant's injury arose out of his employment, the Court analyzed the evidence and concluded that since the claimant's injury arose from a hazard on the employer's premise (i.e., the wet sidewalk), and thus, the requisite work connection was established. Pierre, 386 S.C. at 549, 689 S.E.2d at 623.

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

Respectfully submitted,

October 15, 2013



L. Brenn Watson
Zachary M. Smith
Willson Jones Carter & Baxley, P.A.
872 S. Pleasantburg Drive
Greenville, South Carolina 29607
(864) 527-3292
Attorneys for Appellants

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM
THE WORKERS' COMPENSATION COMMISSION

Appellate Case No.: 2012-206507
Op. No. 5171, Filed September 4, 2013

Carolyn M. Nicholson, Claimant, ... Respondent,

vs.

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

REPLY TO RETURN TO
PETITION FOR REHEARING AND
SUGGESTION FOR REHEARING *EN BANC*

**I. THE DECISION'S INTERPRETATION OF THE "ARISING OUT OF"
REQUIREMENT IS UNNECESSARILY RESTRICTIVE.**

DSS points out that Caswell's Case, 26 N.E.2d 328, 330 (Mass. 1940) existed at the time of the South Carolina Supreme Court's decision in Eargle v. South Carolina Elec. & Gas Co., 205 S.C. 423, 32 S.E.2d 240 (1944) and that subsequent decisions by our appellate courts have sometimes continued to repeat the "peculiar to the work and not common to the neighborhood" language from Eargle and In Re Employers' Liability Assurance Corp., 102 N.E. 697 (Mass. 1913)(also known as

McNicol's Case). This is factually accurate, but it ignores the context in which this language has appeared.

While Eargle and other decisions repeat the language from McNicol's Case, this language is usually included as part of a boilerplate overview on the “arising out of” requirement. When these decisions are read closely, it is clear that this language has not controlled their outcomes. Cases like Eargle and Jordan v. Dixie Chevrolet, 218 S.C. 73, 61 S.E.2d 654 (1950) are representative of a shift away from language that proves onerous and unworkable, and these cases are not outliers. Many decisions that hinge on the “arising out of” prong have approvingly quoted the language that “[a]n 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.” These same decisions do not mention the “peculiar to the work and not common to the neighborhood” language. See Grant v. Grant Textiles, 372 S.C.196, 641 S.E.2d 869 (2007); Dukes v. Rural Metro Corp., 356 S.C. 107, 587 S.E.2d 687 (2003); Osteen v. Greenville Co. School Dist., 333 S.C. 43, 508 S.E.2d 21 (1998); Clade v. Champion Lab., 330 S.C. 8, 496 S.E.2d 856 (1998); Rodney v. Michelin Tire Corp., 320 S.C. 515, 466 S.E.2d 357 (1996); Loges v. Mack Trucks, Inc., 308 S.C. 134, 417 S.E.2d 538 (1992); Ardis v. Combined Ins. Co., 380 S.C. 313, 669 S.E.2d 628 (Ct.App. 2008); McGriff v. Worsley Co., 376 S.C. 103, 654 S.E.2d 856 (Ct.App. 2007); Smith v. NCCI, Inc., 369 S.C. 236, 631 S.E.2d 268 (Ct.App. 2006); Stone v. Traylor Bros., Inc., 360 S.C. 271, 600 S.E.2d 551 (Ct.App. 2004); Eaddy v. Smurfit-Stone Cont. Corp., 355 S.C. 154, 584 S.E.2d 390 (Ct.App. 2003); Holley v. Owens Corning Fiberglas Corp., 301 S.C. 519, 392 S.E.2d 804 (Ct.App. 1990). This is the better view. This language—a rule of reason that is based on rational connections—supports the holdings of Caswell's Case and Jordan, and this rule is contrary to the language of McNicol's Case, which is based on causation.

The reason for this shift is that the “peculiar to the work and not common to the neighborhood” language sounds reasonable but proves unworkable and restrictive. Under DSS’s reasoning, a happenstance injury—a scuffed trip-and-fall—on a level floor will not be compensable because level floors are common outside the workplace. By the same reasoning, a fall down the stairs will not be compensable; stairs exist outside of the workplace and are common to the neighborhood. Similarly, a chef or restaurant worker who accidentally cuts herself while working will not be compensated because knives exist outside the workplace and are common to the neighborhood. The possibilities are endless, and such outcomes are contrary to the purpose of the Workers’ Compensation Act, as the courts noted in Caswell’s Case and Jordan. It does not matter that the injury is not the employer’s fault. What matters is that the injury has a reasonable and rational connection to the employee’s work. That connection exists here. Ms. Nicholson was injured while she was trying to do her work.

DSS’s reliance on Douglas v. Spartan Mills, 245 S.C. 265, 140 S.E.2d 173 (1965) is misplaced. While the Douglas decision does include the “peculiar to the work and not common to the neighborhood” language, the holding of the case did not turn on that language. Instead, it turned on the fact that there was no rational connection between Mr. Douglas’ injury (he was in a car wreck while he was off of work and driving to a hearing) and his job. Ms. Nicholson’s injury has a rational connection—she tripped while she was working. Douglas is meaningfully different.

The same is true for other cases. Consider the decisions in Shuler v. Gregory Electric and West v. Alliance Capital. Both of them cite Douglas and the same “common to the neighborhood” language, but both decisions affirm favorable results for the injured workers because the commission determined that the injuries occurred while the injured workers were fulfilling duties of their employment or involved in activities for the employer’s benefit. See Shuler, 366 S.C. 435, 622

S.E.2d 569 (Ct. App. 2005); West, 368 S.C. 246, 628 S.E.2d 279 (Ct. App. 2006). That test is satisfied here.

II. THE CURRENT DECISION INTRODUCES FAULT INTO THE WORKERS' COMPENSATION SYSTEM.

DSS states that this Court's decision does not introduce fault into the no-fault workers' compensation system. Respectfully, DSS is wrong. The requirement that Nicholson show some fault in the flooring for her injury to be compensable focuses on the proximate cause of her injury, which as Professor Larson explained, is "suffused with the idea of fault" and has no place in workers' compensation. Larson, Workers' Compensation Law, § 3.06 (2005). See also Larson, Workers' Compensation Law, § 1.03 (2005). The proper test for whether an injury arises out of employment is the relationship of the injury to the employment, rather than the relationship of any fault to the injury. The language of Pee v. AVM, Inc., 352 S.C. 167, 170-71, 573 S.E.2d 785, 787 (2002) is relevant: "If [the injury] results from the conditions under which the work is carried on, there is no reason why it should not be held compensable." Pee v. AVM, Inc., 352 S.C. 167, 171 n. 3, 573 S.E.2d 785, 787 n.3 (2002).

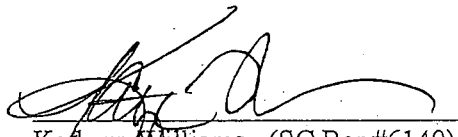
Nicholson does not argue that her injury is compensable simply because she was on her employer's premises at the time of the fall. The reason her injury is compensable is that her performance of work activities brought her in contact with the risk that brought about her injury. This is precisely why the Supreme Court in Pierre v. Seaside Farms, Inc., 386 S.C. 534, 549, 689 S.E.2d 615, 623 (2010) looked to whether "the source of the injury was a risk associated with the conditions under which the employees were required to live."

Tellingly, DSS does not dispute that had claimant been on her way to the bathroom when this accident occurred, her injuries would have been compensable. It defies logic to deny compensation

because she was actively furthering her employers' business as opposed to attending to a personal need.

This Court's decision in this case is contrary to prior decisions of both this Court and the Supreme Court of South Carolina. The Court should grant this Petition, rehear this matter, withdraw its previous decision, and issue a new opinion affirming the Commission's ruling in its entirety. Because of the exceptional importance of this issue, pursuant to Rule 219(b), SCACR, Nicholson suggests that such rehearing be considered *en banc*.

Respectfully submitted,



Kathryn Williams (SC Bar #6140)
Kathryn Williams, P.A.
P.O. Box 10693
Greenville, SC 29603
(864) 235-6254

Dated: 10/28/13
Greenville, South Carolina

The South Carolina Court of Appeals

Carolyn M. Nicholson, Claimant, Respondent,

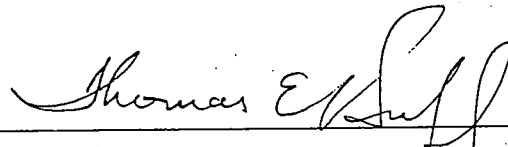
v.

S.C. Department of Social Services, Employer, and State
Accident Fund, Carrier, Defendants, Appellants.

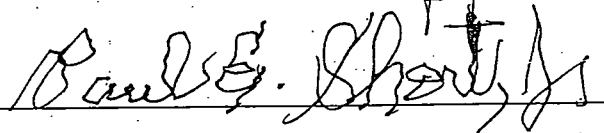
Appellate Case No. 2012-206507

ORDER

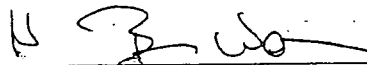
After careful consideration of the suggestion for rehearing en banc, the Court has determined that en banc consideration is not necessary to secure or maintain the uniformity of its decisions, nor is the proceeding one involving a question of exceptional importance. Further, the Court finds no other ground appearing to warrant a rehearing en banc. Accordingly, the suggestion for rehearing en banc is denied.



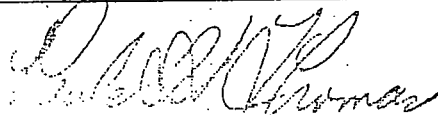
J.



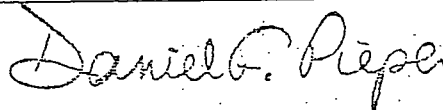
J.



J.



J.



J.

John O. Deane J.

James E. Schum J.

J.

J.

I would vote to grant the rehearing en banc.

John Carmon Jr J.

AKO J.

J.

J.

J.

Columbia, South Carolina

cc:

Lawson Brenn Watson, Esquire

Kathryn Williams, Esquire

Zachary McIver Smith, Esquire

FILED
January 24, 2014

The South Carolina Court of Appeals

Carolyn M. Nicholson, Claimant, Respondent,

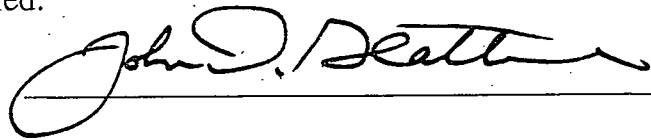
v.

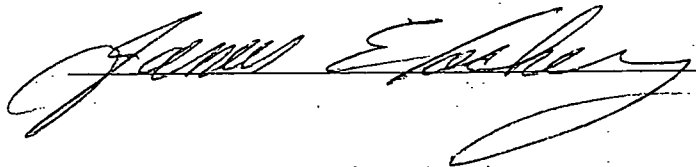
S.C. Department of Social Services, Employer, and State
Accident Fund, Carrier, Appellants.

Appellate Case No. 2012-206507

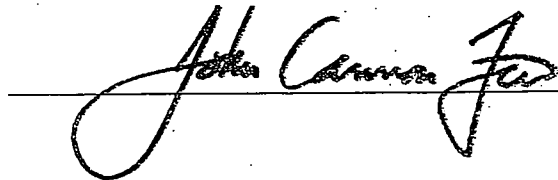
ORDER DENYING REHEARING

After careful consideration of the petition for rehearing, the Court is unable to discover that any material fact or principle of law has been either overlooked or disregarded, and, hence, there is no basis for granting a rehearing. Accordingly, the petition for rehearing is denied.

 J.

 J.

I adhere to my dissent, and I would grant the petition for rehearing.

 C.J.

Columbia, South Carolina

cc:

L. Brenn Watson
Kathryn Williams
Zachary M. Smith

FILED

January 24, 2014

THE STATE OF SOUTH CAROLINA
In The Court Of Appeals

APPEAL FROM THE SOUTH CAROLINA
WORKERS' COMPENSATION COMMISSION

SCWCC No. 0901585

Carolyn M. Nicholson, Employee,

Respondent,

v.

SC Dept. of Social Services, Employer, and
State Accident Fund, Carrier,

Appellants.

RECORD ON APPEAL

L. Brenn Watson, Esquire
Zachary M. Smith, Esquire
872 S. Pleasantburg Drive
Greenville, South Carolina 29607
(864) 527-3292
Attorneys for Appellants

Kathryn Williams, Esquire
619 N. Main St.
Greenville, South Carolina 29603
(864) 235-6254
Attorney for Respondent

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DECISION AND ORDER
of the
APPELLATE PANEL
of the
SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION

File No.: 0901585

Carolyn M. Nicholson, Claimant, ... Appellant,

vs.

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

Hearing: Columbia, South Carolina on September 20, 2011, per notice
timely and properly served upon all parties of interest.

Appearances: Kathryn Williams, Esq. of Kathryn Williams, P.A. for
claimant-appellant

L. Brenn Watson, Esq. of Willson, Jones, Carter & Baxley,
P.A. for defendants-respondents

Purpose: Appellate Panel Review of issues set forth on the Form 30

Filed:

12/29/11

STATEMENT OF THE CASE

Claimant seeks benefits for injury by accident she alleges she sustained on or about February 26, 2009 while she was working for employer-defendant. She specifically contends that she sustained injuries to her neck, back, and left shoulder as a result of the accident, and she seeks payment of past and continuing medical treatment and also temporary total disability compensation benefits for the period from February 26, 2009 through April 13, 2009. Defendants admit claimant fell at work but deny that fall constitutes a compensable injury by accident.

By Order dated April 26, 2011, Commissioner Derrick L. Williams determined claimant fell when her shoe scuffed the carpet while she was walking to a meeting with a stack of files in her hands; however, citing Bagwell v. Ernest Burwell, Inc., 227 S.C. 444, 88 S.E.2d 611 (1955), he found that the claim was not compensable. The Commissioner's specific findings, in pertinent part, are as follows:

3. Claimant was a credible witness. This finding is based on the undersigned's observations of Claimant at the hearing.
4. Claimant's job with Defendant Employer required her to supervise employees and to regularly attend internal audit meetings. This finding is based on Claimant's testimony.
5. Claimant's accident occurred when she fell while walking to a scheduled audit meeting on February 26, 2009.
6. While walking to her scheduled audit meeting, Claimant's shoe scuffed the carpet causing her to fall and injure her back and neck. This finding is supported by Claimant's testimony.
7. The floor Claimant fell on was carpeted, level, and free from any defect. This finding is based on Claimant's testimony.
8. At the time of her fall, Claimant was carrying 10 files that weight approximately 15 pounds; however, the files that Claimant was

carrying did not cause or contribute to her fall on February 26, 2009. This finding is supported by Claimant's testimony.

9. The facts in the present case are analogous to the facts in Bagwell v. Ernest Burwell, Inc., 227 S.C. 444, 88 S.E.2d 611. In Bagwell, the claimant, while in the performance of his duties on the premises of his employer, suddenly fell backward on a concrete floor, lost consciousness, and later died as a result of a subdural hemorrhage. The Court in Bagwell denied compensability on the basis that the claimant's accident did not arise out of his employment with his employer. The Court held that there was no causal connection between the claimant's fall and the claimant's employment and that the claimant's employment was not a contributing cause. The Court further held that even though the claimant fell on a concrete floor, the claimant's employment did not contribute to the effect of the fall. The Court stated, "We are not prepared to accept the contention that, in the absence of special condition or circumstance, a level floor in a place of employment is a hazard." The Court further noted that cement floors or other hard floors are as common outside industry as within it and that the floor in the instant case did not create a hazard which would not be encountered on a sidewalk or street or in a home where a hard surface of the ground or a hard floor existed.
10. Claimant has failed to prove a causal connection between her fall on February 26, 2009 and her employment with Defendant Employer. While Claimant's fall on February 26, 2009 occurred in the course of her employment, Claimant's fall was wholly unrelated to her employment with Defendant Employer. Claimant's fall occurred while she was walking down a normal, level floored hallway. The floor Claimant was walking on at the time of her fall was carpeted, and the carpet was free from defect. While Claimant was carrying 10 files weighing approximately 15 pounds at the time of her fall, Claimant testified that the files she was carrying did not contribute to or cause her fall. Claimant admitted that her fall could have happened on any level, carpeted surface outside of Defendant Employer's building and that there was nothing peculiar about the floor at Defendant Employer's building that caused her to fall. Claimant specifically testified that the sole reason for her fall was that her shoe scuffed the carpet. Thus, Claimant's employment with Defendant Employment was not a contributing cause. This finding is supported by Claimant's testimony.
11. Claimant's employment did not contribute to the effect of her fall on February 26, 2009. While Claimant fell on a carpeted floor in

Defendant Employer's building, Claimant's fall would have carried the same consequences had she fallen on a carpeted floor outside of Defendant Employer's building. There was no special condition or special circumstance about the level, carpeted floor in Defendant Employer's building that contributed to Claimant's injuries. The carpeted floor in Defendant Employer's building did not create a hazard or risk which would not be encountered in any other building or home with a level, carpeted floor.

12. Claimant has failed to prove by a preponderance of the evidence that her injury arose out of her employment with Defendant Employer. This finding is based on the evidence in the record as a whole. Accordingly, Claimant's claim for benefits is denied.

Within the statutory period, claimant filed an Application for Review in the case, copies of which were furnished to all parties prior to briefing and oral argument before the Appellate Panel. By appeal, claimant contended the Commissioner erred as a matter of fact and law in failing to find the claim compensable.

All proffered testimony and documentary evidence was taken and delivered to the individual members of the Appellate Panel for their study and consideration, and following briefing, an appellate hearing was held on September 20, 2011.

EVIDENCE OF THE CASE

At the hearing in Greenville on March 16, 2011, claimant testified that she is 50 years old and has a B.S. in business management. She was employed by employer-defendant for about 20 years, though she was no longer working there at the time of the hearing for reasons unrelated to this claim. Claimant stated that she worked in the child protective services area and was a supervisor of investigations.

Claimant testified that on February 26, 2009 she was preparing for an in-house audit of her files. She stated that she left her office carrying a stack of files for the meeting and was walking down the hall when "the friction from my foot caught me and I fell, files and all, [onto] my left side." (tr. p. 8, lines 7-13) She stated that her leg did not give way, that she is in good health, and had not any previous problems with her legs giving way. Claimant was asked specifically what she thought caused her to fall, and she answered as follows:

Q. So, what is it that you think caused you to fall?

A. Friction from the carpet.

Q. Did your foot get stuck?

A. Yes, from the friction. As I went to walk, the friction from the carpet just grabbed me and I fell.

(tr. p. 8, lines 20-24)

Claimant further testified that employer-defendant sent her to Exigent for medical treatment for pain in her left side, left shoulder, neck, and leg. She eventually underwent an MRI examination of her neck, was evaluated by neurosurgeon Dr. Philip Hodge, and received a cervical epidural steroid injection from Dr. John Haasis. Claimant stated that she was out of work from February 26, 2009 until April 13, 2009, when she returned to her regular work duties. She specifically asked the Commission for compensation for her time out of work and for payment of her medical treatment.

The medical records show that claimant reported to Exigent-Wade Hampton on February 26, 2009 complaining of pain in her left side, left shoulder, neck, and leg after "she tripped on the carpet, fell and landed on her left side." She was diagnosed with contusions and strains, treated with medications, and restricted to light duty work. Claimant continued to attend appointments at

Exigent for treatment of problems with her left shoulder, left arm, and neck through March 24, 2009, though on March 16, 2009, the notes indicate that the workers' compensation insurance company had denied the claim and bills were being sent to claimant's health insurance provider.

A cervical spine MRI performed on March 24, 2009 was read to show multi-level disc degeneration and protrusions but no acute herniation.

Claimant reported to her primary care physician, Dr. Stanley Coleman, on March 25, 2009 for continued care, and Dr. Coleman noted on that date that she was complaining of left arm and shoulder pain after falling at work. After noting continued neck and arm pain on April 6, 2009 and reviewing the MRI scan, Dr. Coleman referred claimant for evaluation with neurosurgeon Dr. Philip Hodge.

Dr. Hodge saw claimant on May 18, 2009 and noted that she was complaining of continued neck and left arm pain after she "[t]ripped and fell on floor" while at work on February 26, 2009. After evaluation, Dr. Hodge diagnosed cervical radiculopathy and recommended an epidural steroid injection. He later opined that claimant's problems "were caused and/or aggravated by her fall at work on February 23, 2009."

Pain management physician Dr. John Haasis saw claimant on May 28, 2009 for evaluation on referral from Dr. Hodge. Dr. Haasis noted claimant complained of neck, left shoulder, and left upper extremity pain after "she fell at work." He recommended a trial of physical therapy before attempting an injection. On June 20, 2009, Dr. Haasis noted that claimant reported "minimal benefit" from the therapy, and he then provided the epidural steroid injection.

Medical records from Dr. Coleman's office dated prior to the incident at work show that claimant was treated for low back pain in 2001, syncope in 2002, chest pain in 2002, a pulled muscle in her arm in 2006, and bilateral knee pain in 2006.

Based upon its review of all the evidence on the record, the Panel hereby reverses the Order of the Hearing Commissioner by majority vote and enters the following findings and conclusions:

FINDINGS OF FACT

1. Employee, employer, and carrier are subject to and bound by the terms and provisions of the South Carolina Workers' Compensation Act, as amended, with Carolyn Nicholson as employee-claimant, S.C. Department of Social Services as employer-defendant, and State Accident Fund as carrier-defendant.

2. The parties stipulated to an average weekly wage of \$747.95, for a compensation rate of \$498.66.

3. Claimant alleged she sustained compensable injury to her neck, left shoulder, and back by accident arising out of and in the course of her employment on February 26, 2009; however, defendants specifically denied the accident arose out of her employment.

4. A hearing on the issues was held before Commissioner Derrick L. Williams on March 16, 2011.

5. Based on his observations of claimant at the hearing, Commissioner Williams found she was a credible witness and that finding was not appealed by either party.

6. Claimant's job with employer-defendant required her to supervise employees and regularly attend internal audit meetings. This finding is based on all the evidence on the record, including but not limited to claimant's testimony.

7. Claimant's accident occurred when her shoe fractioned the carpet causing her to trip and fall while walking to a scheduled audit meeting on February 26, 2009. This finding is

based on all the evidence on the record, including but not limited to claimant's testimony and the medical records of Exigent-Wade Hampton, Dr. Coleman, Dr. Hodge, and Dr. Haasis.

8. While walking to her scheduled audit meeting, claimant's shoe scuffed the carpet causing her to trip, fall onto her left side, and injure her neck, back, left shoulder, and left arm. This finding is based on all the evidence on the record, including but not limited to claimant's testimony and the medical records of Exigent-Wade Hampton, Dr. Coleman, Dr. Hodge, and Dr. Haasis.

9. At the time of her fall, claimant was carrying ten files that together weighed approximately 15 pounds; however, these files did not cause or contribute to her fall. This finding is based on all the evidence on the record, including but not limited to claimant's testimony.

10. The floor on which claimant fell was carpeted, level, and free from any apparent defect. This finding is based on all the evidence on the record, including but not limited to claimant's testimony.

11. There was a specific, non-internal reason for claimant's fall in that she tripped when her foot scuffed or caught in the carpet due to the friction of the carpet against her shoe. This finding is based on all the evidence on the record, including but not limited to claimant's testimony.

 12. There is no evidence claimant suffered any internal breakdown which caused her fall, as the medical records do not suggest any personal medical reason for the fall and claimant testified she is in good health and her leg did not give way or anything of that nature. This finding is based on all the evidence on the record, including but not limited to claimant's testimony and the medical records of Exigent-Wade Hampton, Dr. Coleman, Dr. Hodge, and Dr. Haasis.

13. Medical records submitted by defendants from Dr. Coleman's office dated prior to the incident at work show claimant was treated for low back pain in 2001, syncope in 2002, chest pain in 2002, a pulled muscle in her arm in 2006, and bilateral knee pain in 2006; however, there is no evidence that any of these prior conditions had anything to do with her fall at work on February 26, 2009. This finding is based on all the evidence on the record, including but not limited to claimant's testimony and the medical records of Dr. Coleman.

14. Claimant's fall was not an "idiopathic fall" as there is no evidence that a non-occupational heart attack, epileptic fit, fainting spell, or any other personal medical problem caused the fall. This finding is based on all the evidence on the record, including but not limited to claimant's testimony and the medical records of Exigent-Wade Hampton, Dr. Coleman, Dr. Hodge, and Dr. Haasis.

15. Claimant's fall was not an "unexplained fall" as she identified a specific, non-internal reason for her fall, specifically that she tripped when her foot scuffed or caught in the carpet due to the friction of the carpet against her shoe. This finding is based on all the evidence on the record, including but not limited to claimant's testimony.

16. Claimant has proven that a causal connection exists between her fall on February 26, 2009 and her employment with employer-defendant. This finding is based on all the evidence on the record, including but not limited to claimant's testimony and the medical records of Exigent-Wade Hampton, Dr. Coleman, Dr. Hodge, and Dr. Haasis.

17. Claimant's fall on February 26, 2009 arose out of her employment in that it bore a special relation to her work and the conditions under which her work was performed, specifically that she was required to work in a carpeted area, while walking across the carpet her foot scuffed or caught in the carpet due to the friction of the carpet against her shoe, and this scuffing or

catching in the carpet caused her to trip and fall. This finding is based on all the evidence on the record, including but not limited to claimant's testimony.

18. Claimant's fall on February 26, 2009 occurred in the course of her employment with employer-defendant in that she was then at her place of employment and engaged in the performance of her regular work duties. This finding is based on all the evidence on the record, including but not limited to claimant's testimony.

19. Claimant's employment with employer-defendant was a contributing cause to her fall and subsequent injuries. This finding is based on all the evidence on the record, including but not limited to claimant's testimony.

20. It is irrelevant that this circumstance could have occurred and this fall could have happened on any other level, carpeted surface outside of employer-defendant's building as the fall did not happen in any other place but happened in employer-defendant's building as a result of a risk associated with the conditions under which claimant was required to work, specifically that she was required to work in a carpeted area, while walking across the carpet her foot scuffed or caught in the carpet due to the friction of the carpet against her shoe, and this scuffing or catching in the carpet caused her to trip and fall. This finding is based on all the evidence on the record, including but not limited to claimant's testimony.

21. It is also irrelevant that claimant's fall would have carried the same consequences had she fallen on any other level, carpeted surface outside of employer-defendant's building, as the same can be said of a great many compensable workplace injuries such as a knee injury occurring when standing after bending to tighten a bolt on a machine or a back injury when bending over to pick up a filter rack.

22. Claimant has proven by a preponderance of the evidence that her injury arose out of her employment with employer-defendant. This finding is based on all the evidence on the record, including but not limited to claimant's testimony.

23. Claimant timely reported her accident to employer-defendant. This finding is based on defendants' admission and all the evidence on the record, including but not limited to claimant's testimony.

24. Claimant sustained injuries to her neck, back, and left shoulder as a result of the compensable injury by accident. This finding is based on all the evidence on the record, including but not limited to claimant's testimony and the medical records of Exigent-Wade Hampton, Dr. Coleman, Dr. Hodge, and Dr. Haasis.

25. Claimant has received medical treatment since and because of her compensable injury by accident which was designed to and has tended to effect a cure or give relief, including but not limited to medical treatment provided by Exigent-Wade Hampton, Dr. Coleman, Dr. Hodge, and Dr. Haasis, and she is in need of additional such medical treatment because of her injury by accident. This finding is based on all the evidence on the record, including but not limited to claimant's testimony and the medical records of Exigent-Wade Hampton, Dr. Coleman, Dr. Hodge, and Dr. Haasis.

26. Claimant has not reached maximum medical improvement from her injuries. This finding is based on all the evidence on the record, including but not limited to claimant's testimony and the medical records of Exigent-Wade Hampton, Dr. Coleman, Dr. Hodge, and Dr. Haasis.

27. Claimant was temporarily unable to work and totally disabled because of her compensable injury by accident from February 26, 2009 through and including April 13, 2009.

This finding is based on all the evidence on the record, including but not limited to claimant's testimony and the medical records of Exigent-Wade Hampton, Dr. Coleman, Dr. Hodge, and Dr. Haasis.

RULINGS OF LAW

1. Under S.C. Code Ann. § 42-17-50, the Commission's Appellate Panel is empowered to review the appealed award, weigh the evidence as presented at the initial hearing, and, if good grounds are shown therefore, make its own findings and conclusions consistent with or inconsistent with those of the Hearing Commissioner.

2. Under S.C. Code Ann. § 42-1-130, claimant was a covered employee at the time in question; and under § 42-1-140, employer-defendant was a covered employer.

3. Under S.C. Code Ann. § 42-1-40 and S.C. Code Reg. 67-1603, claimant's average weekly wage is \$747.95, for a compensation rate of \$498.66.

4. Under S.C. Code Ann. § 42-1-160, claimant sustained compensable injury by accident causing compensable injuries to her left lower extremity, left shoulder, and back.

5. Claimant has proven that her injuries arose out of and in the course of her employment with employer-defendant. See Owings v. Anderson Co. Sheriff's Dep't, 315 S.C. 297, 433 S.E.2d 869 (1993) ("In order to be entitled to workers' compensation benefits, the employee must show he or she sustained an 'injury by accident arising out of and in the course of employment.'"); Clade v. Champion Lab., 330 S.C. 8, 496 S.E.2d 856 (1998) ("arising out of" refers to the origin of the cause of the accident; "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.'"); Beam v. State Workers' Comp. Fund, 261 S.C. 327, 200 S.E.2d 83 (1973)("An accident 'arises out of employment' when the employment is a contributing proximate cause."; an injury "arises 'in the course of employment' . . . when it occurs within the period of employment at a place where the employee reasonably may be in the performance of his duties and while fulfilling those duties or engaged in something incidental thereto.")

6. The single Commissioner made his decision based on Bagwell v. Ernest Burwell, Inc., 227 S.C. 444, 88 S.E.2d 611 (1955), determining the injuries were not compensable because claimant fell on a level floor; however, the facts of the present case make clear that this is not an "idiopathic" injury – as there is no evidence claimant suffered any internal breakdown but there is rather a specific, non-personal and work-related reason for her fall – and, for that reason, the "level floor" jurisprudence is irrelevant to this case.

7. Furthermore, contrary to the facts in Bagwell, the facts in the present case show the cause of the fall was related to the work or the working conditions in that the evidence shows claimant was required to work in a carpeted area, while walking across the carpet her foot scuffed or caught in the carpet due to the friction of the carpet against her shoe, and this scuffing or catching in the carpet caused her to trip and fall. See Bagwell, 88 S.E.2d at 613 ("It must be shown that the cause of the fall . . . bore some special relation to the work or to the conditions under which it was performed.").

8. The facts in the present case are more analogous to the facts in the Court of Appeals' decisions in Sigmon v. Dayco Corp., 316 S.C. 260, 449 S.E.2d 497 (Ct.App.1994) and Creech v. Ducane Co., 320 S.C. 559, 467 S.E.2d 114 (Ct.App.1995). In Sigmon, it was

determined that the injured worker sustained a compensable injury when his knee locked when he stood after bending to tighten a bolt on a machine, and in Creech, it was determined that the injured worker sustained a compensable injury by accident where he injured back when bending over to pick up one pound filter rack. Both of these injuries could have happened if the workers had performed similar activities at home or at some other place, but the injuries were compensable because they happened at work due to actions the employees undertook to perform their required work duties and because of the conditions under which they were required to work. Here, claimant's injuries happened at work, while she was performing her work duties in walking to a meeting carrying files in her hands, and the injury occurred because of the condition under which she was required to work, specifically she was required to work in a carpeted area, while walking across the carpet her foot scuffed or caught in the carpet due to the friction of the carpet against her shoe, and this scuffing or catching in the carpet caused her to trip and fall.

9. The Supreme Court's decision in Pierre v. Seaside Farms, Inc., 386 S.C. 534, 689 S.E.2d 615 (2010) forecloses defendants' argument that claimant's fall is not compensable because it could have happened on any carpeted floor at home or in some other place. In Pierre, the Commission determined that the injured worker's injuries were not compensable because, among other reasons, "the risk was not associated with [his] employment because the sidewalk [on which he fell] was no different in character from other sidewalks." However, the Court rejected that finding as not supported by substantial evidence since "the source of the injury was a risk associated with the conditions under which the employees were required to live." Pierre, 689 S.E.2d at 622-623. In doing so, the Court noted that Pierre slipped and fell on a wet sidewalk outside the employer's housing facility, the sidewalk was wet because another employee was using

the sink and water ran across the sidewalk, and the employer's placement of the sink and apparent lack of drainage created the conditions that caused him to fall. Here, claimant testified that she fell because her foot caught in the carpet due to the friction of the carpet against her shoe. Thus, as in Pierre, the source of the injury was a risk associated with a condition under which claimant was required to work, specifically she was required to work in a carpeted area, while walking across the carpet her foot scuffed or caught in the carpet due to the friction of the carpet against her shoe, and this scuffing or catching in the carpet caused her to trip and fall.

10. Claimant has not reached maximum medical improvement from her injuries. Dodge v. Brucoli, Clark, Layman, Inc., 334 S.C. 574, 514 S.E.2d 593 (Ct.App.1999); O'Banner v. Westinghouse Elec. Corp., 319 S.C. 24, 459 S.E.2d 324 (Ct.App.1995).

11. Under S.C. Code Ann. §§ 42-1-120 and 42-9-10, claimant is entitled to and defendants are responsible for temporary total disability compensation benefits at the rate of \$498.66 per week for claimant's temporary total disability from February 26, 2009 through and including April 13, 2009.

12. Under S.C. Code Ann. § 42-15-60, claimant is entitled to and defendants are responsible for all causally related medical treatment and expenses from February 26, 2009 to the present and continuing.

ORDER

IT IS, THEREFORE, ORDERED that the Order of the Hearing Commissioner is hereby reversed by majority vote.

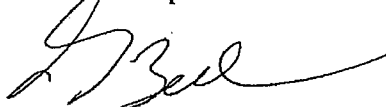
IT IS FURTHER ORDERED that the defendants shall make the following payments:

1. All causally related medical treatment and expenses from February 26, 2009 to the present and continuing.

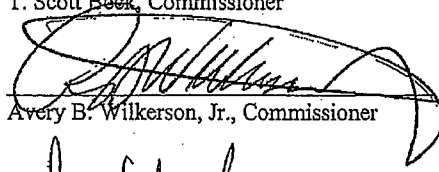
2. Temporary total disability compensation in an amount equal to \$498.66 per week for claimant's temporary total disability from February 26, 2009 through and including April 13, 2009.

AND IT IS SO ORDERED.

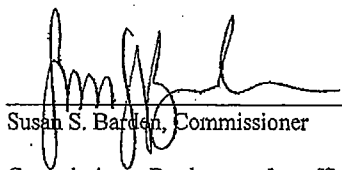
S.C. Workers' Compensation Commission


T. Scott Beck, Commissioner

Concur:


Avery B. Wilkerson, Jr., Commissioner

Dissent:


Susan S. Barden, Commissioner

Commissioner Barden voted to affirm.

Date:

12/29/11

CERTIFICATE OF SERVICE

This is to certify that the undersigned has this date served this order in the above entitled action upon all parties to this cause by depositing a copy hereof, postage paid, in the United States mail addressed to the attorney or attorneys for said parties.

This 29 day of December, 2011
By Valerie Deeks

Administrative Assistant to the Commissioner

Ellen Goodwin
L. Loren Watson

Kathryn Williams

DECISION AND ORDER OF THE
SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION

WCC FILE NO. 0901585

Carolyn Nicholson,	)
Employee,	)
Claimant,	)
vs.	)
SC Department of Social Services,	)
Employer,	)
and	)
State Accident Fund,	)
Carrier,	)
Defendants.	)

HEARING: Held in Greenville, South Carolina on March 16, 2011.

APPEARANCES: Claimant represented by Kathryn Williams, Esquire of Greenville, South Carolina.

Defendants represented by L. Brenn Watson, Esquire of Willson Jones Carter & Baxley, P.A., Greenville, South Carolina.

PURPOSE OF HEARING: To determine the issues as set forth on the Forms 50 and 51.

DECISION AND ORDER: By Derrick L. Williams, Commissioner

FILED: April 26, 2011.

I. APA SUBMISSIONS

Under the Administrative Procedures Act, the following records were submitted into evidence at the time of the hearing:

BY CLAIMANT:

- APA #1: First Report of Injury, dated 2/26/09, consisting of page 1.
- APA #2: Records of Exigent, dated 2/26/09 – 3/24/09, consisting of pages 2-19.
- APA #3: Records of Innervision, dated 3/24/09, consisting of pages 20-21.
- APA #4: Records of Traveler's Rest Family Practice, dated 3/25/09 – 4/6/09, consisting of pages 22-23.
- APA #5: Records of Dr. Hodge of Southeastern Neurosurgical & Spine, dated 5/18/09 – 2/7/11, consisting of pages 24-29.
- APA #6: Records of Dr. Haasis of Carolinas Center for Advanced Mgmt of Pain, dated 5/28/09 – 6/20/09, consisting of pages 30-36.
- APA #7: Records of Hands On Physical Therapy, dated 6/8/09 – 8/29/09, consisting of pages 37-47.

BY DEFENDANTS:

- APA #8: Records of Exigent, dated 2/26/09 – 3/16/09, consisting of pages 48-59.
- APA #9: Records of Traveler's Rest Family Practice, dated 8/17/01 – 4/6/09, consisting of pages 60-68.
- APA #10: Records of Innervision, dated 3/24/09, consisting of pages 69-70.

II. STIPULATIONS

Counsel for the respective parties stipulated at the time of the hearing to the following issues:

1. The purpose of the hearing is to determine the issues as set forth in the Forms 50 and 51 and any other issues which may timely come before the Commission;
2. That Claimant's alleged accident occurred on February 26, 2009;
3. The Claimant's average weekly wage was \$747.95 with a corresponding compensation rate of \$498.66;
4. Notices were timely and properly served upon all parties of interest;

5. Venue, set in Greenville County, is proper as agreed by all parties;

6. That the South Carolina Workers' Compensation Commission has jurisdiction over the parties and issues involved.

Without objection, the Commission's file was made a part of the record in this matter with the exception of any self-serving declaration or unstipulated medical reports.

III. STATEMENT OF THE CASE

On January 3, 2011, Claimant filed a Form 50 Request for Hearing alleging that she sustained an injury to her neck, left shoulder, and back by accident arising out of and in the course of her employment on February 26, 2009. Defendants filed a Form 51 on January 31, 2011 denying that Claimant sustained a compensable injury by accident arising out of and in the course of her employment with Defendant Employer. A hearing was scheduled for March 16, 2011 in Greenville, South Carolina.

At the hearing, Claimant maintained that she sustained a compensable injury by accident arising out of and in the course of her employment on February 26, 2009 when she fell while walking down a hallway in the course of her employment. Claimant sought payment of past causally related medical treatment as well as additional medical treatment to her neck, left shoulder, and back. Claimant also sought temporary total disability benefits for her time out of work. Defendants continued to deny that Claimant sustained a compensable injury by accident arising out of and in the course of her employment.

IV. EVIDENCE OF THE CASE

CLAIMANT'S TESTIMONY

Claimant worked as Defendant Employer's Human Services Coordinator and her job required her to supervise other employees. Claimant is also required to attend internal audits.

Regarding her alleged February 26, 2009 work accident, Claimant testified that she was scheduled for a regular Thursday audit meeting, which was held on the lower floor of Defendant

Employer's building. Claimant's fall occurred on the way to her audit meeting. Claimant testified that she grabbed her files, left her office, signed out on the sign out board, and began walking down the hallway to the audit meeting. She testified that while she was walking down the hall, her shoe frictioned the carpet, which caused her to fall. As a result of her fall, Claimant testified that she sustained injuries to her back and neck.

On cross-examination, Claimant testified that she was walking down a normal hallway and that the floor on which she was walking was level. She further testified that the floor was carpeted and that the floor was free from defect. Claimant specifically testified that the sole reason for her fall was that her shoe frictioned the carpet. When examined by the undersigned, she specifically admitted that the fact that she was carrying files had nothing to do with her fall. Claimant also testified that her fall could have happened on any level, carpeted surface outside of Defendant Employer's building and that there was nothing peculiar about the floor at Defendant Employer's building that caused her to fall.

MEDICAL RECORDS

The file includes some records dated prior to Claimant's alleged February 26, 2009 work accident. On August 17, 2001, Claimant presented to Travelers Rest Family Practice with complaints of low back pain for "probably more than a year." Claimant denied any recent trauma and indicated that her pain "radiates down both buttocks almost to the knee." Claimant was diagnosed with a lumbosacral strain. (Defendants' APA #9).

On July 22, 2002, Claimant presented to Travelers Rest Family Practice with complaints that she felt weak and nauseous the previous weekend and "she passed out with LOC." Claimant was diagnosed with a "probably vasovagal syncope secondary to infection and heat." On July 26, 2002, Claimant presented back to Travelers Rest Family Practice for labs; however, "after the vena puncture, she has a presyncopal spell" that was similar to the one she had the previous week. Claimant was diagnosed with dizziness and it was noted that "she does have orthostatic

hypotension." *Id.*

Claimant returned to Travelers Rest Family Practice on October 16, 2002 with complaints of chest pain, headaches, and "neck pain in the back of her head for 3 weeks." On June 13, 2003, Claimant presented to Travelers Rest Family Practice with complaints of chest wall pain. It was noted that "she states she turns her head to the rt. to the side that it hurts, it sends muscle spasm and pain down the paracervical area and the rhomboid area and the medial scapula distribution." Claimant was diagnosed with musculoskeletal chest wall pain. *Id.*

On February 26, 2009, the date of her alleged work accident, Claimant presented to Exigent with complaints of left shoulder and neck pain after "she tripped on the carpet, fell and landed on her left side." It was also noted that Claimant had some soreness in her legs and that she bumped her head but denied any loss of consciousness. X-rays of Claimant's cervical spine and humerus were negative. Claimant was diagnosed with a "left side contusion with some strain" and placed on light duty from February 27, 2009 thru March 2, 2009. She was also given some antiinflammatories, muscle relaxants, and pain medication. (Claimant's APA #2; Defendants' APA #8).

Claimant returned to Exigent on March 3, 2009 with continued complaints of stiffness and soreness in her left trapezius muscle area and left lower back. Claimant denied radicular pain, numbness, and weakness. Claimant was written out of work until March 10, 2009, when she was to return for a follow-up appointment. On March 10, 2009, Claimant returned to Exigent with complaints of "a dull aching sensation down the left arm." Claimant denied any other problems. It was noted that Claimant's problems seemed to be related to her cervical disk as opposed to her shoulder joint. Claimant underwent a Kenalog injection and was instructed to remain out of work until March 16, 2009. Claimant returned to Exigent for a follow-up appointment on March 16, 2009. She continued to complain of pain in her left shoulder blade area. It was recommended that Claimant undergo an MRI of her cervical spine. *Id.*

An MRI of Claimant's cervical spine dated March 24, 2009 revealed disc degeneration and disc protrusions or bulges from C4-C5 through C6-C7. It was noted that Claimant had "no acute extrusion type disc herniation." (Claimant's APA #3; Defendants' APA #10).

On March 25, 2009, Claimant presented to Travelers Rest Family Practice with complaints of left arm and shoulder pain. Claimant further indicated that she had some discomfort in her left hip. Claimant was diagnosed with left arm pain, hip pain, and cervical degenerative disc disease. Claimant returned to Travelers Rest Family Practice on April 6, 2009 with continued complaints of cervical pain with radiation into her left shoulder area. Claimant was diagnosed with cervical degenerative disc disease and referred to Dr. Phillip J. Hodge. (Claimant's APA #4; Defendants' APA #8).

Claimant presented to Dr. Hodge of Southeastern Neurosurgical and Spine for an evaluation of her cervical pain on May 18, 2009. Dr. Hodge noted that Claimant's pain began on February 26, 2009, when she "tripped and fell on floor." Dr. Hodge diagnosed Claimant with cervical pain and left limb pain and scheduled Claimant for an epidural steroid injection. (Claimant's APA #5).

On May 28, 2009, Claimant presented to Dr. John C. Haasis of Carolinas Center for Advanced Mgmt of Pain for an evaluation and treatment of chronic neck, left shoulder, and left upper extremity pain. Dr. Haasis referred Claimant to physical therapy. (Claimant's APA #6).

Claimant attended four physical therapy sessions for her cervical spine and left shoulder between June 8, 2009 and June 18, 2009. (Claimant's APA #7).

On June 20, 2009, Claimant returned to Dr. Haasis with continued complaints of neck and upper extremity pain. Dr. Haasis noted that Claimant received minimal benefit from physical therapy. Dr. Haasis recommended and performed an epidural steroid injection. (Claimant's APA #6).

On February 6, 2011, Dr. Hodge completed a questionnaire from Claimant's attorney

opining that Claimant's neck, left shoulder and back problems were caused and/or aggravated by her fall at work on February 23, 2009.

A record such as was necessary for a decision was made of the proceeding and after careful consideration and study of all the evidence, the following findings of fact are accordingly made.

V. FINDINGS OF FACT

IT IS FOUND AS A FACT:

1. That Employee, Employer, and Carrier are subject to and bound by the terms and provisions of the South Carolina Workers' Compensation Act, as amended, with Carolyn Nicholson as Employee-Claimant and SC Department of Social Services as Employer and State Accident Fund as Carrier, Defendants.
2. Claimant alleged that she sustained a compensable injury to her neck, left shoulder, and back by accident arising out of and in the course of her employment on February 26, 2009. This is a denied claim. Defendants specifically denied that Claimant's accident arose out of her employment.
3. Claimant was a credible witness. This finding is based on the undersigned's observations of Claimant at the hearing.
4. Claimant's job with Defendant Employer required her to supervise employees and to regularly attend internal audit meetings. This finding is based on Claimant's testimony.
5. Claimant's accident occurred when she fell while walking to a scheduled audit meeting on February 26, 2009.
6. While walking to her scheduled audit meeting, Claimant's shoe scuffed the carpet causing her to fall and injure her back and neck. This finding is supported by Claimant's testimony.
7. The floor Claimant fell on was carpeted, level, and free from any defect. This finding is based on Claimant's testimony.

8. At the time of her fall, Claimant was carrying 10 files that weight approximately 15 pounds; however, the files that Claimant was carrying did not cause or contribute to her fall on February 26, 2009. This finding is supported by Claimant's testimony.

9. The facts in the present case are analogous to the facts in *Bagwell v. Ernest Burwell, Inc.*, 227 S.C. 444, 88 S.E.2d 611. In *Bagwell*, the claimant, while in the performance of his duties on the premises of his employer, suddenly fell backward on a concrete floor, lost consciousness, and later died as a result of a subdural hemorrhage. The Court in *Bagwell* denied compensability on the basis that the claimant's accident did not arise out of his employment with his employer. The Court held that there was no causal connection between the claimant's fall and the claimant's employment and that the claimant's employment was not a contributing cause. The Court further held that even though the claimant fell on a concrete floor, the claimant's employment did not contribute to the effect of the fall. The Court stated, "We are not prepared to accept the contention that, in the absence of special condition or circumstance, a level floor in a place of employment is a hazard." The Court further noted that cement floors or other hard floors are as common outside industry as within it and that the floor in the instant case did not create a hazard which would not be encountered on a sidewalk or street or in a home where a hard surface of the ground or a hard floor existed.

10. Claimant has failed to prove a causal connection between her fall on February 26, 2009 and her employment with Defendant Employer. While Claimant's fall on February 26, 2009 occurred in the course of her employment, Claimant's fall was wholly unrelated to her employment with Defendant Employer. Claimant's fall occurred while she was walking down a normal, level floored hallway. The floor Claimant was walking on at the time of her fall was carpeted, and the carpet was free from defect. While Claimant was carrying 10 files weighing approximately 15 pounds at the time of her fall, Claimant testified that the files she was carrying did not contribute to or cause her fall. Claimant admitted that her fall could have happened on any level, carpeted

surface outside of Defendant Employer's building and that there was nothing peculiar about the floor at Defendant Employer's building that caused her to fall. Claimant specifically testified that the sole reason for her fall was that her shoe scuffed the carpet. Thus, Claimant's employment with Defendant Employment was not a contributing cause. This finding is supported by Claimant's testimony.

11. Claimant's employment did not contribute to the effect of her fall on February 26, 2009. While Claimant fell on a carpeted floor in Defendant Employer's building, Claimant's fall would have carried the same consequences had she fallen on a carpeted floor outside of Defendant Employer's building. There was no special condition or special circumstance about the level, carpeted floor in Defendant Employer's building that contributed to Claimant's injuries. The carpeted floor in Defendant Employer's building did not create a hazard or risk which would not be encountered in any other building or home with a level, carpeted floor.

12. Claimant has failed to prove by a preponderance of the evidence that her injury arose out of her employment with Defendant Employer. This finding is based on the evidence in the record as a whole. Accordingly, Claimant's claim for benefits is denied.

VI. CONCLUSIONS OF LAW

Accordingly, as provided in § 42-17-40, SC Code Ann. (1976), as amended, it is the determination of this Commission that:

1. Pursuant to § 42-1-130, Claimant was a covered employee at the time in question; and pursuant to § 42-1-140, Defendant/Employer was a covered employer under the Act.

2. Pursuant to § 42-1-160 and pursuant to *Bagwell v. Ernest Burwell, Inc.*, 227 S.C. 444, 88 S.E.2d 611, Claimant did not sustain an injury by accident arising out of her employment with Defendant Employer on February 26, 2009.

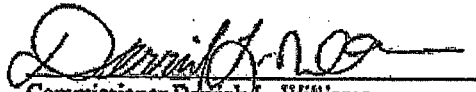
VII. ORDER/AWARD

IT IS HEREBY ORDERED that Claimant's request for benefits be, and is hereby,
DENIED.

No hearing costs are assessed in this instance.

IT IS SO ORDERED.

SOUTH CAROLINA WORKERS'
COMPENSATION COMMISSION


Commissioner Derrick L. Williams

CERTIFICATE OF SERVICE

This is to certify the undersigned has this date served this order in the above entitled action upon all parties to this cause by sending an electronic copy hereof by electronic mail addressed to the attorney or attorneys for said parties or by depositing a copy hereof, postage paid, in the United States certified mail addressed to any unrepresented party.

April 28, 2011

By: Renee Smith, Administrative Assistant to Commissioner Williams

South Carolina Workers' Compensation Commission
1612 Marion Street • Post Office Box 1715
Columbia, South Carolina 29202-1715
(803) 737-5723
www.WCC.sc.gov



WCC File #: 0901585
Carrier File #:
Carrier Code #:
Employer FEIN #:

Claimant's Name: Carolyn Nicholson SSN: Employer's Name: Greenville Cty Dept of Social Services
Address: Address: 301 University Ridge, Ste. 6700
City: State SC Zip: City: Greenville State: SC Zip: 29601
Home Phone: Work Phone: Insurance Carrier: State Accident Fund
Preparer's Name: Kathryn Williams Law Firm: Kathryn Williams, PA Preparer's Phone #: (864) 235-6254

Complete each information blank. To request a hearing, check Box 13b, indicate the kinds of benefits claimed by checking the box(es) at Lines 6, 7, 8, and 9, and file this form in duplicate.

A claim for workers' compensation benefits is made based on the following grounds: Date of Injury or Illness: on or about 02/23/2009 ²⁻²⁶⁻⁰⁹

☒ Injury ☐ Illness ☒ Repetitive Trauma

1a. The claimant sustained an injury to neck, left shoulder and back on or about 02/23/2009 in Greenville county, state of South Carolina

1b. Body part(s) affected are: neck, left shoulder and back

Briefly describe how the accident occurred. Claimant was carrying a stack of paperwork, stopped to speak with a co-worker, her foot stuck on carpet and claimant fell.

2. Both the claimant and the employer were subject to the South Carolina Workers' Compensation Act at the time of injury.

3. The relationship of employer and employee existed at the time of injury.

4. At the time of the injury the claimant was performing services arising out of and in the course of employment.

5. Notice of the accidental injury was given to the Employer on or about 02/23/2009 in the following manner: reported to supervisor

☒ 6. Due to injury, the claimant is in need of (check one):

☒ (a) medical examination and treatment for: neck, left shoulder and back

☒ (b) additional medical examination and treatment for: neck, left shoulder and back

☒ 7. Due to injury, the claimant requests temporary total disability benefits because of lost compensable time from work and wages for the period of: To be Determined

☒ 8. Due to the injury, the Claimant has permanent disability of the following nature and extent (check one): to be determined

☐ (1) General Disability:

☐ Total

☐ (2) Specific Disability:

☐ Total

☐ (3) Wage Loss

☐ Partial

☐ Partial

☐ 9. Due to the injury, the Claimant has a serious bodily disfigurement consisting of:

10a. At the time of the injury, the Claimant was paid weekly wages of \$ to be determined, and demands accounting of days worked and wages earned as provided by law.

10b. Give names and addresses of all employers for whom the Claimant has worked since the date of the accident: to be supplied

11a. Further grounds or unusual aspects of claim: See #12. Claimant makes claim to any and all rights she is entitled to under the Workers' Compensation laws of South Carolina. Claimant requests payment of any award in lump sum with lifetime allocation. Claimant reserves the right to amend the Form 50.

11b. List names and addresses of all physicians or other medical specialists who have seen or treated the Claimant as a result of the accident: See attached list

11c. To the best of your knowledge, did you have any prior permanent disability? To be determined
If yes, describe:

12. Appropriate benefits as provided in the Act for the above grounds and other relief as the Workers' Compensation Commission may direct as just and proper.

13a. I am filing a claim. I am not requesting a hearing at this time.

13b. I am requesting a hearing. A \$25 fee is required.

14. Estimated time needed for hearing: 30 minutes

verify the contents of this form are accurate and true to the best of my knowledge.

Preparer's Signature

Attorney for the Claimant
Title

kwilliamslaw@bellsouth.net
Email

1/3/11
Date

Refer to R.67-204 through R.67-210 and R.67-601 through R.67-615. Questions about the use of this form may be directed to the Commission's Claims Department.

VCC Form # 50
Revised 9/07

50

Employee's Notice of Claim and/or
Request for Hearing

27

Exigent Wade Hampton
2310 Wade Hampton Blvd.
Greenville, SC 29615

Carolinas Center for Advanced Management of Pain
220 Roper Mtn. Rd. Ext.
Greenville, SC 29615

Southeastern Nuerosurgical & Spine
111 Doctors Dr.
Greenville, SC 29605

Traveler's Rest Family Practice
PO Box 246
Travelers Rest, SC 29690

Open MRI of Simpsonville
413 SE Main St.
Simpsonville, SC 29681

Hands On Physical Therapy
220 Roper Mountain Rd. Ext.
Greenville, SC 29615

South Carolina Workers' Compensation Commission

1612 Marion Street • Post Office Box 1715

Columbia, South Carolina 29202-1715

(803) 737-5739

www.WCC.sc.gov

WCC File #: 0901585Carrier File #: 2009-733Carrier Code #: 500 SFEmployer FEIN #: 576036895

Claimant's Name: Carolyn Nicholson SSN: _____ Employer's Name: SC Depart. of Social Services
Address: _____ Address: 1535 Confederate Avenue
City: _____ State: SC Zip: _____
Home Phone: _____ Work Phone: _____ City: Columbia State: SC Zip: 29201
Date of Injury: 02/26/2009 Insurance Carrier: State Accident Fund
Preparer's Name: Ellen Goodwin, Esquire Law Firm: State Accident Fund Preparer's Phone #: (803) 896-5891

Complete each information blank. Specify clearly when contentions are admitted in part and denied in part. The employer/carrier in answer to the claim, respectfully shows:

Date of Injury or Illness: 02/26/2009

1. It is **Denied** the employee sustained an injury or illness on or about the date set forth in the Form 50. The reasons for denial are:
No injury by accident arising out of and within the course and scope of employment.
2. It is **Denied** both the employer and employee were subject to the Workers' Compensation Act at the time in question. The reasons for denial are:
See #1
3. It is **Denied** the relationship of employer and employee existed at the time in question. The reasons for denial are:
See #1
4. It is **Denied** at the time in question the employee was performing services arising out of and in the course of employment. The reasons for denial are:
See #1
5. It is **Denied** notice of injury was given the employer. The reasons for denial are:

6. It is **Denied** the employee **Is Entitled to Additional** medical care as a result of injury or illness. The reasons for denial are:
See #1
7. It is **Denied** the employee is entitled to temporary total disability for the period(s) of :
See #1
8. It is **Denied** the employee is permanently disabled. The reasons for denial are:
Disability, if any, to be determined by the SCWCC.
9. It is **Denied** the employee has serious disfigurement.
10. It is contended that an average weekly wage of **\$747.95** applies, according to attached Form 20 as provided by law.
11. Further contentions, grounds of defense, or unusual aspects are:

12. Estimated time needed for hearing: 30 minutes

I certify I have served this document pursuant to R.67-212 by delivering a copy to:

Name: SC Workers' Compensation Commission, Judicial Department, P.O. Box 1715, Columbia, SC 29202-1715 andKathryn Williams, Esquire, P.O. Box 10693, Greenville, SC 29606on the 31 day of January, 2011 by ☒ first class mail ☐ personal service ☐ certified mail.

I verify the contents of this form are accurate and true to the best of my knowledge.

Ellen Goodwin

Assistant Chief Counsel

egoodwin@saf.sc.gov

1-31-11

Ellen Goodwin, Esquire

Preparer's Signature

Title

Email

Date

Refer to R.67-204 through R.67-210 and R.67-601 through R.67-615. Questions about the use of this form may be directed to the Commission's Judicial Department. Pursuant to R.67-606, a Form 20 must be filed with the Claims Department at least 30 days from the date of filing this form.

WCC Form # 51

Revised 9/07

51**Employer's Answer to Request for Hearing**

SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION
P. O. Box 1715 - 1333 Main Street, Suite 500
Columbia, South Carolina 29202-1715

WCC File No. **0901585**
Carrier File #
Carrier Code #
Employer FEIN

Carolyn Nicholson				S.C. Dep't of Social Services			
Claimant's Name		SSN		Employer's Name			
Address	City	State	Zip	Address	City	State	Zip
(864)	()			State Accident Fund			
Home Phone	Work Phone			Insurance Carrier			
Kathryn Williams, P.A.				(864) 235-6254			
Preparer's Name				Phone #			

Request for Commission Review by **CLAIMANT. ORAL ARGUMENT IS REQUESTED.**

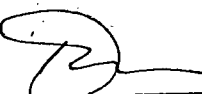
The undersigned makes application for review of the Hearing Commissioner's findings in the above matter. The request for review is based on the following grounds: (State the grounds of your appeal in the form of questions presented. Each question presented must contain a concise statement of one proposition of law or fact. Refer to evidence by title and exhibit number. Use additional pages if necessary).

1. The Hearing Commissioner erred in failing to find claimant sustained compensable injury by accident on February 26, 2009; the error being that the evidence overwhelmingly demonstrates that claimant did sustain compensable injury by accident arising out of her employment on February 26, 2009.
2. The Hearing Commissioner erred in failing to find claimant sustained compensable injury by accident on February 26, 2009 when she tripped and fell while performing her job duties; the error being that the evidence overwhelmingly demonstrates that claimant did sustain compensable injury by accident arising out of her employment on February 26, 2009 when she tripped and fell while performing her job duties.
3. The Hearing Commissioner erred in failing to find claimant is entitled to medical and compensation benefits as a result of her injury by accident on February 26, 2009; the error being that the evidence overwhelmingly demonstrates that claimant did sustain compensable injury by accident arising out of her employment on February 26, 2009 and that she is entitled to medical and compensation benefits as a result of that injury by accident.
4. The Hearing Commissioner erred in finding that claimant's accident occurred when she fell while walking to a scheduled audit meeting on February 26, 2009; the error being that the evidence overwhelmingly demonstrates that claimant's accident occurred when she tripped and fell while performing her work duties and walking to a scheduled audit meeting on February 26, 2009.
5. The Hearing Commissioner erred in finding that claimant injured her back and neck as a result of her fall on February 26, 2009; the error being that the evidence overwhelmingly demonstrates that claimant sustained compensable injury by accident arising out of her employment on February 26, 2009 causing injuries to her neck, left shoulder, and back.

CONTINUED ON ATTACHED SHEET.

ORAL ARGUMENT IS REQUESTED.

I certify that I have served this document pursuant to R.67-212 by delivering a copy to the Commission at P.O. Box 1715, Columbia, SC 29202-1715 and to the attorney for defendants, L. Brenn Watson of Willson, Jones, Carter & Baxley, LLC at 872 S. Pleasantburg Dr., Greenville, SC 29607, on the 11th day of May, 2011 by first class U.S. mail.

 Sa Kw Attorney for Claimant
Preparer's Signature Title Date 5/11/11

If claimant appeals and is not represented by an attorney, the Judicial Department will prepare additional copies of this form and serve it on the opposing party. Rule 67-701(B). Otherwise, file the original and eight copies of this form with the Judicial Department. The appeal must be postmarked no later than 14 days from the date of service of the Hearing Commissioner's decision. Rule 67-205(D). Attach the filing fee to this form. Attach a Form 32 if you are unable to pay the filing fee. Refer to Rules 67-701 through 711 for additional information.

6. The Hearing Commissioner erred in finding that while walking to her scheduled audit meeting, claimant's shoe scuffed the carpet causing her to fall and injury her back and neck; the error being that the evidence overwhelmingly demonstrates that while performing her work duties and walking to her scheduled audit meeting, claimant's shoe scuffed the carpet causing her to trip and fall and thereby injuring her neck, left shoulder, and back.
7. The Hearing Commissioner erred in finding that the facts in the present case are analogous to the facts in *Bagwell v. Ernest Burwell, Inc.*; the error being that the evidence overwhelmingly demonstrates that the facts in the present case are not analogous to the facts in *Bagwell v. Ernest Burwell, Inc.* and the holding of that case is inapplicable to the present case.
8. The Hearing Commissioner erred in finding that claimant failed to prove a causal connection between her fall on February 26, 2009 and her employment with defendant employer; the error being that the evidence overwhelmingly demonstrates that claimant did sustain compensable injury by accident arising out of her employment on February 26, 2009 and did prove a causal connection to her employment in that she tripped and fell while performing her job duties.
9. The Hearing Commissioner erred in finding that while claimant's fall on February 26, 2009 occurred in the course of her employment, claimant's fall was wholly unrelated to her employment with defendant employer; the error being that the evidence overwhelmingly demonstrates that claimant did sustain compensable injury by accident arising out of her employment on February 26, 2009 and did prove a causal connection to her employment in that she tripped and fell while performing her job duties.
10. The Hearing Commissioner erred in finding claimant's fall occurred when she was walking down a normal, level floored hallway; the error being that the evidence overwhelmingly demonstrates that claimant's accident occurred when she tripped and fell while walking to a scheduled audit meeting on February 26, 2009.
11. The Hearing Commissioner erred in finding claimant admitted that her fall could have happened on any level, carpeted surface outside of defendant employer's building and that there was nothing peculiar about the floor at defendant employer's building that caused her to fall; the error being that it is irrelevant whether claimant's fall could have happened on any level, carpeted surface outside of defendant employer's building because the fall did not happen on a surface outside of defendant employer's building but claimant's accident occurred when she tripped and fell while performing her work duties and walking to a scheduled audit meeting in defendant employer's building on February 26, 2009.
12. The Hearing Commissioner erred in finding that claimant testified that the sole reason for her fall was that her shoe scuffed the carpet; the error being that the evidence overwhelmingly demonstrates that claimant testified that her accident occurred when her shoe scuffed the carpet while performing her work duties and walking to a scheduled audit meeting causing her to trip and fall and thereby injuring her neck, left shoulder, and back.
13. The Hearing Commissioner erred in finding that claimant's employment with defendant employ[er] was not a contributing cause; the error being that the evidence overwhelmingly demonstrates that claimant's employment with defendant employer was a contributing cause to her accident and related injuries in that the accident occurred when her shoe scuffed the carpet while performing her work duties and walking to a scheduled audit meeting causing her to trip and fall and thereby injuring her neck, left shoulder, and back.

14. The Hearing Commissioner in finding claimant's employment did not contribute to the effect of her fall on February 26, 2009; the error being that the evidence overwhelmingly demonstrates that claimant's employment did contribute to her fall on February 26, 2009 as the accident occurred when her shoe scuffed the carpet while performing her work duties and walking to a scheduled audit meeting causing her to trip and fall and thereby injuring her neck, left shoulder, and back.
15. The Hearing Commissioner erred in finding that while claimant fell on a carpeted floor in defendant employer's building, claimant's fall would have carried the same consequences as she fallen on a carpeted floor outside of defendant employer's building; the error being that it is irrelevant whether claimant's fall would have carried the same consequences as she fallen on a carpeted floor outside of defendant employer's building because the fall did not happen on a surface outside of defendant employer's building but claimant's accident occurred when she tripped and fell while performing her work duties and walking to a scheduled audit meeting in defendant employer's building on February 26, 2009 and furthermore the same could be said about almost any accident that occurs.
16. The Hearing Commissioner erred in finding that there was no special condition or special circumstance about the level carpeted floor in defendant employer's building that contributed to claimant's injuries; the error being that this is irrelevant and the evidence overwhelmingly demonstrates that claimant's employment did contribute to her fall on February 26, 2009 as the accident occurred when her shoe scuffed the carpet while performing her work duties and walking to a scheduled audit meeting causing her to trip and fall and thereby injuring her neck, left shoulder, and back.
17. The Hearing Commissioner erred in finding that the carpeted floor in defendant employer's building did not create a hazard or risk which would not be encountered in any other building or home with a level carpeted floor; the error being that it is irrelevant whether defendant employer's building created a hazard or risk which would not be encountered in any other building or home with a level carpeted floor because the fall did not happen on a surface outside of defendant employer's building but claimant's accident occurred when she tripped and fell while performing her work duties and walking to a scheduled audit meeting in defendant employer's building on February 26, 2009 and furthermore the same could be said about almost any accident that occurs.
18. The Hearing Commissioner erred in finding claimant has failed to prove by a preponderance of the evidence that her injury arose out of her employment with defendant employer; the error being that the evidence overwhelmingly demonstrates that claimant did sustain compensable injury by accident arising out of her employment on February 26, 2009 when she tripped and fell while performing her job duties.
19. The Hearing Commissioner erred in ruling that pursuant to § 42-1-160 and pursuant to *Bagwell v. Ernest Burwell, Inc.*, claimant did not sustain injury by accident arising out of her employment with defendant employer and on February 26, 2009; the error being that the evidence overwhelmingly demonstrates that the facts in the present case are not analogous to the facts in *Bagwell v. Ernest Burwell, Inc.*, the holding of that case is inapplicable to the present case, and the evidence overwhelmingly demonstrates that claimant did sustain compensable injury by accident arising out of her employment on February 26, 2009 when she tripped and fell while performing her job duties.
20. The Hearing Commissioner erred in denying claimant's request for benefits; the error being that the evidence overwhelmingly demonstrates that claimant sustained compensable injury by accident arising out of her employment on February 26, 2009 and that she is entitled to medical and compensation benefits as a result of that injury by accident.

~~THE STATE OF SOUTH CAROLINA~~
In the Court of Appeals

APPEAL FROM THE SOUTH CAROLINA
WORKERS' COMPENSATION COMMISSION

WCC Number: 0901585

Carolyn M. Nicholson,

Respondent,

v.

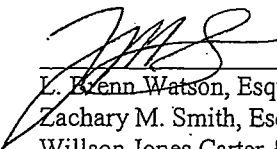
S.C. Dept. of Social Services and
State Accident Fund,

Appellants.

NOTICE OF APPEAL

Pursuant to S.C. Code Ann. § 42-17-60, S.C. Dept. of Social Services and State Accident Fund appeal the Order of the Appellate Panel of the S.C. Workers' Compensation Commission, filed January 13, 2012 on the attached grounds. Appellant received written notice of the entry of the original Order on December 29, 2011.

January 13, 2012


L. Brenn Watson, Esquire
Zachary M. Smith, Esquire
Willson Jones Carter & Baxley, P.A.
872 S. Pleasantburg Drive
Greenville, SC 29607
Attorneys for Appellants

Other Counsel of Record:

Kathryn Williams, Esquire
Kathryn Williams, P.A.
619 N. Main St.
Greenville, SC 29603

Carolyn M. Nicholson v. S.C. Dept. of Social Services
WCC File No.: 0901585

As S.C. Code Ann. § 42-17-60 provides that the "[n]otice of appeal must state the grounds of the appeal or the alleged errors of law," the following is provided as an attachment to the Notice of Appeal:

1. The Commission erred in reversing the Order of the Single Commissioner dated April 26, 2011, the error being that such reversal is not supported by the substantial evidence in the record and that such reversal is not an accurate application of the law.
2. The Commission erred in reversing the Single Commissioner's finding that the facts in the present case are analogous to the facts in Bagwell v. Ernest Burwell, Inc., 227 S.C. 444, 88 S.E.2d 611 (1955), the error being that such reversal is not supported by the substantial evidence in the record and that such reversal is not an accurate application of the law.
3. The Commission erred in reversing the Single Commissioner's finding that Claimant failed to prove a causal connection between her fall on February 26, 2009 and her employment with Defendant Employer, the error being that such reversal is not supported by the substantial evidence in the record and that such reversal is not an accurate application of the law.
4. The Commission erred in reversing the Single Commissioner's finding that Claimant's fall was wholly unrelated to her employment with Defendant Employer, the error being that such reversal is not supported by the substantial evidence in the record and that such reversal is not an accurate application of the law.
5. The Commission erred in reversing the Single Commissioner's finding that Claimant's employment with Defendant Employer was not a contributing cause, the error being that such reversal is not supported by the substantial evidence in the record and that such reversal is not an accurate application of the law.
6. The Commission erred in reversing the Single Commissioner's finding that Claimant's employment did not contribute to the effect of her fall on February 26, 2009, the error being that such reversal is not supported by the substantial evidence in the record and that such reversal is not an accurate application of the law.
7. The Commission erred in reversing the Single Commissioner's finding that Claimant's fall would have carried the same consequences had she fallen on a carpeted floor outside of Defendant Employer's building, the error being that such reversal is not supported by the substantial evidence in the record and that such reversal is not an accurate application of the law.
8. The Commission erred in reversing the Single Commissioner's finding that there was no special condition or special circumstance about the level, carpeted floor in Defendant

Employer's building that contributed to Claimant's injuries, the error being that such reversal is not supported by the substantial evidence in the record and that such reversal is not an accurate application of the law.

9. The Commission erred in reversing the Single Commissioner's finding that the carpeted floor in Defendant Employer's building did not create a hazard or risk which would not be encountered in any other building or home with a level, carpeted floor, the error being that such reversal is not supported by the substantial evidence in the record and that such reversal is not an accurate application of the law.
10. The Commission erred in reversing the Single Commissioner's finding that Claimant failed to prove by a preponderance of the evidence that her injury arose out of her employment with Defendant Employer, the error being that such reversal is not supported by the substantial evidence in the record and that such reversal is not an accurate application of the law.
11. The Commission erred in reversing the Single Commissioner's conclusion that pursuant to § 42-1-160 and pursuant to Bagwell v. Ernest Burwell, Inc., 227 S.C. 444, 88 S.E.2d 611, Claimant did not sustain an injury by accident arising out of her employment with Defendant Employer on February 26, 2009, [*See Bagwell, supra*; Owings v. Anderson County Sheriff's Dept., 315 S.C. 297, 433 S.E.2d 869 (1993); Douglas v. Spartan Mills, 245 S.C. 265, 140 S.E.2d 173 (1965); Crosby v. Wal-Mart, 330 S.C. 489, 499 S.E.2d 253 (Ct. App. 1998); Clade v. Champion Laboratories, 330 S.C. 8, 496 S.E.2d 856 (1998); Lorick v. South Carolina Elec. & Gas, 245 S.C. 513, 141 S.E.2d 662 (1965); Jennings v. Chambers Development Co., 335 S.C. 249, 516 S.E.2d 453 (Ct. App. 1999)], the error being that such reversal is not supported by the substantial evidence in the record and that such reversal is not an accurate application of the law.
12. The Commission erred in Finding of Fact #7 by finding that "Claimant's accident occurred when her shoe fractioned the carpet causing her to trip and fall while walking to a scheduled audit meeting on February 26, 2009," the error being that such finding is not supported by the substantial evidence in the record and that such finding is not an accurate application of the law.
13. The Commission erred in Finding of Fact #8 by finding that "While walking to her scheduled audit meeting, claimant's shoe scuffed the carpet causing her to trip, fall onto her left side, and injure her neck, back, left shoulder, and left arm," the error being that such finding is not supported by the substantial evidence in the record and that such finding is not an accurate application of the law.
14. The Commission erred in Finding of Fact #8 by finding that "While walking to her scheduled audit meeting, claimant's shoe scuffed the carpet causing her to trip, fall onto her left side, and injure her neck, back, left shoulder, and **left arm**" (Emphasis added), the error being that such finding is not supported by the substantial evidence in the record and that such finding is an error of law because Claimant never pled or alleged an injury to her left arm. [*See Pratt v. Morris Roofing, Inc.*, 353 S.C. 339, 577 S.E.2d 475 (Ct. App. 2003)].

15. The Commission erred in Finding of Fact #16 by finding that "Claimant has proven that a causal connection exists between her fall on February 26, 2009 and her employment with employer-defendant," the error being that such finding is not supported by the substantial evidence in the record and that such finding is not an accurate application of the law.
16. The Commission erred in Finding of Fact #16 by finding that "Claimant has proven that a causal connection exists between her fall on February 26, 2009 and her employment with employer-defendant," the error being that Claimant's alleged injury by accident was not causally related to her employment with the S.C. Dept. of Social Services.
17. The Commission erred in Finding of Fact #16 by finding that "Claimant has proven that a causal connection exists between her fall on February 26, 2009 and her employment with employer-defendant," the error being that Claimant's alleged injury by accident is not causally related to her employment because it occurred as the result of a hazard to which Claimant would have been equally exposed apart from her employment with the S.C. Dept. of Social Services.
18. The Commission erred in Finding of Fact #16 by finding that "Claimant has proven that a causal connection exists between her fall on February 26, 2009 and her employment with employer-defendant," the error being that Claimant's employment with the S.C. Dept. of Social Services was not a contributing proximate cause to her alleged injury.
19. The Commission erred in Finding of Fact #17 by finding that "Claimant's fall on February 26, 2009 arose out of her employment in that it bore a special relation to her work and the conditions under which her work was performed, specifically that she was required to work in a carpeted area, while walking across the carpet her foot scuffed or caught in the carpet due to the friction of the carpet against her shoe, and this scuffing or catching in the carpet caused her to trip and fall," the error being that such finding is not supported by the substantial evidence in the record and that such finding is not an accurate application of the law.
20. The Commission erred in Finding of Fact #17 by finding that "Claimant's fall on February 26, 2009 arose out of her employment in that it bore a special relation to her work and the conditions under which her work was performed, specifically that she was required to work in a carpeted area, while walking across the carpet her foot scuffed or caught in the carpet due to the friction of the carpet against her shoe, and this scuffing or catching in the carpet caused her to trip and fall," the error being that Claimant's alleged injury by accident did not "arise out of" her employment with S.C. Dept. of Social Services as required by S.C. Code Ann. § 42-1-160.
21. The Commission erred in Finding of Fact #17 by finding that "Claimant's fall on February 26, 2009 arose out of her employment in that it bore a special relation to her work and the conditions under which her work was performed, specifically that she was required to work in a carpeted area, while walking across the carpet her foot scuffed or caught in the carpet due to the friction of the carpet against her shoe, and this scuffing or catching in the carpet caused her to trip and fall," the error being that Claimant's alleged injury by

accident was not causally related to her employment with the S.C. Dept. of Social Services.

22. The Commission erred in Finding of Fact #17 by finding that "Claimant's fall on February 26, 2009 arose out of her employment in that it bore a special relation to her work and the conditions under which her work was performed, specifically that she was required to work in a carpeted area, while walking across the carpet her foot scuffed or caught in the carpet due to the friction of the carpet against her shoe, and this scuffing or catching in the carpet caused her to trip and fall," the error being that Claimant's alleged injury by accident is not causally related to her employment because it occurred as the result of a hazard to which Claimant would have been equally exposed apart from her employment with the S.C. Dept. of Social Services.
23. The Commission erred in Finding of Fact #17 by finding that "Claimant's fall on February 26, 2009 arose out of her employment in that it bore a special relation to her work and the conditions under which her work was performed, specifically that she was required to work in a carpeted area, while walking across the carpet her foot scuffed or caught in the carpet due to the friction of the carpet against her shoe, and this scuffing or catching in the carpet caused her to trip and fall," the error being that Claimant's employment with the S.C. Dept. of Social Services was not a contributing proximate cause to her alleged injury.
24. The Commission erred in Finding of Fact #19 by finding that "Claimant's employment with employer-defendant was a contributing cause to her fall and subsequent injuries," the error being that such finding is not supported by the substantial evidence in the record and that such finding is not an accurate application of the law.
25. The Commission erred in Finding of Fact #19 by finding that "Claimant's employment with employer-defendant was a contributing cause to her fall and subsequent injuries," the error being that Claimant's alleged injury by accident did not "arise out of" her employment with S.C. Dept. of Social Services as required by S.C. Code Ann. § 42-1-160.
26. The Commission erred in Finding of Fact #19 by finding that "Claimant's employment with employer-defendant was a contributing cause to her fall and subsequent injuries," the error being that Claimant's alleged injury was not causally related to her employment with the S.C. Dept. of Social Services.
27. The Commission erred in Finding of Fact #19 by finding that "Claimant's employment with employer-defendant was a contributing cause to her fall and subsequent injuries," the error being that Claimant's alleged injury by accident is not causally related to her employment because it occurred as the result of a hazard to which Claimant would have been equally exposed apart from her employment with the S.C. Dept. of Social Services.
28. The Commission erred in Finding of Fact #19 by finding that "Claimant's employment with employer-defendant was a contributing cause to her fall and subsequent injuries," the

error being that Claimant's employment with the S.C. Dept. of Social Services was not a contributing proximate cause to her alleged injury.

29. The Commission erred in Finding of Fact #20 by finding that "It is irrelevant that this circumstance could have occurred and this fall could have happened on any other level, carpeted surface outside of employer-defendant's building as the fall did not happen in any other place but happened in employer-defendant's building as a result of a risk associated with the conditions under which claimant was required to work, specifically that she was required to work in a carpeted area, while walking across the carpet her foot scuffed or caught in the carpet due to the friction of the carpet against her shoe, and this scuffing or catching in the carpet caused her to trip and fall," the error being that such finding is not supported by the substantial evidence in the record and that such finding is not an accurate application of the law.
30. The Commission erred in Finding of Fact #20 by finding that "It is irrelevant that this circumstance could have occurred and this fall could have happened on any other level, carpeted surface outside of employer-defendant's building as the fall did not happen in any other place but happened in employer-defendant's building as a result of a risk associated with the conditions under which claimant was required to work, specifically that she was required to work in a carpeted area, while walking across the carpet her foot scuffed or caught in the carpet due to the friction of the carpet against her shoe, and this scuffing or catching in the carpet caused her to trip and fall," the error being that substantial evidence in the record does not support a finding that Claimant's fall occurred as the result of a risk associated with the conditions under which she was required to work.
31. The Commission erred in Finding of Fact #21 by finding that "It is also irrelevant that claimant's fall would have carried the same consequences had she fallen on any other level, carpeted surface outside of employer-defendant's building, as the same can be said of a great many compensable workplace injuries such as a knee injury occurring when standing after bending to tighten a bolt on a machine or a back injury when bending over to pick up a filter rack," the error being that such finding is not supported by the substantial evidence in the record and that such finding is not an accurate application of the law.
32. The Commission erred in Finding of Fact #21 by finding that "It is also irrelevant that claimant's fall would have carried the same consequences had she fallen on any other level, carpeted surface outside of employer-defendant's building, as the same can be said of a great many compensable workplace injuries such as a knee injury occurring when standing after bending to tighten a bolt on a machine or a back injury when bending over to pick up a filter rack," the error being that substantial evidence in the record does not support a finding that Claimant's fall was causally related to her employment with the S.C. Dept. of Social Services.
33. The Commission erred in Finding of Fact #21 by finding that "It is also irrelevant that claimant's fall would have carried the same consequences had she fallen on any other level, carpeted surface outside of employer-defendant's building, as the same can be said of a great many compensable workplace injuries such as a knee injury occurring when standing

after bending to tighten a bolt on a machine or a back injury when bending over to pick up a filter rack," the error being that substantial evidence in the record establishes that Claimant's employment with the S.C. Dept. of Social Services was not a contributing proximate cause to her alleged injury.

34. The Commission erred in Finding of Fact #22 by finding that "Claimant has proven by a preponderance of the evidence that her injury arose out of her employment with employer-defendant," the error being that such finding is not supported by the substantial evidence in the record and that such finding is not an accurate application of the law.
35. The Commission erred in Finding of Fact #22 by finding that "Claimant has proven by a preponderance of the evidence that her injury arose out of her employment with employer-defendant," the error being that Claimant's alleged injury by accident did not "arise out of" her employment with S.C. Dept. of Social Services as required by S.C. Code Ann. § 42-1-160.
36. The Commission erred in Finding of Fact #22 by finding that "Claimant has proven by a preponderance of the evidence that her injury arose out of her employment with employer-defendant," the error being that Claimant's alleged injury by accident was not causally related to her employment with the S.C. Dept. of Social Services.
37. The Commission erred in Finding of Fact #22 by finding that "Claimant has proven by a preponderance of the evidence that her injury arose out of her employment with employer-defendant," the error being that Claimant's alleged injury by accident is not causally related to her employment because it occurred as the result of a hazard to which Claimant would have been equally exposed apart from her employment with the S.C. Dept. of Social Services.
38. The Commission erred in Finding of Fact #22 by finding that "Claimant has proven by a preponderance of the evidence that her injury arose out of her employment with employer-defendant," the error being that Claimant's employment with the S.C. Dept. of Social Services was not a contributing proximate cause to her alleged injury.
39. The Commission erred in Finding of Fact #22 by finding that "Claimant has proven by a preponderance of the evidence that her injury arose out of her employment with employer-defendant," the error being that such finding is based on surmise, conjecture and speculation.
40. The Commission erred in Finding of Fact #24 by finding that "Claimant sustained injuries to her neck, back, and left shoulder as a result of the compensable injury by accident," the error being that such finding is not supported by the substantial evidence in the record and that such finding is not an accurate application of the law.
41. The Commission erred in Finding of Fact #24 by finding that "Claimant sustained injuries to her neck, back, and left shoulder as a result of the compensable injury by accident," the error being that Claimant's alleged injury by accident did not "arise out of" her

- employment with S.C. Dept. of Social Services as required by S.C. Code Ann. § 42-1-160.
42. The Commission erred in Finding of Fact #24 by finding that "Claimant sustained injuries to her neck, back, and left shoulder as a result of the compensable injury by accident," the error being that Claimant's alleged injury by accident was not causally related to her employment with the S.C. Dept. of Social Services.
 43. The Commission erred in Finding of Fact #24 by finding that "Claimant sustained injuries to her neck, back, and left shoulder as a result of the compensable injury by accident," the error being that Claimant's alleged injury by accident is not causally related to her employment because it occurred as the result of a hazard to which Claimant would have been equally exposed apart from her employment with the S.C. Dept. of Social Services.
 44. The Commission erred in Finding of Fact #24 by finding that "Claimant sustained injuries to her neck, back, and left shoulder as a result of the compensable injury by accident," the error being that Claimant's employment with the S.C. Dept. of Social Services was not a contributing proximate cause to her alleged injury.
 45. The Commission erred in Finding of Fact #25 finding that "Claimant has received medical treatment since and because of her compensable injury by accident which was designed to and has tended to effect a cure or give relief, including but not limited to medical treatment provided by Exigent-Wade Hampton, Dr. Coleman, Dr. Hodge, and Dr. Haasis, and she is in need of additional such medical treatment because of her injury by accident," the error being that the substantial evidence in the record establishes that Claimant did not sustain a compensable injury by accident arising out of and in the course of her employment with the S.C. Dept. of Social Services and that such finding is not an accurate application of the law.
 46. The Commission erred in Finding of Fact #26 by finding that "Claimant has not reached maximum medical improvement from her injuries," the error being that the substantial evidence in the record establishes that Claimant did not sustain a compensable injury by accident arising out of and in the course of her employment with the S.C. Dept. of Social Services and that such finding is not an accurate application of the law; thus, the Commission erred in addressing the issue of maximum medical improvement.
 47. The Commission erred in Finding of Fact #27 by finding that "Claimant was temporarily unable to work and totally disabled because of her compensable injury by accident from February 26, 2009 through and including April 13, 2009," the error being that the substantial evidence in the record establishes that Claimant did not sustain a compensable injury by accident arising out of and in the course of her employment with S.C. Dept. of Social Services and that such finding is not an accurate application of the law; thus, the Commission erred in determining that Claimant was out of work as a result of a compensable injury by accident.
 48. The Commission erred in Ruling of Law #4 by concluding that "Under S.C. Code Ann. §

- 42-1-160, claimant sustained compensable injury by accident causing compensable injuries to her left lower extremity, left shoulder, and back," such ruling is not supported by substantial evidence in the record.
49. The Commission erred in Ruling of Law #4 by concluding that "Under S.C. Code Ann. § 42-1-160, claimant sustained compensable injury by accident causing compensable injuries to her left lower extremity, left shoulder, and back," the error being that such ruling is not an accurate application of the law.
 50. The Commission erred in Ruling of Law #5 by concluding that "Claimant has proven that her injuries arose out of and in the course of her employment with employer-defendant," the error being that such ruling is not supported by substantial evidence in the record.
 51. The Commission erred in Ruling of Law #5 by concluding that "Claimant has proven that her injuries arose out of and in the course of her employment with employer-defendant," the error being that such ruling is not an accurate application of the law.
 52. The Commission erred in Ruling of Law #6 by concluding that "The single Commissioner made his decision based on Bagwell v. Ernest Burwell, Inc., 227 S.C. 444, 88 S.E.2d 611 (1955), determining the injuries were not compensable because claimant fell on a level floor; however, the facts of the present case make clear that this is not an "idiopathic" injury – as there is no evidence claimant suffered any internal breakdown but there is rather a specific, non-personal and work-related reason for her fall – and, for that reason, the "level floor" jurisprudence is irrelevant to this case," the error being that such ruling is not supported by substantial evidence in the record.
 53. The Commission erred in Ruling of Law #6 by concluding that "The single Commissioner made his decision based on Bagwell v. Ernest Burwell, Inc., 227 S.C. 444, 88 S.E.2d 611 (1955), determining the injuries were not compensable because claimant fell on a level floor; however, the facts of the present case make clear that this is not an "idiopathic" injury – as there is no evidence claimant suffered any internal breakdown but there is rather a specific, non-personal and work-related reason for her fall – and, for that reason, the "level floor" jurisprudence is irrelevant to this case," the error being that such ruling is not an accurate application of the law.
 54. The Commission erred in Ruling of Law #7 by concluding that "contrary to the facts in Bagwell, the facts in the present case show the cause of the fall was related to the work or the working conditions in that the evidence shows claimant was required to work in a carpeted area, while walking across the carpet her foot scuffed or caught in the carpet due to the friction of the carpet against her shoe, and this scuffing or catching in the carpet caused her to trip and fall. See Bagwell, 88 S.E.2d at 613 ("It must be shown that the cause of the fall... bore some special relation to the work or to the conditions under which it was performed," the error being that such ruling is not supported by substantial evidence in the record.
 55. The Commission erred in Ruling of Law #7 by concluding that "contrary to the facts in

Bagwell, the facts in the present case show the cause of the fall was related to the work or the working conditions in that the evidence shows claimant was required to work in a carpeted area, while walking across the carpet her foot scuffed or caught in the carpet due to the friction of the carpet against her shoe, and this scuffing or catching in the carpet caused her to trip and fall. See Bagwell, 88 S.E.2d at 613 ("It must be shown that the cause of the fall... bore some special relation to the work or to the conditions under which it was performed," the error being that such ruling is not an accurate application of the law.

56. The Commission erred in Ruling of Law #8 by concluding that "The facts in the present case are more analogous to the facts in the Court of Appeals' decisions in Sigmon v. Dayco Corp., 316 S.C. 260, 449 S.E.2d 497 (Ct.App.1994) and Creech v. Ducane Co., 320 S.C. 559, 467 S.E.2d 114 (Ct.App.1995)," the error being that such ruling is not supported by substantial evidence in the record.
57. The Commission erred in Ruling of Law #8 by concluding that "The facts in the present case are more analogous to the facts in the Court of Appeals' decisions in Sigmon v. Dayco Corp., 316 S.C. 260, 449 S.E.2d 497 (Ct.App.1994) and Creech v. Ducane Co., 320 S.C. 559, 467 S.E.2d 114 (Ct.App.1995)," the error being that such ruling is not an accurate application of the law.
58. The Commission erred in Ruling of Law #8 by concluding that "In Sigmon, it was determined that the injured worker sustained a compensable injury when his knee locked when he stood after bending to tighten a bolt on a machine, and in Creech, it was determined that the injured worker sustained a compensable injury by accident where he injured back when bending over to pick up one pound filter rack. Both of these injuries could have happened if the workers had performed similar activities at home or at some other place, but the injuries were compensable because they happened at work due to actions the employees undertook to perform their required work duties and because of the conditions under which they were required to work. Here, claimant's injuries happened at work, while she was performing her work duties in walking to a meeting carrying files in her hands, and the injury occurred because of the condition under which she was required to work, specifically she was required to work in a carpeted area, while walking across the carpet her foot scuffed or caught in the carpet due to the friction of the carpet against her shoe, and this scuffing or catching in the carpet caused her to trip and fall," the error being that such ruling is not supported by substantial evidence in the record.
59. The Commission erred in Ruling of Law #8 by concluding that "In Sigmon, it was determined that the injured worker sustained a compensable injury when his knee locked when he stood after bending to tighten a bolt on a machine, and in Creech, it was determined that the injured worker sustained a compensable injury by accident where he injured back when bending over to pick up one pound filter rack. Both of these injuries could have happened if the workers had performed similar activities at home or at some other place, but the injuries were compensable because they happened at work due to actions the employees undertook to perform their required work duties and because of the conditions under which they were required to work. Here, claimant's injuries happened at work, while she was performing her work duties in walking to a meeting carrying files in

her hands, and the injury occurred because of the condition under which she was required to work, specifically she was required to work in a carpeted area, while walking across the carpet her foot scuffed or caught in the carpet due to the friction of the carpet against her shoe, and this scuffing or catching in the carpet caused her to trip and fall," the error being that such ruling is not an accurate application of the law.

60. The Commission erred in Ruling of Law #9 by concluding that "The Supreme Court's decision in Pierre v. Seaside Farms, Inc., 386 S.C. 534, 689 S.E.2d 615 (2010) forecloses defendants' argument that claimant's fall is not compensable because it could have happened on any carpeted floor at home or in some other place. Thus, as in Pierre, the source of the injury was a risk associated with a condition under which claimant was required to work, specifically she was required to work in a carpeted area, while walking across the carpet her foot scuffed or caught in the carpet due to the friction of the carpet against her shoe, and this scuffing or catching in the carpet caused her to trip and fall," the error being that such ruling is not supported by substantial evidence in the record.
61. The Commission erred in Ruling of Law #9 by concluding that "The Supreme Court's decision in Pierre v. Seaside Farms, Inc., 386 S.C. 534, 689 S.E.2d 615 (2010) forecloses defendants' argument that claimant's fall is not compensable because it could have happened on any carpeted floor at home or in some other place. Thus, as in Pierre, the source of the injury was a risk associated with a condition under which claimant was required to work, specifically she was required to work in a carpeted area, while walking across the carpet her foot scuffed or caught in the carpet due to the friction of the carpet against her shoe, and this scuffing or catching in the carpet caused her to trip and fall," the error being that such ruling is not an accurate application of the law.
62. The Commission erred in Ruling of Law #10 by concluding that "Claimant has not reached maximum medical improvement from her injuries. Dodge v. Bruccoli, Clark, Layman, Inc., 334 S.C. 574, 514 S.E.2d 593 (Ct.App.1999); O'Banner v. Westinghouse Elec. Corp., 319 S.C. 24, 459 S.E.2d 324 (Ct.App.1995)," the error being that such ruling is not supported by substantial evidence in the record.
63. The Commission erred in Ruling of Law #10 by concluding that "Claimant has not reached maximum medical improvement from her injuries. Dodge v. Bruccoli, Clark, Layman, Inc., 334 S.C. 574, 514 S.E.2d 593 (Ct.App.1999); O'Banner v. Westinghouse Elec. Corp., 319 S.C. 24, 459 S.E.2d 324 (Ct.App.1995)," the error being that such ruling is not an accurate application of the law.
64. The Commission erred in Ruling of Law #11 by concluding that "Under S.C. Code Ann. §§ 42-1-120 and 42-9-10, claimant is entitled to and defendants are responsible for temporary total disability compensation benefits at the rate of \$498.66 per week for claimant's temporary total disability from February 26, 2009 through and including April 13, 2009," the error being that the substantial evidence in the record establishes that Claimant did not sustain a compensable injury by accident arising out of and in the course of her employment with the S.C. Dept. of Social Services; thus, Claimant is not entitled to temporary total disability compensation benefits.

65. The Commission erred in Ruling of Law #11 by concluding that "Under S.C. Code Ann. §§ 42-1-120 and 42-9-10, claimant is entitled to and defendants are responsible for temporary total disability compensation benefits at the rate of \$498.66 per week for claimant's temporary total disability from February 26, 2009 through and including April 13, 2009," the error being that such ruling is not an accurate application of the law.
66. The Commission erred in Ruling of Law #12 by concluding that "Under S.C. Code Ann. § 42-15-60, claimant is entitled to and defendants are responsible for all causally related medical treatment and expenses from February 26, 2009 to the present and continuing," the error being that the substantial evidence in the record establishes that Claimant did not sustain a compensable injury by accident arising out of and in the course of her employment with the S.C. Dept. of Social Services; thus, Defendants are not responsible for Claimant's causally-related medical treatment.
67. The Commission erred in Ruling of Law #12 by concluding that "Under S.C. Code Ann. § 42-15-60, claimant is entitled to and defendants are responsible for all causally related medical treatment and expenses from February 26, 2009 to the present and continuing," the error being that such ruling is not an accurate application of the law.
68. The Commission erred in ordering that Defendants shall pay for all causally related medical treatment and expenses from February 26, 2009 to the present and continuing, the error being that the substantial evidence in the record establishes that Claimant did not sustain a compensable injury by accident arising out of and in the course of her employment with the S.C. Dept. of Social Services and that such order is not an accurate application of the law.
69. The Commission erred in ordering that Defendants shall pay temporary total disability compensation in an amount equal to \$498.66 per week for Claimant's temporary total disability from February 26, 2009 through and including April 13, 2009, the error being that the substantial evidence in the record establishes that Claimant did not sustain a compensable injury by accident arising out of and in the course of her employment with the S.C. Dept. of Social Services and that such order is not an accurate application of the law.

STATE OF SOUTH CAROLINA
WORKERS' COMPENSATION COMMISSION
CASE NUMBER - 0901585

CAROLYN M. NICHOLSON,	)	
	)	
CLAIMANT,	)	HEARING
	)	
VS.	)	BEFORE
	)	
DEPT OF SOCIAL SERVICES,	)	COMMISSIONER WILLIAMS
	)	
EMPLOYER,	)	
	)	
STATE ACCIDENT FUND,	)	
	)	
CARRIER,	)	
	)	
DEFENDANTS.	)	
	)	

COPY

WORKERS' COMPENSATION COMMISSION HEARING TAKEN
BEFORE NADINE A. GARRETT, A NOTARY PUBLIC IN AND FOR
THE STATE OF SOUTH CAROLINA, COMMENCING AT THE HOUR OF
12:34 PM ON MARCH 16, 2011, AT COUNTY SQUARE, 301
UNIVERSITY RIDE, GREENVILLE, SOUTH CAROLINA.

NADINE A. GARRETT
COURT REPORTER
POST OFFICE BOX 1205
IRMO, SOUTH CAROLINA 29063
803-834-3410

APPEARANCES**FOR THE CLAIMANT**

KATHRYN WILLIAMS, P.A.
 POST OFFICE BOX 10693
 GREENVILLE, SOUTH CAROLINA 29603
 (864) 235-6254

FOR THE CARRIER

L. BRENN WATSON, ESQUIRE
 WILLSON, JONES, CARTER AND BAXLEY, P.A.
 872 SOUTH PLEASANTBURG DRIVE
 GREENVILLE, SOUTH CAROLINA 29607
 (864) 527-3280

NADINE A. GARRETT
 COURT REPORTER
 POST OFFICE BOX 1205
 IRMO, SOUTH CAROLINA 29063
 803-834-3410

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NADINE A. GARRETT
 COURT REPORTER
 803-834-3410

1 THE COURT: Today's date is March 16, 2011. This
2 is the Workers' Compensation Case of Ms. Carolyn
3 Nicholson versus DSS. This is WCC File No. 0901585.
4 The date of accident alleged as February 26, 2009.
5 Present for the Claimant is Attorney Kathryn Williams.
6 Present for the Employer and Carrier is Attorney Brenn
7 Watson. Hearing is set on the Forms 50 and 51.
8 Average weekly wage \$747.95, corresponding comp rate
9 of \$498.66.

10 I have APA submissions from the parties. Any
11 objections to jurisdiction, venue or the APA
12 submissions? Ms. Williams?

13 MS. WILLIAMS: No, sir.

14 MR. WATSON: No, sir.

15 THE COURT: Then the Commission file is part of
16 the record with the exception of any self-serving
17 declarations or any unstipulated medical reports.

18 Denied claim.

19 The Claimant alleges an injury on February 26,
20 2009 to her neck, left shoulder and back in the course
21 and scope of her duties at work. She would seek
22 further medical treatment, temporary total from
23 February 23, 2009 through April 13, 2009. And she
24 will not be asking for permanency at this time, but
25 reimbursement for any causally-related medicals to

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1 date.

2 The Employer/Carrier denies this claim in full.

3 They do not believe the Claimant can meet her burden

4 of proving a compensable injury by accident, mainly

5 that this type of accident not arises out of and in

6 the course and scope of her duties. They would cite

7 Crosby and Bagwell as they would argue this is an

8 idiopathic fall and all benefits should be denied.

9 That being stated, though, do the parties want to
10 state anything else for the record? Ms. Williams?

11 MS. WILLIAMS: Only that I think it's clear that
12 all these cases are very, very fact specific. And I
13 believe the facts of this one would show that she's
14 entitled to compensation. I would also just pass up -
15 I think you passed up, what?

16 THE COURT: I have Bagwell.

17 MS. WILLIAMS: And I will pass up Sigmund
18 (phonetic).

19 THE COURT: Mr. Watson, anything else for the
20 record?

21 MR. WATSON: No, sir. I believe you -

22 THE COURT: All right. Ms. Nicholson is in the
23 witness chair. Let's swear her in, please.

24 CAROLYN NICHOLSON,
25 having been first duly sworn, testified as follows:

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1 THE COURT: Ms. Williams.

2 DIRECT EXAMINATION

3 BY MS. WILLIAMS:

4 Q Carolyn, how old are you?

5 A Fifty.

6 Q And how far did you go in school?

7 A I have a BS degree in management, business management.

8 Q And I believe that you were employed - I know that you
9 are no longer employed with DSS now, but you were
10 employed with DSS for about nine years; is that right?

11 A No.

12 Q Okay.

13 A Pretty close to 20 years.

14 Q Oh, 20 years. I'm sorry. I can't add. Math was
15 never my strong suit. So, you were with DSS for 20
16 years roughly?

17 A Roughly.

18 Q What were your job duties there?

19 A I was in several different areas, but my last course
20 of action was with child protective services.

21 Q What did you do with child protective services?

22 A I was a supervisor in the investigations area of the
23 Department of Social Services.

24 Q Okay. And I believe before you went to DSS, you were
25 employed at Bi-Lo; is that correct?

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1 A Yes, ma'am.

2 Q And how long were you there?

3 A Approximately 12 years.

4 Q Now, in your job at DSS, did you have an accident on
5 February 23, 2009?

6 A I believe that date is incorrect.

7 Q What date do you think it was?

8 A If I'm not mistaken, it's February 26th.

9 Q Okay. Do you think you went to the doctor the same
10 day you fell?

11 A I did.

12 Q And the first doctor you went to was Exigent?

13 A Yes. That was the -

14 Q That's where they told you to go?

15 A Yes.

16 Q And they told you to go the same day?

17 A Yes.

18 MS. WILLIAMS: We would amend our date of
19 accident to February 26, 2009. That is the first day
20 of treatment.

21 MR. WATSON: No objection.

22 THE COURT: All right. I think had - did I not
23 say that? Maybe I was wrong. I had that as February
24 26, 2009.

25 MS. WILLIAMS: Okay. I was the only one that was

1 wrong then.

2 THE COURT: Somebody had already changed it.

3 BY MS. WILLIAMS:

4 Q So, what happened to - what were you doing on February
5 26th?

6 A That was the day that we had auditing. On Thursdays
7 we would have audits for case files to review and
8 update areas so that when we had our large audit time,
9 we could kind of be prepared.

10 Q Okay. And this is an audit with you and your
11 supervisors where you review cases?

12 A In-house.

13 Q In-house, okay. So, what happened that day?

14 A As I was leaving my office with my cases to go
15 downstairs because we were on this level and there is
16 a lower level -

17 Q You had cases in your hand?

18 A I had cases in my hand, correct.

19 Q And how many - these were files, I take it, that you
20 had?

21 A These were files, yes.

22 Q How many did you have?

23 A Roughly ten.

24 Q And about how thick were they?

25 A Maybe half an inch to an inch.

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- 1 Q Okay.
- 2 A Depending on the material that was in each case.
- 3 Q Okay. And you had about ten of those?
- 4 A Yes.
- 5 Q In your arms?
- 6 A Yes.
- 7 Q Okay. And then what did you do?
- 8 A I stacked them from my desk and went around to go out
- 9 the door. I was speaking to a worker on my way there
- 10 that stopped me. And by the time I got midway from my
- 11 office to going down the hall, the friction from my
- 12 foot caught me and I fell, files and all, my left
- 13 side. That was the gist of the story.
- 14 Q Okay. Did your leg give way or anything like that?
- 15 Did anything happen?
- 16 A No. I'm in good health. No.
- 17 Q Okay. Have you ever had any problems with your legs
- 18 before with giving way or anything like that?
- 19 A No.
- 20 Q So, what is it that you think caused you to fall?
- 21 A Friction from the carpet.
- 22 Q Did your foot get stuck?
- 23 A Yes, from the friction. As I went to walk, the
- 24 friction from the carpet just grabbed me and I fell.
- 25 Q Okay. And I believe that DSS sent you to Exigent; is

1 that correct? That's where they told you to go?

2 A Yes.

3 Q And you treated with them until some time, it looks
4 like the middle of March. And you were complaining to
5 them of having pain in your left side, left shoulder
6 and neck, soreness down your leg; is that correct?

7 A Yes, ma'am.

8 Q And then you - I think you were sent to Innervision
9 for an MRI?

10 A Yes, ma'am.

11 Q And you treated with Dr. Hodge, who is a neurosurgeon?

12 A Yes, ma'am.

13 Q I think you also had a cervical epidural steroid
14 injection; is that right?

15 A I did.

16 Q Okay. And that was done by Dr. Haasis?

17 A Yes.

18 Q You were out of work -

19 MS. WILLIAMS: Is there any dispute about that,
20 Brenn, that she was out of work from -

21 MR. WATSON: I don't think so.

22 MS. WILLIAMS: - February 23rd until April 13th?

23 MR. WATSON: I think that's the date I have.

24 BY MS. WILLIAMS:

25 Q And after that, you returned to your regular duties;

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1 is that correct?

2 A I did. Yes, ma'am.

3 Q I know that you're not working at DSS now, but that
4 has nothing to do with anything that has to do with
5 this claim; is that correct?

6 A That's correct.

7 Q Are you asking the Commissioner to award you temporary
8 total disability benefits for that time that you were
9 out of work?

10 A Yes, ma'am.

11 Q Asking him to require the Defendants to provide the
12 medical treatment - to pay for the medical treatment
13 that you have incurred?

14 A Yes, ma'am.

15 MS. WILLIAMS: That's all the questions I have.

16 THE COURT: Mr. Watson.

17 MR. WATSON: Thank you, Commissioner.

18 CROSS EXAMINATION

19 BY MR. WATSON:

20 Q Ms. Nicholson, first of all, it's good to see you
21 again.

22 A Yes, sir. Thank you.

23 Q Now, my understanding is that you - I think you just
24 said that you were a supervisor with DSS; is that
25 right?

- 1 A Yes, sir.
- 2 Q Part of those job duties required you to supervise ,
3 other employees. Is that fair?
- 4 A Yes, sir.
- 5 Q And you also had to attend these audits that you just
6 told Ms. Williams about?
- 7 A Yes, sir.
- 8 Q And those audits were every Thursday?
- 9 A Every Thursday from where they had set it up, unless
10 something - unless they changed the schedule. It was
11 kind of ongoing basis.
- 12 Q I see. They were pretty typical, though, to have
13 these audits?
- 14 A Yes, sir.
- 15 Q And on this Thursday, I think you told me at your
16 deposition, I just want to make sure I am right, right
17 as you step outside of your office, there is a sign-
18 out board. And that sign-out board just lets people
19 know where you are if you are not in the office.
- 20 A Correct.
- 21 Q So, on that day on February 26th, when you were leaving
22 your office to go to this audit, you actually did your
23 little sign out.
- 24 A Have to sign out. Yes, sir.
- 25 Q And then you started walking down the hallway?

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- 1 A Yes, sir.
- 2 Q Now, you told me at your deposition, and I just want
- 3 to make sure this is right, this is a pretty normal
- 4 hallway, right?
- 5 A It is.
- 6 Q That you would see here or anywhere really, right?
- 7 A Same carpet that we have here.
- 8 Q Fair enough. And the floor was carpeted; is that
- 9 right?
- 10 A Correct.
- 11 Q And it was a level floor; is that right?
- 12 A Yes, sir.
- 13 Q And I think you told me at your deposition that the
- 14 carpeting was free of defect?
- 15 A As far as I know.
- 16 Q You don't recall seeing anything -
- 17 A No, sir.
- 18 Q - even after your accident that would have caused you
- 19 to think, "Hey, I might have tripped over that."?
- 20 A No, sir. No debris.
- 21 Q It was just simply level floor, carpeted level floor?
- 22 A Yes, sir.
- 23 Q And when I asked at your deposition what kind of shoes
- 24 you were wearing that day, I think you told me just
- 25 normal, regular shoes.

1 A Yes, sir.

2 Q In fact, I think you may have said that the heels on
3 your shoes on February 26, 2009 may have even been a
4 little lower than the heels that you were wearing at
5 your deposition that day.

6 A Yes, sir.

7 Q Now, when you fell, there's no dispute, I don't think,
8 and I just want to make sure you're right, that it was
9 simply a crazy event. You don't even know what
10 happened really, do you?

11 A No, sir. Just from the friction, it catching my foot,
12 then it just all like a domino effect. I went to the
13 ground. Couldn't even catch myself.

14 Q I understand. And you attribute the fall here today
15 solely to the friction on the carpet?

16 A Yes, sir.

17 Q And solely to your shoe touching the carpet, causing
18 the friction, and then causing the fall?

19 A Exactly.

20 Q Okay. No other cause other than that?

21 A No, sir.

22 Q And certainly I appreciated your honesty at the
23 deposition. I certainly appreciate it here today.
24 But I asked you several questions at your deposition
25 relating to why you fell. And at one point you said

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1 this: I asked you, "Why did you fall?" And you
2 said, answer, "I don't know. That's the big mystery
3 there. It happened so fast." Are you able to say
4 with any degree of certainty that your foot just
5 happened to have fractioned on the carpet or do you
6 really not know, but you're just guessing that your
7 foot fractioned on the carpet?

8 A No. I know that my foot frictioned on the carpet.
9 But why it fractioned on the carpet, to clarify that,
10 is what I don't know why it fractioned on the carpet.
11 But I know that it did.

12 Q And you go on to say, "It happened so fast. I walked
13 out of my office and I hit the floor. It's like, I
14 don't know. I think - this is my theory: I walk out
15 of my office and I trip." And my question is, you say
16 it then like, "Well, this is just my theory," as
17 though, "This is my speculation" or "This is my
18 surmise."

19 MS. WILLIAMS: And I'm going to object that's
20 that's not a - because it's not complete. It's not -

21 MR. WATSON: I'm happy to read the rest of it.

22 THE COURT: Okay.

23 BY MR. WATSON:

24 Q It goes on to say, "My theory, I walk out of the
25 office and I trip. If you've walked - if you've been

- 1 walking before and you've walked down carpet before
2 and you will get a knick where the carpet will catch
3 your shoe, does that make sense what I am saying?"
4 What is your complete answer to that?
- 5 A Okay.
- 6 Q But I will stand by my characterization.
- 7 A Okay.
- 8 Q It sounded like to me then and now as I read it that
9 you really just were not completely sure, but that was
10 your theory.
- 11 A No. I can say and it can possibly be in wording
12 because my foot was still from the friction of the
13 carpet caught on the carpet.
- 14 Q Since you were on - since you were walking down a
15 normal hallway -
- 16 A Yes, sir.
- 17 Q - on a level floor with carpet free of defect wearing
18 normal shoes, would you agree with me, Ms. Nicholson,
19 that your foot fractioning on the carpet could have
20 happened either at work at DSS or it could have
21 happened at a department store or it could even happen
22 here while we are in this hearing room since the
23 carpet is exactly the same and we have a level floor;
24 would you agree with that?
- 25 A Repeat the question, please.

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1 Q Sure. Would you agree with me that since you were
2 working down a normal hallway on a level floor on
3 carpet free of defect, that this event, your foot
4 fractioning against the carpet thus causing you to
5 fall, could have happened anywhere? It could happen
6 here in this room.

7 A That's possible.

8 Q All right. Just as possible that it happened at work
9 on February 26, 2009.

10 A Okay.

11 Q Is that fair?

12 A Unsure.

13 MS. WILLIAMS: He's asking her to speculate.

14 THE WITNESS: Unsure.

15 MR. WATSON: I'm really not asking her to
16 speculate. I mean, we're dealing with definite facts
17 here.

18 THE COURT: Okay. I think she said she was -
19 what was our answer?

20 THE WITNESS: I'm like unsure as to where he's -
21 you know, what he's asking me because I could walk out
22 the door now and fall and it not be - you could walk
23 out and fall and it not be my fault or your fault, but
24 basically -

25 THE COURT: I think that's what he's asking.

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1 BY MR. WATSON:

2 Q Yeah. That's exactly what I'm asking. So it could
3 have happened anywhere?

4 A It could have happened anywhere.

5 Q All right. Fair enough. The only thing connecting
6 this fall to your employment was that you happened to
7 be at your job at the time; is that right?

8 A Yes.

9 Q Now, I think I'm almost through and we can let you go.
10 I saw something that was interesting. I just want to
11 ask you about this. In some prior medical records
12 that I got from your family doctor, Travelers Rest
13 Family Practice, and this is APA page 61, date July
14 22, 2002, there's a note in here. And it says,
15 "Patient was at Anderson Jockey Lot on Saturday when
16 she began feeling weak and nauseous. She had not had
17 breakfast that morning. And then, according to her
18 husband, she passed out with loss of consciousness."
19 And it looks like you were assessed with a possible, I
20 can't pronounce this word, Vasovagal syncope.

21 MS. WILLIAMS: Vasovagal syncope.

22 MR. WATSON: Yeah.

23 BY MR. WATSON:

24 Q Is that what happened here? Did you get light-headed
25 or faint?

1 A I had had some medication and it made me feel sick.
2 I don't know if it was - I think I had some ibuprofen.

3 MS. WILLIAMS: You are talking about in July of
4 '02?

5 THE WITNESS: When I fell at the Jockey Lot.

6 MS. WILLIAMS: Okay.

7 THE WITNESS: I remember that. But that's what
8 that was all about. And I hadn't eaten with it and it
9 made me nauseated and apparently being out in the
10 heat, it made me pass out.

11 BY MR. WATSON:

12 Q And then there's another note, page 62. It's July 26,
13 2002. And it says, "Patient was actually here today
14 just for lab. But after the venipuncture, she has a
15 presyncope spell. This is similar to the one that she
16 had at the Jockey Lot one week ago." It looks like
17 you were having left flank pain. Again, did those
18 syncope episodes resolve themselves of is that
19 something you've had problems with?

20 A That was a one-time, isolated thing.

21 Q Sure. And you don't recall that being an issue for
22 you -

23 A Ever.

24 Q - on February 26, 2009?

25 A No, sir.

1 MR. WATSON: Kathryn, forgive me for this. Are
2 you claiming - you are claiming TTD only from 4/13/09
3 - I'm sorry, from the date of the incident to 4/13/09?

4 MS. WILLIAMS: Correct.

5 MR. WATSON: Only?

6 MS. WILLIAMS: Only.

7 MR. WATSON: Thank you for your time.

8 THE COURT: Any redirect?

9 REDIRECT EXAMINATION

10 BY MS. WILLIAMS:

11 Q You were asked about what connects this to your work.
12 You were actually -

13 MR. WATSON: Objection to leading, Commissioner.

14 BY MS. WILLIAMS:

15 Q Where were you going? What were you doing when your
16 foot caught on the carpet and you fell?

17 A On my way to an audit.

18 Q Is that why you were up and walking around?

19 A Yes. Work related.

20 Q Now, would you agree with me -

21 MR. WATSON: Objection to leading, Commissioner.

22 THE COURT: Can you rephrase?

23 MS. WILLIAMS: I haven't asked the question yet.

24 THE COURT: Yeah. She hasn't asked it yet.

25 ///

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1 BY MS. WILLIAMS:

2 Q I want you to assume that - you said you had a stack
3 of files in your hands, a stack of files in your
4 hands.

5 A Yes, ma'am.

6 Q Estimate for me how much those weighed.

7 A No more than 15 pounds.

8 Q Do you lift that much at home?

9 A No.

10 Q Do you lift that much outside of the office?

11 A No. Not in a normal -

12 Q You are not going to lift any. Okay. Could it have
13 happened - well, I want you to assume for me that you
14 hurt your back lifting those files. Could you have
15 done that - could that have happened anywhere?

16 A Sure.

17 MS. WILLIAMS: That's all I have.

18 MR. WATSON: What was the question?

19 MS. WILLIAMS: Could that have happened anywhere?

20 MR. WATSON: Lifting - hurting your back while
21 you lifting the files?

22 MS. WILLIAMS: Uh-huh. I asked her just to
23 assume hypothetically that that had happened.

24 THE COURT: Do you have any other questions,
25 Mr. Watson?

1 MR. WATSON: I don't believe I do.

2 EXAMINATION

3 BY THE COURT:

4 Q Ms. Nicholson, let me ask this. Just a couple. Have
5 you ever had any other Workers' Compensation claims
6 before this one?

7 A An accident I had years ago in a car wreck of DSS that
8 was not my fault. Someone hit me head on. But other
9 than -

10 Q Any other accidents?

11 A No, sir.

12 Q In terms of - now, when you say your foot frictioned,
13 did the carpet kind of buckle up or did the carpet
14 move at all when you frictioned?

15 A Not that the carpet, it's just that the friction from
16 it caught my shoe. It's wasn't that it moved or
17 anything.

18 Q And the files you were carrying, the files didn't make
19 you fall? I think you testified to it and I just want
20 to be clear.

21 A No. The files did not make me fall.

22 THE COURT: Okay. Any other questions,

23 Ms. Williams?

24 MS. WILLIAMS: No, sir.

25 THE COURT: Mr. Watson?

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1 MR. WATSON: No, sir.

2 THE COURT: Any other witnesses for the Claimant?

3 MS. WILLIAMS: That's our case.

4 MR. WATSON: We have no witnesses.

5 THE COURT: That'll conclude this hearing.

6 (THE HEARING CONCLUDED AT 12:53 PM.)

STATE OF SOUTH CAROLINA)
COUNTY OF LEXINGTON) CERTIFICATE

BE IT KNOWN THAT I TOOK THE FOREGOING
WORKERS' COMPENSATION HEARING;

THAT I WAS THEN AND THERE A NOTARY PUBLIC IN
AND FOR THE STATE OF SOUTH CAROLINA-AT-LARGE;

THE FOREGOING TRANSCRIPT REPRESENTS A TRUE,
ACCURATE AND COMPLETE TRANSCRIPTION OF THE TESTIMONY SO
GIVEN AT THE TIME AND PLACE AFORESAID TO THE BEST OF MY
SKILL AND ABILITY;

THAT I AM NOT RELATED TO NOR AN EMPLOYEE OF
ANY OF THE PARTIES HERETO, NOR A RELATIVE OR EMPLOYEE OF
ANY ATTORNEY OR COUNSEL EMPLOYED BY THE PARTIES HERETO,
NOR INTERESTED IN THE OUTCOME OF THIS ACTION.

WITNESS MY HAND AND SEAL THIS 2ND DAY OF JUNE,
2011.


NADINE A. GARRETT
NOTARY PUBLIC FOR SOUTH CAROLINA
MY COMMISSION EXPIRES AUGUST 11, 2016

NADINE A. GARRETT
COURT REPORTER
803-834-3410

STATE OF SOUTH CAROLINA
WORKERS' COMPENSATION COMMISSION
CASE NUMBER - 0901585

CAROLYN M. NICHOLSON,	)	
	)	
CLAIMANT,	)	FULL COMMISSION HEARING
	)	
VS.	)	BEFORE
	)	
SCDSS,	)	PANEL A
	)	
EMPLOYER,	)	COMMISSIONER BECK
	)	
STATE ACCIDENT FUND,	)	COMMISSIONER BARDEN
	)	
CARRIER,	)	COMMISSIONER WILKERSON
	)	
DEFENDANTS.	)	
	)	

COPY

WORKERS' COMPENSATION FULL COMMISSION HEARING
TAKEN BEFORE SARA L. QUATTLEBAUM, A NOTARY PUBLIC IN
AND FOR THE STATE OF SOUTH CAROLINA, COMMENCING AT THE
HOUR OF 11:04 AM ON TUESDAY, SEPTEMBER 20, 2011,
WORKERS' COMPENSATION COMMISSION, 1333 MAIN STREET,
COLUMBIA, SOUTH CAROLINA.

QUATTLEBAUM COURT REPORTING
148 LAKE HARBOR DRIVE
LEXINGTON, SC 29072
(803)447-0272

APPEARANCES

FOR THE APPELLANT/CLAIMANT
KATHRYN WILLIAMS, ESQUIRE
KATHRYN WILLIAMS, PA
POST OFFICE BOX 10693
GREENVILLE, SOUTH CAROLINA 29603
(864) 235-6254

FOR THE RESPONDENT/DEFENDANTS
L. BRENN WATSON, ESQUIRE
WILLSON JONES CARTER & BAXLEY, P.A.
872 S. PLEASANTBURG DRIVE
GREENVILLE, SOUTH CAROLINA 29607
(864) 527-3292

SARA L. QUATTLEBAUM
INDEPENDENT COURT REPORTER
148 LAKE HARBOR DRIVE
LEXINGTON, SOUTH CAROLINA 29072
(803) 447-0272

SARA QUATTLEBAUM, Independent Court Reporter
(803) 447-0272

1 COURT REPORTER: Today is September 20, 2011.

2 This is South Carolina Workers' Compensation Case
3 No. 0901585.

4 This is the case of Carolyn Nicholson, Claimant
5 versus SCDSS, Employer. And State Accident Fund is
6 the Carrier.

7 The Appellant is the Claimant represented by
8 Kathryn Williams. The Respondent is represented by
9 Brenn Watson.

10 Each side is allowed ten minutes for oral
11 argument and the Appellant three minutes in reply.
12 You are requested to argue the grounds of exception
13 and stay within the record.

14 COMMISSIONER WILKERSON: Ms. Williams.

15 MS. WILLIAMS: May it please the Commission.

16 We are here today purely on an issue of law; that
17 is, the Hearing Commissioner erred in treating this
18 case as an idiopathic fall case under the Bagwell and
19 Crosby line of cases.

20 And, you know, the problem is that we have a
21 number of seemingly inconsistent decisions out there.
22 And I really think that's because these cases have to
23 be sort of decided on a case-by-case basis. So the
24 results of sort of different.

25 But the facts in this case are not in dispute.

 SARA QUATTLEBAUM, Independent Court Reporter
 (803)447-0272

1 The Claimant was an HR person. She had these audit
2 meetings every Thursday that she was required to
3 attend. She was on her way to a meeting. And she
4 picked up the files off her desk to go to this
5 meeting. She went and signed a sign-out board that
6 tells them where they're located, subsequent
7 employees. And then as she turns to go down the hall
8 to go to the meeting her foot got stuck on the carpet
9 and she fell.

10 There is - we admit that there is nothing wrong
11 with the carpet. There wasn't a defect in it or
12 anything like that. But what caused her to fall was
13 the fact of her foot getting stuck on the carpet. It
14 was an accident, nobody intended it.

15 But I think the error here legally is with
16 applying the Crosby and Bagwell line of cases because
17 it is not an idiopathic fall. And it's not an
18 unexplained fall. We know why this lady fell.

19 Bagwell stands for the proposition that if you
20 are standing on a level floor and you fall without an
21 explanation and you don't hit anything on the way down
22 that it's not compensable. And there is a good reason
23 for that. And the Crosby case stands for the same
24 thing only Crosby is related with walking, and she
25 fell because her leg gave way.

SARA QUATTLEBAUM, Independent Court Reporter
(803)447-0272

1 The big reason behind those line of cases is that
2 there is some sort of suspicion or there arises that
3 something internally happened to cause the fall if you
4 can't explain it. And that's reasonable, because we
5 don't want to have the Defendants have to pay for if
6 somebody's blood sugar dropped or blood pressure
7 dropped or something like that that would cause them
8 to fall. They should not have to pay for that.

9 COMMISSIONER WILKERSON: Was there testimony that
10 she said her foot got stuck? I'm looking at the order
11 to see if it said that yesterday when I was looking
12 through there.

13 MS. WILLIAMS: She said that - let me find it -
14 that there was testimony, and that's not in dispute.
15 It's at Page 8 of the transcript where she describes
16 what happened to her. And I said, "What is it that
17 you think caused you to fall?" And she said,
18 "Friction from the carpet." "Did your foot get
19 stuck?" "Yes, from the friction. As I went to walk
20 the friction from the carpet just grabbed me, and I
21 fell."

22 COMMISSIONER WILKERSON: Okay.

23 MS. WILLIAMS: So this fall is not an unexplained
24 fall. She knows exactly how it happened; it happened
25 because of the circumstances of her employment which

1 required her to be there and to walk down this hall
2 and to walk on that carpet and to go to that meeting.

3 The fact that it could have - and he will argue
4 that it could have happened anywhere. Well, the fact
5 that it could have happened anywhere is really of no
6 consequence whatsoever. Most accidents that happen at
7 work could have happened somewhere else. People go up
8 and down stairs at home. The general public is
9 exposed to stairs. But if you fall on the stairs at
10 work, that is undisputably compensable. If you bend
11 over - you know, people bend over and pick things up
12 at home all the time. But if you do that at work and
13 you hurt your back when you're doing that, then it's
14 compensable. If you are on your way to a - we have
15 all had that experience. If you are on your way to a
16 Full Commission hearing and you're walking down the
17 hall and you have files and your foot gets stuck on
18 the carpet and that causes you to fall, I don't think
19 anybody would argue that that's not compensable. The
20 Act was written up - it sounds like I'm lecturing
21 here, and I don't mean to do that, but -

22 COMMISSIONER BARDEN: Was she carrying anything?

23 MS. WILLIAMS: She had a bunch - she had some
24 files in her hands. She also said that did not cause
25 her to fall, the fact that she was carrying files.

1 But she was carrying files, and her foot stuck on the
2 carpet. And she fell, files and everything.

3 But, you know, the Act is written, it's a no-
4 fault system because, you know, sometimes the Employer
5 causes the accident and sometimes they don't.
6 Sometimes the Employee causes it and sometimes nobody
7 does. Sometimes it is just an accident.

8 And the Act was written for Employers to be
9 responsible for workplace accidents as long as there
10 is a rational connection to the employment. As long
11 as somebody didn't faint because their blood sugar
12 dropped or they had a TIA or something like that. If
13 it's - and more than that, if there is a rational
14 connection to further the Employer's business and the
15 conditions of the employment, the carpet, or what
16 caused the fall; and we know undisputably what
17 happened in this case, then that should be
18 compensable.

19 They are going to - and this is more like the
20 Sigmund and the Creech cases, and I cited those in my
21 brief. In Sigmund he was bending over and picking up
22 an object, had a pain in his back. And I think it
23 ultimately wound up being a herniated disc, and they
24 found that was compensable. They are going to say,
25 well, those were different because all those cases

1 said was that no causative event is required, so there
2 would be an injury by accident. Well, that is a
3 distinction without a difference. Both of those cases
4 were arising out of employment cases. And causative
5 event, causal relationship arising out of the
6 employment; all of those are sort of different words
7 but the same thing.

8 And it's clear from those cases that a causative
9 event is not necessary for an accident to be
10 compensable. There just has to be a causal
11 connection, which we have here because she was on her
12 way to a meeting and her foot got stuck on the carpet.
13 And that grabbing of the carpet with her shoe is what
14 caused her to fall.

15 So I think the Hearing Commissioner's order
16 should be reversed and she should be awarded it
17 compensable since it is pursuant to the Act.

18 Thank you.

19 COMMISSIONER WILKERSON: Mr. Watson?

20 MR. WATSON: Thank you, Commissioner Wilkerson.

21 May the Defendants' argument please the Commission.

22 Let me say this first. The longer I do this, the
23 more and more I believe that the parties on both sides
24 of the aisle, believability and credibility make or
25 break a case.

1 In this case I believe we won because her client
2 was absolutely, 100 percent truthful and honest.

3 42-1-160 has four requirements; four
4 requirements, not one requirement that we all lump
5 together. It's four. An injury by accident, arising
6 out of and in the course of the employment in order
7 for a claim to be compensable.

8 The facts in this case are much like Ms. Williams
9 just said. They are very simple. She was walking
10 down a level floor, carpeted, free of defect, free of
11 debris hallway; a normal hallway wearing normal shoes.
12 She testified that her foot frictioned the carpet -
13 frictioned the carpet which caused her to fall.

14 Commissioner Williams actually asked a question
15 that I was afraid to ask because I didn't know the
16 answer to it. Kathryn didn't ask it during direct.
17 And that was this, and you highlighted it, I believe,
18 Commissioner Barden. Did the files cause her to fall?
19 She was honest, she was truthful; she said no, period.
20 The facts are she was walking down a level floor
21 hallway, carpeted, free of defects and that's it.

22 Now, the question becomes -

23 COMMISSIONER WILKERSON: Didn't she ask the
24 question friction and stuck?

25 MR. WATSON: I think friction was - I've got the

1 testimony inside my brief, Commissioner.

2 COMMISSIONER WILKERSON: No.. Ms. Williams read
3 it. I didn't pull it out. And you may object to what
4 was in the testimony.

5 MR. WATSON: No, I don't. I don't object.

6 COMMISSIONER WILKERSON: This is what she says,
7 friction and stuck, okay.

8 MR. WATSON: And by the time I got midway from my
9 office to go on down the hall, the friction from my
10 foot caught me and I fell, files and all, left side.
11 That was the gist of the story.

12 Question: Did your foot get stuck?

13 Answer: Yes, from the friction.

14 That doesn't matter to me. Stuck, friction; she
15 fell because her foot stuck, friction, yet a carpet
16 that was free of defects, just like this. In fact, I
17 asked her during her testimony, is this the same
18 carpet that we would see anywhere? And she said,
19 actually, it's just like the carpet in this hearing
20 room. That answers this question: What risk did the
21 employment give to cause this lady's injury? And I
22 believe that the answer is no risk at all. And that
23 must be present. We can't blue pencil or scratch out
24 or erase the causation requirement in the statute.
25 There is no question of -

1 Yes, sir.

2 COMMISSIONER WILKERSON: Tell me the difference
3 in friction and stuck and friction and twisted?

4 MR. WATSON: Friction would cause the sticking.
5 I don't think friction would necessarily cause a
6 twisting. I don't know.

7 COMMISSIONER WILKERSON: That's fine. That's
8 fine. Thank you.

9 MR. WATSON: I'm not sure. I will say that I
10 have, in the past, had a Full Commission, and it may
11 have even been you all three that was on the panel.
12 But she twisted her foot on a level floor and the
13 Commission found it not to be compensable at the time.

14 The law in this case and the law in these lines
15 of cases are this: The mere fact that the injury
16 occurred in the course of the employment is not a
17 basis for an award. Arising out of and in the course
18 of employment, the requirements for compensability of
19 injury under the Workers' Compensation Act are
20 somewhat overlapping, but they are not synonymous.
21 Both must simultaneously exist.

22 Arising out of in the statute, requiring the
23 injury to arise out of and in the course of employment
24 refers to the injury's origin or cause. What caused
25 that to happen? Was it the employment or was it that

1 it just happened?

2 An injury arises out of employment when there is
3 a causal relationship between the conditions under
4 which the work is to be performed and the resulting
5 injury. An injury which cannot fairly be traced to
6 the employment as a contributing proximate cause and
7 which comes from a hazard to which the workman would
8 have been equally exposed apart from the employment,
9 hence the same carpet in the hearing room would not
10 arise out of the employment.

11 Finally, if I can find it. The Bagwell case
12 specifically says this: "We are not prepared to
13 accept the contention that in the absence of special
14 condition or circumstance, a level floor in a place of
15 employment is a hazard." That is the law. That is
16 the law. We know she was on a level floor. If she
17 would have testified there was a defect I would have
18 had that claim. If she were to testify there was
19 debris I would have had that claim. If the files
20 would have caused her to fall, Commissioner Barden, I
21 would have had that claim. There is no doubt about
22 any of those things.

23 But she was truthful and she was honest. She was
24 walking just like she could have been at Walmart or
25 here or at the hearing room or anywhere else, and her

1 foot frictioned the carpet and she fell.

2 There is nothing - in fact, she admitted this in
3 her testimony, there is no factor other than the fact
4 that she was on the Employer's time and dime that
5 caused that fall. She admitted to that. That was the
6 only link to her employment. And that is in her
7 testimony.

8 In order to find the case compensable, I would
9 argue and suggest that you have to overrule decades of
10 jurisprudence on this issue. I would argue that you
11 essentially delete the arising out of requirement.

12 And I would also say this: This is not a gray
13 case. This is not a, oh, which way is it? It's not.
14 The facts are what they are because she told the
15 truth. She was walking down a level floor carpet free
16 of defects hallway, normal hallway wearing normal
17 shoes and she fell. It's about as clean as I think it
18 could ever possibly get to apply over the decades of
19 jurisprudence on the issue and to apply the
20 arising-out-of requirement in the statute.

21 Overruling Commissioner Williams' decision
22 deletes that requirement. And there is no mistake
23 about that in Brenn Watson's mind. And I would hope
24 that there wouldn't be in yours. There would be no
25 rising-out-of requirement in this case if you find it

1 compensable.

2 Thank you.

3 COMMISSIONER WILKERSON: Ms. Williams?

4 MS. WILLIAMS: May it please the Commission.

5 He quotes the Bagwell line that we are not
6 prepared to accept that the level floor is a hazard
7 out of context. Bagwell was focusing on whether the
8 result of the fall was compensable. He hit his head
9 on - he was standing still and hit his head on the
10 concrete floor.

11 We are not here to say that hitting his head on
12 the concrete floor was a hazard, okay? That is not
13 what we have here. In truth, what you do would be to
14 affirm Commissioner Williams' decision that you
15 overrule decades of jurisprudence that says that in an
16 arising out of and in the course of employment case it
17 should be construed liberally in favor of coverage
18 because that is what the Act is supposed to do.

19 We have - and let me quote to you from Crosby.
20 Crosby's case rules for the Defense because it is
21 really most on point with this case because she was
22 walking across the floor and fell. But this is what
23 Crosby says: "When asked what happened Crosby said,
24 my leg just gave out. Crosby never stated she slipped
25 or fell on anything." The Court goes on to say:

1 "Neither was there any evidence regarding the
2 condition of the floor." The Commissioner held that
3 presuming Crosby slipped on something would require
4 speculation. Okay.

5 There is no speculation required here. We know
6 that nothing gave out. She testified her leg didn't
7 give out. We know there was nothing wrong with her.
8 There was nothing internal that caused this to happen.
9 We know, it's been accepted, she said that it happened
10 that way, that what caused her to fall was that her
11 foot got stuck on the carpet.

12 And you raised an interesting question. If her
13 foot had gotten stuck on the carpet and she turned and
14 pivoted and twisted her ankle, there is no doubt that
15 - we wouldn't be standing here today. There is no
16 difference here. Her foot got stuck on the carpet
17 that she was required to walk across as a result of
18 her employment when she was on her way to this
19 meeting. It was, simply put, an accident. And it
20 should be compensable.

21 Thank you.

22 COMMISSIONER WILKERSON: Good case. All right.
23 Thank you all. Good to see you all. That will
24 conclude the hearing.

25 (The hearing concluded at 11:21 AM)

SARA QUATTLEBAUM, Independent Court Reporter
(803)447-0272

STATE OF SOUTH CAROLINA)
) CERTIFICATE
COUNTY OF LEXINGTON)

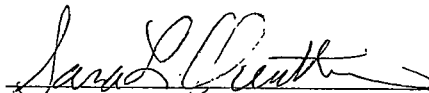
BE IT KNOWN THAT I TOOK THE FOREGOING
WORKER'S COMPENSATION HEARING;

THAT I WAS THEN AND THEE A NOTARY PUBLIC IN
AND FOR THE STATE OF SOUTH CAROLINA-AT-LARGE;

THE FOREGOING TRANSCRIPT REPRESENTS A TRUE,
ACCURATE AND COMPLETE TRANSCRIPTION OF THE TESTIMONY SO
GIVEN AT THE TIME AND PLACE AFORESAID TO THE BEST OF MY
SKILL AND ABILITY;

THAT I AM NOT RELATED TO NOR AN EMPLOYEE OF
ANY OF THE PARTIES HERETO, NOR A RELATIVE OR EMPLOYEE OF
ANY ATTORNEY OR COUNSEL EMPLOYED BY THE PARTIES HERETO,
NOR INTERESTED IN THE OUTCOME OF THIS ACTION.

WITNESS MY HAND AND SEAL THIS 10TH DAY OF
NOVEMBER, 2011.



SARA L. QUATTLEBAUM
NOTARY PUBLIC FOR SOUTH CAROLINA
MY COMMISSION EXPIRES JULY 12, 2012

SARA QUATTLEBAUM, Independent Court Reporter
(803)447-0272

SC WORKERS COMPENSATION - FIRST REPORT OF INJURY OR ILLNESS									
EMPLOYER (NAME & ADDRESS INCL ZIP)				CARRIER/CLAIMS ADMINISTRATION CLAIM NUMBER			REPORT PURPOSE CODE		
Department of Social Service SCDSS Greenville County Greenville County Square 301 University Ridge Suite 6700 Greenville SC				JURISDICTION			JURISDICTION CLAIM NUMBER		
				INSURED REPORT NUMBER					
SIC CODE				EMPLOYER FEIN			EMPLOYER'S LOCATION ADDRESS (IF DIFFERENT)		
							LOCATION #		
							PHONE #		
CARRIER/CLAIMS ADMINISTRATOR									
CARRIER (NAME, ADDRESS, & PHONE NO)				POLICY PERIOD			CLAIMS ADMINISTRATOR (NAME, ADDRESS, & PHONE NO)		
State Accident Fund of South Carolina P.O. Box 102100 Columbia, SC 29221-5000 800-521-6576				TO					
				CHECK IF APPROPRIATE					
				SELF INSURANCE					
CARRIER FEIN				POLICY/SELF INSURED NUMBER			ADMINISTRATOR FEIN		
AGENT NAME & CODE NUMBER									
EMPLOYEE/WAGE									
NAME (LAST, FIRST, MIDDLE)				DATE OF BIRTH		SOCIAL SECURITY NUMBER		DATE HIRED	
Nicholson, Carolyn M								10-17-1990	
ADDRESS (INCL ZIP)				SEX		MARITAL STATUS		OCCUPATION/JOB TITLE	
				MALE		UNMARRIED (SINGLM)		Human Services Coord.	
				☒ FEMALE		☒ MARRIED		EMPLOYMENT STATUS	
				UNKNOWN		SEPARATED		Regular Employment	
PHONE				# OF DEPENDENTS		NCC CLASS CODE			
				0					
RATE		PER:		DAY		MONTH		# DAYS WORKED/WEEK	
\$748.79		X		WEEK		OTHER		5	
FULL PAY FOR DAY OF INJURY?								☒ YES	
DID SALARY CONTINUE?								☒ YES	
OCCURRENCE/TREATMENT									
TIME EMPLOYEE BEGAN WORK		☒ AM		DATE OF INJURY/ILLNESS		TIME OF OCCURRENCE		☒ AM	
08:30		PM		02/26/2009		08:55		PM	
								LAST WORK DATE	
								02-26-2009	
CONTACT NAME/PHONE NUMBER				TYPE OF INJURY/ILLNESS			PART OF BODY AFFECTED		
Brenda Bennett, 864-467-7795				Contusion			L side, L arm, L hip, neck, Head		
DID INJURY/ILLNESS EXPOSURE OCCUR ON EMPLOYER'S PREMISES?				TYPE OF INJURY/ILLNESS CODE			PART OF BODY AFFECTED CODE		
☒ YES ☐ NO									
DEPARTMENT OR LOCATION WHERE ACCIDENT OR ILLNESS EXPOSURE OCCURRED				ALL EQUIPMENT, MATERIALS, OR CHEMICALS EMPLOYEE WAS USING WHEN ACCIDENT OR ILLNESS EXPOSURE OCCURRED					
				N/A					
SPECIFIC ACTIVITY THE EMPLOYEE WAS ENGAGED IN WHEN THE ACCIDENT OR ILLNESS EXPOSURE OCCURRED				WORK PROCESS THE EMPLOYEE WAS ENGAGED IN WHEN ACCIDENT OR ILLNESS EXPOSURE OCCURRED					
Coming out of her office. Signed out on board. Just before going down stairs to Audit Review				Coming out of her office. Signed out on board. Just before going down stairs to Audit Review					
HOW INJURY OR ILLNESS/ABNORMAL HEALTH CONDITION OCCURRED. DESCRIBE THE SEQUENCE OF EVENTS AND INCLUDE ANY OBJECTS OR SUBSTANCES THAT DIRECTLY INJURED THE EMPLOYEE OR MADE THE EMPLOYEE ILL									
Took few steps & fell. Not sure what happened. Fell on L side, no break in fall. Hurt L side, L arm, L hip, & neck. Hit head, no loss of consciousness. Feels little light headed.									
DATE RETURNED TO WORK		IF FATAL, GIVE DATE OF DEATH		WERE SAFEGUARDS OR SAFETY EQUIPMENT PROVIDED?				YES ☒ NO	
				WERE THEY USED?				YES ☒ NO	
PHYSICIAN/HEALTH CARE PROVIDER (NAME & ADDRESS)				HOSPITAL (NAME & ADDRESS)				INITIAL TREATMENT	
Exigent Clinic 2310 WADE HAMPTON Greenville, SC 29615								☐ NO MEDICAL TREATMENT	
								☐ MINOR BY EMPLOYER	
								☒ MINOR CLINIC/HOSP	
								☐ EMERGENCY CARE	
								☐ HOSPITALIZED > 24 HRS	
								FUTURE MAJOR MEDICAL TREATMENT ANTICIPATED	
WITNESSES (NAME & PHONE #)									
Gail Kokoszka & Tina Israel; (864) 467-3372									
DATE ADMINISTRATOR NOTIFIED		DATE PREPARED		PREPARER'S NAME & TITLE				PHONE NUMBER	
02-26-2009		03-03-2009		Brenda Bennett				864-467-7795	
SEE BACK FOR IMPORTANT STATE INFORMATION SIGNATURE									

EXIGENT - WADE HAMPTON

DATE OF SERVICE: 02/26/09

NAME: NICHOLSON, CAROLYN

CHART NUMBER: 60158

SSN: XXX-XX-

SUBJECTIVE: 40 year old comes in today stating she tripped on the carpet, fell and landed on her left side. Just banged up a little. Hurting mostly in the left shoulder and neck area. A little stiffness and soreness going all the way down the leg. Also bumped her head, but denies any LOC. No bruise or any other problems there. No current medications. No known allergies.

OBJECTIVE: White female in no acute distress. She is tender to palpation mostly over the left shoulder and upper arm area. There is no significant bruising and swelling. She has limited range of motion with complaint of pain. The rest of the exam is normal. Has some soreness on her legs, but ambulates without difficulty. There is no significant bruising and swelling there. We did an x-ray of the C-spine and the humerus, both of which were negative.

ASSESSMENT: Left side contusion with some strain.

PLAN: Patient given some anti-inflammatories, muscle relaxants, pain medicines. Note for light duty. Recheck on Monday.


LYNN STORCH OWENS, M.D. / tj1

T: 02/27/09

EXIGENT WADE HAMPTON

2310 Wade Hampton Blvd.
Greenville, South Carolina 29615

FILE # 80152

EXAM ROOM # 4

PATIENT NAME LAST FIRST MIDDLE Nicholson, Carolyn M. Carolyn		INSURANCE PAYMENT METHOD ☒ WWC ☐ CB ☐ SP ☐	
PATIENT ADDRESS		CITY STATE ZIP	SOCIAL SECURITY #
PATIENT EMPLOYER Department Of Social Services		EMPLOYER MAILING ADDRESS 301 University Ridge, Travelers Rest	
EMPLOYER PHONE 864-467-7966		GUARANTOR NAME Nicholson, Carolyn	
GUARANTOR EMPLOYER Department Of Social Services		GUARANTOR PHONE 864-616-6972	
LOCAL CONTACT BOBBY NICHOLSON		LOCAL ADDRESS	
LOCAL PHONE		DATE 02/26/09	TIME 10:50 AM
MS / G / A M F	DOB 48	HOME PHONE	WORK PHONE
USER ID SC			

CC: fell at work

W/C VERIFIED:

VITAL SIGNS: TIME 11:50 T 98.2 P 84 R 12 BP 128/80
BY: [Signature]
V/S REPEAT: TIME T P R BP HT
BY:

DRUG ALLERGIES:

CURRENT MEDICATIONS:

NURSING ASSESSMENT: 2/26/09 - Tripped on carpet fell landed on E Side patient's sac all over.

TETANUS STATUS:

PHYSICIAN ASSESSMENT: DICTATED _____ PROTOCOL _____

PATIENT'S MD:

TREATMENT:

EKG:

LAB:

CBC _____ UA _____

C&S _____ WET PREP _____ GC/CL _____

MONO _____ HCG _____ STREP _____ BS _____

X-RAY: C-spine @ humerus

DISCHARGE INSTRUCTIONS

CAST/SPLINT _____ HEAD _____ WOUND CARE _____

MEDICATION: Adv. pain DS #14

OTHER: Flexeril 10mg qid
Lorazepam 1mg qid

CHANGES IN PMH, ROS, FH, SH, SINCE _____ ☐ YES ☐ NO

DIAGNOSIS: (L) Shoulder / Ant. Labrum - 1/14

(R) (L) Leg pain 2nd Fall

RECHECK NOTE:

___ FULL DUTY

___ LIGHT DUTY UNTIL _____ FOLLOW-UP DATE: 3/2/09 EXIGENT

___ OFF WORK UNTIL _____ OTHER

I.D. SIGNATURE [Signature]

SCHEDULE FOR REFERRAL TO:

☐ P.T. ☐ STUDIES/TESTS

86

EXIGENT WADE HAMPTON

CALL BACK RECORD

PATIENT Caroleen Nicholson CHART 60158
DATE TREATED 2/26/09 DOB _____
PHONE _____ MESSAGE TAKEN BY (Initials) DR

Follow-up Call To / From: X

PATIENT
DOCTOR
OTHER

DATE OF CALL 2/27/09 TIME OF CALL 9:10

DOCTOR (Authorizing Follow-Up) _____

DETAILS OF FOLLOW-UP OR QUESTIONS

Cannot function
@ work on medication
to drowsy on Flexeril
left work & went home
pt. will come in 3/2 for
rev & we'll take care
of Fri. work note then DR

CALL MADE / TAKEN BY _____

word:callback

EXIGENT WADE HAMPTON

2310 Wade Hampton Blvd.
Greenville, South Carolina 29615

FILE # 60152

EXAM ROOM # 2

PATIENT NAME LAST FIRST MIDDLE Nicholson, Carolyn M			INSURANCE PAYMENT METHOD ☐ WC ☐ CB ☐ SP ☐		
PATIENT ADDRESS			CITY	STATE	ZIP
PATIENT EMPLOYER Department Of Social Services			EMPLOYER MAILING ADDRESS 714 North Pleasantburg Dr Greenville		EMPLOYER PHONE 864-467-7966
GUARANTOR NAME Nicholson, Carolyn			GUARANTOR EMPLOYER Department Of Social Services		GUARANTOR PHONE 864-616-6972
LOCAL CONTACT BOBBY NICHOLSON			LOCAL ADDRESS		LOCAL PHONE
DATE 02/02/09	TIME 08:21	MS / G / A M F	DOB 49	HOME PHONE	WORK PHONE
				USER ID gmb	

CC:

Recheck hip pain, shoulder sprain.

VITAL SIGNS: TIME T P R BP WT

BY:

V/S REPEAT: TIME T P R BP HT

BY:

NURSING ASSESSMENT:

PHYSICIAN ASSESSMENT

DICTATED

PROTOCOL

W/C VERIFIED:

DRUG ALLERGIES:

CURRENT MEDICATIONS:

TETANUS STATUS:

PATIENT'S MD:

EKG:

LAB:

CBC UA

C&S WET PREP GC/CL

MONO HCG STREP BS

X-RAY:

DISCHARGE INSTRUCTIONS:

CAST/SPLINT HEAD, INJ WOUND CARE

MEDICATION:

OTHER:

SCHEDULE FOR REFERRAL TO:

☐ P.T. ☐ STUDIES/TESTS

CHANGES IN PMH, ROS, FH, SH, SINCE

☐ YES ☐ NO

DIAGNOSIS:

RECHECK NOTE:

FULL DUTY

LIGHT DUTY UNTIL

OFF WORK UNTIL

FOLLOW-UP DATE

OTHER

EXIGENT

A.D. SIGNATURE

EXIGENT - WADE HAMPTON

DATE OF SERVICE: 03/03/09

NAME: NICHOLSON, CAROLYN

CHART NUMBER: 60158

SSN: XXX-XX-

States still kind of burning, stiff and sore in the left trapezius muscle area of the left lower back. No radicular pain, numbness or weakness. No other problems.

She is tender throughout the left trapezius muscle and the left lumbar angle. No spasm. Good motor/ sensory exam. Moving around pretty well.

Continue ice and heat. Off work for now. I will see him back next week.



THOMAS H. MASKELL, M. D. /tjl

T: 03/04/09

EXIGENT WADE HAMPTON

2310 Wade Hampton Blvd.
Greenville, SC 29615
864-292-5915 Fax; 864-244-7734

J.M. Alexander, M.D.

Thomas H. Maskell, M.D.

Lynn M.S. Owens, M.D.

PATIENT Gary N. AdamsDATE EXAMINED 3-30-8**WORK STATUS/RETURN TO WORK**OFF WORK FROM 2-27 thru 3-10

LIGHT DUTY FROM _____ thru _____

(Note: If employer has no light duty available, then employer may send patient home)

AVOID: ☐ LIFTING > _____ LBS. WITH L, R, BOTH ARM(S)
☐ HEAVY PULLING/PUSHING WITH L, R, BOTH ARM(S)
☐ REACHING OVERHEAD ☐ CLIMBING/CRAWLING
☐ BENDING ☐ PROLONGED SITTING
☐ STOOPING/CROUCHING ☐ DRIVING A VEHICLE

☐ NO USE OF LEFT ARM ☐ NO USE OF RIGHT ARM
☐ NO USE OF LEFT HAND ☐ NO USE OF RIGHT HAND

☐ LIMITED USE OF LEFT ARM ☐ LIMITED USE OF RIGHT ARM
☐ LIMITED USE OF LEFT HAND ☐ LIMITED USE OF RIGHT HAND

☐ MUST USE CRUTCHES ☐ KEEP BANDAGE CLEAN & DRY

☐ MUST WEAR SPLINT ON: ☐ LEFT ARM ☐ RIGHT ARM
☐ LEFT HAND ☐ RIGHT HAND
☐ LEFT LEG ☐ RIGHT LEG

☐ MUST WEAR CAST SHOE ON: ☐ LEFT FOOT ☐ RIGHT FOOT

☐ MUST WEAR SLING ON: ☐ LEFT ARM ☐ RIGHT ARM

☐ OTHER WORK RESTRICTIONS/INSTRUCTIONS: _____☐ REFERRAL FOR _____ TO BE SCHEDULED (PT, TEST, SPECIALIST)☒ RETURN FOR RE-EXAMINATION3-10
DATE☒ RETURN FOR FULL DUTY_____
DATE7
M.D.**Please return this work note to your employer.**

EXIGENT WADE HAMPTON

2310 Wade Hampton Blvd.
Greenville, South Carolina 29615

FILE # 6015A

EXAM ROOM #

MS-

PATIENT NAME LAST FIRST MIDDLE Nicholson, Carolyn M			INSURANCE PAYMENT METHOD ☒ WC ☐ CB ☐ SP ☐		
PATIENT ADDRESS			CITY	STATE	ZIP
PATIENT EMPLOYER Department Of Social Services			EMPLOYER MAILING ADDRESS 714 North Pleasantburg Dr. Greenville		
GUARANTOR NAME Nicholson, Carolyn			GUARANTOR EMPLOYER Department Of Social Services		
LOCAL CONTACT BOBBY NICHOLSON			LOCAL ADDRESS		
DATE 03/10/09	TIME 08:25	MS / G / A M F	DOB 48	HOME PHONE	WORK PHONE
			USER ID JMB		

CC:

Right shoulder sprain

VITAL SIGNS TIME T P R BP WT
BY: [Signature]
V/S/REPEAT TIME T P R BP HT
BY:

NURSING ASSESSMENT:

DO I 2/26/09
C/O pain radiating to
arm "like toothache"

PHYSICIAN ASSESSMENT

DICTATED

PROTOCOL

W/C VERIFIED:

DRUG ALLERGIES:

NKA

CURRENT MEDICATIONS:

Anaprox / out
Ibuprofen / 80
TETANUS STATUS:

PATIENT'S MD:

EKG:

LAB:

CBC

UA

WET PREP

GC/CL

MONO

H2G

STREP

BS

X-RAY:

DISCHARGE INSTRUCTIONS:

CAST/SPLINT

HEAD INJ

WOUND CARE

MEDICATION:

OTHER:

Code 7176

REC CHECK NOTE:

FULL DUTY

LIGHT DUTY UNTIL

FOLLOW-UP DATE

EXIGENT

OFF WORK UNTIL

OTHER

M.D. SIGNATURE

P.T.

STUDIES/TESTS

91

41

EXIGENT - WADE HAMPTON

DATE OF SERVICE: 03/10/09

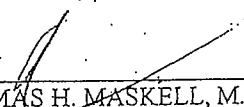
NAME: NICHOLSON, CAROLYN

CHART NUMBER: 60158

SSN: XXX-XX-

States now she has just had this kind of a dull aching sensation down the left arm. No numbness or weakness. No other problems. Left shoulder is really nontender. Good range of motion. But upward gaze of the neck and right upward gaze especially increases the pain down the arm. A little uncomfortable. Good motor/ sensory exam. Really seems to be more of a cervical disk issue at this point than a shoulder joint issue.

Injection of some Kenalog. I will put her on a prednisone Dosepak. Give her something for pain at night. Doesn't feel like she can go back to work yet. I will see her back next week.


THOMAS H. MASKELL, M. D. /tjl

T: 03/11/09

EXIGENT WADE HAMPTON

2310 Wade Hampton Blvd.
Greenville, SC 29615
864-292-5915 Fax: 864-244-7734

J.M. Alexander, M.D.

Thomas H. Maskell, M.D.

Lynn M.S. Owens, M.D.

PATIENT 2014/10/16/502

DATE EXAMINED 2/16/09

WORK STATUS/RETURN TO WORK

OFF WORK FROM

3/10

thru

3/16

LIGHT DUTY FROM

thru

(Note: If employer has no light duty available, then employer may send patient home)

AVOID:

☐ LIFTING > ☐ LBS. WITH L, R, BOTH ARM(S)

☐ HEAVY PULLING/PUSHING WITH L, R, BOTH ARM(S)

☐ REACHING OVERHEAD

☐ CLIMBING/CRAWLING

☐ BENDING

☐ PROLONGED SITTING

☐ STOOPING/CROUCHING

☐ DRIVING A VEHICLE

☐ NO USE OF LEFT ARM

☐ NO USE OF RIGHT ARM

☐ NO USE OF LEFT HAND

☐ NO USE OF RIGHT HAND

☐ LIMITED USE OF LEFT ARM

☐ LIMITED USE OF RIGHT ARM

☐ LIMITED USE OF LEFT HAND

☐ LIMITED USE OF RIGHT HAND

☐ MUST USE CRUTCHES

☐ KEEP BANDAGE CLEAN & DRY

☐ MUST WEAR SPLINT ON:

☐ LEFT ARM

☐ RIGHT ARM

☐ LEFT HAND

☐ RIGHT HAND

☐ LEFT LEG

☐ RIGHT LEG

☐ MUST WEAR CAST SHOE ON:

☐ LEFT FOOT

☐ RIGHT FOOT

☐ MUST WEAR SLING ON:

☐ LEFT ARM

☐ RIGHT ARM

☐ OTHER WORK RESTRICTIONS/INSTRUCTIONS:

☐ REFERRAL FOR ☐ TO BE SCHEDULED (PT, TEST, SPECIALIST)

☐ RETURN FOR RE-EXAMINATION

DATE 3-16-09

☐ RETURN FOR FULL DUTY

DATE 3-16-09

M.D. [Signature]

Please return this work note to your employer.

EXIGENT WADE HAMPTON

2310 Wade Hampton Blvd.
Greenville, South Carolina 29615

FILE # 60150

EXAM ROOM # MS2

PATIENT NAME LAST FIRST MIDDLE Nicholson, Carolyn M <i>Carolyn</i>		INSURANCE PAYMENT METHOD ☒ WC ☐ CB ☐ SP ☐	
PATIENT ADDRESS		CITY STATE ZIP	SOCIAL SECURITY #
PATIENT EMPLOYER Department Of Social Services		EMPLOYER MAILING ADDRESS 714 North Pleasantburg Dr Greenville	EMPLOYER PHONE 864-467-7966
GUARANTOR NAME Nicholson, Carolyn		GUARANTOR EMPLOYER Department Of Social Services	GUARANTOR PHONE 864-616-6972
LOCAL CONTACT		LOCAL ADDRESS	LOCAL PHONE
DATE 03/16/09	TIME 0832	MS / G / A M F	DOB 48
HOME PHONE		WORK PHONE	USER ID JSS
CC: <i>rech - wc ing - aem</i>			
VITAL SIGNS: TIME BY: <i>08:52</i>		T P R BP WT	
V/S REPEAT: TIME BY:		T P R BP HT	
NURSING ASSESSMENT: <i>1/26/09</i>			
<i>Not Any Better. meds did not help</i>			
PHYSICIAN ASSESSMENT: <i>[Signature]</i>		DICTATED	PROTOCOL
TREATMENT: <i>[Signature]</i>			
CHANGES IN PMH, ROS, FH, SH, SINCE <i>[Signature]</i> ☐ YES ☐ NO			
DIAGNOSIS:			
RECHECK NOTE:			
FULL DUTY		FOLLOW-UP DATE	
LIGHT DUTY UNTIL		EXIGENT	
OFF WORK UNTIL		OTHER	
M. D. SIGNATURE <i>[Signature]</i>			
DRUG ALLERGIES: <i>NKDA</i>			
CURRENT MEDICATIONS: <i>Car Lab</i>			
TETANUS STATUS:			
PATIENT'S MD:			
EKG:			
LAB:			
CBC UA			
C&S WET PREP GC/CL			
MONO HCG STREP BS			
X-RAY:			
DISCHARGE INSTRUCTIONS:			
CAST/SPLINT HEAD INJ WOUND CARE			
MEDICATION:			
OTHER:			
SCHEDULE FOR REFERRAL TO:			
☐ P.T. ☐ STUDIES/TESTS <i>994</i>			

EXIGENT - WADE HAMPTON

DATE OF SERVICE: 03/16/09

NAME: NICHOLSON, CAROLYN

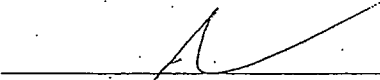
CHART NUMBER: 60158

SSN: XXX-XX-

States the prednisone didn't help much. Still has that gnawing pain in the left shoulder blade area. Now she really doesn't describe it as much as going down the arm. No numbness or weakness. No other problems.

She is tender about the T2 level left trapezius muscle. The glenohumeral joint is completely nontender. Good range of motion. No pain on range of motion. Upward gaze of the neck maybe minimally increases this today.

Continue ice and heat. After this oint we will get an MRI of her cervical spine.



THOMAS H. MASKELL, M. D. /tjl

T: 03/17/09

EXIGENT WADE HAMPTON

2310 Wade Hampton Blvd.
Greenville, SC 29615
864-292-5915 Fax; 864-244-7734

J.M. Alexander, M.D.

Thomas H. Maskell, M.D.

Lynn M.S. Owens, M.D.

PATIENT _____

DATE EXAMINED 3/1/16

WORK STATUS/RETURN TO WORK

OFF WORK FROM 3/1/16

thru 1/16

LIGHT DUTY FROM _____

thru _____

(Note: If employer has no light duty available, then employer may send patient home)

AVOID:

_____ LIFTING > _____ LBS. WITH L, R, BOTH ARM(S)

_____ HEAVY PULLING/PUSHING WITH L, R, BOTH ARM(S)

_____ REACHING OVERHEAD

_____ CLIMBING/CRAWLING

_____ BENDING

_____ PROLONGED SITTING

_____ STOOPING/CROUCHING

_____ DRIVING A VEHICLE

_____ NO USE OF LEFT ARM

_____ NO USE OF RIGHT ARM

_____ NO USE OF LEFT HAND

_____ NO USE OF RIGHT HAND

_____ LIMITED USE OF LEFT ARM

_____ LIMITED USE OF RIGHT ARM

_____ LIMITED USE OF LEFT HAND

_____ LIMITED USE OF RIGHT HAND

_____ MUST USE CRUTCHES

_____ KEEP BANDAGE CLEAN & DRY

_____ MUST WEAR SPLINT ON:

_____ LEFT ARM

_____ RIGHT ARM

_____ LEFT HAND

_____ RIGHT HAND

_____ LEFT LEG

_____ RIGHT LEG

_____ MUST WEAR CAST SHOE ON:

_____ LEFT FOOT

_____ RIGHT FOOT

_____ MUST WEAR SLING ON:

_____ LEFT ARM

_____ RIGHT ARM

_____ OTHER WORK RESTRICTIONS/INSTRUCTIONS: _____

☒ REFERRAL FOR _____ TO BE SCHEDULED (PT, TEST, SPECIALIST)

_____ RETURN FOR RE-EXAMINATION

2 days after PT

DATE

_____ RETURN FOR FULL DUTY

DATE

12 M.D.

Please return this work note to your employer.

CALL BACK RECORD

Follow-up Call To (From:

PATIENT
DOCTOR
OTHER

DOCTOR (Authorizing Follow-Up) _____

DETAILS OF FOLLOW-UP OR QUESTIONS _____

critic med's?

neck pair

neck pain
w/c claim denied as of 3/11/09

We are now seeing pt under her

B x B S + proceed to MRI

Rx: CVS, Trainers, Rest

CALL MADE / TAKEN BY

word:c:callback

EXIGENT WADE HAMPTON

CALL BACK RECORD

PATIENT Carden Nicholson CHART 60158
DATE TREATED 3/16 DOB _____
PHONE _____ MESSAGE TAKEN BY (Initials) RR

Follow-up Call To / From: X

PATIENT
DOCTOR
OTHER _____

DATE OF CALL 3/20 TIME OF CALL 9:30

DOCTOR (Authorizing Follow-Up) _____

DETAILS OF FOLLOW-UP OR QUESTIONS Wants to know
about getting note from Dr. M.
for work status

1020 - left VM trying to
return call

note being seen
for WC injury

CALL MADE / TAKEN BY _____

fax 503 898 7176
att. Frances Shealy

word:c:callback

J. M. ALEXANDER, MD, FACEP
President



EXIGENT WADE HAMPTON
2310 Wade Hampton Boulevard
Greenville, South Carolina 29615

Phone: (864) 292-5915
Fax: (864) 244-7734

THOMAS H. MASKELL, MD
Medical Director



3/20/09

Dear Ms. Shealy

We have seen Carolyn Nickelson
on 2/26/09, 3/3/09 + 3/10/09 for a
workman's comp injury (L) hip, (L) arm
& (L) shoulder. As of 3/11/09 her W/C
claim was denied and she has requested
that we continue to see her for
these injuries under her private
insurance, Blue Cross. If you have
questions you may contact me @
the above number.

Sincerely
Jan Buff

Urgent Care

Occupational Medicine

EXIGENT WADE HAMPTON

2310 Wade Hampton Blvd.
Greenville, South Carolina 29615

EXAM ROOM # 4

FILE # 60150

PATIENT NAME LAST FIRST MIDDLE Nicholson, Carolyn M			INSURANCE PAYMENT METHOD ☐ WC ☐ CB ☐ SP ☒ BOSS		
PATIENT ADDRESS			CITY STATE ZIP	SOCIAL SECURITY #	
PATIENT EMPLOYER Department Of Social Services			EMPLOYER MAILING ADDRESS 714 North Pleasantburg Dr Greenville		EMPLOYER PHONE 864-467-7966
GUARANTOR NAME Nicholson, Carolyn			GUARANTOR EMPLOYER Department Of Social Services		GUARANTOR PHONE 864-616-6972
LOCAL CONTACT BOBBY NICHOLSON			LOCAL ADDRESS		LOCAL PHONE
DATE 03/24/09	TIME 11:12 P	MS / G / A M F 48	DOB	HOME PHONE	WORK PHONE
					USER ID 9713

CC:

Right shoulder sprain

VITAL SIGNS: TIME

BY: *AM 11:15*

V/S REPEAT: TIME

BY:

NURSING ASSESSMENT:

Side Flank pain

PHYSICIAN ASSESSMENT

Dictated

Protocol

W/C VERIFIED:

DRUG ALLERGIES:

CURRENT MEDICATIONS:

TETANUS STATUS:

PATIENT'S MD:

EKG:

LAB:

CBC

C&S

MONO

X-RAY:

DISCHARGE INSTRUCTIONS:

CAST/SPLINT

MEDICATION:

OTHER:

CHANGES IN PMH, ROS, FH, SH, SINCE

DIAGNOSIS:

RECHECK NOTE:

FULL DUTY

LIGHT DUTY UNTIL

OFF WORK UNTIL

M.D. SIGNATURE

FOLLOW-UP DATE

OTHER

EXIGENT

SCHEDULE FOR REFERRAL TO:

P.T.

STUDIES/TESTS

TIME

100

**EXIGENT Wade Hampton
PROCEDURE SCHEDULING**

Please schedule patient: C M Nichols

Name

For:

- ☐ C.T. of Abdomen
☐ C.T. of Head
☒ M.R.I of Head C-Scan
☐ physical therapy X _____ visits
☐ U/S of Abdomen
☐ U/S of Abdomen and Pelvis
☐ U/S of Pelvis
☐ other _____

Location:

- ☐ Eastside Medical Imaging
☐ Greenville Radiology. P.A. office
☐ G.M.H. Radiology Department
☐ VBS Physical Therapy
☒ No Preference Innevision

W/C

☐ Yes ☒ No

When:

☐ ASAP ☒ Routine

☐ STAT

Clinical History:

New Lump

3/18/09 1500
 spoke w pt
 she knows claim
 denies, (E) pt
 she needs to come
 in & provide her
 pt insur. info
 so we can proceed
 STAT - scheduling

Referred By: [Signature], M.D.

Date: 3/16/09

Appointment confirmed for:

3/24/09
Date

at 8:30
Time

Patient Notified:

3/20/09
Date

at _____
Time

[Signature], RN

OK 165

3/16/09, Mon, 9:45

cl. denies?

pt. forget back

per Mr. Halley

claim denied as of
3/11/09

Patient Name:
DOB:

Travelers Rest Family Practice

Vital Signs: Weight 134 Height 5'8" Temp 99.2 BP 112/80 Pulse 68 Resp 16 Saturation 98
Allergies: None
Chief Complaint: Arm & shoulder pain
HP: (location, quality, severity, duration, timing, context, modifying factors, associated s/s)
Left arm & shoulder pain, some discomfort
at work
reased from
W/C
PMH/PSH: None
Meds: None
FHx: None
SocHx: None
Tobacco: None
Alcohol: None
Drugs: None
Caffeine: None
Sex: Male
Occupation: None
Exercise: None
Immunizations: None

ROS: (cross out if negative, circle if positive)

General - weight change fever/chills malaise fatigue diaphoresis hot flashes night sweats
Eyes - vision loss blurred vision diplopia scotoma amaurosis pain redness discharge dryness photophobia
Ears - hearing loss tinnitus otalgia discharge phonophobia
Nose - rhinorrhea congestion postnasal drip anosmia epistaxis facial pressure
Mouth/Throat - sore throat oral ulcers bleeding gums hoarseness snoring dentalgia
Neck - stiffness pain goiter mass
Respiratory - SOB cough wheezing hemoptysis sleep apnea TB exposed hx PPD+
Cardiovascular - chest pain palpitations orthopnea PND hix murmur syncope edema claudication
Gastrointestinal - abdominal pain nausea vomiting oral regurgitation heartburn dysphagia odynophagia hematemesis early satiety
diarrhea constipation melena hematochezia appetite
Genitourinary - dysuria frequency urgency incontinence (urge/stress) hematuria nocturia polyuria low force/flow ED
discharge dyspareunia dysmenorrhea menorrhagia metrorrhagia pruritus prolapse depressed libido
Musculoskeletal - arthralgia stiffness swelling myalgias weakness Raynauds
Neurologic - headache seizures dizziness ataxia numbness paresthesias tremor dysarthria memory loss paresis
Psychiatric - anxiety depression anhedonia insomnia suicidal ideation delusions hallucinations (auditory/visual) dec. concentration
Endocrine - heat/cold intolerance polydipsia/polyuria/polyphagia
Hema/Lymph - easy bruisability swollen nodes tender neck axillary inguinal
Allergy/Immunology - frequent infections seasonal/perennial allergies
Skin - rash lesions pruritus concerning nevus hair loss/dryness nail changes
Breast - lumps discharge pain bleeding

Physical Exam	Normal	Abnormal	Comments
General	✓		
Eyes			
ENMT			
Neck			
Cardiovascular	✓		
Respiratory	✓		
Gastrointestinal			
Chest/Breasts			
Genitourinary			
Musculoskeletal	✓		✓ ROM (Dorn) / (D) hip & ankle
Neurologic			
Skin/Hair			
Lymphatic			
Psychiatric			

Caregivers/Students:

Total Time Spent
Time Counseling

A/P:

A) Down / hip pain / PDD
 P) Redstone 10 3rd x 3rd Ph MRI
 2nd x 3rd Ph 10 Date: 9.5.2009
 10th Ph MD:

Office or Other Outpatient Consultations

CAROLYN NICHOLSON Patient ID: 247-25-3100
DOB: (48) Female
Visit Date: 18 May 2009

PRESENT ILLNESS INFORMATION

Chief Complaint: Patient seen in neurosurgical consultation at the Dr. Coleman for neck and left arm pain. REPORT ONLY. Patient states pain score today is a 6. Medications reviewed with patient, appropriate updates made.

HPI:

SA: Evaluation of cervical pain.

Location: trapezius area on the left.

Quality: aching.

Severity: The usual pain level is 8 (scale of 1-10). Functional impairment is very severe - when present the patient is unable to carry out any daily activities.

Timing: This has been a problem since 2/26/09.

Referred or radiating symptoms:

• pain of the same quality as the cervical pain in the entire left upper extremity.

Setting in which it first occurred: following: Tripped and fell on floor.

• Timing of injury: 2/26/09.

• Locale where the injury occurred: in the workplace. The injury was reported to Workers' Compensation.

Aggravating factors: lifting and too much movement.

Relieving factors: Darvocet, Pain medication.

Associated manifestations: none identified.

Previous tests/evaluations:

• Cervical spine MRI: Date - 3/24/09. Test location - Intervention.

Previous treatment related to the cervical pain: Prescription medication: PrednisONE (effectiveness: fair), Flexcil (effectiveness: fair), Lortab (effectiveness: fair).

REVIEW OF SYSTEMS

Musculoskeletal: *joint pain*.

The following systems are negative: Constitution, Cardiovascular, Ears, Nose, Mouth, Throat, Endocrine, Eyes, Gastrointestinal, Genital/Urinary, Hematological/Lymphatic, Immunologic, Integumentary, Nervous, Psychiatric, Respiratory.

PAST, FAMILY AND SOCIAL HISTORY

Current Meds: Lortab (uncertain of dosage), every 6 hours, prescribed by Dr. Coleman

Med Allergies: No known medication allergies

Non-Med Allergies: No non-medication allergies.

Past Health History: Childhood Communicable Diseases: negative.

Eyes: negative.

Ears: negative.

Cardiovascular: negative.

Respiratory: negative.

Gastrointestinal: negative.

Genitourinary: Patient states she is not pregnant.

• Gynecologic Problems and conditions:

Neurologic: negative.

Endocrine: negative.

Hematologic and Lymphatic: negative.

Surgeries and Hosp: Problems with anesthesia: none.

Previous surgery: Musculoskeletal: 1999.

Previous non-surgical hospitalizations: none.

Serious Injuries: No serious injuries or accidents.

Family History: Problems with anesthesia: negative.

Cardiovascular: negative.

Respiratory: negative.

Musculoskeletal: negative.

Neurologic: negative.

Hematologic/Lymphatic: negative. Specifically, no bleeding, clotting, or bruising problems.

Social History: Most recent occupation: Greenville County Dept. of - Human Services.

Marital status: married.

Office or Other Outpatient Consultations

Current tobacco usage: none.
Current use of alcoholic beverages: none.
Second-hand smoke exposure: none.
Hand dominance: right.
Home living situation and relationships: Lives with spouse and children.
Other comments: DR. STANLEY COLEMAN- PCP AND REFERRING.
Provider has reviewed PFSH/ROS information

OBJECTIVE

CONSTITUTION: Blood pressure: Left arm - sitting 107/72 mm Hg. Radial Pulse: 65 bpm. Temperature: 98 F (oral). Weight: 133.8 pounds.
General appearance: Well developed, well nourished and groomed. No apparent acute or chronic distress.
Ability to communicate: normal.

RESPIRATORY: Respiratory Effort normal. Auscultation: normal breath sounds.

CARDIOVASCULAR:

Auscultation: normal S1, S2, no murmurs or abnormal sounds.

MUSCULOSKELETAL:

Cervical spine: Full AROM without pain.
Left: weakness.

NEUROLOGIC:

Level of consciousness: awake and alert.
Level of orientation: normal to time, place, person and situation.
Judgment and insight: normal.
Mood and affect: normal and appropriate to the situation.
Language: intact for receptive and expressive functions.

Motor examination:

- Muscle strength - Upper extremities, intact and symmetrical. Lower extremities intact and symmetrical.
- Muscle tone is normal and symmetrical in all 4 extremities.
- Muscle size - is normal and symmetrical in upper extremities; is normal and symmetrical in lower extremities; for age.

Sensory examination for light touch intact and symmetrical in the upper extremities; intact and symmetrical in the lower extremities.

Deep tendon reflexes: Biceps reflexes normal (2+) bilaterally. Brachioradialis reflex normal (2+) bilaterally. Triceps reflexes normal (2+) bilaterally. Knee reflexes normal (2+) bilaterally. Ankle reflexes normal (2+) bilaterally.

No pathological reflexes.

Nerve and spinal cord tension-compression signs: Spurlings Maneuver negative.

Gait: Normal.

Station: Normal.

TESTS AND PROCEDURES

PERFORMED IN THE PAST

72141 MRI, spinal canal and contents, cervical; without contrast material

Date: 24.Mar.2009; Location: innervision

- 18.May.2009 Not available for review.

ASSESSMENT

CURRENT PROBLEMS

723.1 Pain, Cervical

Status: unstable

729.5 Limb Pain

Status: unstable; Location: left

PLAN

Medical Advice: Contact the office if there are any problems. Patient's questions were answered.

Schedule Follow-up: in 2 weeks following cervical epidural steroid injection.

Comments: She will bring her cervical MRI for the next visit.

Impression: Mrs. Nicholson has cervical radiculopathy after a fall in 2/2009. She describes a C7 left radiculopathy

Office or Other Outpatient Consultations

although the report of cervical spine shows multilevel degenerative changes that are not that specific. We will get a cervical epidural steroids injection next. We will review her MRI at the next visit.

TESTS AND PROCEDURES

SCHEDULED

64479 ESI cervical

Scheduled: 28 May 2009; Location: Carolina Center for Advanced Management

- 18 May 2009 5/22/09 - Patient scheduled for a cervical ESI on 5/28/09 @ 4:45pm, and has a f/u appt on 6/15/09 @ 3:30pm. Left the patient a VM with the times and date of the appt on 5/22/09 @ 10:51am. SMT

COMMUNICATIONS

Dr. Gardner's letter.

Stanley Coleman, Jr, M.D.

Philip J. Hodge, M.D.

AllMeds

ICD CODE SUMMARY

729.5 Limb Pain

723.1 Pain, Cervical

CPT CODE SUMMARY

99243 Office Consult: Level 3

NON-BILLABLE CPT CODES

72141 MRI, spinal canal and contents, cervical; without contrast material

64479 ESI cervical

24 25

Feb. 21. 2011 11:11AM

SOUTHEASTERN NEUROSURGICAL

No. 5723 P. 2

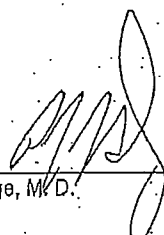
Statement of Philip Hodge, M. D.

Re: Carolyn Nicholson vs. Greenville Cty Dept of Social Services
SSN: _____
Date of Birth: _____
Date of Injury: 02/23/2009

Based on my review of the medical records and notes related to this patient, it is my opinion to a reasonable degree of medical certainty that

☒ Carolyn Nicholson's neck, left shoulder and back problems were caused and/or aggravated by her fall at work on 02/23/2009.

☐ Carolyn Nicholson's neck, left shoulder and back problems were not caused and/or aggravated by her fall at work on 02/23/2009.


Philip Hodge, M.D.

2/26/11
Date

NOV/12/2010/FRI 03:36 PM

FAX No.

P. 015

Carolinas Center for Advanced Mgmt of Pain - Greenville Office
220 Roper Mountain Road Ext Greenville, SC 29616
8642956399 Fax: 8642952337

November 12, 2010
Page 1
Chart Document

MS CAROLYN M NICHOLSON
Female

30129

Home:
Ins: State Health SC

05/28/2009 - Office Visit: Initial Office Visit
Provider: John C Haasis MD
Location of Care: Carolinas Center for Advanced Mgmt of Pain - Greenville Office

New Patient Visit

Chief Complaint: The patient is a 48 year-old African-American female seen at the request of her referring physician for evaluation treatment regarding chronic neck, left shoulder, and left upper extremity pain. She denies any significant numbness or weakness. She reports an onset of symptoms in February at which time she fell at work. She was treated conservatively by her primary care physician and failed to respond. She was subsequently referred to Dr. Hodge of neurosurgery. She presents today for further evaluation and consideration for additional treatment options.

Age: 48 Years Old
Sex: Female
Race: African American

History of Present Illness

Cause of Pain: work related injury
Date Pain Began: February 2009
Location of Pain: neck, shoulder, and left upper extremity
Description of Pain: Sharp, Dull/Aching, Throbbing, Stabbing, Pressure, Burning
Current Pain Rating (Good Day): 7
Current Pain Rating (Bad Day): 10
Is The Pain Always The Same: No
Duration of Pain: Constant
Aggravating Factors: Activity
Comments: certain neck movements as well as utilizing the upper extremity
Alleviating Factors: Heat, Medication, Massage

Additional History

Previous Treatments: Narcotic Pain Medication
Previous Diagnostic Studies: X-Ray, MRI
Data Reviewed: Old Charts, X-ray, MRI

Past Treatment

Has patient been treated in another pain management center? No
Has patient ever had previous psychiatric or psychological treatment? No
Has patient ever required treatment for substance abuse or alcohol abuse? No

Sleep Disturbances

Does the patient ever have difficulty falling asleep? Yes
Does the patient have difficulty maintaining sleep? Yes
Is the patient ever awakened by pain? Yes
Does the patient have difficulty staying awake during the day? No

Demographic Details

Marital Status: M

NOV/12/2010/FRI 03:36 PM

FAX No.

P. 016

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220 Roper Mountain Road Ext Greenville, SC 29615
8642966399 Fax: 8642952337

November 12, 2010

Page 2

Chart Document

MS CAROLYN M NICHOLSON

Female

30129

Home:

Ins: State Health SC

Number of Children: 2
High School Grad: y
College Courses: y
Current Occupation: DSS
Is pain result of a work-related injury? Yes
Is patient receiving compensation? No
Does the patient have an attorney? No

Past, Family, and Social History

Past History: arthritis, no significant past surgical history
Family History: noncontributory; patient denies drug allergies
Social History: denies smoking or drinking, married, works full-time at DSS

Allergies:

Risk Factors

Tobacco use: never
Passive smoke exposure: no
Alcohol use: no
HIV high risk behavior: no

Review of Systems

Musculoskeletal: neck and shoulder and arm pain
Skin: denies rash, itching, dryness, suspicious lesions
Neurologic: left upper extremity pain, denies weakness or numbness
Psychiatric: denies depression, anxiety, memory loss, mental disturbance, suicidal ideation, hallucinations, paranoia
Endocrine: denies cold intolerance, heat intolerance, polydipsia, polyphagia, polyuria, weight change
Hematologic/Lymphatic: denies abnormal bruising, bleeding, enlarged lymph nodes
Allergic/Immunologic: denies urticaria, hay fever, persistent infections, HIV exposure

Vital Signs

P: 78 R: 14 BP: 110/70 mm Hg

Physical Exam

General

General appearance: well developed, well nourished, no acute distress
Communication ability: communicates by voice, normal quality
Gait and station: Normal

Psychiatric

Mental Status: AAO x3
Judgement/Insight: intact
Mood/Affect: Appropriate

Head and Face

Inspection: normocephalic, no scars, lesions, or masses
Facial strength: no weakness

NOV/12/2010/FRI 03:36 PM

FAX No.

P. 017

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November 12, 2010

Page 3

Chart Document

MS CAROLYN M NICHOLSON
Female

30129

Home:
Ins: State Health SC

Ears, Nose and Throat

External ear: normal, no lesions or deformities

External nose: normal, no lesions or deformities

Lips/teeth/gums: normal dentition

Oropharynx: tongue normal; posterior pharynx without erythema or exudate

Neck

Neck: supple, no masses, trachea midline

Respiratory

Auscultation: clear to auscultation bilaterally, no rales, rhonchi, or wheezes

Cardiovascular

Auscultation: RRR, no murmur, rub, or gallop.

Chest Wall

Chest: Normal inspection and palpation

Abdomen

Abdomen: soft, non-tender, non-distended, no masses, bowel sounds normal

Extremities

Pedal pulses: pulses 2+, symmetric

Periph. circulation: no cyanosis, clubbing, edema, or varicosities

Eyes

Inspection of conjunctivae & lids: Normal

Pupils and Irises: grossly intact by confrontation

Pupils: equal, round, reactive to light and accommodation

EOM: extraocular movements intact, normal gaze alignment

Cranial Nerves

5th (Trigeminal): normal corneal reflex

7th (Facial): no weakness

8th (Auditory): grossly intact

9th (Glossopharyngeal): grossly intact

11th (Spinal accessory): grossly intact

12th (Hypoglossal): tongue midline on protrusion no fasciculations

Cervical

ROM some pain with range of motion testing

Spurling's Test Negative

Palpation: Tender

Suboccipital, Paracervical, Trapezius/LS, Midline

Comments: left greater than right.

Thoracolumbar

ROM: FROM

Patrick's Test: Negative

NOV/12/2010/FRI 03:36 PM

FAX No.

P. 018

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220 Roper Mountain Road Ext Greenville, SC 29615
8642956399 Fax: 8642952337

November 12, 2010
Page 4
Chart Document

MS CAROLYN M NICHOLSON

Female

30129

Home:

Ins: State Health SC

Straight Leg Raise: Negative
Palpation: Non-Tender

Manual Muscle Testing

RUE: 5/5

RLE: 5/5

LUE: 5/5

LLE: 5/5

Muscle Stretch Reflex

RUE: 1+

RLE: 1+

LUE: 1+

LLE: 1+

Sensory Intact to light touch/pin prick

Comments: gross motor and sensory function intact about both upper and lower extremities

Waddell's Signs: 0/5

Neuro No Atrophy or Clonus

Comments: no pain behavior

Comments: no long tract signs noted

Sympathetic Function: Normal

Knees

Comments: within normal limits

Shoulders

Comments: some pain with range of motion testing about the left shoulder

Assessment

New Problems:

DEGENERATIVE DISC DISEASE - CERVICAL SPINE (ICD-722.4)

CERVICAL RADICULOPATHY (ICD-723.4)

CERVICAL SPONDYLOSIS (ICD-721.0)

CERVICALGIA (ICD-723.1)

CERVICAL SPRAIN - POST-TRAUMATIC (ICD-847.0)

Plan

This is a very nice individual who continues to note difficulties with neck, shoulder and intermittent left upper extremity pain following a fall at work in February of this year. Results of recent MRI imaging were reviewed and discussed a multilevel disc disease is appreciated. No frank herniations are reported. We discussed and reviewed possible treatment options. It appears she has never undergone any formal physical therapy evaluation or treatment. We will make the necessary referral. If she fails to respond to a structured physical therapy regimen, will offer her a trial of therapeutic block as suggested by her treating neurosurgeon. Risk, benefits and limitations of medications and procedures were reviewed. Final disposition per Dr. Hodge

Procedures: T/C CESI

Consults: PT eval./treat

NOV/12/2010/FRI 03:37 PM

FAX No.

P. 019

Carolinas Center for Advanced Mgmt of Pain - Greenville Office
220 Roper Mountain Road Ext Greenville, SC 29615
8642966399 Fax: 8642962337

November 12, 2010
Page 6
Chart Document

MS CAROLYN M NICHOLSON
Female

30129

Home:
Ins: State Health SC

New Orders:

NP - Comprehensive [99204]

Return for follow-up 1 month [xxxxx]

Physical Therapy Referral [XXXXX]

I

Signed by John C Haas MD on 05/29/2009 at 12:49 PM

NOV/12/2010/FRI 03:36 PM

FAX No.

P. 013

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November 12, 2010
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Chart Document

MS CAROLYN M NICHOLSON

Female

30129

Home: (

Ins: State Health SC

06/20/2009 - Office Procedure: Epidural Steroid Injection

Provider: John C Haas MD

Location of Care: Carolinas Center for Advanced Mgmt of Pain - Greenville Office

Epidural Steroid Injection

Indications:

The patient returns reporting ongoing difficulties with neck and upper extremity pain she is undergoing physical therapy reporting minimal benefit. She presents today for scheduled block. Results of recent imaging studies were reviewed. Her pain referral pattern and findings on exam suggested cervical nerve root irritation.

Procedure:

After informed consent was obtained, the patient was placed in the prone position and the neck was prepped with Betadine and draped in the usual sterile fashion. Fluoroscopy was used to localize the appropriate interspace. Local anesthesia was administered using a 27 gauge needle and 1% Lidocaine. Using a 18 gauge Touhy needle and loss of resistance technique, the epidural space was entered at the C6-7 interspace. No blood or CSF was noted returning from the needle. .2cc of Omnipaque was used to verify needle position. Following negative aspiration, 40mg Triamcinolone in 4cc normal saline was injected into the space. The needle was removed and the puncture wound was dressed.

Observations

- The patient was monitored for an appropriate length of time after the procedure and then discharged home, in good condition, with a driver.
- The patient was instructed to refrain from driving for 12 hours and to contact the office immediately if any of the following were noted: new or different pain in the back, loss of bladder or bowel control, new pain, numbness or weakness of the legs, redness or drainage from the needle insertion site.
- No sedation was given.
- The patient tolerated the procedure well.

The following complications were noted:
None

Additional Comments: No complications were noted. Post procedure instructions were provided. Risk, benefits and limitations of indications and procedures were reviewed. She will follow up accordingly. Final disposition per Dr. Hodge

Orders

Return for follow-up 1 month [xxxxx]
Return for Procedure [XXXXX]
c-arm [CPT-77003]
Single Cervical / Thoracic [62310]
Triamcinolone 10mg [J3301]

NOV/12/2010/FRI 03:36 PM

FAX No.

P.014

Carolinas Center for Advanced Mgmt of Pain - Greenville Office
220 Roper Mountain Road Ext Greenville, SC 29615
8642956399 Fax: 8642952337

November 12, 2010

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Chart Document

MS CAROLYN M NICHOLSON

Female

30129

Home:

Ins: State Health SC

Signed by John C Haasis MD on 06/23/2009 at 9:05 PM

26

EXIGENT - WADE HAMPTON

DATE OF SERVICE: 02/26/09

NAME: NICHOLSON, CAROLYN

CHART NUMBER: 60158

SSN: XXX-XX-

SUBJECTIVE: 40 year old comes in today stating she tripped on the carpet, fell and landed on her left side. Just banged up a little. Hurting mostly in the left shoulder and neck area. A little stiffness and soreness going all the way down the leg. Also bumped her head, but denies any LOC. No bruise or any other problems there. No current medications. No known allergies.

OBJECTIVE: White female in no acute distress. She is tender to palpation mostly over the left shoulder and upper arm area. There is no significant bruising and swelling. She has limited range of motion with complaint of pain. The rest of the exam is normal. Has some soreness on her legs, but ambulates without difficulty. There is no significant bruising and swelling there. We did an x-ray of the C-spine and the humerus, both of which were negative.

ASSESSMENT: Left side contusion with some strain.

PLAN: Patient given some anti-inflammatories, muscle relaxants, pain medicines. Note for light duty. Recheck on Monday.


LYNN STORCH OWENS, M.D. / tjl

T: 02/27/09

TRAVELERS REST FAMILY PRACTICE CENTER

P.O. BOX 489 * TRAVELERS REST, SOUTH CAROLINA 29690-0489
TELEPHONE (864) 834-3192 * FAX (864) 834-9420

JAMES E BARNETT, MD

STANLEY I. COLEMAN, JR., MD

LANDRUM I. MCCARRELL, JR., MD

JAMES W. HUDSON, MD

PATIENT NAME: Carolyn Nicholson

CHART #: NICC

Date: 08/17/2001

- S: Low back pain, lumbosacral spine. Has been going on quite awhile. It has probably been more than a year. No recent trauma. Just radiates down both buttocks almost to the knee.
- O: WDBF, in NAD. NECK supple. LUNGS clear. HEART RRR. DTR's +1 patella, knee jerk bilaterally equal. No CVA tenderness. No suprapubic tenderness. She has no known allergies. X-ray shows mild degenerative change but not a significant amount of arthritic change and minimal disc space narrowing. Nothing appears to be out of alignment. CBC is basically normal.
- A: Lumbosacral strain.
- P: Celebrex 200 at bedtime. GI side effects explained. No better in 10 days may have to get help on this one. Her urine is clear.

Stanley I. Coleman, JR., M.D./sbr


MRI LS spine at GRAD on 10/12/01 @ 7:40 am
Message left (616 6972). Order FAXED x-rays & courier


10-18-01
appt. Dr. Gardner 10-26-01 @ 10:10 (MAY) 295-3600

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JAMES E BARNETT, MD

STANLEY L. COLEMAN, JR., MD

LANDRUM L. MCCARRELL, JR., MD

JAMES W. HUDSON, MD

Patient Name: CAROLYN NICHOLSON

CHART#: NICC

Date: 7/22/2002

Vital signs: W: 147. T: 99.5. P: 66. BP: 108/70.

- S: Patient was at Anderson Jockey Lot on Saturday when she began feeling weak and nauseous. She had not had breakfast that morning and then according to her husband she passed out with LOC. There was no seizure activity. She also had episode of vomiting. Denies CP, palpitations or dyspnea. Has had no problems since. Was seen at the ED in Anderson, diagnosed with a UTI and was also noted her glucose was 149.
- O: In general pleasant healthy appearing female NAD. HEENT: Eyes: PERRL, EOMI. Discs flat with sharp margins. TMs clear. Neck supple without LAD, thyromegaly or bruits. CV: normal S1, S2 without MGR. Lungs CTA. Neuro: cranial nerves II-XII.
- A/P: 1. Probable vasovagal syncope secondary to infection and heat. The remainder of her labs were all normal.
2. UTL Complete Macrobid course.
3. Elevated glucose. She will follow up Friday for fasting glucose and lipid. If she has any recurrence of the symptoms we will need to extend our work up.

James W. Hudson, M.D./cr

JUL 26

98
44

Labs Urine, Fasting glucose & lipids (mg)
urine here Glu & lipid - 6ml
T3, T4, TSH

Alt like pass out. every day. Healthy; other than 0.5 / pc / pc / dyspnea.

Thyroid; worse when 1st stands up
& get head down.

Just new vasovagal signs

Diagnosis - orthostatic hypotension; stress urinary.

Arthritis; 1st Arch.

Call 12 Eileen Monday

12
10
52

98
68
44

12
10
44
68

MD

61 54

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JAMES E BARNETT, MD STANLEY I. COLEMAN, JR., MD LANDRUM L. McCARRELL, JR., MD JAMES W. HUDSON, MD

PATIENT NAME: Carolyn Nicholson

CHART: NICC

DATE: 07/26/2002

S: Pt was actually here today just for lab but after the vena puncture, she has a presyncopal spell. This is similar to the one that she had at the Jockey Lot one week ago. She states that since we saw her she has been having daily dizziness described as a floating feeling. There's no associated headache, vision changes, palpitations, chest pain or dyspnea. It is worse when she first stands up and there is no association with head turning. Continues to have a little bit of left flank pain but it is improving. No dysuria.

O: Orthostatics 112/70, pulse 52 supine to 98/68, pulse 64 sitting to 102/64, pulse 68 standing. Extension of her neuro exam from last visit shows DTRs being 2+ and symmetric throughout. Motor and sensory intact. Cerebellar intact. Finger to nose and rapid hand movement. Romberg neg.

EKG shows sinus brady w/ what looks like a PVC superimposed on a sinus beat. Otherwise, normal appearing.

- A&P: 1. Dizziness. I feel her presyncopal spell today was once again vasovagal but I am somewhat concerned with her persistent dizziness. She does have orthostatic hypotension and recommend that she drink at least 8 glasses of water daily and rise slowly from seated position flexing her toes. I'll have her try Antivert 25mg q6h prn to see if this is simply an inner ear dysequilibrium.
2. UTI. Today UA shows 5-10 WBCs, 2+ bacteria and occasional epi's and we'll culture this to see if it is completely cleared. T3, T4, TSH, glucose and screening lipid pending. She is to call Monday if sx unresolved.

James W. Hudson, M.D./ac

Wt. 149 Temp 99.9
CC: Went to Anderson ER Sat., body aches,
fever, EIU m:

better some Monday,
still pain across shoulder
to knee / mosquito bites.
Drugs.

ENB

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JAMES E. BARNETT, MD STANLEY L. COLEMAN, JR., MD LANDRUM I. MCCARRELL, JR., MD JAMES W. HUDSON, MD

PATIENT NAME: Carolyn Nicholson

CHART #: NICC

DATE: 7/0/16/2002

- S: Patient is here today for chest pain. Also c/o headache. She has a throbbing pressure-like discomfort in her chest. She also has neck pain in the back of her head for 3 weeks.
- O: W 150. T 99.1. TMs are clear. The pharynx is red, purulent drainage is in the pharynx and the nostrils. Lungs are clear. Heart is regular. EKG is normal. Chest x-ray is clear. Rapid troponin was negative.
- A: Chest pain. Sinusitis, headache.
- P: Amoxil 875 1 bid. Cephadyne 1 q6 prn for headache and then also Sudal 60/500 1 bid. Lincocin 2cc IM. Recheck here if no improvement.

Landrum I. McCarrell, Jr., M.D./ps

Handwritten notes:
Chest pain
Pt went to Gm ER yesterday EKG done
Labs done X Ray. Wt-147 Temp 99.2
① chest pain / WNL / NO BCP
EKG
O2 Sat 97% (147)
Nexio m
recheck
stop tid

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JAMES E BARNETT, MD STANLEY I. COLEMAN, JR., MD LANDRUM L. MCCARRELL, JR., MD JAMES W. HUDSON, MD

PATIENT NAME: Carolyn Nicholson

CHART #: NICC

DATE: 06/13/2003

S: Pt seen in ER last night rt chest wall pain. Of interest, she states that when she turns her head to the rt. to the side that it hurts, it sends muscle spasm and pain down the paracervical area and the rhomboid area and the medial scapula distribution. So I think this is probably musculoskeletal. She had blood work, normal EKG, normal chest x-ray. Everything was normal. She had no SOB but she feels it pull when she takes a deep breath. Get all the reports and oximetry today is fine, 97% on room air. No calf tenderness. No physical abnormalities except the muscle area which is tender to palpate.

A: Musculoskeletal chest wall pain.

P: She is not on BCPs or anything that would predispose her to pulmonary emboli and she is not SOB right now so I think that is unlikely although if it continues we may have to address this as a remote possibility. I am going to put her on moist heat, Sta-Flex tid, and recheck her back in 2 or 3 days, sooner should she worsen at all.

Stanley I. Coleman, Jr., M.D./ps

28

el: sinus

W: 134

Temp 98.2

Z Troph
XZ

Aspirin

REF FOR DR. <i>C/H</i>		CALLER		PHYSICIAN'S ORDERS/FOLLOW UP ACTION	
PT. NAME <i>Nickelson Carolyn</i>	DOB	DATE OF MESSAGE <i>9/16/04</i>	TIME OF MESSAGE <i>8:55</i>	AM ☐	PM ☐
CALLER'S PHONE #	SOC ID #	<i>Staphex 1 gm BID po</i> <i># 30x0.</i>			
<i>pulled muscle again in arm,</i> <i>Dr. C gave her Staphex, would</i> <i>like Rx for this.</i>				<i>Rx change</i>	
URGENT ☐ YES ☐ NO CALL BACK AT		338-6996 PHARMACY # <i>CUS</i>		INITIALS <i>DM</i>	
AM ☐ PM ☐		CALLED ☒ YES ☐ NO		INITIALS <i>CH</i>	

AM ☐ PM ☐	PHARMACY # <i>864</i>	INITIALS <i>MS</i>	CALLED ☐ YES ☐ NO
AM ☐ PM ☐	338-6996	AM ☐ PM ☐	(initials)

Travelers Rest Family Practice

Patient Name: Clark, Nicholas
DOB: _____

Vital Signs: Weight 134 Height _____ Temp 99.1/18/77 Pulse _____ Resp _____ Saturation _____ BMI _____

Allergies:

Chief Complaint: Both knees painful x 3 w

HPI: (location, quality, severity, duration, timing, context, modifying factors, associated s/s)

Both knee pain since
10/10/08

PMH/PSH:

Meds:

Hx:

Socfx:

Tobacco:

Alcohol:

Drugs:

Caffeine:

Sex:

Occupation:

Exercise:

Immunizations:

NO dx / NO hx of bte

ROS: (cross out if negative, circle if positive)

General - weight change fever/chills malaise fatigue diaphoresis hot flashes night sweats

Eyes - vision loss blurred vision diplopia scotoma amaurosis pain redness discharge dryness photophobia

Ears - hearing loss tinnitus otalgia discharge phonophobia

Nose - rhinorrhea congestion postnasal drip anosmia epistaxis facial pressure

Mouth/Throat - sore throat oral ulcers bleeding gums hoarseness snoring dentalgia

Neck - stiffness pain goiter mass

Respiratory - SOB cough wheezing hemoptysis sleep apnea TB exposed hx PPD+

Cardiovascular - chest pain palpitations orthopnea PND hx murmur syncope edema claudication

Gastrointestinal - abdominal pain nausea vomiting oral regurgitation heartburn dysphagia odynophagia hematemesis early satiety

diarrhea constipation melena hematochezia appetite

Genitourinary - dysuria frequency urgency incontinence (urge/stress) hematuria nocturia polyuria low force/flow ED

discharge dyspareunia dysmenorrhea menorrhagia metrorrhagia pruritus prolonged decreased libido

Musculoskeletal - arthralgias stiffness swelling myalgias weakness Raynaud's both knees

Neurologic - headache seizures dizziness ataxia numbness paresthesias tremor dysarthria memory loss paresis

Psychiatric - anxiety depression anhedonia insomnia suicidal ideation delusions hallucinations (auditory/visual) decr. concentration

Endocrine - heat/cold intolerance polydipsia/polyuria/polyphagia

Heme/Lymph - easy bruisability swollen nodes tender - neck axillary inguinal

Allergy/immunology - frequent infections seasonal/perennial allergies

Skin - rash lesions pruritus concerning nevi hair loss/dryness nail changes

Breast - lumps discharge pain bleeding

Physical Exam	Normal	Abnormal	Comments
General	☒		
Eyes	☒		
ENMT	☒		
Neck	☒		
Cardiovascular	☒		
Respiratory	☒		
Gastrointestinal	☒		
Chest/Breasts	☒		
Genitourinary	☒		
Musculoskeletal		☒	<u>anterior capsule / no effusion</u>
Neurologic	☒		
Skin/Hair	☒		<u>no rash</u>
Lymphatic	☒		
Psychiatric	☒		

Labs/Studies:

Total Time Spent:

Time Counseling:

A/P: Both knee pain

Self care / RRR / CBC / ANA / RF
and 10 35dx3 / 25dx3 / 15dx3

Date: 06/14/2009

By: _____

Travelers Rest Family Practice

Patient Name:
DOB:

Carolyn
Nicholson

Vital Signs: Weight 134 Height 5'8" Temp 99.2 BP 112/80 Pulse 68 Resp 16 Saturation 98
Allergies: None
Chief Complaint: Arm & shoulder pain
HPI: (location, quality, severity, duration, timing, context, modifying factors, associated s/s) Right arm & shoulder pain, dull, aching, some sharp, for weeks. Pain (1 to 10) 7-8. Worse with activity, better with rest. No trauma.
PMH/PSH: None
Med: None FHx: None SocHx: None Sex: Female
Alcohol: None Occupation: None Exercise: None
Drugs: None Immunizations: None
Caffeine: None

RQS: (cross out if negative, circle if positive)

General - weight change fever/chills malaise fatigue diaphoresis hot flashes night sweats
Eyes - vision loss blurred vision diplopia scotoma amaurosis pain redness discharge dryness photophobia
Ears - hearing loss tinnitus otalgia discharge phonophobia
Nose - rhinorrhea congestion postnasal drip anosmia epistaxis facial pressure
Mouth/Throat - sore throat oral ulcers bleeding gums hoarseness snoring dentalgia
Neck - stiffness pain goiter mass
Respiratory - SOB cough wheezing hemoptysis sleep apnea TB exposed hx PPD+
Cardiovascular - chest pain palpitations orthopnea PND hx murmur syncope edema claudication
Gastrointestinal - abdominal pain nausea vomiting oral regurgitation heartburn dysphagia odynophagia hematemesis early satiety
diarrhea constipation melena hematochezia appetite
Genitourinary - dysuria frequency urgency incontinence (urge/stress) hematuria nocturia polyuria low force/flow ED
discharge dyspareunia dysmenorrhea menorrhagia metrorrhagia pruritus prolapse depressed libido
Musculoskeletal - antralgia stiffness swelling myalgias weakness Raynaud's
Neurologic - headache seizures dizziness ataxia numbness paresthesias tremor dysarthria memory loss paresis
Psychiatric - anxiety depression anhedonia insomnia suicidal ideation delusions hallucinations (auditory/visual) decr. concentration
Endocrine - heat/cold intolerance polydipsia/polyuria/polyphagia
Heme/Lymph - easy bruisability swollen nodes tender - neck axillary inguinal
Allergy/immunology - frequent infections seasonal/perennial allergies
Skin - rash lesions pruritus concerning nevi hair loss/dryness nail changes
Breast - lumps discharge pain bleeding

Physical Exam Normal Abnormal Comments

General	✓		
Eyes			
ENMT			
Neck			
Cardiovascular	✓		
Respiratory			
Gastrointestinal			
Chest/Breasts			
Genitourinary			
Musculoskeletal		✓	ROM Arm/Shoulder
Neurologic			
Skin/Hair			
Lymphatic			
Psychiatric			

Labs/Studies:

A/P:

AD arm/hip pain / PDD
1) balance 10 3rd x 30 10
2nd x 30 10
Baroad N-20 1/88H
100
449 25 2005

Travelers Rest Family Practice

Patient Name: Carolyn Nicholson
DOB:

Vital Signs: Weight 135 Height 5'9" Temp 99.4 BP 128/76 Pulse Resp Saturation BMI

Allergies:

Chief Complaint: rev

HPI: (location, quality, severity, duration, timing, context, modifying factors, associated s/s)

PAIN (1 to 10)

PMH/PSH:

Meds:

PHx:

SocHx:

Tobacco:

Alcohol:

Drugs:

Caffeine:

Sex:

Occupation:

Exercise:

Immunizations:

ROS: (cross out if negative, circle if positive)

General - weight change, fever/chills, malaise, fatigue, diaphoresis, hot flashes, night sweats

Eyes - vision loss, blurred vision, diplopia, sclerema, amaurosis, pain, redness, discharge, dryness, photophobia

Ears - hearing loss, tinnitus, otalgia, discharge, phonophobia

Nose - rhinorrhea, congestion, postnasal drip, anosmia, epistaxis, facial pressure

Mouth/Throat - sore throat, oral ulcers, bleeding gums, hoarseness, snoring, dentalgia

Neck - stiffness, pain, goiter, mass

Respiratory - SOB, cough, wheezing, hemoptysis, sleep apnea, TB exposed, hx PPD+

Cardiovascular - chest pain, palpitations, orthopnea, PND, fix murmur, syncope, edema, claudication

Gastrointestinal - abdominal pain, nausea, vomiting, oral regurgitation, heartburn, dysphagia, odynophagia, hematemesis, early satiety

diarrhea, constipation, melena, hematochezia, appetite

Genitourinary - dysuria, frequency, urgency, incontinence (urge/stress), hematuria, nocturia, polyuria, low force/flow, ED

discharge, dyspareunia, dysmenorrhea, menorrhagia, metrorrhagia, pruritus, prolapse, decreased libido

Musculoskeletal - arthralgia, stiffness, swelling, myalgias, weakness, Raynaud's

Neurologic - headache, seizures, dizziness, ataxia, numbness, paresthesias, tremor, dysarthria, memory loss, paresis

Psychiatric - anxiety, depression, anhedonia, insomnia, suicidal ideation, delusions, hallucinations (auditory/visual), decr. concentration

Endocrine - heat/cold intolerance, polydipsia/polyuria/polyphagia

Heme/Lymph - easy bruisability, swollen nodes, tender - neck, axillary, inguinal

Allergy/immunology - frequent infections, seasonal/perennial allergies

Skin - rash, lesions, pruritus, concerning nevi, hair loss/dryness, nail changes

Breast - lumps, discharge, pain, bleeding

Physical Exam Normal Abnormal Comments

General	✓		
Eyes			4-8-09 Fixed solo to SE Neuro
ENMT			They will contact Dr. C. again
Neck	✓	✓	4-9-09 Dr. Hodge 4-23-09
Cardiovascular	✓		10/02/04
Respiratory	✓		
Gastrointestinal			
Chest/Breasts			
Genitourinary			
Musculoskeletal			
Neurologic			some of sensation down
Skin/Hair			
Lymphatic			
Psychiatric			

Labs/Studies:

Total Time Spent:

Time Counseling:

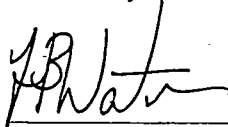
A/P:

A) DDD C-spine ! injury at
B) To Dr. Hodge eval ? up hwy
Produce 7.5 B/P R food ? pt
Date: APR 06 2009
MD:

CERTIFICATE OF COUNSEL

The undersigned hereby certifies that the Record on Appeal contains all material proposed to be included by any of the parties and not any other material.

August 13, 2012



L. Brenn Watson, Esquire
Zachary M. Smith, Esquire
872 S. Pleasantburg Drive
Greenville, South Carolina 29607
(864) 527-3292
Attorneys for Appellants