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THE STATE OF SOUTH CAROLINA
In the Court of Appeals

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APR 08 2015

APPEAL FROM SOUTH CAROLINA
WORKERS' COMPENSATION COMMISSION

SC Court of Appeals

Case No.: 2014-001197

Brenda Oswald, Employee.....Appellant,

v.

Oswald Law Firm, Employer
and

Norguard Insurance Co., Carrier.....Respondents.

**FINAL BRIEF
OF APPELLANT**

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ATTORNEYS FOR APPELLANT

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STATEMENT OF ISSUES ON APPEAL

1. Did the South Carolina Workers' Compensation err in concluding the claim of the Claimant-Appellant was barred by the "going and coming rule"?

STATEMENT OF CASE

By her Form 50 of December 30, 2012, Claimant-Appellant sought disability benefits and medical treatment for injuries to her neck, back, and arms suffered in an automobile accident which occurred on September 27, 2010. On September 27, 2010, Appellant was involved in an automobile accident when her automobile was struck in the rear by another vehicle. Appellant sought workers' compensation benefits as she was carrying out duties for her employer at the time of the accident. The Employer and Carrier-Respondents denied Appellant was entitled to benefits alleging she was simply driving to work and her claim was barred by the "going and coming" rule.

A hearing was held before the Hearing Commission on March 21, 2013. By Decision issued on July 9, 2013, the Commissioner ruled Appellant's claim was barred by the "going and coming" rule. Pursuant to Appellant's Form 30 of July 22, 2013, a hearing before the Appellate Panel was held on November 19, 2013. By Decision issued on May 6, 2014, the Appellate Panel affirmed the decision of the Hearing Commissioner. Thereafter, Notice of Appeal was filed with the South Carolina Court of Appeals on June 4, 2014.

STATEMENT OF FACTS

This claim arose out of an automobile accident in which the Appellant's motor vehicle was rear ended on September 27, 2010. At that time Appellant was working as the office manager for the Oswald Law Firm, LLC. Her husband Billy R. Oswald, was the owner and president of the Employer company. (R. p. 265, line 11-15). As part of her normal duties, Appellant would necessarily run errands for the law firm, and among other things would be responsible for picking up payroll checks from the law firm's accountant, and making bank deposits. (R. p. 266, line 1-11).

According to the testimony of Mr. Oswald on the morning of September 27, 2010, Appellant left home and proceeded to pick up payroll checks from the office of the law firm accountant, and then was to make bank deposits for the law firm. (R. p. 266, line 15-page 9, line 15). According to the testimony of Mr. Oswald, the owner and president of the Employer, the Appellant left the house, actually picked up the checks from the accountant, and was involved in the motor vehicle accident as she was on the way to make deposits at the Law Firm's bank. (R., p. 267, line 16-page 10, line 3). Mr. Oswald, the president and owner of the law firm, further made it clear the Appellant was performing duties for the law firm at the time of the accident stating, "There's absolutely no question that she was doing what she was supposed to be doing as part of the law firm." (R. p. 269, line 7-12). Mr. Oswald advised Appellant to immediately proceed to the emergency room. (R. p. 269, line 13-19).

The Appellant also testified she left home on the morning of September 27, 2010, to pick up payroll checks from the accountant and then to proceed to make some bank deposits. The accident happened after she had stopped by the accountant's office and as

she was on her way to the bank. (R. p. 287, line 13-19). These were part of her normal duties as office manager for the Oswald Law Firm. (R. p. 288, line 2-15). Appellant further testified just prior to the motor vehicle accident, she was using a cell phone provided by the Law Firm to speak with an insurance agent in regard to insurance coverage for the building used by the Law Firm. This conversation took place on a cell phone provided by the Law Firm and concerned insurance coverage for the law firm. (R. p. 289, line 2-page 32, line 7; R. p. 143).

STANDARD OF REVIEW

“The South Carolina Administrative Procedures Act governs judicial review of a decision of the workers’ compensation commission.” Lark v. Bi-Lo, Inc., 276 S.C. 130, 134, 276 S.E.2d 304, 306 (1982); Bass v. Isochem, 365 S.C. 454, 467, 617 S.E.2d 369, (Ct. App. 2005) cert. dismissed as improvidently granted Aug. 2007; Hargrove v. Titan Textile Co., 360 S.C. 276, 288, 599 S.E.2d 604, 610 (Ct. App. 2004). Pursuant to the APA, an appellate Court’s review is limited to deciding whether the Appellate Panel’s decision is unsupported by substantial evidence or is controlled by some error of law. Grant v. Grant Textiles, 372 S.C. 196, 200, 641 S.E.2d 869, 871 (2007); S.C. Code Ann. Section 1-23-380(A)(5) (Supp. 2006).

The judicial review of the Appellate Panel’s factual findings is governed by the substantial evidence standard. Gadson v. Mikasa Corp., 368 S.C. 214, 221, 628 S.E.2d 262, 266 (Ct. App. 2006); Frame v. Resort Servs., Inc., 357 S.C. 520, 527, 593 S.E.2d 491, 494 (Ct. App. 2004); Corbin v. Kohler Co., 351 S.C. 613, 617, 571 S.E.2d 92, 94-95 (Ct. App. 2002); Lockridge v. Santens of America, Inc., 344 S.C. 511, 515, 544 S.E.2d 842, 844 (Ct. App. 2001). The Appellate Panel’s decision must be affirmed if supported by substantial evidence in the record. Shuler v. Gregory Elec., 366 S.C. 435, 440, 622 S.E.2d 569, 571 (Ct. App. 2005) (citing Sharpe v. Case Produce, Inc., 366 S.C. 154, 160, 519 S.E.2d 102, 105 (1999)). A reviewing court may not substitute its judgment for the judgment of the agency as to the weight of the evidence on questions of fact. S.C. Code Ann. Section 1-23-380(A)(5)(d)(e)(Supp. 2006), see, also, Hall v. United Rentals, Inc., 371 S.C. 69, 77, 636 S.E.2d 876, 881, (Ct. App. 2006). However, a reviewing court may reverse or modify a decision of the Appellate Panel if the findings, inferences,

conclusions, or decisions of them are “clearly erroneous in view of the reliable, probative and substantial evidence on the whole record.” S.C. Code Ann. Section 1-23-

380(A)(5)(e)(Supp. 2006); Bass v. Kenco Group, 366 S.C. 450, 457, 622 S.E.2d 577, 580 (Ct. App. 2005); Burse v. S.C. Dep’t of Health & Envtl. Control, 360 S.C. 135, 141, 600 S.E.2d 80, 84 (Ct. App. 2004) aff’d, 369 S.C. 176, 631 S.E.2d 899 (2006).

ARGUMENT I

THE WORKERS' COMPENSATION COMMISSION ERRED IN CONCLUDING APPELLANT'S CLAIM WAS BARRED BY THE "GOING AND COMING RULE". (ISSUE 1)

The Workers' Compensation Commission concluded Appellant's claim was barred by the "going and coming" rule. Generally, an employee who was simply going to the place of employment or coming home from the place of employment is not on the job. Therefore, an injury sustained by accident at those times is not compensable. Whitworth v. Window-World, Inc., 377 S.C. 637, 661 S.E.2d 333 (2008); Gallman v. Springs Mills, 201 S.C. 257, 22 S.E.2d 715 (1942). Appellant respectfully submits the Commission erred in concluding her claim was barred under this rule.

The going and coming rule provides an accident to an employee while he is simply going or coming from his place of employment is not covered by workers' compensation because the employee is not performing any work related duties during those times. There are, however, numerous exceptions to the general rule. Medlin v. Upstate Plaster Service, 329 S.C. 92, 495 S.E.2d 447 (1998).

An employee's accident going to or coming from work falls within an exception to the going and coming rule if the employee is charged with the performance of some task in the furtherance of the employer's business while traveling to or from work. Shuler v. Gregory Elec., (Ct. App. 2005); Greg v. Dorchester County School System, 270 S.C. 189, 241 S.E.2d 554 (1978). Appellant respectfully submits the Commission erred in failing to determine her accident fell within this exception to the going and the coming rule.

In ruling Appellant's claim was barred by the going and coming rule, the Commission simply concluded Appellant was on her way to work at the time of the accident and therefore her claim was barred. The Commission ignored, however, overwhelming evidence the Appellant was charged with performing duties related to her employment at the time of the accident. Significantly, the Employer admitted Appellant was performing duties related to her job and was in fact on the job at the time of her accident.

Appellant and her Employer both testified Claimant left her house with two specific work related duties. She was to stop by the law firm accountant's office to pick up payroll checks, and she was further charged with making deposits to the law firm bank account. Both of these errands were to be performed on her way to work and both locations were on her travel path to work.

As the office manager for the law firm, the errands mentioned above were specifically within her job duties. Furthermore, immediately prior to the accident the Appellant was conducting law firm business by discussing insurance coverage for the law firm by cell phone while in the car.

Although some evidence was presented to call into question whether or not Appellant actually stopped at the office of the accountant, there is no evidence controverting the testimony of Claimant she was on the cell phone in regard to insurance coverage for the law firm or that she was also charged with making bank deposits which would have been done just down the road from where the accident occurred. The controlling person for the Oswald Law Firm confirmed she in fact picked up the payroll

checks and that she was also going to make bank deposits for the law firm at a bank which was on the route she was traveling at the time of the accident.

There is no showing Appellant made any deviation from the route required to stop by the accountant's office and subsequently the bank to make deposits. There was no proof of any personal deviation from her necessary route of travel to accomplish those errands. The owner and president of the Oswald Law Firm, LLC, testified she in fact picked up the payroll checks from the accountant's office and was performing her duties as law office manager at the time of the accident. Furthermore, Appellant was conducting law firm business by cell phone immediately prior to the accident. For all of the above reasons the decision of the Appellate Panel of the Workers' Compensation Commission should be reversed, with a ruling the Appellant is entitled to workers' compensation benefits as a result of the motor vehicle accident. The case should be remanded to the Commission for determination of disability payments and medical benefits Appellant is entitled to as a result of the accident.

CONCLUSION

The testimony and evidence presented at the hearing before the Hearing Commissioner clearly showed the Appellant was performing duties within the course and scope of her employment at the time of her motor vehicle accident. The Commission erred in concluding her claim was barred by the going and coming rule. The decision of the Appellate Panel should be reversed with a determination the Appellant's accident is covered by the Workers' Compensation law. The case should be remanded for a hearing to determine what disability payments and medical benefits she is entitled to as a result of the motor vehicle accident of September 27, 2010.

Respectfully submitted,

April 7, 2015
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CERTIFICATE OF COUNSEL

The undersigned certifies that the **BRIEF OF APPELLANT** dated April 7, 2015,
and filed April 8, 2015, complies with Rule 211(b) of the South Carolina Appellate Court
Rules.

Respectfully submitted,



West Columbia, South Carolina
April 8, 2015

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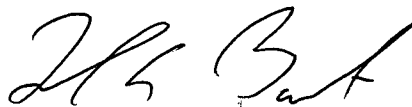
Norguard Insurance Co., Carrier.....Respondents.

PROOF OF SERVICE

The undersigned does hereby certify three copies of the **FINAL BRIEF OF APPELLANT** was served in the foregoing action by depositing the same in the United States mail, with sufficient postage affixed thereon and return address clearly visible on April 8, 2015, addressed to the following:

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April 8, 2015



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