STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

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S.C. SUPREME COURT

Appeal from South Carolina
Workers Compensation Commission

WCC File No.: 1203664
Ct. App. Appellate No.: 2013-001778
S.C. Ct. App. Op. No. 2015-UP-041, filed January 21, 2015
Appellate Case No.: 2015-001218

Nathalie I. Davaut, Employee, Claimant, ... Petitioner,

v.

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

RESPONDENTS' RETURN TO PETITION FOR A WRIT OF CERTIORARI

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DID THE COURT OF APPEALS PROPERLY AFFIRM THE DECISION OF THE SOUTH CAROLINA WORKERS COMPENSATION COMMISSION WHICH FOUND THAT THE CLAIMANT DID NOT SUSTAIN AN INJURY BY ACCIDENT ARISING OUT OF AND IN THE COURSE AND SCOPE OF HER EMPLOYMENT?

STATEMENT OF THE CASE

This matter comes before the Court upon a Petition for Writ of Certiorari filed by the Appellant, Nathalie I. Davaut, from the Decision of the South Carolina Court of Appeals affirming the denial of benefits in this matter by the South Carolina Workers' Compensation Commission. This case arose as a result of a motor vehicle versus pedestrian accident that took place on the late evening of February 16, 2012. Specifically, the Appellant was struck while crossing a public street by a third party that was charged as being at fault in the accident. At the time of the accident, the Claimant was in a public crosswalk that was not owned, constructed, or maintained by the University of South Carolina, the Respondent named herein. After discovery was completed in the claim, a Hearing was held before the South Carolina Workers' Compensation Commission on September 25, 2012. Thereafter, the Single Commissioner found that the Appellant had failed to prove an injury by accident arising out of and in the course and scope of her employment and denied the claim in an Order dated November 6, 2012. (R. pp. 8-19, Single Commissioner Order).

The Appellant timely filed a Request for Commission Review, SCWCC Form 30. Following oral arguments in the claim, the Appellate Panel unanimously found that the Claimant had not sustained an injury by accident within the meaning of the Workers Compensation Act and denied the claim by Order dated July 22, 2013. (R. pp. 1-7, Appellate Panel Order). On August 20, 2013, the Appellant filed an appeal with the South Carolina Court of Appeals. Following oral arguments in the case, the Court of Appeals issued an opinion affirming the findings of the South Carolina Workers' Compensation Commission. Thereafter, the appellant filed a Petition for Rehearing which was denied by the Court of Appeals by Order dated May 8, 2015. Appellant thereafter filed a Petition for Writ of Certiorari with this Court.

The Respondents maintain that the Decision and Order of the South Carolina Workers' Compensation Commission is supported by substantial evidence in the record and properly applied the law to the facts presented and was properly affirmed by the Court of Appeals. Wherefore, Respondents respectfully request that the Appellant's Petition for Writ of Certiorari be denied.

STATEMENT OF THE FACTS

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

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

16-19). In fact, there isn't even a sign that designates the parking lot on the north side of Hubbard Drive as a University parking lot. (R. p. 138, lines 10-11).

The Appellant was employed as a foreign language instructor at the University of South Carolina – Lancaster at the time of this accident and has held this position since 2008. With the exception of attending classes the Appellant was scheduled to teach, the Claimant's work schedule was set at her discretion. (R. p. 53).

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

The necessity to cross Hubbard Drive arose as a result of the Claimant's discretionary choice to park in a parking lot located on the north side of Hubbard Drive that did not contain any faculty designated parking spaces. (R. p. 4, Appellate Panel Order). It is undisputed that the University does not assign specific parking spaces to any faculty member. However, the University does designate faculty parking spaces and it is undisputed that all designated faculty parking spaces

are located on the south side of Hubbard Drive where all of the classrooms, the library, and teacher offices are located. By the Claimant's own admission, she elected to park in a parking lot on the north side of Hubbard Drive rather than checking for available faculty parking in other parking lots located on the south side of Hubbard Drive which would not have required her to cross Hubbard Drive at all. (R. p. 108, lines 7-17).

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

ARGUMENTS

I. STANDARD OF REVIEW.

A reviewing Court is prohibited from disturbing the findings of the Workers' Compensation Commission when its findings are supported by substantial evidence on the record as a whole. Lark v. Bi-Lo, Inc., 276 S.C. 130, 276 S.E. 2d 304 (1981). A reviewing Court may not substitute its judgment for that of an agency as to the weight of the evidence on questions of fact unless the agencies findings are clearly erroneous in view of the reliable, probative and substantial evidence on the whole record. Grayson v. Carter Road Furniture, 317 S.C. 306, 454 S.E. 2d 320 (1995). Substantial evidence has been defined as evidence which, considering the record as a whole, would allow reasonable minds to reach the conclusion that the Administrative Agency reached. Gibson v.

Florence Country Club, 282 S.C. 283, 318 S.E. 2d 365 (1984). The possibility of drawing two inconsistent conclusions from the evidence does not prevent an Administrative Agency's finding from being supported by substantial evidence. Hoxit v. Michelin Tire Corp., 304 S.C. 461, 405 S.E. 2d 407 (1991).

Where there is conflicting evidence, the findings of the Commission are conclusive, Miller v. State Roofing Company, 441 S.E. 2d 323 (1994), and when factual findings are supported by substantial evidence, analogous to a jury's findings of fact on disputed issues, the Commission's conclusions must be affirmed. Hunter v. Patrick Construction Company, 289 S.C. 46, 344 S.E. 2d 613 (1986). Final determination of witness credibility and the weight to be accorded evidence is reserved to the Commission. Ford v. Allied Chemical Corp., 252 S.C. 561, 167 S.E. 2d 564 (1969).

The Appellant states that the Petition for Writ of Certiorari was filed because the Court of Appeal's opinion is in conflict with prior decisions of the Supreme Court on the "going and coming rule," including Howell v. Pacific Mills, 291 S.C., 469, 354 S.E.2d 384 (1987), and Williams v. South Carolina State Hospital, 245 S.C. 377, 140 S.E. 2d 601 (1965). In holding that the Williams case was not controlling in the case before the Court, the Court of Appeals quoted from the Howell decision wherein this Court stated "[A]ppellant contends that this case in on all fours with Williams. This contention is without merit. In Williams, the claimant was injured on the employer's premises. In the present case, appellant was injured on a public street." Howell, at 386. This is precisely the case before the Court. The Claimant also states that this case presents a novel question of law. The Respondents maintain that this issue has been addressed in the Howell decision. Furthermore, the North Carolina Supreme Court has also addressed the identical factual scenario presented in this

case and held that the Claimant did not sustain an injury by accident arising out of and in the course and scope of employment.

In Royster v. Culp, Incorporated, 343 N.C. 279, 470 S.E.2d 30 (1996), the North Carolina Supreme Court was presented with the very question raised in this case. In Royster, the claimant was injured when he was struck by a car while attempting to walk across a public highway that separated his place of employment from a parking lot which was owned and operated by the employer. In holding that the claimant had not sustained an injury by accident within the course and scope of his employment the Court applied the coming and going rule. In doing so, the Court specifically noted that, like in the case before this Court, the employer did not own or control the public street where the accident occurred. This Court has long held that decisions of the North Carolina courts interpreting the North Carolina Workers' Compensation Act are entitled to weight because the South Carolina Act was fashioned after North Carolina's. See, Anderson v. Baptist Medical Center, 343 S.C. 487, 541 S.E.2d 526 (2001); Adams v. Texfi Industries, 320 S.C. 213, 464 S.E.2d 109 (1995).

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

A decision of the Workers' Compensation Commission cannot be overturned by a reviewing court unless it is clearly unsupported by substantial evidence in the record. Massey v. W.R. Grace & Company, 286 S.C. 434, 334 S.E. 2d 122 (1985). The Appellant attempts to avoid

application of the substantial evidence rule by arguing that the Court of Appeals misapplied the law in affirming the Commission's denial of her claim. The Decision and Order of the Commission is based on specific factual findings made by the Commission that support the Commission's ultimate ruling that the Claimant did not sustain a compensable accident. It is well settled in South Carolina that for an injury to be compensable under the Workers' Compensation Act, it must be caused by an accident, and arise out of and in the course of employment. S.C. Code Ann. §42-1-160 (2007). The going and coming rule states that "an employee going to or coming from the place where his work is to be performed is not engaged in performing any service growing out of or incidental to his employment, and therefore, an injury suffered by accident at such time does not arise out of and in the course of his employment." Aughtry v. Abbeville County School District #60, 332 S.C. 453, 504 S.E.2d 830 (Ct. App. 1998).

There are five recognized exceptions to the going and coming rule and those consist of:

1. Where, in going to and returning from work, the means of transportation is provided by the employer, or the time that is consumed is paid for or included in the wages;

2. Where the employee, on his way to or from his work, is still charged with some duty or task in connection with his employment;

3. Where the way used is inherently dangerous and is either (a) the exclusive way of ingress and egress to and from his work; or (b) constructed and maintained by the employer;

4. That such injury incurred by a workman in the course of his travel to his place of work and not on the premises of his employer but in close proximity thereto is not compensable unless the place of injury was brought within the scope of employment by an express or implied

requirement in the contract of employment of its use by the servant in going to and coming from his work; or

5. Where the employee sustains an injury while performing a task, service, mission, or special errand for his employer, even before or after customary working hours or on a day of which he does not ordinarily work.

Bickley v. South Carolina Gas and Electric Company, 259 S.C. 463, 192 S.E.2d 866 (1972); Sola v. Sunny Slope Farms, 244 S.C. 6, 135 S.E.2d 321 (1964).

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

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

A significant factor that cannot be disputed by the Claimant is that the Employer designated faculty parking spaces in the parking lots located on the south side of Hubbard Drive only. (R. p. 52). The Claimant admitted that when she arrived on campus on the morning of February 16, 2012, she drove through the parking lot adjacent to Hubbard Hall located on the south side of Hubbard Drive. The Claimant testified that she did not see any available faculty parking spaces in that particular parking lot. Without checking the remaining parking lots located on the south side of Hubbard Drive for a vacant space which would have eliminated her need to physically cross Hubbard Drive, the Claimant instead elected to park across the street in a parking lot provided for the general public adjacent to the Carole Ray Dowling building located on the north side of Hubbard Drive. (R. p. 108, lines 7-17). She admitted that she did so "even though it wasn't faculty parking." (R. p. 108, line 12). The Claimant then crossed Hubbard Drive to teach her classes and engage in her normal work activities. Her accident occurred when she was returning to her automobile later that evening and was struck in one of the three crosswalks located on Hubbard Drive.

The Claimant argues in her Brief that the Employer somehow dictated that she use the parking lot that she elected to use on the date of her accident because Thursday was a busier day of the week than normal implying that there was nowhere else to park. This assertion by the Claimant is speculative at best. By the Claimant's own admission, she never checked any of the other parking lots on the south side of Hubbard Drive which also contain faculty designated parking. When asked at the Hearing if other faculty ever parked in the parking lot she elected to utilize on the day of her accident on the north side of Hubbard Drive the Claimant testified "sometimes, probably not very often". (R. p. 39, line 9). Mr. Helwer, the Assistant Librarian, testified that prior to this accident

the parking lot used by the Claimant meant nothing to him because there were always available spots in the other parking lots located on the south side of Hubbard Drive. (R. p. 261, lines 1-4). Mr. Helwer also testified that he always parked in the lots designated for faculty because it was his understanding that that was what he was supposed to use since he was staff at the University. (R. p. 259, lines 10-12).

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

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

on the north side of Hubbard Drive rather than take the time to check the remaining parking lots on the south side of Hubbard Drive cannot convert her discretionary choice into an express or implied requirement in her contract of employment.

The Appellant argues that the Court's decision in Howell v. Pacific Mills, 291 S.C., 469, 354 S.E.2d 384 (1987) does not apply to the facts of the case currently before this court because the Claimant in Howell was never on the premises of the Employer before she entered the crosswalk on the public street where she was injured. A review of the Howell decision reflects that it is analogous to the case currently before this Court. In Howell, the Supreme Court rejected a Claimant's attempt to argue one of the five exceptions to the going and coming rule after being injured in a crosswalk located on a public street between an Employer owned parking lot and the plant. In that case, the only Employer owned parking lot was on the other side of a public street that ran in front of the plant. While the Court in Howell noted that the Claimant had not entered the parking lot across from the plant it did so in a discussion wherein the Court was summarily dismissing the "divided premises rule" argument advanced by the Claimant in that case.

In rejecting the claimant's argument that crossing the street in a crosswalk where her injury occurred was an implied requirement in her contract of employment, the Court in Howell stated as follows:

> The Employer exercised no control over which route the Appellant chose to use in coming and going from work...Appellant was plainly free to cross Heyward at many points or not to cross it at all. The logic behind Appellant's argument appears to be that since she had to cross Heyward Street to get to the mill and since there was a crosswalk in front of one entrance, it was an implied requirement of her employment that she cross the street on the crosswalk. Any injury occuring in that crosswalk, therefore, is compensable. There would be nothing to prevent this line of reasoning from being extended to mean that all Employees must leave home in order to come to work, coming to work

> is an implied requirement of their employment. All accidents occuring on the way to work are compensable. This kind of reasoning would permit the exceptions to swallow the rule.

Howell, 291 S.C. at 472, 354 S.E.2d at 385.

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

Because the Claimant did not want to take the time to locate an available parking space on the south side of Hubbard Drive she elected to park on the north side of Hubbard Drive which did not contain any faculty designated parking. In fact, by the Claimant's own admission, the parking lot that she used was open to the general public that visited the Carole Ray Dowling building to

access the physical therapy and health services offered therein to the general public by the University. The Claimant's argument that her egress and ingress to and from her office and the library located in the Medford building across a public street to the parking lot that was maintained by the University are incident to her employment such that her injury occurred in the course of her employment is simply without merit. Had the University intended faculty to park in the parking lot the Claimant elected to use at her own discretion, it would have designated faculty parking in said parking lot. In fact, the Claimant even admitted that she was not aware of even a sign that designated the parking lot she used as University parking. (R. p. 138, lines 10-11). She did admit that the parking lot on the North side of Hubbard Drive was not faculty parking. (R.p. 108).

The Appellant offers a hypothetical situation involving the USC Columbia campus as support for adopting a new exception to the going and coming rule. The Respondents submit that the hypothetical presented by the Appellant demonstrates the very reason such a rule should not be adopted. Under the Appellant's own example, the Employee assigned to work at the National Advocacy Center could decide to park in the parking lot of the Colonial Life Arena and cross as many as five or more public streets before actually arriving at the place where their work is to be performed and if injured crossing any of those public streets their claim would be compensable. Under the same line of reasoning, an employee working for an employer that has warehouse facilities within walking distance of a manufacturing facility could elect to park in the parking lot of the warehouse and walk down a public street to enter the manufacturing facility even though parking is provided at the manufacturing facility and the claim would be compensable if the Employee was injured on the public highway while doing so. The South Carolina Workers' Compensation Commission properly rejected the Appellant's argument and applied the reasoning of

the Court in Howell in reaching its decision in this case. The Decision and Order of the South Carolina Workers' Compensation Commission is supported by substantial evidence as well as South Carolina case law and North Carolina and was properly affirmed by the Court of Appeals.

III. THE DISCRETIONARY CHOICE MADE BY THE CLAIMANT ON THE MORNING OF HER ACCIDENT IS RELEVANT.

The Claimant argues in her Petition that the fact that she made a discretionary choice as to where she decided to park on the morning of her accident has no bearing on whether her accident is compensable. This assertion is squarely refuted by the Court's decision in Howell v. Pacific Mills, 291 S.C., 469, 354 S.E.2d 384 (1987). In Howell, the Claimant was dropped off by her husband in a crosswalk which connected the parking lot to one of the entrances to the plant where she worked. The Claimant was struck while in the crosswalk and injured. The Claimant argued, as does the Appellant herein, that the fourth exception to the going and coming rule applied, i.e. that crossing the public street in the crosswalk was an implied requirement in the contract of employment. The Court found that the Claimant did not sustain an injury arising out of and in the scope and course of her employment and held that none of the exceptions to the going and coming rule applied. In rejecting the Claimant's argument that crossing the street in the crosswalk where she was injured was an implied requirement in her contract of employment the court noted the following:

> Appellant contends that the circuit court erred in affirming the full commission's determination that her case does not fall within the exception stated above. We disagree. The Commission found that the appellant failed to establish an implied requirement in her contract of employment that she cross the street in the crosswalk where the accident occurred. The employer exercised no control over which route appellant chose to use in coming and going to work. On the night that the accident took place, her husband just as readily could have let appellant out on the mill side of Heyward Street. Appellant contends that, since "no parking" signs were located on the mill side of Heyward Street, the only place for a

> person being driven to work to legally exit a car would be on the parking area side of the street. Evidence in the record shows that employees were regularly picked up and dropped off on the mill side of the crosswalk. In fact, it is lawful for passengers to be picked up or discharged at a crosswalk or in front of "no parking" signs. S.C. Code Ann. Section 56-5-2530. Appellant was plainly free to cross Heyward at many points or not to cross it at all.

Howell, 291 S.C. at 472, 354 S.E.2d at 385.

The Courts discussion in Howell, makes it clear that an employee's discretion or choice is not only a relevant factor, but a critical one, in applying the going and coming rule and the exceptions to same. In the case currently before the Court, the Claimant was free to cross Hubbard Drive at any of three crosswalks constructed and maintained by the City of Lancaster or not to cross it at all. To quote the Claimant "I decided to just park the car, **even though it wasn't faculty parking**, to park the car there instead of trying to go all the way across campus to see if there were any other faculty spots available." (R. p. 108, lines 7-17). As found by the South Carolina Workers' Compensation Commission, the Claimant's accident resulted because of the Claimant's discretionary choice to park in the parking lot located on the north side of Hubbard Drive that did not contain any faculty designated parking spaces. (R. p. 4, Appellate Panel Order - Finding of Fact No. 14). The Claimant could have decided to take the time to locate a faculty designated parking spot, all of which are located on the south side of Hubbard Drive, and her accident would have never occurred.

IV. THE CLAIMANT'S CONTINUED RELIANCE ON THE CASE OF WILLIAMS V. SOUTH CAROLINA STATE HOSPITAL IS MISPLACED.

The Claimant continues to argue that the case of Williams v. South Carolina State Hospital, 254 S.C. 377, 140 S.E.2d 601 (1965) is controlling under the facts of this case. In Howell, the Court

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

In Williams, the Employer owned the street where the Claimant's injury occurred, the Employer owned the sidewalk used by the Claimant when walking to and from her car and specifically designated the parking area used by the Claimant as parking for nurses. In the case currently before the Court it is undisputed that the City of Lancaster owns and maintains Hubbard Drive where the Claimant's accident occurred and the City of Lancaster constructed and maintained the cross walk where the Claimant's accident occurred. It is also undisputed that **all** faculty designated parking is located on the south side of Hubbard Drive and does not require crossing Hubbard Drive at all. The parking lot used by the Claimant on the day of her accident was open to the general public and did not contain any faculty parking. Not only is the Williams decision not on all fours with the case currently before this court it is submitted that it is not on any.

V. THE COURT DID NOT MISAPPREHEND THE FACTS REGARDING THE CLAIMANT'S ACTIONS IN PARKING IN THE CAROLE RAY DOWLING CENTER LOT ON THE NORTH SIDE OF HUBBARD DRIVE.

In support of her Petition, the Appellant asserts that this Court misapprehended the undisputed, relevant facts regarding the Claimant's actions in parking in the Carole Ray Dowling Center lot on the north side of Hubbard Drive. The Appellant then asserts that the Court's statement that "all faculty parking is located on the south side of Hubbard Drive" is not supported by the

undisputed evidence. This assertion is completely without merit. It is undisputed that the only faculty designated parking was located on the south side of Hubbard Drive which would not have required the Claimant to cross Hubbard Drive at all. As found by the South Carolina Workers' Compensation Commission, the Claimant's accident resulted because of the Claimant's discretionary choice to park in the parking lot located on the north side of Hubbard Drive that did not contain any faculty designated parking spaces. (R. p. 4, Appellate Panel Order - Finding of Fact No. 14). . To quote the Claimant, "I decided to just park the car, **even though it wasn't faculty parking**, to park the car there instead of trying to go all the way across campus to see if there were any other faculty spots available." (R. p. 108, lines 7-17).

The Claimant also argues in her Petition that the Employer somehow dictated that she use the parking lot that she elected to use on the date of her accident because Thursday was a busier day of the week than normal implying that there was nowhere else to park. This assertion by the Claimant is speculative at best. By the Claimant's own admission, she never checked any of the other parking lots on the south side of Hubbard Drive which also contain faculty designated parking. When asked at the Hearing if other faculty ever parked in the parking lot she elected to utilize on the day of her accident on the north side of Hubbard Drive the Claimant testified "sometimes, probably not very often". (R. p. 39, line 9).

The Claimant also asserts that the Court misapprehended the testimony of the assistant librarian. Mr. Helwer, the Assistant Librarian, testified that prior to this accident the parking lot used by the Claimant meant nothing to him because there were always available spots in the other parking lots located on the south side of Hubbard Drive. (R. p. 261, lines 1-4). Mr. Helwer also testified that he always parked in the lots on the south side of Hubbard Drive designated for faculty

because it was his understanding that that was what he was supposed to use since he was staff at the University. (R. p. 259, lines 10-12).

The Claimant also asserts that the Court overlooked the undisputed facts that on the morning of the accident, a Thursday, the Claimant looked for but was unable to find any available spaces on the south side of Hubbard Drive. This assertion ignores the Claimant's very testimony on this issue. When questioned about this very issue the Claimant admitted, "I decided to just park the car, even though it wasn't faculty parking, to park the car there **instead of trying to go all the way across campus to see if there were any other faculty spots available**." (R. p. 108, lines 7-17).

The Claimant's Petition further alleges that the Claimant was using a "designated crosswalk" at the time of her accident. The undisputed facts in this case reflect that there are three crosswalks on Hubbard Drive which were owned, constructed and maintained by the City of Lancaster. The University of South Carolina does not exercise any control over the crosswalks or Hubbard Drive. (R. p. 166). All traffic control, ticketing, and accident investigations relating to Hubbard Drive is conducted by the City of Lancaster exclusively. (R. p. 179).

In short, the Court properly ascertained the testimony offered and the admissions made in this case in reaching its decision that the findings of the South Carolina Workers' Compensation Commission were supported by substantial evidence. The possibility of drawing two inconsistent conclusions from the evidence does not prevent an Administrative Agency's finding from being supported by substantial evidence. Hoxit v. Michelin Tire Corp., 304 S.C. 461, 405 S.E. 2d 407 (1991). Where there is conflicting evidence, the findings of the Commission are conclusive, Miller v. State Roofing Company, 441 S.E. 2d 323 (1994), and when factual findings are supported by substantial evidence, analogous to a jury's findings of fact on disputed issues, the Commission's

conclusions must be affirmed. Hunter v. Patrick Construction Company, 289 S.C. 46, 344 S.E. 2d 613 (1986). Final determination of witness credibility and the weight to be accorded evidence is reserved to the Commission. Ford v. Allied Chemical Corp., 252 S.C. 561, 167 S.E. 2d 564 (1969).

CONCLUSION

To be entitled to an award under the South Carolina Workers' Compensation Act, an Employee must sustain an injury by accident that both "arose out of" and "in the course of" the employment. S.C. Code Ann. §42-1-160 ; Howell v. Pacific Mills, 291 S.C., 469, 354 S.E.2d 384 (1987). The term "arising out of" has been held to refer to the origin or cause of the accident and the term "in the course of" has been held to refer to the time, place, and circumstances under which the accident occurred. In this case, the question of whether there is an injury by accident arising out of and in the course and scope of the Claimant's employment was a question of fact to be decided by the South Carolina Workers' Compensation Commission as the fact finders. McDonald v. Kenneth Cotton Mills, 250 S.C. 51, 156 S.E.2d, 324 (1967). A review of the factual findings made by the South Carolina Workers' Compensation Commission is limited to determining whether those findings are supported by substantial evidence. Lark v. Bi-Lo, Inc., 376 S.C. 130, 276 S.E.2d 304 (1981).

After reviewing all of the evidence submitted in this case, the South Carolina Workers' Compensation Commission concluded that the Claimant had failed to carry her burden of proving an injury by accident arising out of and in the course and scope of her employment. The Decision of the South Carolina Workers' Compensation Commission is supported by the substantial evidence of record and was properly affirmed by the South Carolina Court of Appeals. It is further submitted

that the Supreme Court's Decision in Howell v. Pacific Mills, 291 S.C., 469, 354 S.E.2d 384 (1987) is directly on point with the facts of this case and dictates the very result reached by the Commission and affirmed by the Court of Appeals. Furthermore, the North Carolina Supreme Court addressed the very facts presented in this claim in the case of Royster v. Culp, Incorporated, 343 N.C. 279; 470 S.E.2d 30 (1996) and held that the Claimant did not sustain an injury by accident arising out of and in the course of his employment.

WHEREFORE, Respondents respectfully request that the Appellant's Petition for Writ of Certiorari be denied.

Respectfully Submitted,

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July 17, 2015

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

RECEIVED

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S.C. SUPREME COURT

Appeal from South Carolina
Workers Compensation Commission

WCC File No.: 1203664
Ct. App. Appellate No.: 2013-001778
S.C. Ct. App. Op. No. 2015-UP-041, filed January 21, 2015
Appellate Case No.: 2015-001218

Nathalie I. Davaut, Employee, Claimant, ... Petitioner,

v.

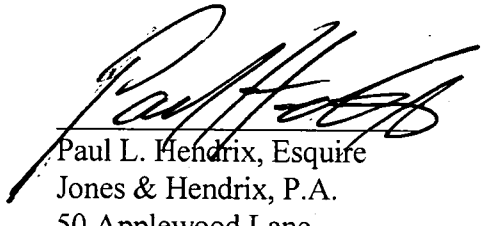
University of South Carolina
and State Accident Fund, Defendants, ... Respondents.

CERTIFICATE OF SERVICE

I, Paul L. Hendrix, do hereby certify that I have this day served a copy of the Respondent's Return to Petition for a Writ of Certiorari upon the following person by placing a copy of same in the United States Mail, First Class Mail, properly addressed and with the correct amount of postage affixed thereto:

Paul L. Reeves, Esq.
Blackwell, Trimnal, Reeves, & Myers, LLC
P.O. Box 11126
Columbia, S.C. 29211

Dated this the 17th day of July, 2015.



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