

APPELLATE PANEL
DECISION AND ORDER
OF THE
SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION
WCC FILE NO. 1403134

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SC Court of Appeals

CLYDE WILLIAMS,

EMPLOYEE,
CLAIMANT/APPELLANT,

vs.

BOWMAN GIN CO.,

EMPLOYER,

AND

AMERICAN INTERSTATE INS. CO.
d/b/a AMERISAFE RISK SERVICES,

CARRIER,
DEFENDANTS/RESPONDENTS.

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

Appellate Panel Decision and Order filed

October 12, 2015

AFFIRMS WITH AMENDMENTS

APPEARANCES:

Claimant represented by Lewis C. Lanier, Esquire,
of Lanier & Burroughs, LLC, Orangeburg, South
Carolina.

Defendants 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 which occurred on March 27, 2014. The Claimant contends that on this date he was at the Love's Truck Stop in Orangeburg County while performing his job duties for Bowman Gin Company. It is the Claimant's contention that after cleaning the passenger side windshield, he fell off his truck for unknown reasons. He then moved to the driver's side and was standing on a tire to clean the windshield when he again fell off the truck, striking his head and suffering a traumatic brain injury. The Claimant contends he has suffered a traumatic brain injury as a result of this accident and that the fall causing his brain injury was causally related to his employment with Bowman Gin. The Claimant admits there was no witness to the fall and he does not recall the fall or accident.

The Claimant contends that the most likely conclusion in viewing the evidence is that Claimant suffered a fall which arose out of and in the course of his employment, causing him to suffer brain damage. The Claimant contends he is permanently and totally disabled and is entitled to lifetime medical treatment and lifetime benefits. It was determined in opening statements by Commissioner Wilkerson that there is no evidence to show that Claimant is at maximum medical improvement and that the hearing was for compensability.

The Claimant relied on the medical report from Dr. Marshall White indicating that Claimant fell six to eight feet striking his head. Dr. White's report indicates that he bases his opinion on the emergency room records and indicated that he obtained a history of accident including the fall from those reports. The emergency room reports do not match the history quoted from them by Dr. White.

It was also discussed by both parties that there is no video of the incident though Love's

Truck Stop was subpoenaed for all video surveillance. Both parties agree they have received only a partial video which does not show the time of injury. Also, both parties agree that there was no witness to the accident and that the Claimant, Mr. Williams, does not remember the accident.

The Defendants contend that Claimant did not suffer a compensable workers' compensation claim under the Workers' Compensation Act. Defendants contend the Claimant suffered an idiopathic injury and that the evidence does not support a finding of compensability. Defendants further contend that there is not a scintilla of evidence to show that the Claimant fell off the truck and struck his head. The Claimant was found on the concrete ground passed out/unconscious. There were no witnesses to the injury and there is no evidence to determine whether he fell while standing flat footed on the ground or whether he fell from the truck. The Claimant himself testified that the last thing he remembers is cleaning the windshield with a long brush in his hand. He does not remember falling. He woke up in the hospital in Charleston, SC. Furthermore, Claimant agrees he is a Type II diabetic and he went off of his diabetes medication. He also has a long standing history of chronic hypertension and is a heavy smoker. Dr. Pritchard, neurologist from MUSC, found that Claimant suffered a syncope episode.

Defendants further contend that the evidence reflects the Claimant was found on the ground, lying on the concrete, and the brushes used for cleaning windshields were not in use and were standing/leaning against the gas pumps. This is evidenced by the pictures taken at the accident scene by the witnesses who found him. This was also supported by the testimony of Mr. Jeffrey Ruff and Mr. Tyrone Johnson. Defendants further relied on the EMS report which indicates Claimant reported to them at the scene that he remembers stopping to fuel his truck and feeling weak.

In regard to the independent medical evaluation by Dr. Marshall White, he indicates that the Claimant fell six to eight feet and that he obtained this information from the emergency room records. However, the emergency room records show that Claimant could not tell them what happened and that he may have fallen. Dr. White's indication and summation that Claimant fell six to eight feet off of a truck based on the emergency room records is therefore incorrect and invalid. Defendants further rely on Claimant's own deposition testimony, page 28, that when asked whether he had any recollection of how he got off the tire on the driver's side he responded "None. None whatsoever." (Claimant's deposition p.28). Lastly, Defendants relied on the photographs submitted into evidence by both the Defendant and the Claimant. These photographs taken immediately following the finding of the Claimant unconscious show him lying on the concrete ground next to a bucket. The brushes used to clean windshields are leaning against the gas pump. One of the brushes is actually inside the bucket and leaning on the gas pump. There are no brushes around the Claimant or lying on the ground.

A hearing set on Claimant's Form 50 was held before the Single Commissioner on September 25, 2014. By way of a Decision and Order dated January 14, 2015, the single Commissioner issued 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 Clyde O. Williams as Employee-Claimant and Bowman Gin Company as Employer and American Interstate Insurance Company d/b/a Amerisafe Risk Services as Carrier, Defendants.*

2. *That the average weekly wage of Employee at the time of the above-described accident was \$976.10, and his compensation rate was \$650.77.*

3. *A decision by Commissioner Wilkerson with findings of fact was made and sent to the parties on October 8, 2014 by e-mail.*

4. *Claimant specifically testified at the hearing and in his deposition that he does not remember falling. He testified he does not know how his accident occurred and does not know how he ended up laying on the concrete. The Claimant's wife would corroborate this testimony as well as there were no witnesses to the incident.*

5. *Tyrone Johnson testified he is an employee of Love's Truck Stop. On the date of the incident, he heard the noise of a bucket and walked over to inspect. He found Clyde Williams laying on the ground. He indicated that Mr. Williams was found in the exact same way as that reflected in the photographs submitted as exhibits. Mr. Williams was laying on the concrete next to the water bucket. The washing brushes used to clean windshields were lined up and leaning against the gas pump. Mr. Johnson testified that to his knowledge no one touched anything at the scene nor were there any witnesses to the incident.*

6. *Brad Wimberly testified he is the Vice President and co-owner of Bowman Gin Company. Mr. Wimberly also did not know how the incident with Mr. Williams occurred as he arrived after the Claimant was taken to the hospital. He testified that you normally would not have to stand on the wheel of a truck to clean its windshield due to the long handled brushes. He also testified that it did not appear that the Claimant's windshield had been cleaned. He testified that the truck was moved before he got there by an employee of Love's Truck Stop. He found personal items in the truck along with a bag of Claimant's personal medication.*

7. *Jeffrey D. Ruff testified by deposition that he is the former manager of Love's Truck Stop at the time of this incident. He testified that Tyrone Johnson came inside and got him and told him that there was a man injured laying on the concrete. Mr. Ruff came to the scene and took*

photographs with his cell phone. Mr. Ruff did identify the photographs attached to his deposition (also included in the APA Submissions) as an exact representation of how they found Mr. Williams. To his knowledge, nothing had been touched at the scene. He stated that the long handled brushes used to wash the windshield were already propped up and leaning against the gas pump when he first came out to find the Claimant. Mr. Ruff testified that once he was told by his employee that there was a man outside laying on the ground, he went outside to see what was going on immediately. He then took the pictures and came back inside to have his tire technician call 911. He did not touch or move the Claimant or any of the items shown in the picture.

8. *The Claimant is a Type II diabetic and the medical records do reflect a prior history of dizziness and lightheadedness. The records also reflect that on February 25, 2014, the Claimant went to see Dr. Brunson and requested to stop his diabetes medication. It was the Claimant's own testimony that while he was cleaning the windshield on the passenger side of the vehicle, he does not know what happened to him and he all of a sudden realized he was sitting on the ground soaking wet. The Claimant himself testified he was feeling faint and dizzy at that time with no idea how he got to the ground. Subsequent to that incident, he then got up and went to the driver's side of the truck to wash that side of the windshield. He remembers climbing up on the truck but has no other memory. The Claimant testified he does not know what happened. The Claimant did not say he slipped, tripped, or fell off the truck. He does not remember anything else until waking up in a hospital bed.*

9. *The photographs show the Claimant to be lying in an unusual position with his head between the bucket and a fuel pump. The brushes used to wash the windshield are clearly standing up leaning against the platform/fuel pump. The bottom of one brush is inside the bucket and the bottom of the second brush is on the concrete. There is no sign of a brush used to clean*

windshields on the ground or near the Claimant.

10. The medical records from MUSC found in APA #4 indicate the Claimant was found down on the morning of March 27, 2014 near his 18 wheeler in a puddle of blood. A CT scan of the head showed a large intracranial hemorrhage and basilar skull fractures. He was then transferred for neurosurgical evaluation and a de-compressive craniotomy was performed. The medical records from the emergency department state the Claimant was brought by LifeNet and that he is unable to describe what happened. He further denied any memory of the incident. APA #3, p. 10.

11. The Claimant was seen on June 20, 2014 wherein it was noted that he was disabled and unable to work due to his injury.

12. The EMS report dated March 27, 2014 indicates medic units was dispatched for an unconscious patient bleeding from a laceration. It was determined on scene that patient had been unconscious for several minutes not responding to anyone. Witnesses were unsure how he fell and it was noted "no one saw the pt fall." It was also noted that "pt states that last thing he remembers is stopping to fuel when he became weak." APA #1, p. 1.

13. In personally reviewing the photographs taken at the scene of this incident, I give great weight to these photographs and the testimony of both Mr. Johnson and Mr. Ruff regarding that they had not touched anything shown in the photograph and that they reflect how Mr. Johnson found the Claimant upon hearing a noise on a nearby pump and immediately going to investigate. The Claimant's glasses were approximately one and a half to two feet from him on the ground. The water bucket is still standing up and was not turned over. There is also what appears to be a pack of crackers or a candy bar with red wrapping lying approximately one and a half to two feet from Claimant's left arm. Also, from the direction and position of the glasses and the candy bar, it

appears that these could have easily been dropped when the Claimant fell as they are both in the direction of the Claimant's outstretched hands/arms. Most importantly, it is clear that the brushes used to wash the windshield have already been placed back in their appropriate positions and therefore would not have been involved in any type of fall from the truck.

14. The Claimant denies any prior problems or issues with dizziness or lightheadedness. The medical evidence from Bamberg County Hospital dated January 29, 2012 shows Claimant reported to the hospital with a chief complaint of not feeling well for a few days and complaining of lightheadedness and dizziness.

15. I give great weight to the report of Dr. Paul A. Pritchard, III, neurologist at MUSC. Dr. Pritchard reviewed all relevant medical records, the EMS report, deposition of the Claimant, and photographs of the Claimant from the scene of his injury. Dr. Pritchard notes that a review of his medical records prior to this injury show that he had a long standing history of hypertension and diabetes mellitus, type II. Dr. Pritchard discussed Claimant's recounting of the circumstances of his fall while refueling his vehicle. Initially on the passenger side, he suddenly found himself soaked and lying on the concrete. The Claimant noted that he was "hazy" and "lightheaded." He did not observe any injury at that point. He then proceeded to the driver's side of the vehicle to wash that side of the windshield but does not recall anything further until waking up under medical care. Dr. Pritchard opined that the medical records prior to this date of incident are revealing and also that Claimant actually lost consciousness at the scene of the accident not once but twice. Prior to this incident, the Claimant described himself as wet, hazy, and lightheaded with no physical injury. He was subsequently found unconscious and bleeding on the driver's side of the vehicle. Dr. Pritchard opined that the initial loss of consciousness had no relationship to the physical trauma, and the circumstances are more consistent with syncope, for which his prior

17. I have reviewed the report of Dr. Marshall White, neurologist, dated September 4, 2014. Dr. White bases his opinion on information that Mr. Williams was "fueling up his 18 wheel truck and washing the windows on the truck when he apparently fell from the truck, striking his head on the concrete bolster protecting the pumps." This was not proven by the evidence as there were no witnesses to the incident and the Claimant, by his own testimony, does not know what happened to him. Dr. White went further to note that the emergency room records from Palmetto Richland indicated that the patient fell from his truck approximately six to eight feet. However, this is incorrect and is not consistent with the records from Palmetto Richland. Those records indicate that Claimant did not know what happened to him. Dr. White's report indicates the Claimant continues to have problems with agitation and confusion at home along with delusional thought. He attempted to stab his wife, and attempted to set her on fire. He also locked her out of the house and was re-admitted to MUSC in July, 2014. He was diagnosed with traumatic brain injury and medications were changed. This did somewhat improve his behavior. Dr. White

16. I find the photographs taken of the Claimant lying on the ground, the location of his personal items such as his glasses and a possible candy bar, and the fact that the windshield washing brushes were not in use to carry significant weight and prove that Claimant was not washing his windshield at the time of his fall and that his fall with idiopathic records, photographs and deposition.

of medical certainty. I give greater weight to the opinion of Dr. Pritchard who reviewed all of the events which caused his fall and head injury. This opinion was given within a reasonable degree and the account/testimony Mr. Williams provided, it was his conclusion that he had two syncope past medical history with ongoing treatment of hypertension and diabetes at the time of his injury history of Type II diabetes and hypertension put him at risk. Based on the circumstances of his

evaluated the Claimant in the presence of his wife, Anita. He reviewed medical records from the Regional Medical Center in Orangeburg as well as MUSC. He found if Mr. Williams continues to exhibit signs of severe traumatic brain injury that would render him totally incapable of work as a result of emotional, cognitive and physical problems arising from these injuries. Dr. White's assessment of how the accident occurred is based on incorrect information or an incorrect reading of the emergency room records and is not consistent with the evidence of the case.

18. The Claimant was treated by both Dr. Varma at MUSC and Dr. Dixon at RMC Primary Care for right frontal lobe hemorrhage, hypogonadism, hypertension, hypernatremia, hyperlipidemia, HTN dysphagia, DM type II with craniotomy, cerebral edema, anxiety, agitation, acute respiratory failure, and loss of appetite.

19. Dr. Brunson of RMC Primary Care was Claimant's family physician. He has treated the Claimant since 2003. The medical records that are APA #10 show Claimant has consistently been treated for ongoing chronic hypertension, hyperlipidemia, and diabetes mellitus Type II. It was noted on January 1, 2012 that his blood pressure was elevated and he was not feeling well. It was noted he quit eating sweets but had been eating a lot of starches. Medication was changed. It was noted in follow up by Dr. Brunson that he was to continue his medication and to maintain a good diet. He was to stay away from starches and sugar. He was treated throughout 2013 for arterial hypertension, combined hyperlipidemia, and was noted as had control of his Type II diabetes mellitus and anxiety. This was the notation on September 27, 2013. However, on February 25, 2014, it was noted that he was seen in follow up having problems sleeping. He was not able to sleep more than five hours without Ativan. At this appointment, the Claimant told Dr. Brunson he would like to come off of his diabetes mellitus Type II medication. Dr. Brunson indicated that he must watch his carbs very closely, continue his other medication, and change his

Ativan to Xanax. The Claimant's request to come off of his medication for his diabetes is located on page 353 of the APA submissions.

20. *Based on the greater weight of evidence, I would give Dr. Paul A. Pritchard, III, MD, greater weight as he reviewed the entire record to include Claimant's recollection of the moments immediately preceding this incident as Claimant has no recollection of the fall.*

21. *I find this to be an unexplained idiopathic fall as no evidence exists as to what caused the fall. To find otherwise would require me to speculate as to what happened to the Claimant. Also, the photographic evidence shows that the Claimant was in fact not washing his windshield at the time of his fall as was his speculation. Also, by the Claimant's own testimony, he admits that he was already feeling hazy and dizzy before this incident occurred of which he has no memory.*

22. *This claim is denied under the South Carolina Workers' Compensation Act. The Claimant suffered an idiopathic fall that did not arise out of his employment.*

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. *The Claimant did not suffer a compensable injury by accident which arose out of his employment pursuant to the Workers' Compensation Act.*

3. *The Claimant's injury was idiopathic in nature and there was no work related reason for the fall.*

4. *The Claimant could not meet his burden of proof to show that he suffered an injury*

by accident arising out of and within the course of his employment. No evidence was presented to show how or why the Claimant fell. The Claimant's own testimony indicated that he does not recall the event and that he had a syncopal episode and was feeling hazy and lightheaded immediately preceding the incident which caused him to strike his head. He also personally testified that the last thing he remembers is cleaning a windshield with a long handled brush. When the Claimant was found lying unconscious on the ground, the windshield cleaning brushes were back in their proper place leaning against the fuel pump.

5. *The greater weight of evidence supports a finding that Claimant's physical injury to his head arose from some physical condition personal to the Claimant and was therefore idiopathic. The Claimant had stopped taking his medication for diabetes mellitus Type II the month before this accident, was a habitual smoker, and suffered from chronic hypertension and hyperlipidemia. This conclusion is also supported by the fact that Claimant admits to an unrelated syncopal episode immediately preceding this alleged injury by accident of which the Claimant has no recollection.*

ORDER/AWARD

IT IS HEREBY ORDERED that this claim is denied in full.

No hearing costs are assessed in this instance.

IT IS SO ORDERED.

Although Claimant argues numerous assignments of error on the part of the single Commissioner, his primary points on appeal are that the single Commissioner erred in (1) giving more weight to the opinion evidence of Dr. Paul A. Pritchard, III, a neurologist at MUSC, (2) finding that the Claimant did not fall from the truck while washing the windshield, and (3) finding that Claimant had an idiopathic fall that led to injury without any causal connection to his

employment.

All proffered testimony has been taken. Such, together with all documentary evidence and oral argument, has been delivered to the individual members of the Appellate Panel and has since been under careful consideration.

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 Hearing Commissioner. *See Green v. Raybestos-Manhattan, Inc.*, 250 S.C. 58, 156 S.E.2d 318 (1967); *see also Lowe v. An-Can Transport Services, Inc.*, 283 S.C. 534, 324 S.E.2d 87 (Ct. App. 1984).

STATEMENT OF THE FACTS

The Claimant testified he is 59 years of age, was born on August 19, 1955, and went through one and a half years of college at Brunswick Junior College in Brunswick, GA. He testified he has been working as a truck driver for 20 to 21 years. His only other employment has been at a grocery store as assistant manager and doing carpentry work for 3 to 4 years. He also testified is married to Anita Faye Williams and he has been married for 8 or 9 years. He testified that they have been together for 23 years. He testified that they do not have children together.

The Claimant testified that he has been working for Bowman Gin for 13 or 14 years. He has a prior workers' compensation claim which involved a chemical burn to his hands where he treated at the Burn Center of Charleston. The Claimant testified that while treating for his burns, he had to go to Dr. Brunson as he was light headed as he was on too strong a pain medicine. (Hrg. Tr. p. 28, lines 2-9).

The Claimant testified on the morning of March 27, 2014 he cranked his truck up, warmed the truck, and drove to Gulbrandsen to pick up his load. He indicated he picked up chemicals and then went to Love's Truck Stop. While at Love's, he went to the fuel island but the credit card he uses to pay for gas would not read. He took the card inside to the cashier to swipe it and punch it in for authorization. He testified he then got a couple of snacks for later in the morning and went back out and started fueling. The Claimant testified he raised the hood and started cleaning the windshield. He testified he did the right side (passenger side) first.

The Claimant indicated that the next thing he knew, he was on the ground and all wet. He was wearing rubber sole shoes. He testified that to clean the windshield, he opens the hood of the truck and then stands on the front tire. He was washing the right (passenger) side of the windshield. The Claimant testified that the next recollection he had "I was over there sitting on the ground." (Hrg. Tr. p. 32, line 4).

The Claimant testified he got up and went around the hood to the driver's side and climbed up on the tire. He then started washing the windshield on that side. The Claimant was then asked "and then what happened?" (Hrg. Tr. p.33, line 25). The Claimant responded "Then, I don't know." (Hrg. Tr. p.34, line 1). He was then asked "Do you remember anything else about this incident?" (Hrg. Tr. p.34, lines 2-3). His response was: "No." (Hrg. Tr. p.34, line 4).

The Claimant was then asked about the emergency room medical report showing that he stated he felt dizzy. He was asked whether he recalled telling the emergency room people that information. The Claimant responded "no, I don't." The Claimant was asked if he remembered telling them that he became weak. He responded "no." (Hrg. Tr. p.34, line 22-23). The Claimant was then asked "do you know when you became weak, if you became weak?" He responded "no." (Hrg. Tr. p.35, line 1).

The Claimant was able to testify that it had been probably an hour to an hour and a half between the time he cranked the truck and the time he was injured. (Hrg. Tr. p.36, lines 1-3).

The Claimant was then asked about the scrub brushes used to clean windshields at Love's Truck Stop. The Claimant testified that most truck stops have them on both sides but he does not recall them being on both sides at this location. The Claimant then gave the following testimony on direct examination:

Q: Do you have any recollection of the brush?

A: I used the brush on the windshield.

Q: Ok. Do you know what happened to the brush?

A: No, I don't remember.

Q: Do you know long you were unconscious?

A: No.

Q: Do you know whether or not the bucket turned over?

A: No. I - - I don't know that it turned over but I am assuming it did since I was all wet.

(Hrg. Tr. p.37, lines 9-17).

The Claimant then testified in regards to the things he can no longer do since this incident in March, 2014. He testified he cannot concentrate and he cannot dress himself properly. He now has a chair in the shower as the doctor and his wife are worried he will lose his balance and fall. The Claimant states he now needs a cane to walk due to his balance.

The Claimant was then asked regarding his medication prior to the accident. Claimant testified "Now, I had had a talk with my doctor about coming off some of my - - I was diabetic and my diabetes with my blood test every morning had been so - - so normal for a - - a long period of

time. And me and Dr. Brunson had been talking about me coming off my medicine and - - just to see what my blood would do over a period - - a short period of time. And he wasn't - - he wasn't too - - too for it but he said I could try it for a week. And so, I did and the blood - - the blood level stayed like it normally did." (Hrg. Tr. p.38, lines 23 through p. 39 line 7). The Claimant further testified that he checks his blood levels every morning. When asked if he checked his blood levels on the morning of this accident, he stated that he did. When asked the result of the blood test, the Claimant testified "I just can't remember; I'll have to get my notebook to know." (Hrg. Tr. p.39, lines 14-15). The Claimant was then asked if he recalls whether it was normal or abnormal. The Claimant responded "No, it - - no, it was never - - it was close to normal." (Hrg. Tr. p.39, lines 16-18).

The Claimant then testified he has seen Dr. Brunson for 3 or 4 years. He has never had a seizure nor felt like he was having a stroke. He felt lightheaded before this accident and that was when he checked himself into Bamberg Hospital. He was passing a kidney stone. The Claimant was then asked whether it was due to changing his medication as he indicated earlier in his testimony. The Claimant then testified that "no, matter of fact, when I was passing the medication - - I mean, when I was passing the kidney stone I was on the medication." (Hrg. Tr. p.41, lines 11-13).

The Claimant's attorney then made a request for the exception to be used for leading questions for when a person is obviously impaired. Counsel for Defendants objected to leading on the grounds that the Claimant has been able to recall the answers to each and every question asked by the Claimant all the way back through 2011. He also gave all of his background information and had not given any indication that he was impaired during his testimony at this hearing nor was any evidence provided that he was unable to testify in his deposition or at the hearing.

Commissioner Wilkerson indicated that the Claimant had provided information about what happened in Bamberg and information regarding his doctors. The Claimant's attorney then indicated he had no further questions. (Hrg. Tr. p.43, lines 2-3).

On cross examination, the Claimant indicated he did remember having the conversation with Dr. Brunson on February 25, 2014 that he wanted to go off his diabetes medication. The Claimant was asked if he recalled the conversation with Dr. Brunson that he would have to be really careful about what he ate. The Claimant agreed. The Claimant was then asked whether he told any of his doctors that he remembered what happened to him on March 27, 2014. The Claimant responded "I don't believe I did, no." (Hrg. Tr. p.44, line 25). The Claimant then testified that he did not tell any doctors that his memory of that morning had come back to him. However, he stated that his memory came back in bits and pieces while he laid in his hospital bed. The Claimant agreed that he checked out of the hospital in Charleston on April 17, 2014. When asked again if he told any of his physicians that his memory had come back before or after that time he stated "no." (Hrg. Tr. p.45, lines 21-24). When asked whether he thought it would be important to tell his physicians that he now remembers washing windshields on the passenger side and passing out, he stated "no, they never asked that." (Hrg. Tr. p.46, line 2). He again later stated "So, no. I didn't - - I didn't see no importance in that." (Hrg. Tr. p.46, lines 4-5). When asked if the first time he told somebody that his memory had come back and he recalled washing the windows on the truck was when he gave his deposition, Claimant responded, "No, that wasn't the first time. I told my wife and I told Mr. Lewis." When asked whether he told anybody that was actually treating him, he responded "no." (Hrg. Tr. p.46, lines 6-12).

The Claimant testified that on March 27, 2014, the date of his accident, he was not taking any medication for his Type II diabetes. He also testified that he had probably five to seven

cartons of cigarettes in his truck on the morning of his accident. (Hrg. Tr. p.47, lines 5-9).

In regard to the events on the date of accident, the Claimant testified that he was washing the windshield on the passenger side and then all of a sudden he was sitting on the ground soaking wet. He indicated he had no idea why he was wet. When asked if he remembered how he got to the ground and why he was sitting there he indicated that he assumed he fell. When asked not to assume but to describe what he remembers as to how he got on the ground, Claimant testified as follows:

A: If you - - If you are asking me if I remember falling, specifically, I can't say I specifically remember falling; I just know I did. The next thing I remember is I - - and I'm the ground wet.

Q: Okay. But - - but it's also possible that you could have gotten down and then all of a sudden ended up sitting on the ground because you don't remember what happened between the time you were cleaning your windshield and all of sudden you were on the ground; is that right?

A: Possibly, yeah. I - - I guess you could say it's possible but not likely though. You don't sit down on the concrete by a diesel pump.

Q: But you don't know why you sat down on the ground by a diesel pump; is that right?

A: Well, you would never sit down there.

Q: Okay. And - -

A: It's just - - just too nasty.

Q: - - and when you realized you were sitting on the ground on the

passenger side, is that when everything was kind of hazy to you?

A: I guess hazy would be the right word.

Q: Okay. And I'm taking this from your prior deposition, you said you were feeling lightheaded and hazy while you were sitting on the ground; is that how you were feeling?

A: Right.

Q: Okay. And then you got up and decided to go wash the other side?

A: Right.

Q: Okay. Now, what is the very last thing you remember?

A: Being up on the driver's side tire washing the driver's side windshield.

Q: So, the very last thing you remember is you were standing on the tire and you were holding the scrub brush for the windshield?

A: Holding the brush yes.

Q: And that's - - that's where your memory ends?

A: Yes.

Q: Okay. So in reality you could have gotten off of the tire, put your brush up where it is shown in the pictures, and then you could have passed out?

A: Yeah, I mean, you know, there is a lot of possibilities there.

(Hrg. Tr. p.48, line 4 - p. 49, line 23).

The Claimant's wife, Faye Williams, was present to testify. The parties stipulated that Mrs.

Faye Williams would corroborate the Claimant's testimony as to how he is doing now. The parties agreed she was not a fact witness on the issue of compensability as she was not present at the time of injury.

Defendants then called Mr. Tyrone Johnson as a witness. Mr. Johnson testified that he currently lives in Bamberg, SC and was present today under subpoena from the Defendants. He is still an employee at Love's Truck Stop as a tire technician and in maintenance. Mr. Johnson testified that in the mornings he is usually in the area where the trucks fuel. He testified he is usually outside from 4:00am until 7:00am.

Mr. Johnson testified that on March 27, 2014 he was at work at Love's Truck Stop. He went outside and started his "oil try." He got done at approximately 6:30am. He then went around to the back to get the trash and fill up the water buckets. He testified he was probably at pump 21, 22 when he heard a water bucket noise. He walked up to the front and saw somebody lying on the ground. (Hrg. Tr. p.55, lines 14-20).

Mr. Johnson identified the man who had been lying on the ground as the Claimant, Clyde Williams. Mr. Johnson was shown the photograph that was Defendant's Exhibit A. He was asked if that was an accurate reflection of how he found Mr. Williams on the morning of March 27, 2014. Mr. Johnson testified "yes, it is." (Hrg. Tr. p.56, line 5). Mr. Johnson was asked if anything had been moved in the picture. He responded "no." Mr. Johnson testified that he did not pick up the scrub brushes that are shown leaning against the concrete in the photograph. Mr. Johnson testified that he did not move anything. After he saw Mr. Williams on the ground, he went inside and called 911 and told the manager. He and the manager, Jeff Ruff, went straight back outside and that is when the pictures shown in the exhibits were taken. He testified that when he and Jeff got back outside, the scene around Mr. Williams was no different. Mr. Johnson testified he is not

aware of any witness to the incident or any other drivers that saw Mr. Williams fall.

On cross examination, Mr. Johnson testified he has been with Love's Truck Stop for 2 years as of November 8, 2014. Mr. Johnson testified that he was unaware of how long it was between the time Mr. Williams fell and the time that he saw him. Mr. Johnson testified that he was approximately two pumps away from Mr. Williams when he heard the water bucket noise. He described it as sounding like somebody kicked it and you could hear water going around it. (Hrg. Tr. p.58, lines 18-19). Mr. Johnson then testified that he felt like the sound of the bucket came from the direction of pump 23. He testified Mr. Williams was completely unconscious and did not say anything to him. He testified that it looked like Mr. Williams was bleeding from the nose.

Mr. Johnson was then asked whether there was water around him. He testified "no." (Hrg. Tr. p.59, lines 21-23). Mr. Johnson then testified that it looked like Mr. Williams had on a pair of deck shoes. He also testified he did not touch Mr. Williams in any way. Mr. Johnson testified he has never been under subpoena and has never had to come to a hearing before.

On re-direct examination, Mr. Johnson was asked if Mr. Williams was wet when he found him. Mr. Johnson testified "no." He was then asked was he soaking wet on the front of him? Mr. Johnson responded "no." He was then asked whether there was water anywhere around him. Mr. Johnson responded "no." On re-cross examination, Mr. Johnson testified he did not touch him so would not be able to tell whether he was in fact wet.

Defendants then called Thad Wimberly as a witness. Mr. Wimberly testified he is the vice president of Bowman Gin and his father is the controlling stock owner. He testified he runs the day-to-day operations. He is a graduate of Clemson University and has a BS in AG and Business. Mr. Wimberly also testified he is a forest ranger for the South Carolina Forestry Commission.

Mr. Wimberly testified that on March 27, 2014 he received a call about the Claimant being

injured. He went to Love's Truck Stop. At the time he arrived, the Claimant was no longer there and had already been taken by ambulance to the hospital. Mr. Wimberly began inspecting the vehicle to make sure everything was still there and intact.

Mr. Wimberly indicated that someone from Love's Truck Stop moved the truck to a different area so it was no longer blocking the fuel pump. He testified he is not sure who moved the truck. He went inside to make sure that the fuel was paid for and then inspected the outside of the truck by doing a full walk around the vehicle. In regard to the windshield, he testified "I won't say it was not visible but it was not like it had just been cleaned." He testified there was some dirt on the windshield and it had not been cleaned by the "bug juice or whatever you put on the window, you know, to clean the bugs or whatever." (Hrg. Tr. p.67, lines 1-4). He testified that there were some bugs on the windshield.

Mr. Wimberly testified that he then inspected the inside of the truck. He testified "I noticed his belonging there, you know, his clothes and stuff and his medication bag was still right there in the floor and a cup of coffee was already inside the truck: one of those big travel mugs was inside there." (Hrg. Tr. p.67, lines 12-16). He then testified that he found seven cartons of cigarettes lying on the top bed in the truck. In regard to the bag of medicine, Mr. Wimberly testified that it was "like a small cooler, like you would tote - - like a little small zip up type cooler." (Hrg. Tr. p.68, lines 11-12). Mr. Wimberly testified he opened the cooler to see what was inside. He found "a lot of medicine in there, yes. It was probably 10 bottles, maybe, of different types of medication." (Hrg. Tr. p.68, lines 17-19).

On cross examination, Mr. Wimberly admitted that he is not an expert of windshield cleaning. He also testified that he is not an executive and that he does clean windshields. He did agree that he did not clean the windshield on the Claimant's truck. Mr. Wimberly agreed that the

truck was not in the same location that it was when Mr. Williams got hurt. It had been moved about 50 feet and it was unknown who moved the truck.

Mr. Wimberly testified on cross examination that he does not know of any prior episodes of fainting for the Claimant and that the Claimant never complained to him of lightheadedness. He also testified he has his regular CD license and that he would not be driving if he didn't.

Mr. Wimberly further testified that the Claimant was driving a new truck for Bowman Gin. When asked how far a man would fall standing on the wheel of that truck, Mr. Wimberly testified approximately 2 feet. He also testified he would not stand on the wheel to wash a truck. He also agreed that the tires were 24.5 inches. Mr. Wimberly agreed in his testimony that the Claimant was where he should have been while working for Bowman Gin after picking up his load at Gulbrandsen. He also testified that they do give drivers a credit card for fuel.

On re-direct examination, Mr. Wimberly testified that he has cleaned windshields of these size trucks in the past. They use a long handle brush so that they do not have to climb on the tires. Mr. Wimberly also testified that if any of his drivers told him that he was dizzy or lightheaded, he would not be able to drive until he had been checked or cleared by a doctor.

Defendants submitted the *de benne esse* deposition of Jeffrey D. Ruff. Mr. Ruff testified that he is the former manager of Love's Truck Stop at the time of this incident. He testified that Tyrone Johnson came inside and got him and told him that there was a man injured lying on the concrete. Mr. Ruff came to the scene and took photographs with his cell phone. Mr. Ruff did identify the photographs attached to his deposition (also included in the APA Submissions) as an exact representation of how they found Mr. Williams. To his knowledge, nothing had been touched at the scene. He stated that the long handled brushes used to wash the windshield were already propped up and leaning against the gas pump when he first came out to find the Claimant.

Mr. Ruff testified that once he was told by his employee that there was a man outside lying on the ground, he went outside to see what was going on immediately. He then took the pictures and came back inside to have his tire technician call 911. He did not touch or move the Claimant or any of the items shown in the picture.

The medical evidence presented shows that Claimant has a chronic history of hypertension, hyperlipidemia, and diabetes mellitus Type II. He has treated with Dr. Brunson for these conditions. Prior to this incident, he reported to Bamberg County Hospital in January 2012 for his diabetes and indicated he was lightheaded and dizzy. He was to follow up with Dr. Brunson and follow a diabetic diet. Dr. Brunson saw him on January 31, 2012 and cautioned him regarding his diet and to adjust his medication. The Claimant continued to treat with Dr. Brunson for these conditions throughout 2012 and 2013. On February 25, 2014, he reported increased problems sleeping and asked to go off of his medication for diabetes mellitus Type II. He was warned to watch his diet and carbs very closely and to continue his other medication.

On March 27, 2014, the Claimant was then found lying unconscious on the concrete and bleeding from his head. He was originally evaluated by West Middle Fire Department, and it was noted he had open trauma to his face and head. He was released to EMS. The Orangeburg County EMS report also dated March 27, 2014 shows he was unconscious and bleeding. He was found near the cab of the 18-wheeler and fuel pump island. Per bystanders noted in the report, he was unconscious for several minutes and witnesses were unsure how he fell. It was also indicated that no one saw him fall so he was placed in full spinal precautions. The EMS report further notes the Claimant did state that the last thing he remembers is stopping to fuel when he became weak. The Claimant was then taken by LifeNet to Palmetto Health Richland Hospital.

~~The medical records from March 27, 2014 from Palmetto Health Richland show the~~

Claimant was found down beside his truck and was unresponsive. He was diagnosed with an extensive fracture of the skull base. The medical records from Palmetto Health state that he was found unconscious on the ground and he was unable to describe what happened to him. He was diagnosed with a possible subarachnoid hemorrhage. He was then immediately transferred to MUSC on the same day.

The medical records from MUSC from March 27, 2014 indicate the Claimant was found down this morning near an 18-wheeler in a puddle of blood. His mental status had declined and a CT scan showed a large intracranial hemorrhage and skull fracture. It was unknown if the patient fell or was assaulted. The Claimant underwent a right sided craniotomy for resection of the right frontal intra cerebral hemorrhage performed by Dr. Varma on March 27, 2014.

The Claimant was seen in follow up as an in-patient at MUSC where he was treated for post decompressive craniotomy. He had impaired motor function and sensory integrity. It was noted that he had chronic changes or plural effusion, was a heavy smoker, and was using a hand held nebulizer.

The Claimant was treated at MUSC until he was released to the Regional Medical Center for therapy. He was treated for a traumatic brain injury, recent pneumonia treated, hypertension, diabetes mellitus Type II controlled, and hyperlipidemia. It was noted on May 2, 2014, he was ambulating 250 feet with a rolling walker and encouraged to abstain from smoking. The Claimant verbalized he anticipated noncompliance. He was released home. Home care was provided by RMC Primary Care.

The Claimant was treated in follow up in May, 2014 by Dr. Varma at MUSC for no evidence of new hemorrhage and a healing skull based fracture.

The Claimant was continuing to treat with MUSC, the Regional Medical Center and RMC

Primary Care. The APA Submissions reflect he was seen August 30, 2014, by Dr. Varma at MUSC for post evacuation of right frontal hematoma with cognitive impairment. A referral was made for physical therapy for range of motion of the left shoulder and he was returned to the neurologist when necessary and was to continue on medication. He was not released at maximum medical improvement.

The Claimant was then seen by Dr. White at his attorney's office on September 4, 2014. Dr. White indicated the Claimant was fueling his truck and washing windows when he fell from his truck, approximately six to eight feet, striking his head on the concrete bolster protecting the pumps. He was diagnosed with a traumatic brain injury and behavioral and cognitive abnormalities. Dr. White indicated that Claimant's injury was consistent with a severe brain trauma associated with skull fracture and that he would never return to gainful employment. It is important to note that the medical records from the date of accident are not consistent with Dr. White's report, and the description of accident used by Dr. White was not factual. The emergency room records did not report Claimant fell six to eight feet from his truck as indicated by Dr. White.

All medical records, photographs of the scene, and deposition testimony were reviewed by Dr. Pritchard, III, of MUSC on September 11, 2014. Dr. Pritchard indicated there was a long standing history of hypertension and diabetes mellitus Type II. The Claimant reported immediately preceding this incident to feeling "hazy and lightheaded." Dr. Pritchard indicated that Claimant lost consciousness before this actual accident occurred and then got up and moved to the driver's side where he again suffered a second loss of consciousness consistent with a syncope episode. This is supported by the Claimant's own testimony regarding his passing out and waking up sitting on the concrete, not knowing how he got there or why he was wet. Dr. Pritchard also noted his prior history of Type II diabetes mellitus (for which he had just stopped taking his

medication) and his chronic history of hypertension which put him at risk.

DECISION/ANALYSIS

The parties do not dispute that Claimant was injured while in the course of his employment, so the primary issue is whether Claimant sustained an injury by accident that *arose* out of his employment. An accidental injury is compensable if it arises out of *and* in the course of employment. S.C. Code § 42-1-160(A). An injury arises out of employment if it is proximately caused by the employment. *Douglas v. Spartan Mills, Startex Div.*, 245 S.C. 265, 269, 140 S.E.2d 173, 175. The burden of proof is on the claimant to prove such facts as will render the injury compensable, and such an award must not be based on surmise, conjecture or speculation. *Crosby v. Walmart*, 330 S.C. 489, 496 (1998).

At the hearing, the single Commissioner was presented with two factually competing theories of injury. The first theory, urged by Claimant, is that he was standing up on the left/driver's side tire of his truck and engaged in washing the windshield when he fell to a concrete surface sustaining a serious head injury, and therefore his injury arose out of his employment. The second theory, which was supported by the greater weight of evidence, is that Claimant's fall was idiopathic in nature and the injury resulting therefrom had no causal connection with Claimant's employment.

An idiopathic fall is one that is "brought on by a purely personal condition unrelated to employment, such as a heart attack or a seizure." 2 Modern Workers' Compensation 110:8 (quoted in *Barnes v. Charter 1 Realty*, Op. No. 27479, (S.C. Sup. Ct. filed Jan. 14, 2015)). In *Barnes*, the South Carolina Supreme Court stated "[t]he idiopathic fall doctrine is based on the notion that an idiopathic injury does not stem from an accident, but is brought on by a condition particular to the employee that could have manifested itself anywhere." *Id.* at pg. 3. Idiopathic

injuries are generally noncompensable absent evidence the workplace contributed to the severity of the injury. *Bagwell v. Ernest Burwell, Inc.*, 227 S.C. 444, 452, 88 S.E.2d 611, 614 (1955).

Contemporaneous to the *Barnes* decision, the South Carolina Supreme Court published another opinion expounding on the idiopathic fall doctrine in *Nicholson v. S.C. Dept. of Soc. Servs.*, Op. No. 27478 (S.C. Sup. Ct. filed Jan 14, 2015). In the *Nicholson* case, the Court discussed *Bagwell*, which involved a claimant that sustained an idiopathic fall and died as a result of a subdural hemorrhage when his head struck a concrete floor. Op. No. 27478 at pgs. 5-6 (citing 227 S.C. at 499). The Court's reading of the *Bagwell* case instructs that noncompensability in cases where an idiopathic fall is implicated hinges on two questions: first, whether the fall was idiopathic, and two, whether a special danger or hazard of a claimant's employment contributed to the resultant injury. See *Nicholson* at pg. 6. As the *Nicholson* Court observed, the Court in *Bagwell* ultimately held the concrete floor upon which claimant fell was not a hazard of employment capable of bringing his idiopathic fall within "the ambit of coverage." *Id.* The *Nicholson* Court did not disturb the holding in *Bagwell* in its analysis, but simply pointed out that *Bagwell* is not applicable to facts where a fall takes place at work that is *not* caused by a condition peculiar to the claimant. In other words, *Bagwell* only applies in cases that involve evidence of an idiopathic fall.

In the present case, *Bagwell* does apply, and because the single Commissioner was presented with evidence, the greater weight of which showed, that Claimant (1) suffered an idiopathic fall, and (2) no special danger or hazard of Claimant's employment contributed to the resultant injury. Accordingly, the single Commissioner's finding that Claimant's injury was not compensable should be upheld.

I. The single Commissioner was correct in finding that Claimant was unable to meet his burden of proof in showing that he fell from his truck while washing

the windshield thereby sustaining injury where Claimant cannot recall falling from the truck, and when other witness testimony and photographic evidence contradicts Claimant's contention that he was engaged in washing the truck windshield just prior to falling and sustaining injury.

In support of his contention that his injury arose out of his employment, Claimant alleges that he fell from his truck on the driver's side while attempting to wash the windshield, such fall causing his head injury. However, Claimant does not remember actually falling from the truck. Witness testimony and photographic evidence support a finding that Claimant was not up on the driver's side tire washing the windshield immediately before his fall, therefore Claimant's fall and subsequent injury did not arise out of his employment.

In his deposition, Claimant testified that while at a Love's Truck Stop, he remembers standing on the tire of the front *passenger-side* washing the windshield when he suddenly found himself on the ground. There is some confusion in the questioning as counsel for Respondent was not aware that Claimant essentially had suffered two falls. The exchange is as follows:

Q: That was after washing the --- I'm sorry I'm not trying to confuse you on this. Okay. So you were on the top of the passengers-side tire?

A: On the passenger tire washing the windshield.

Q: Were you wet at that point?

A: No.

Q: Then you got down?

A: No, I didn't even know I got down, I was down on the concrete like in a sitting position and all -- laying down and I was all wet. I said "Well damn" and I got up and went around to the driver-side and climb up on the tire and start washing the other side.

Q: Okay. So let me back up.

A: Okay.

Q: So you were washing the passenger-side and you don't know how you got down that time?

A: No. I have no idea how I got down.

Q: All of a sudden you were sitting on the ground on the passenger-side?

A: Pretty much laying down, yeah.

(Clmt. Dep. Tr. p. 25)

...

Q: Okay. And you get up from the passenger-side and do what?

A: I walk around the front of the truck to the driver tire climbed up on it start washing the driver-side and that was the last thing I remember.

Q: Okay. When you realize that you were sitting on the ground on the passenger-side, was there anything else wrong with you other than being soaking wet?

A: Everything was kind of hazy.

Q: Did you have any injuries or any problems?

A: I was like light-headed, hazy, you know what I mean, I hadn't had any problem that I can tell physically.

(Clmt Dep. Tr. pp. 26-7)

In sum, Claimant first attempted to wash the passenger-side windshield, and for some unknown reason, he ended up on the ground on the passenger side of the truck. He does not recall getting down from the truck, but when finding himself on the ground he recalled things being hazy. Then, he says he went to the driver's side, stood up on the tire and started washing that part of the windshield, and that is the last thing he remembers. Claimant does not remember falling off the truck.

~~Mr. Tyrone Johnson, who was the first person to discover Claimant on the ground,~~

testified at the hearing. Mr. Johnson identified the man who had been lying on the ground as the Claimant, Clyde Williams. He was shown the photograph that was Defendant's Exhibit A and asked if it was an accurate reflection of how he found Mr. Williams on the morning of March 27, 2014, to which he replied "yes, it is." (Hrg. Tr. p.56, line 5). Mr. Johnson was asked if anything had been moved in the picture, and he responded "no." Mr. Johnson testified that he did not pick up the scrub brushes that are shown leaning against the concrete in the photograph nor did he move anything.

Mr. Thad Wimberly, vice president of the Employer, also testified at the hearing, as he was called to the scene upon being informed of Claimant's injury. In regards to the windshield, he testified "I won't say it was not visible but it was not like it had just been cleaned." He testified there was some dirt on the windshield and it had not been cleaned by the "bug juice or whatever you put on the window, you know, to clean the bugs or whatever." (Hrg. Tr. p.67, lines 1-4). Regarding the height of the tires, Mr. Wimberly testified the tires were 24.5 inches, so if someone fell from standing on one of the tires they would fall approximately 2 feet.

During the hearing, on cross-examination, Claimant conceded as follows:

Q: Okay. Now, what is the very last thing you remember?

A: Being up on the driver's side tire washing the driver's side windshield.

Q: So, the very last thing you remember is you were standing on the tire and you were holding the scrub brush for the windshield?

A: Holding the brush yes.

Q: And that's - - that's where your memory ends?

A: Yes.

Q: Okay. So in reality you could have gotten off of the tire, put your brush up where it is shown

in the pictures, and then you could have passed out?

A: Yeah, I mean, you know, there is a lot of possibilities there.

(Hrg. Tr. p. 49, lines 13-23).

Given this and other evidence, the single Commissioner justifiably and correctly found that Claimant had not met his burden of proof in showing that he fell from the truck thereby sustaining his injury. Claimant testified to ending up on the ground, without injury, on the passenger side of the truck just before going to the driver's side, for which he has no explanation as to how he got there, but he recalled feeling light-headed. The photographic evidence submitted clearly shows two long-handle cleaning brushes: one inside a bucket standing upright, and the other leaning upright against a concrete barrier. Claimant does not recall falling from the truck, nor were there any witnesses to the fall, and one witness testified that the windshield of the truck did not appear to be recently cleaned. Overall, taking into account all the evidence, the single Commissioner's finding that Claimant did not fall from the truck was supported by the greater weight of evidence.

II. The single Commissioner properly gave greater weight to the medical opinion evidence of Dr. Pritchard, who reviewed Claimant's medical records, photographs of the scene of Claimant's fall, and Claimant's deposition testimony, and concluded that Claimant suffered not one, but two episodes of loss of consciousness, the second of which led to Claimant's injury-causing fall, and where the competing medical opinion evidence of Dr. White assumed facts not supported by the greater weight of evidence.

The opinions stated in Dr. Pritchard's report of Sept 11, 2014, were appropriately and justifiably given more weight than that of Dr. White. Dr. Pritchard based his opinion on pre-accident medical records, photographs of the scene, and Claimant's deposition testimony that recounts the fainting incident on the passenger side of the truck that immediately preceded the ~~injury-causing fall on the driver's side. As further support that Claimant has had similar~~

symptoms in the past, among the prior medical records, there is a narrative from Bamberg County Hospital dated January 29, 2012, documenting that Claimant presented with a chief complaint of not feeling well for a few days and complaining of lightheadedness. (APA p. 247). In his report, Dr. Pritchard documented that Claimant has a longstanding history of hypertension and diabetes mellitus, Type II, and the circumstances as described by Claimant are more consistent with syncope, for which these diagnoses place him at risk. (APA pp. 387-389). Counter to Claimant's allegation that he must have slipped and fallen from the truck while washing the driver's side windshield, Dr. Pritchard opines to a reasonable degree of medical certainty that Claimant had two syncopal events, the second of which caused his fall and subsequent head injury.

Claimant points to the report of Dr. White to support his theory that he fell from the truck. In his report, which relates to a visit he had with Claimant on September 4, 2014, which was only two days after Claimant's deposition, Dr. White documents that emergency room records from Palmetto Richland indicate Claimant fell from his truck about six to eight feet. (APA p. 247). Given that this was Dr. White's understanding of Claimant's fall, the single Commissioner was justified in giving less weight to Dr. White's opinions about the mechanism of injury. A close reading of the emergency room records reveal how the "fall from six to eight feet" claim originated: "Bystanders on the scene told Lifenet they think he *could* have fallen out of his truck cab which is about 6-8 feet off the ground (emphasis added)." (APA p. 10)

In contrast, other evidence establishes that Claimant did not fall from his cab, including Claimant's own testimony about the contemporaneous fainting incident, the testimony establishing the tire from which he alleges falling is only about 2 feet high, and the photographs of the scene showing the undisturbed long-handled cleaning brushes standing upright indicating

they were not in use at the time Claimant fell. Furthermore, Dr. White's opinion was apparently rendered without any knowledge of the fainting incident that took place on the opposite side of the truck almost immediately before the injury causing fall. At the hearing, when asked whether he thought it would be important to tell his physicians that he now remembers washing the windshield on the *passenger* side and passing out, Claimant stated "no, they never asked that." (Hrg. Tr. p.46, line 2). He again later stated "So, no. I didn't - - I didn't see no importance in that." (Hrg. Tr. p.46, lines 4-5).

In sum, in rendering his opinion to a reasonable degree of medical certainty, Dr. Pritchard benefited from a key piece of information that came from the Claimant, namely that he experienced a syncopal episode on the passenger side of the truck before being found on a flat, dry concrete surface on the driver's side of the truck. This critical piece of causation evidence was not available or told to Dr. White. Accordingly, it was proper for the single Commissioner to give greater weight to the opinion of Dr. Pritchard.

III. The single Commissioner properly concluded that Claimant's injury arose from some physical condition personal to Claimant and was therefore idiopathic in nature, without any causal relationship to Claimant's employment.

Based on the evidence as discussed above, the single Commissioner correctly found that Claimant did not meet his burden of proof with respect to showing that he fell from the truck, and the Single Commissioner's decision to give more weight to Dr. Pritchard's opinion was also firmly supported by the evidence. Accordingly, the single Commissioner's decision that Claimant's injury was not compensable was correct.

Importantly, this decision is also consistent with the Court's recent decisions in *Nicholson* and *Barnes*, in that the facts and evidence in this case support the conclusion that Claimant fell because of a condition peculiar to him, namely that he had a syncopal episode, and

the resulting injury had no causal connection to his employment.

In *Nicholson* and *Barnes*, there was no evidence to support a finding that either claimant suffered some internal breakdown, i.e. an idiopathic event that led to their falls and subsequent injuries. Here, we have a situation that falls squarely in line with *Bagwell*, where the claimant was found to have suffered an idiopathic fall onto a flat, dry concrete surface suffering a head injury, which was ultimately determined noncompensable. However, unlike in *Bagwell*, where the claim was found not compensable even though claimant in that case could not provide any information about his fall because he died from his injuries, Claimant here fortunately survived his fall and was able to provide critical information about events that took place just before his injury that gives the single Commissioner even greater justification for a finding of noncompensability. In particular, Claimant's deposition and hearing testimony make it clear that he had a syncopal episode that could have accounted for falling on the concrete in and of itself without the added risk of standing up on a truck tire. The evidence of a prior syncopal episode, together with the photographs and witness testimony proving that Claimant was not engaged in cleaning the truck windows when he fell onto a flat, dry concrete surface, further bolsters the single Commissioner's conclusion that Claimant suffered an idiopathic fall, which resulted in an injury that was not causally related to his employment.

In sum, the single Commissioner considered Claimant's testimony, medical evidence, photographic evidence, and other witness testimony, all of which supported the conclusion that Claimant's injury is not compensable. Accordingly, we find the single Commissioner's Decision and Order should be affirmed in full, subject to amendments as indicated below.

FULL COMMISSION APPELLATE PANEL FINDINGS OF FACT

After a thorough review of the evidence, including the hearing testimony, medical evidence, exhibits, 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, WITH AMENDMENTS:

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 Clyde O. Williams as Employee-Claimant and Bowman Gin Company as Employer and American Interstate Insurance Company d/b/a Amerisafe Risk Services as Carrier, Defendants.

2. That the average weekly wage of Employee at the time of the above-described accident was \$976.10, and his compensation rate was \$650.77.

3. A decision by Commissioner Wilkerson with findings of fact was made and sent to the parties on October 8, 2014 by e-mail.

4. Claimant specifically testified at the hearing and in his deposition that he does not remember falling. He testified he does not know how his accident occurred and does not know how he ended up lying on the concrete. The Claimant's wife would corroborate this testimony as well as there were no witnesses to the incident.

5. Tyrone Johnson testified he is an employee of Love's Truck Stop. On the date of the incident, he heard the noise of a bucket and walked over to inspect. He found Clyde Williams lying on the ground. He indicated that Mr. Williams was found in the exact same way as that reflected in the photographs submitted as exhibits. Mr. Williams was lying on the concrete next to the water bucket. The washing brushes used to clean windshields were lined up and leaning against the gas pump. Mr. Johnson testified that to his knowledge no one touched anything at the

scene nor were there any witnesses to the incident.

6. Brad Wimberly testified he is the Vice President and co-owner of Bowman Gin Company. Mr. Wimberly also did not know how the incident with Mr. Williams occurred as he arrived after the Claimant was taken to the hospital. He testified that you normally would not have to stand on the wheel of a truck to clean its windshield due to the long handled brushes. He also testified that it did not appear that the Claimant's windshield had been cleaned. He testified that the truck was moved before he got there by an employee of Love's Truck Stop. He found personal items in the truck along with a bag of Claimant's personal medication.

7. Jeffrey D. Ruff testified by deposition that he is the former manager of Love's Truck Stop at the time of this incident. He testified that Tyrone Johnson came inside and got him and told him that there was a man injured lying on the concrete. Mr. Ruff came to the scene and took photographs with his cell phone. Mr. Ruff did identify the photographs attached to his deposition (also included in the APA Submissions) as an exact representation of how they found Mr. Williams. To his knowledge, nothing had been touched at the scene. He stated that the long handled brushes used to wash the windshield were already propped up and leaning against the gas pump when he first came out to find the Claimant. Mr. Ruff testified that once he was told by his employee that there was a man outside lying on the ground, he went outside to see what was going on immediately. He then took the pictures and came back inside to have his tire technician call 911. He did not touch or move the Claimant or any of the items shown in the picture.

8. The Claimant is a Type II diabetic and the medical records do reflect a prior history of dizziness and lightheadedness. The records also reflect that on February 25, 2014, the Claimant went to see Dr. Brunson and requested to stop his diabetes medication. It was the Claimant's own ~~testimony that while he was cleaning the windshield on the passenger side of the vehicle, he does~~

not know what happened to him and he all of a sudden realized he was sitting on the ground soaking wet. The Claimant himself testified he was feeling faint and dizzy at that time with no idea how he got to the ground. Subsequent to that incident, he then got up and went to the driver's side of the truck to wash that side of the windshield. He remembers climbing up on the truck but has no other memory. The Claimant testified he does not know what happened. The Claimant did not say he slipped, tripped, or fell off the truck. He does not remember anything else until waking up in a hospital bed.

9. The photographs show the Claimant to be lying in an unusual position with his head between the bucket and a fuel pump. The brushes used to wash the windshield are clearly standing up leaning against the platform/fuel pump. The bottom of one brush is inside the bucket and the bottom of the second brush is on the concrete. There is no sign of a brush used to clean windshields on the ground or near the Claimant.

10. The medical records from MUSC found in APA #4 indicate the Claimant was found down on the morning of March 27, 2014 near his 18-wheeler in a puddle of blood. A CT scan of the head showed a large intracranial hemorrhage and basilar skull fractures. He was then transferred for neurosurgical evaluation and a de-compressive craniotomy was performed. The medical records from the emergency department state the Claimant was brought by LifeNet and that he is unable to describe what happened. He further denied any memory of the incident. APA #3, p. 10.

11. The Claimant was seen on June 20, 2014, wherein it was noted that he was disabled and unable to work due to his injury.

12. The EMS report dated March 27, 2014 indicates medic units was dispatched for an ~~unconscious patient bleeding from a laceration. It was determined on scene that patient had been~~

unconscious for several minutes not responding to anyone. Witnesses were unsure how he fell and it was noted "no one saw the pt fall." It was also noted that "pt states that last thing he remembers is stopping to fuel when he became weak." APA #1, p. 1.

13. In personally reviewing the photographs taken at the scene of this incident, we give great weight to these photographs and the testimony of both Mr. Johnson and Mr. Ruff regarding that they had not touched anything shown in the photograph and that they reflect how Mr. Johnson found the Claimant upon hearing a noise on a nearby pump and immediately going to investigate. The Claimant's glasses were approximately one and a half to two feet from him on the ground. The water bucket is still standing up and was not turned over. There is also what appears to be a pack of crackers or a candy bar with red wrapping lying approximately one and a half to two feet from Claimant's left arm. Also, from the direction and position of the glasses and the candy bar, it appears that these could have easily been dropped when the Claimant fell as they are both in the direction of the Claimant's outstretched hands/arms. Most importantly, it is clear that the brushes used to wash the windshield have already been placed back in their appropriate positions and therefore would not have been involved in any type of fall from the truck.

14. The Claimant denies any prior problems or issues with dizziness or lightheadedness. The medical evidence from Bamberg County Hospital dated January 29, 2012 shows Claimant reported to the hospital with a chief complaint of not feeling well for a few days and complaining of lightheadedness and dizziness.

15. We give great weight to the report of Dr. Paul A. Pritchard, III, neurologist at MUSC. Dr. Pritchard reviewed all relevant medical records, the EMS report, deposition of the Claimant, and photographs of the Claimant from the scene of his injury. Dr. Pritchard notes that a review of his medical records prior to this injury show that the Claimant had a long standing

hypertension and diabetes mellitus, type II. Dr. Pritchard discussed Claimant's recounting of the circumstances of his fall while refueling his vehicle. Initially on the passenger side, he suddenly found himself soaked and lying on the concrete. The Claimant noted that he was "hazy" and "lightheaded." He did not observe any injury at that point. He then proceeded to the driver's side of the vehicle to wash that side of the windshield but does not recall anything further until waking up under medical care. Dr. Pritchard opined that the medical records prior to this date of incident are revealing and also that Claimant actually lost consciousness at the scene of the accident not once but twice. Prior to this incident, the Claimant described himself as wet, hazy, and lightheaded with no physical injury. He was subsequently found unconscious and bleeding on the driver's side of the vehicle. Dr. Pritchard opined that the initial loss of consciousness had no relationship to the physical trauma, and the circumstances are more consistent with syncope, for which his prior history of Type II diabetes and hypertension put him at risk. Based on the circumstances of his past medical history with ongoing treatment of hypertension and diabetes at the time of his injury and the account/testimony Mr. Williams provided, it was his conclusion that he had two syncope events which caused his fall and head injury. This opinion was given within a reasonable degree of medical certainty. We give greater weight to the opinion of Dr. Pritchard who reviewed all of the records, photographs and deposition.

16. We find the photographs taken of the Claimant lying on the ground, the location of his personal items such as his glasses and a possible candy bar, and the fact that the windshield washing brushes were not in use to carry significant weight and prove that Claimant was not washing his windshield at the time of his fall and that his fall was idiopathic.

17. We have reviewed the report of Dr. Marshall White, neurologist, dated September 4, 2014. Dr. White bases his opinion on information that Mr. Williams was "fueling up his 18

wheel truck and washing the windows on the truck when he apparently fell from the truck, striking his head on the concrete bolster protecting the pumps.” This was not proven by the evidence as there were no witnesses to the incident and the Claimant, by his own testimony, does not know what happened to him. Dr. White went further to note that the emergency room records from Palmetto Richland indicated that the patient fell from his truck approximately six to eight feet. However, this is incorrect and is not consistent with the records from Palmetto Richland. Those records indicate that Claimant did not know what happened to him. Dr. White’s report indicates the Claimant continues to have problems with agitation and confusion at home along with delusional thought. He attempted to stab his wife, and attempted to set her on fire. He also locked her out of the house and was re-admitted to MUSC in July, 2014. He was diagnosed with traumatic brain injury and medications were changed. This did somewhat improve his behavior. Dr. White evaluated the Claimant in the presence of his wife, Anita. He reviewed medical records from the Regional Medical Center in Orangeburg as well as MUSC. He found if Mr. Williams continues to exhibit signs of severe traumatic brain injury that would render him totally incapable of work as a result of emotional, cognitive and physical problems arising from these injuries. Dr. White’s assessment of how the accident occurred is based on incorrect information or an incorrect reading of the emergency room records and is not consistent with the evidence of the case.

18. The Claimant was treated by both Dr. Varma at MUSC and Dr. Dixon at RMC Primary Care for right frontal lobe hemorrhage, hypogonadism, hypertension, hypernatremia, hyperlipidemia, HTN dysphagia, DM type II with craniotomy, cerebral edema, anxiety, agitation, acute respiratory failure, and loss of appetite.

19. Dr. Brunson of RMC Primary Care was Claimant’s family physician. He has treated the Claimant since 2003. The medical records that are in APA #10 show Claimant has

consistently been treated for ongoing chronic hypertension, hyperlipidemia, and diabetes mellitus Type II. It was noted on January 1, 2012, that his blood pressure was elevated and he was not feeling well. It was noted he quit eating sweets but had been eating a lot of starches. Medication was changed. It was noted in follow up by Dr. Brunson that he was to continue his medication and to maintain a good diet. He was to stay away from starches and sugar. He was treated throughout 2013 for arterial hypertension, combined hyperlipidemia, and was noted as had control of his Type II diabetes mellitus and anxiety. This was the notation on September 27, 2013. However, on February 25, 2014, it was noted that he was seen in follow up having problems sleeping. He was not able to sleep more than five hours without Ativan. At this appointment, the Claimant told Dr. Brunson he would like to come off of his diabetes mellitus Type II medication. Dr. Brunson indicated that he must watch his carbs very closely, continue his other medication, and change his Ativan to Xanax. The Claimant's request to come off of his medication for his diabetes is located on page 353 of the APA submissions.

20. Based on the greater weight of evidence, we give the opinion of Dr. Paul A. Pritchard, III, MD, greater weight as he reviewed the entire record to include Claimant's recollection of the moments immediately preceding this incident as Claimant has no recollection of the fall.

21. We find this to be an unexplained idiopathic fall as no evidence exists as to what caused the fall. To find otherwise would require us to speculate as to what happened to the Claimant. Also, the photographic evidence shows that the Claimant was in fact not washing his windshield at the time of his fall as was his speculation. Also, by the Claimant's own testimony, he admits that he was already feeling hazy and dizzy before this incident occurred of which he has

no memory.

22. This claim is denied under the South Carolina Workers' Compensation Act. The Claimant suffered an idiopathic fall that did not arise out of his employment.

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. The Claimant did not suffer a compensable injury by accident which arose out of his employment pursuant to the Workers' Compensation Act.

3. The Claimant's injury was idiopathic in nature and there was no work-related reason for the fall.

4. The Claimant could not meet his burden of proof to show that he suffered an injury by accident arising out of and within the course of his employment. No evidence was presented to show how or why the Claimant fell. The Claimant's own testimony indicated that he does not recall the event and that he had a syncopal episode and was feeling hazy and lightheaded immediately preceding the incident which caused him to strike his head. He also personally testified that the last thing he remembers is cleaning a windshield with a long handled brush. When the Claimant was found lying unconscious on the ground, the windshield cleaning brushes were back in their proper place leaning against the fuel pump.

5. The greater weight of evidence supports a finding that Claimant's physical injury to his head arose from some physical condition personal to the Claimant and was therefore idiopathic.

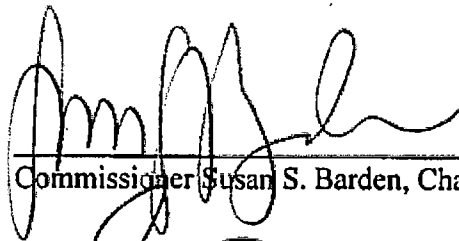
~~The Claimant had stopped taking his medication for diabetes mellitus-Type II the month before this~~

accident, was a habitual smoker, and suffered from chronic hypertension and hyperlipidemia. This conclusion is also supported by the fact that Claimant admits to an unrelated syncopal episode immediately preceding this alleged injury by accident of which the Claimant has no recollection.

ORDER/AWARD

IT IS HEREBY ORDERED that Commissioner Avery Wilkerson's Decision and Order dated January 14, 2015, is affirmed subject to the amendments of the Full Commission.

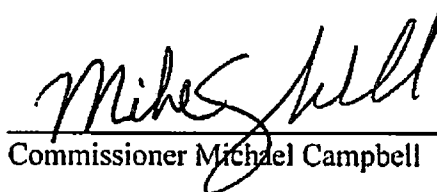
IT IS SO ORDERED.



Commissioner Susan S. Barden, Chair



Commissioner T. Scott Beck



Commissioner Michael Campbell

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 Eugenia Hollmon on October 12, 2015