

RECEIVED

JUL 27 2015

SC Court of Appeals

APPELLATE PANEL
DECISION AND ORDER
OF THE

SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION

WCC FILE NO. 1405375

Jenna Foran,

EMPLOYEE,
CLAIMANT/APPELLANT,

vs.

Murphy USA,

EMPLOYER,

AND

Liberty Insurance Corporation,

CARRIER,
DEFENDANTS/RESPONDENTS.

Appellate Panel Review held in Columbia, South Carolina,
on April 21, 2015 per notices timely and properly served
upon all parties of interest.

Appellate Panel Decision and Order filed

July 14th

, 2015

AFFIRMS IN FULL

APPEARANCES:

Claimant/Appellant represented by C. Scott Masel, Esquire
of Myrtle Beach, South Carolina.

Defendants/Respondents represented by Anne Veatch
Noonan, Esquire of Willson Jones Carter & Baxley, P.A.,
Mount Pleasant, South Carolina.

STATEMENT OF THE CASE AND PROCEDURAL HISTORY

This is a denied claim for an injury to the left ankle which occurred on April 29, 2014. The Claimant/Appellant contends the single Commissioner erred by denying the claim and concluding Claimant's injury was idiopathic and not a compensable injury in light of the recent South Carolina Supreme Court cases *Nicholson* and *Barnes* and further contends the single Commissioner erred in giving greater weight to the testimony of Randolph Stokes Rogers, a witness for the Defendants, than to that of the Claimant, Jenna Foran. This incident was captured on video surveillance which was reviewed by the Appellate Panel and single Commissioner.

On October 31, 2014, a hearing was held before the Honorable Avery Wilkerson (hereinafter single Commissioner) in Conway, South Carolina to resolve the issues raised by the Claimant's request for hearing via Form 50.

The Claimant contends she was injured on April 29, 2014 while she was working as a cashier. She contends that while stocking cigarettes, she went to stand up and stepped half on and half off of the mat that was located on the floor behind the register. As a result of this, her ankle rolled on the uneven surface causing her to suffer torn ligaments and requiring surgery. She further contends this is not an idiopathic injury and that her injury is a result of a specific incident and is therefore compensable.

The Defendants contend Claimant suffered an idiopathic injury on April 29, 2014 when she rolled her ankle due to a pre-existing chronic instability of her left ankle documented in the medical records. The video of the incident shows Claimant was standing flat footed on the mat when her ankle merely gave way. The Claimant had pre-existing issues with her left ankle and was having ankle problems with an altered gait at the time immediately preceding this injury. These left ankle issues were originally documented in 2005 when the Claimant underwent

surgical repair of the ankle. At the time of the surgery, Dr. Kane, of Hackensack University Medical Center, diagnosed Claimant with chronic instability of the left ankle. (APA 1 p. 1.) Additionally, Dr. Kane noted that the surgery was due to a protracted "history of recurrent injuries to the left ankle" and indicated that Claimant had "failed conservative treatment including physical therapy." (*Id.*)

The Defendants relied on video taken from the store cameras from April 29, 2014, which clearly shows that the floor mat did not cause Claimant's injury and was not involved in her ankle giving out. Claimant was merely standing at the register when her left ankle gave way. Defendants further argue that there is no special risk associated with the Claimant's work that caused this accident and it is therefore idiopathic in nature.

Prior to the hearing, a review of the video surveillance for the date of accident was viewed with all parties present. The floor mat from the video was also reviewed by Commissioner Wilkerson as provided by the store manager.

On January 14, 2015, the single Commissioner issued a Decision and Order with the following Findings of Fact, Conclusions of Law, and Order/Award:

FINDINGS OF 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 Jenna Foran as Employee-Claimant and Murphy USA as Employer and Liberty Insurance Corporation as Carrier, Defendants.*

2. *That the average weekly wage of Employee at the time of the above-described accident was \$168.84, and his compensation rate was \$112.57.*

3. *Order directives and instructions were sent to all parties on October 31, 2014.*

4. *The Claimant's testimony is very confusing as to her description of this accident.*

She verified her personal description multiple times which was different than what the video shows actually happened. The video also clearly shows that after the Claimant was in a kneeling position, her ankle did not roll and she was able to walk over to the other side of the counter. The Claimant's testimony was therefore untrue and inaccurate based on the video surveillance showing this incident.

5. *The Claimant described the mat as being well over an inch thick causing her to fall. This was inconsistent after personally viewing the mat at the hearing.*

6. *The manager of the store, Stokes Rogers, did authenticate the mat and brought it to the hearing. This was the mat in question shown in the video which Claimant states caused her ankle to roll. This mat was personally viewed by the Commissioner.*

7. *Photographs of the mat were taken at the hearing and agreed upon by all parties.*

8. *The mat which Claimant indicates caused her injury is possibly a quarter to half an inch thick at most.*

9. *Stokes Rogers, II, manager of this Murphy Oil station, indicated that he was never told by the Claimant that she felt she had an accident caused by the mat at the store until two weeks before the hearing date when informed by his counsel that that was the Claimant's testimony. The Claimant specifically reported to Mr. Rogers that she went to get up and hurt her left ankle. Mr. Rogers was also aware that the Claimant suffered from a bad left ankle as she generally walked with a significant and noticeable limp on the left side prior to April 29, 2014.*

10. *The medical report from Coastal Orthopedics dated June 12, 2014 specifically shows the Claimant reported to Dr. Taylor that her left ankle pain began after slipping and falling. She did not discuss or describe to Dr. Taylor that she slipped while half on and half off of a mat.*

11. *APA #1, pages 1- 5 specifically document the Claimant's prior left ankle issues and chronic instability.*

12. *The medical records from Doctor's Care indicate the Claimant reported that her injury occurred when she stood up and may have caught on a mat twisting her left ankle. The Claimant's description of accident to her medical providers all indicate that her injury occurred while she was rising from a kneeling or lower position. This is supported by all of the medical records from Doctor's Care pages 6 – 47.*

13. *The Claimant submitted as APA #3, pg. 53 a letter signed only by the Claimant's attorney. I therefore do not give any weight to this letter as it is not signed by a medical physician. Even if the medical reports did indicate that the Claimant slipped half on and half off of a mat, this is inconsistent with the video evidence clearly showing this incident.*

14. *The video surveillance provided for this date of accident is key to the compensability of this case. ~~The video evidence does not show an injury by accident arising out of~~ or within the course and scope of employment. The Claimant is merely standing at the register with both feet forward when her left ankle rolls. The video shows that the ankle rolling is therefore idiopathic in nature regardless of the mat.*

15. *The Claimant testified that she had a total recovery from her previous ankle injury. However, the store manager described the Claimant with a chronic and noticeable limp on an everyday basis. Based on the Claimant's weakness of her foot and prior instability of her left ankle, I do not feel that the mat whether a quarter inch, half inch, or up to an inch caused her accident or was any type of increased special risk incurred by the Claimant.*

16. *I find the Claimant's testimony to be unclear as to what actually happened. The Claimant testified repeatedly that she was in a kneeling position and was trying to stand with her foot half off and half on the mat when her ankle rolled. Her description is unclear and is not consistent with the video surveillance. The Claimant was limping around the gas station prior to this accident contrary to her own testimony. The medical evidence also does not match the*

Claimant's testimony that she had a 100% recovery from her chronic ankle instability and surgery in 2004.

17. I give greater weight and credibility to the employer witness, Stokes Rogers, than I do to the Claimant. The medical history shown in the medical records indicate the Claimant had chronic instability of the left ankle. I do not find she suffered a compensable injury by accident within the course and scope of her employment as the video shows her standing at the register when her left ankle merely gives out. Furthermore, I do not find the mat to be a special risk that contributed to her ankle giving out. The Claimant therefore suffered an idiopathic fall and is not entitled to benefits under the South Carolina Workers' Compensation Act.

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. Under § 42-1-130, Claimant was a covered employee at the time in question; and under § 42-1-140, Defendant/Employer was a covered employer under the Act.*
- 2. Under § 42-1-160, Claimant did not suffer a compensable injury by accident within the course and scope of her employment. The Claimant's rolling of the left ankle was idiopathic in nature and not caused or aggravated by her work or any special risk found in her employment. I further find that the video surveillance supports the Claimant's ankle rolling was idiopathic only. Even if the Claimant's foot had been half on and half off of the mat, I do not feel that the mat caused or contributed to the Claimant's injury after personally reviewing the floor mat and the video surveillance of this incident.*

ORDER/AWARD

IT IS HEREBY ORDERED that this claim is denied.

IT IS SO ORDERED.

Claimant filed a Form 30, Application for Review, appealing the single Commissioner's findings regarding the idiopathic nature of her injury, the extent of her preexisting left ankle instability in light of medical and testimonial evidence, and the single Commissioner's award of greater weight and credibility to the testimony of the store manager. In response, Defendants contend Claimant had preexisting left ankle instability prior to the accident as evidenced by medical records and witness testimony regarding the Claimant's chronic limp. Based on her chronic left ankle instability, video surveillance showing Claimant's left ankle merely gave way ~~while standing at the register, Claimant's testimony, and the testimony of the store manager, the~~ Defendants contend the single Commissioner's Decision and Order should be affirmed. Accordingly, the single Commissioner's Decision and Order is hereby AFFIRMED in full.

STANDARD OF REVIEW

In an Appellate Review, the Appellate Panel shall, pursuant to S.C. Code Ann. § 42-17-50, review the award, weigh the evidence as presented at the hearing and, if good grounds be shown therefore, make its findings of facts and reach its own conclusions of law consistent or inconsistent with those of the single Commissioner. *See Green v. Raybestos-Manhattan, Inc.*, 250 S.C. 58, 156 S.E.2d 318 (1967); *see also Lowe v. An-Can Transport Servs., Inc.*, 283 S.C. 534, 324 S.E.2d 87 (Ct. App. 1984).

STATEMENT OF THE FACTS

The Claimant, Jenna Foran, testified at the hearing on her own behalf. She stated that in 2004, she underwent surgery on her left ankle. However, she testified that her physician "cleared me at 100% out of medical; therefore, I was able to do everything and anything." Hrg. Tr. pg. 10,

lines 13-17. The Claimant then testified that after her surgery in 2004, her left ankle was fully healed and she had no physical limitations.

The Claimant testified following her 2004 surgery, she worked as a cashier and a lifeguard. She testified that her ankle did not limit her job duties. She also was able to participate in recreational activities including volleyball and softball. She further testified that she was not limited with her left ankle in any way with activities at home or doing daily chores. She was able to do her job without any physical requirements prior to her accident.

The Claimant testified she started working for Murphy Oil in December, 2013 as a third shift cashier. Her job duties included stocking cigarettes, stocking shelves, cleaning, and running the cash register. She worked part time from 11:00pm to 7:00am.

The Claimant testified that her ankle "was really fine until I had stumbled onto the mat where my foot was half on, half off, and my ankle gave out." Hrg. Tr. pg. 12, lines 20-22. The Claimant testified that immediately preceding her stepping on the mat, she was stocking cartons of cigarettes to put on the shelves.

Claimant testified "I noticed I had grabbed - - grabbed too many cartons of cigarettes to put up at the time; therefore I was going to - - I was getting up to put them on the table or the counter behind - - on the other side of me to see what else I needed to grab from the back room; so, I would put those away as well while I was trying to get the others. And I went to get up and my foot was half on, half off, of the mat and my ankle just rolled underneath me." Hrg. Tr. pg. 13, lines 4-12.

The Claimant then testified that the mat seen in the video is approximately an inch thick and three to four feet wide. She testified it is cushiony to give comfort to the cashiers around their feet. The Claimant testified that she has seen mats like this before in grocery stores and gas stations. She does not believe her ankle would have rolled but for the floor mat.

The Claimant then testified that she has never seen a mat like this at home and that they are

not common to her neighborhood. She did testify that the store has mats such as this in the doorway where people walk from the parking lot into the store.

The Claimant testified that after she rolled her ankle, she got up and went right back to her duties. Her supervisor, Jean, came into the store later in the morning. She testified that she showed Jean that her ankle had rolled underneath her as she was stocking cigarettes. The Claimant testified that she was told by her supervisor that she would contact the store manager, Mr. Stokes (Mr. Randolph Stokes Rogers, II is referred to in Claimant's testimony as "Mr. Stokes"). Mr. Stokes told her that she needed to go to Doctors Care. Mr. Stokes then met the Claimant at Doctors Care.

The Claimant testified that she told Mr. Stokes "I was stocking the cigarettes; my foot was half on, half off, the mat and my ankle had rolled." Hrg. Tr. pg. 17, lines 22-24. The Claimant was then asked whether she had reviewed the store video tape for the time period when her fall took place. The Claimant testified that she had reviewed the video and that it was accurate. She also confirmed that the floor mat is shown in the video.

The Claimant testified she has been seen by Doctors Care and an orthopedist, Dr. Taylor. She testified she originally came back to work on light duty but was taken out of work by her doctor as of June 12, 2014. Dr. Taylor provided her the boot she was wearing at the hearing. She testified she wears her boot every day and sometimes to bed. The Claimant testified she is not able to walk without it and crawls around her house.

On cross examination, the Claimant was asked specifically about her prior description of accident. She indicated she was kneeling while stocking the shelves, and that she got up from the kneeling position with her foot half on the mat and half off of the mat. The Claimant confirmed that her injury occurred while she was kneeling and went to stand up. When asked whether she would agree that the video actually shows that she had already stood up, turned around, gone over

to where the cashier area was, the Claimant responded "I haven't -- I -- what I've seen was I was in the process of on the way up." Hrg. Tr. pg. 22, lines 17-21.

The Claimant then reiterated on cross examination that she was injured while "in the process of standing up my foot was half on, half off, and my ankle had rolled. Hrg. Tr. pg. 23, lines 2-3. When asked if she was still saying, contrary to the video evidence, that she was in the process of standing up from a kneeling position when she was injured, the Claimant testified "yes." Hrg. Tr. pg. 23, lines 4-7. Defense counsel referred the Commissioner to the video surveillance for the time of 5:33:47am.

Further on cross examination the Claimant was asked whether she testified in her deposition that her ankle just rolled while she was standing up. She indicated she was "down on one knee as if I was proposing, and I had leaned up with this foot was up propping me the other one was underneath me, and when I had gone up my foot was half on, half off, of the mat and it rolled as I was getting up." Hrg. Tr. pg. 24, lines 12-17. The Claimant again confirmed that this was the exact way in which she was injured. The Claimant was again asked whether she watched the video surveillance from the store and whether she thought it was accurate and consistent. The Claimant testified that yes she had seen the video and felt the video was accurate.

The Claimant was asked regarding her testimony that after her 2004 surgery, she was told by the doctor she was 100%. The Claimant denied that she was actually diagnosed instead with "chronic instability of the left ankle." Hrg. Tr. pg. 25, line 12. When asked whether she had been diagnosed by her current doctors with chronic instability of the left ankle, Claimant replied "no, they have not." Hrg. Tr. pg. 25, lines 16-19.

The Claimant then testified on cross examination that before this accident on April 29, 2014, she had not complained to anyone in the store about having left ankle pains and denied having any problems with her left ankle. She denied that any such complaints occurred. Hrg. Tr.

pg. 26, line 2.

On redirect examination, the Claimant testified that she had reviewed the video of the actual accident and that she was facing the register when her foot was half on and half off of the mat.

Mr. Randolph Stokes Rogers, II, then testified on behalf of the Defendants. He testified he is the Manager of Store 8717 for Murphy Oil Corporation. He testified that this is the store where Ms. Foran works and that he has been with the company for four years. He testified the Claimant was hired in December, 2013.

Mr. Stokes Rogers (referred to by Claimant in testimony as Mr. Stokes) testified that before this alleged accident on April 29, 2014, the Claimant would walk around the store with an obvious limp. He testified he asked her multiple times what was wrong with her left foot/ankle. He testified she always replied that "she had a car accident years ago and that's what was bothering her." Hrg. Tr. pg. 30, lines 19-22.

He further testified that he noticed that the Claimant walked with an apparent limp about every time he saw her. He does not recall whether there was ever a day that she walked without a limp. He also testified that before this alleged accident, she complained multiple times about having a "bad ankle." Hrg. Tr. pg. 31, line 7.

Mr. Rogers further testified that on the date of the alleged accident, he spoke with the Claimant. He specifically stated "she told me she was stocking some cigarettes down on the floor level and that she got up and she hurt her ankle." Hrg. Tr. pg. 32, lines 7-9. He further testified that she never mentioned anything about catching her foot on the mat or being half on and half off of the mat. In fact, he testified that the mat had actually never come up before this case was in litigation. Hrg. Tr. pg. 32, lines 14-17.

Mr. Rogers then produced the floor mat in question from the store. He testified the mat is

not an inch or even close to an inch in thickness. Hrg. Tr. pg. 33, lines 20-22.

Commissioner Wilkerson then inspected the mat and instructed defense counsel to take photographs of the mat on the floor. Commissioner Wilkerson noted on the record that the mat was not an inch thick and was possibly quarter to a half inch raised off the floor. Hrg. Tr. pg. 37, lines 11-16. Multiple photographs from all angles were taken at the hearing in the presence of all parties.

On cross examination, Mr. Rogers testified that prior to April 29, 2014 the Claimant was able to perform her job every time he asked her about the pain in her left ankle. Mr. Rogers then testified on cross examination that prior to this alleged injury, he did not know of any restrictions Claimant had that prevented her from doing her job duties. Mr. Rogers further testified as to his conversation with the Claimant after her alleged accident. He testified that he asked her how she was injured and she stated "she was stocking cigarettes and when she went to get up her ankle kind of gave way." Hrg. Tr. pg. 45, lines 23-25. He was then asked whether she said anything regarding the mat and whether the mat caused her injury. Mr. Rogers testified he had no idea about the mat until a couple of weeks ago as she only told him she was stocking cigarettes and went to get up when her ankle rolled. Hrg. Tr. pg. 46, lines 1-12.

Mr. Rogers further testified that the mat brought in today was the mat from the store and was the one in the video surveillance. They use it as a cushion mat kept behind the register for cashiers to stand on instead of concrete. He testified he believes it helps their legs that they do not have to stand on concrete all day. When asked if he has a mat like that at home, he indicated he does not.

Ms. Amber Goss then testified on behalf of Defendants. Ms. Goss testified she is the District Manager for Murphy Oil, USA. She testified that she is not a mat expert, but she has seen these types of mats before outside of work. They sell them in stores and she actually has one in her

kitchen. They are soft, squishy, kind of cushiony mats and they are decorative but also a comfort mat. Hrg. Tr. pg. 51, lines 9-14.

The medical records included in the file are those from Hackensack University from December 2005. These records reflect the Claimant was seen December 6, 2005 with a protracted history of recurrent injuries to the left ankle with now chronic instability that has failed conservative treatment. She underwent Open Watson-Jones reconstruction of the lateral ligament complex of the left ankle. APA #1, pg. 1.

The medical records from Doctors Care from April 29, 2014 through May 23, 2014 were submitted into evidence. The medical report from the date of injury indicates the Claimant's history is significant for tendon reconstruction in the left ankle in 2004 (states after history of "multiple sprains") but since surgery, had been pregnant, working and has had no issues until today. X-rays were reviewed and it was agreed that there was no evidence for any acute boney trauma, changes consistent with prior surgery and referred to a sub-specialist for continued symptoms. APA #2, pg. 15.

The medical records from Dr. Ross Taylor at Coastal Orthopedics were submitted into evidence for dates June 12, 2014 through August 15, 2014. However, included with these reports is a letter dated August 15, 2014 on letterhead of Palmetto Injury Lawyers signed by the Claimant's attorney only. APA #3, pg. 52-53. This document is not a medical record and not signed by a medical doctor. The report dated June 12, 2014 from Dr. Taylor indicates the Claimant "admits to having complete loss of sensation distal to the mid cap area since her previous surgery. This is not related to her most recent injury." APA #3, pg. 48. Dr. Taylor found that the Claimant's previous repair was ruptured and recommended a revision lateral ankle ligament reconstruction using unalographt. APA #3, pg. 48. The Claimant was taken out of work on June 12, 2014. APA #3, pg. 50.

The same medical report dated June 12, 2014 from Dr. Taylor indicates the Claimant was seen with pain in her left ankle that "began when she was at work after slipping and falling." APA #4, pg. 65. He diagnosed her with ankle instability, status post fall left ankle. Defendants further submitted the entire video surveillance for the store from two separate cameras showing the morning of April 29, 2014. These videos were reviewed in detail by the Commissioner. The video surveillance clearly shows that at 5:33am, the Claimant turned around with her back to the register and squatted down on the ground stocking cigarettes. She then stood up without any incident whatsoever and did not roll her ankle. The Claimant turned around and went back to the register where she was standing on the mat. The Claimant partially stepped off of the mat and then stepped fully back on the mat with her left foot. While standing at the register on the floor mat, the Claimant's left ankle then rolled, causing her to lean forward into the counter. When Claimant's left ankle rolled, both of her feet were placed forward. The video surveillance also shows that Claimant was not rising from a crouching position such as a man proposing on one knee. The Claimant also was not half on half off of the mat when her ankle rolled. Photographs of the floor mat further were included with the evidence showing a thin slightly cushioned mat.

DECISION/ANALYSIS

- I. Even in light of the recent South Carolina Supreme Court decisions in *Barnes* and *Nicholson*, the single Commissioner did not err in finding the injury was idiopathic and consequently, not compensable.**

In *Barnes v. Charter 1 Realty* and *Nicholson v. S.C. Department of Social Services*, the South Carolina Supreme Court was presented with an opportunity to "clarify the idiopathic exception to workers' compensation benefits." *Barnes v. Charter 1 Realty*, Opinion No. 27479, 2015 WL 161731 at 1 (S.C. S. Ct. Jan. 14, 2015); *Nicholson v. S.C. Dep't of Social Servs.* Opinion No. 27478, 2015 WL 161719 (S.C. S. Ct. Jan. 14, 2015) (emphasis added). While the legal process for evaluating idiopathic injuries has changed, *Barnes* and *Nicholson* illustrate that

the legal principles and policies behind idiopathic injuries remain intact. The holding in *Barnes* and *Nicholson* reaffirms the existing doctrine that an idiopathic injury is (1) brought on by a condition particular to the employee that could have manifested itself anywhere and (2) does not stem from an accident. *Barnes*, Op. No. 27479 at 4 (emphasis added). It is on these unchanged principles that the Panel finds that the single Commissioner correctly based his decision in favor of the Defendants.

- a. **Claimant's injury was idiopathic because the chronic instability and weakness of her left ankle was an internal condition particular to her, and the internal breakdown of the left ankle caused her injury.**

The holding in *Barnes* establishes that an idiopathic injury is one that is brought on by a condition particular to the employee that could have manifested itself anywhere. Specifically, such a condition is characterized by a result of an internal failure or breakdown. *Barnes*, Op. No. 27479 at 4. The Court even provides an additional, broader category— permitting that such conditions could be classified as a “weakness.” *Barnes*, Op. No. 27479 at 5. This is explicitly laid out by the statement in *Barnes*, which finds that “whether [the Claimant] tripped because she was hurrying or she tripped over her own feet, neither [instance is] an internal breakdown or weakness that falls within the ambit of idiopathy.” *Id.* (emphasis added). This statement shows that an idiopathic injury can even be based upon a weakness. Similarly, the facts in *Crosby v. Wal-Mart Store, Inc.* illustrate that the Claimant's fall was characterized as idiopathic because it was a result of an internal breakdown of the knee. 330 S.C. 489, 499 (Ct. App. 1998). *Barnes* confirms the holding in *Crosby* because the accident was “not simply unexplained, but indicated the cause was internal.” *Barnes*, Op. No. 27479 at 4 (finding that the holding in *Crosby* was in harmony with how the courts have consistently applied the idiopathic exception—the circumstances of the fall were not simply unexplained, but indicated the cause was internal). The court in *Barnes* was careful to differentiate that an idiopathic fall was not simply an injury

where no cause could be identified, but instead, as laid out in *Crosby*, was one that was caused by an internal failure, breakdown, or weakness. *Barnes*, Op. No. 27479 at 4-5.

Here, the Claimant's assertion that the Commissioner made no findings of an internal failure or breakdown is incorrect. The single Commissioner specifically found that medical history showed chronic instability of the left ankle, and that the video surveillance shows Claimant's ankle "giving out" while she was simply standing at the register. (FOF 17.)

This finding of weakness or an internal failure, as required by *Barnes*, is further supported by other evidence in the case. Claimant specifically testified that she underwent surgery on her left ankle. (Hrg. Tr. p 10.) That surgery, a left ankle arthroscopy and Watson-Jones ligament reconstruction, was performed by Dr. Kane at Hackensack University Medical Center. (APA 1 p. 5.) Those records indicate that the surgery was performed due to a history of recurrent sprains to the left ankle. (APA 1 p. 1.) Dr. Kane additionally noted that the left ankle had chronic instability. In spite of these medical records, at the hearing Claimant denied that she was actually diagnosed with "chronic instability of the left ankle." At Doctors Care on May 23, 2015, Dr. Denton specifically noted that "the[re] is significant weakness of these lateral ligaments. This is under the surgical scar of [the] tendon repair that patient had at 14 years of age. There is numbness to light touch of entire foot up to the ankle[,] which is old." (APA 3 p. 33.)

Additionally, it was the Claimant's testimony that she had not complained to anyone in the store about having left ankle problems and that she had not had any issues since the surgery. (Hrg. Tr. p.25.) She testified that she had no physical limitations, she was able to work as a lifeguard, cashier, and could play volleyball and softball without limitation. (Hrg. Tr. p. 11). This testimony is contrary to that of Mr. Rogers, the store manager. Mr. Rogers testified that before the alleged accident on April 29, 2014, Claimant would walk around the store with an

obvious limp. (Tr. 30.) He also testified that he asked her multiple times what was wrong with her left foot/ankle. (Tr. 30.) Additionally, he testified that before the alleged accident, she complained multiple times about having a "bad ankle." (Tr. 31.) Therefore, the Panel finds that because the Claimant was found to have a prior weakness in her left ankle, walked with a visible limp, and complained to her employer that she had a "bad ankle," the single Commissioner's finding that Claimant suffered from a chronic instability, which subsequently caused an idiopathic injury, was not in error.

b. There was no causal connection between the Claimant's injury and her employment, and instead, her injury was a result of an internal breakdown/weakness in her left ankle.

Nicholson sets forth a new standard in determining whether or not an injury arose out of, or was proximately caused by, the employment. Opinion No. 27478, 2015 WL 161719 (S.C. S.

Ct. Jan. 14, 2015). In *Nicholson*, the Court found that when an employee tripped as she was hurrying down the hall, there was a causal connection between the "conditions under which the work [was] required to be performed and the resulting injury." *Nicholson*, Op. No. 27478 at 7. Additionally, the Court held that whether specific objects or conditions posed a special risk or hazard is now immaterial.

The facts in *Nicholson* are starkly different from the case at hand. In *Nicholson*, the employee's injury was due to a trip and fall, not an internal condition or breakdown. *Nicholson*, Op. No. 27478 at 5. There is no mention in *Nicholson* about prior weakness or internal conditions that caused the employee to fall. In contrast to *Nicholson*, the video surveillance reveals that Claimant's ankle gave out when she was standing at the register with both of her feet placed forward. (FOF 14.) When Claimant was initially in a kneeling position, her ankle did not roll, and when she subsequently walked over to the other side of the counter and placed her feet on the mat, her ankle again, did not roll. Not until after she was stationary did the Claimant's

ankle fail. *Id.*

The Claimant's testimony regarding how her ankle failed was also unclear and contrary to the video surveillance. She testified repeatedly that she was in a kneeling position and she stated that when she "had gone up my foot was half on, half off, of the mat and it rolled." (Hrg. Tr. p.24.) Based on this evidence, the single Commissioner found no causal connection between the conditions under which the work was required to be performed and the injury. (FOF 15.) The Claimant's injury did not stem from an accident and instead, arose from a purely personal physical weakness, unrelated to employment. Therefore, based on the single Commissioner's findings and the Panel's review of the video evidence of the alleged accident, we find that the single Commissioner did not err in finding that the Claimant sustained an injury due to an internal breakdown. ~~We also find that the single Commissioner did not err in finding that the~~ Claimant's testimony regarding her injury was unclear and inconsistent with the actual video.

II. The single Commissioner did not err in determining Claimant's testimony was untrue and inaccurate.

While "the final determination of witness credibility and the weight to be accorded evidence is reserved to the Appellate Panel," a single Commissioner's evaluation of credibility is given deference in evaluating a witness' testimony. *See Frame v. Resort Servs. Inc.*, 357 S.C. 520, 528 (Ct. App. 2004) (internal citation omitted).

Here, the single Commissioner reviewed all of the evidence and properly evaluated the Claimant and Mr. Rogers' testimony. For example, Claimant stated she had total recovery, yet Mr. Rogers testified that the Claimant had a chronic and noticeable limp on an everyday basis. Additionally, Mr. Rogers testified that the Claimant had told him that she had a "bad ankle," but Claimant later testified she had no issues with her ankle after the 2005 surgery. This testimony by Mr. Rogers was corroborated by Dr. Denton's note indicating Claimant had residual ankle numbness following the 2005 surgery. (APA 2 p. 33.) Claimant's credibility was also

compromised by her inability to clearly state how she injured her left ankle and testifying that she “stumbled on the mat,” despite clear video surveillance that shows otherwise. This inability to testify clearly about how her injury occurred is also illustrated in the medical records, which suggest that Claimant did not know how her ankle rolled. (APA 3 p. 8.) Mr. Rogers testified Claimant told him following this incident that her ankle gave way. The medical records from Doctors Care state that Claimant “may” have gotten caught on a mat. *Id.* However, the video surveillance does not show any evidence of Claimant catching her foot or ankle on the mat. (FOF 14.) Therefore, we find the single Commissioner’s finding that the Claimant’s testimony was untrue and inaccurate was not in error.

FULL COMMISSION APPELLATE PANEL FINDINGS OF FACT

After a thorough review of the evidence, including the hearing testimony, medical evidence, exhibits, video, and other documentary evidence submitted by the respective parties pursuant to the Administrative Procedures Act, the Commission File in this matter, and arguments of counsel, WE, THE APPELLATE PANEL, AFFIRM THE FINDINGS OF FACT OF THE SINGLE COMMISSIONER, IN FULL, AND FIND AS FOLLOWS:

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 Jenna Foran as Employee-Claimant and Murphy USA as Employer and Liberty Insurance Corporation as Carrier, Defendants.

2. That the average weekly wage of Employee at the time of the above-described accident was \$168.84, and his compensation rate was \$112.57.

3. Order directives and instructions were sent to all parties on October 31, 2014.

4. The Claimant’s testimony is very confusing as to her description of this accident. She verified her personal description multiple times which was different than what the video shows

actually happened. The video also clearly shows that after the Claimant was in a kneeling position, her ankle did not roll and she was able to walk over to the other side of the counter. The Claimant's testimony was therefore untrue and inaccurate based on the video surveillance showing this incident.

5. The Claimant described the mat as being well over an inch thick causing her to fall. This was inconsistent after the mat was personally viewed at the hearing.

6. The manager of the store, Stokes Rogers, did authenticate the mat and brought it to the hearing. This was the mat in question shown in the video which Claimant states caused her ankle to roll. This mat was personally viewed by the single Commissioner.

7. Photographs of the mat were taken at the hearing and agreed upon by all parties.

8. The mat which Claimant indicates caused her injury is possibly a quarter to half an
inch thick at most.

9. Stokes Rogers, II, manager of this Murphy Oil station, indicated that he was never told by the Claimant that she felt she had an accident caused by the mat at the store until two weeks before the hearing date when informed by his counsel that that was the Claimant's testimony. The Claimant specifically reported to Mr. Rogers that she went to get up and hurt her left ankle. Mr. Rogers was also aware that the Claimant suffered from a bad left ankle as she generally walked with a significant and noticeable limp on the left side prior to April 29, 2014.

10. The medical report from Coastal Orthopedics dated June 12, 2014 specifically shows the Claimant reported to Dr. Taylor that her left ankle pain began after slipping and falling. She did not discuss or describe to Dr. Taylor that she slipped while half on and half off of a mat.

11. APA #1, pages 1- 5 specifically document the Claimant's prior left ankle issues and chronic instability.

12. The medical records from Doctors Care indicate the Claimant reported that her

injury occurred when she stood up and may have caught on a mat twisting her left ankle. The Claimant's description of accident to her medical providers all indicate that her injury occurred while she was rising from a kneeling or lower position. This is supported by all of the medical records from Doctors Care pages 6 – 47.

13. The Claimant submitted as APA #3, pg. 53 a letter signed only by the Claimant's attorney. I therefore do not give any weight to this letter as it is not signed by a medical physician. Even if the medical reports did indicate that the Claimant slipped half on and half off of a mat, this is inconsistent with the video evidence clearly showing this incident.

14. The video surveillance provided for this date of accident is key to the compensability of this case. The video evidence does not show an injury by accident arising out of ~~or within the course and scope of employment. The Claimant is merely standing at the register~~ with both feet forward when her left ankle rolls. The video shows that the ankle rolling is therefore idiopathic in nature regardless of the mat.

15. The Claimant testified that she had a total recovery from her previous ankle injury. However, the store manager described the Claimant with a chronic and noticeable limp on an everyday basis. Based on the Claimant's weakness of her foot and prior instability of her left ankle, we do not feel that the mat whether a quarter inch, half inch, or up to an inch caused her accident or was any type of increased special risk incurred by the Claimant.

16. We find the Claimant's testimony to be unclear as to what actually happened. The Claimant testified repeatedly that she was in a kneeling position and was trying to stand with her foot half off and half on the mat when her ankle rolled. Her description is unclear and is not consistent with the video surveillance. The Claimant was limping around the gas station prior to this accident contrary to her own testimony. The medical evidence also does not match the Claimant's testimony that she had a 100% recovery from her chronic ankle instability and surgery

in 2004.

17. We give greater weight and credibility to the employer witness, Stokes Rogers, than to the Claimant. The medical history shown in the medical records indicate the Claimant had chronic instability of the left ankle. We do not find she suffered a compensable injury by accident within the course and scope of her employment as the video shows her standing at the register when her left ankle merely gives out. Furthermore, we do not find the mat to be a special risk that contributed to her ankle giving out. The Claimant therefore suffered an idiopathic fall and is not entitled to benefits under the South Carolina Workers' Compensation Act.

FULL COMMISSION APPELLATE PANEL CONCLUSIONS OF LAW

In view of those Findings of Fact, and as provided in the South Carolina Code of Law, WE, THE APPELLATE PANEL, AFFIRM THE CONCLUSIONS OF LAW OF THE SINGLE
COMMISSIONER IN FULL:


1. Under § 42-1-130, Claimant was a covered employee at the time in question; and under § 42-1-140, Defendant/Employer was a covered employer under the Act.
2. Under § 42-1-160, Claimant did not suffer a compensable injury by accident within the course and scope of her employment. The Claimant's rolling of the left ankle was idiopathic in nature and not caused or aggravated by her work or any special risk found in her employment. We further find that the video surveillance supports the Claimant's ankle rolling was idiopathic only. Even if the Claimant's foot had been half on and half off of the mat, we do not feel that the mat caused or contributed to the Claimant's injury after personally reviewing the floor mat and the video surveillance of this incident.

ORDER/AWARD

IT IS, HEREBY, ORDERED that Commissioner Wilkerson's Decision and Order dated January 14, 2015, is affirmed, in full. Commissioner Wilkerson's Decision shall remain in effect.

IT IS SO ORDERED.

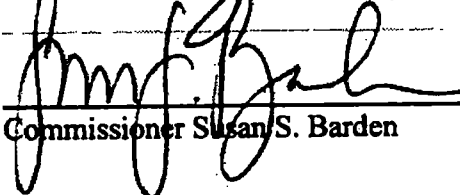
**SOUTH CAROLINA WORKERS'
COMPENSATION COMMISSION**



Commissioner T. Scott Beck, Chair



Commissioner R. Michael Campbell, II



Commissioner Susan S. Barden

CERTIFICATE OF SERVICE

This is to certify that the undersigned has on this date served a copy of this order in the above entitled action upon all parties to this case by sending an electronic copy hereof by electronic mail addressed to the attorneys for said parties; or if there is an unrepresented party(ies), by depositing a copy hereof, postage paid in the United States mail, first class, addressed to the unrepresented party(ies) and to the attorney(s) for the represented party(ies).

By Kim Falls on July 14, 2015