

THE STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM SOUTH CAROLINA COURT OF APPEALS

Opinion Number 5369 (S.C. Ct. App. filed December 9, 2015)

Brian Wofford, deceased
Employee, by and through Boisha
Wofford, surviving spouse,

Petitioner,

v.

City of Spartanburg,

Employer and Self-Insurer,

and

South Carolina Municipal Insurance Trust Carrier,

Respondents.

APPENDIX

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THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM SPARTANBURG COUNTY
Workers' Compensation Commission

Case No. 2014-001269

Boisha Wofford, alleged surviving spouse,
and Kaelyn Wofford, surviving child, on behalf
of Brian Wofford, deceased employee,

Appellants,

v.

City of Spartanburg, through the South Carolina
Municipal Insurance Trust,

Respondents.

RECORD ON APPEAL

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South Carolina Workers' Compensation Commission
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WCC File #:	1207113
Carrier File #:	
Carrier Code #:	00925
Employer FEIN #:	

Claimant's Name: Boisha W. Wofford

SSN: _____

Employer's Name: City of Spartanburg

Address: 1 Holly Tree Circle

Address: P.O. Box 1749

City:	Duncan,	State:	SC	Zip:	29334
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City:	Spartanburg	State:	SC	Zip:	2930
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Home Phone: (864) 574 - 9003

Work Phone: () -

Insurance Carrier: South Carolina Municipal Insurance Trust

Preparer's Name: Kenneth C. Anthony, Jr.

Law Firm: The Anthony Law Firm, PA

Preparer's Phone #: (864) 582 - 2355

REQUEST FOR COMMISSION REVIEW

Request for Commission Review by ☒ Claimant ☐ Employer (check one) Date of Injury or Illness: 05-18-2012

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

1. Did the Commissioner err in finding that the decedent was not working at the time of his death?

2. Did the Commissioner err in finding that the claim was barred by the going and coming rule, and that there was no applicable exceptions? Specifically, did the Commissioner err in failing to find that the decedent, on his way to or from his work, was still charged with some duty or task in connection with his employment? Medlin v. Upstate Plaster Service, 329 S.C. 92, 495 S.E. 2d 447 (1997).

(Check one) Oral argument ☒ is ☐ is not requested. Appellant's request for oral argument is waived if not indicated on this form.

☐ Mediation

☐ Mediation is requested by consent of the Parties pursuant to Reg. 67-1803.

Questions regarding mediation may be submitted to mediation@wcc.sc.gov.

I certify I have served this document pursuant to Reg. 67-211 by delivering a copy to Stephanie Lamb Pugh of Turner, Padgett, Graham Lane Address PO Box 1509, Greenville, SC 29602 on the 18th day of November, 2013 by ☒ first class postage ☐ certified mail ☐ personal service.

Preparer's Signature

Attorney for Claimant
Title

kanthony@anthonylaw.com
Email

November 18, 2013
Date

Questions about the use of this form should be directed to the Judicial Department at 803.737.5675 or appeals@wcc.sc.gov.

If the claimant appeals and is not represented by counsel, the Judicial Department will properly serve this form pursuant to Reg. 67-607 C. Pursuant to Reg. 6205 and Reg. 701, the appeal must be postmarked no later than 14 days from the date of service of the Decision and Order of the Hearing Commissioner along with the filing fee. Attach a Form 32, if you are unable to pay the filing fee. Refer to Reg. 67-211 and Reg. 67-701 through 711.

7 COPY

SOUTH CAROLINA WORKERS' COMPENSATION HEARING

BRIAN WOFFORD (Deceased),

Employee

WCC FILE NO.
1207113

-VS-

CITY OF SPARTANBURG,

Employer

and

SOUTH CAROLINA MUNICIPAL
SELF-INSURANCE TRUST FUND,

Carrier

Pursuant to Notice of the Workers' Compensation
Hearing taken on the 15th day of August 2013, heard
before the Honorable T. Scott Beck, and commencing at
the hour of 12:38 p.m. in Spartanburg, South Carolina.

C. Tatum Court Reporting
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Edgefield, SC 29824
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REPRESENTING THE EMPLOYER/CARRIER

ALSO PRESENT

Boisha Wofford,
Wife of Claimant

Mitch Kennedy,
Representative of the City of Spartanburg

P R O C E E D I N G S

1
2 COMMISSIONER BECK: Today's date is August 15,
3 2013. This is Workers' Compensation File Number
4 1207113. Claimant in this matter was *Brian*
5 *Wofford*, Mr. Wofford is deceased. His wife, *Boisha*
6 *Wofford* is present. The Deceased estate is
7 represented today by Attorney Ken Anthony, Junior.
8 The Employer was the *City of Spartanburg*, the
9 Carrier is the *South Carolina Municipal Self-*
10 *Insurance Trust Fund*, they are represented today by
11 Attorney Stephanie Pugh. Date of accident in this
12 matter is May 18, 2012. Parties have stipulated to
13 an average weekly wage of \$1,234.26, yielding a
14 compensation rate of \$725.47. We are here today on
15 Claimant's Form 52. I have conceded to allow the
16 record in this matter to remain open until close of
17 business tomorrow, August 16, 2013, for the purpose
18 of the Claimant submitting some case law in
19 response to that already submitted by the
20 Defendant.

21 I have APAs from both the Claimant and the
22 Defendant in this matter, as well as briefs by both
23 the Claimant and the Defendant. Also, case law
24 submitted on behalf of the Defendant's would
25 include: *Falconer versus Beard-Laney; Gallman*

1 *versus Springs Mill; Gregg versus Dorchester County*
2 *School System; Moore versus Family Service of*
3 *Charleston County; Sylvan versus Sylvan Brothers,*
4 *Inc.; and White versus South Carolina State Highway*
5 *Department; Whitworth versus Window World, Inc.*

6 Are there any objections to APAs,
7 jurisdiction, venue, or any other item,
8 Mr. Anthony?

9 MR. ANTHONY: None from the Claimant, your
10 Honor.

11 COMMISSIONER BECK: Ms. Pugh?

12 MS. PUGH: None from the Defendants, your
13 Honor.

14 COMMISSIONER BECK: Without any objection the
15 Commission File becomes part of the record with the
16 exception of self-serving declarations and
17 un-stipulated medical reports.

18 Also during the pre-hearing conference in this
19 matter respective positions of both the parties was
20 discussed. From the Claimant's standpoint it is
21 asserted that the Claimant, Mr. Brian Wofford, was
22 involved in a compensable accident resulting in his
23 death and they are here seeking a finding of
24 compensability in that matter. They would assert
25 that Claimant was working at the time and if, in

1 fact, he had deviated from the course of his
2 employment that it was a minor deviation and that
3 he was still, in fact, performing a job for the
4 city at the time of this accident.

5 Claimant further asserts that a third party
6 action was never commenced, as there was never a
7 Summons of Complaint filed. There was, in fact, a
8 petition filed for approval of a settlement per
9 Statute of 15-51-10, and as such a Common Plea
10 number was assigned to that matter. Claimant
11 further asserts that the posture of the case is
12 such that a lawsuit could still, in fact, be filed
13 with regard this accident.

14 Mr. Anthony, anything in addition that you'd
15 like to add to the record or that we're here to
16 litigate today, sir?

17 **MR. ANTHONY:** I think that stated it very
18 well.

19 **COMMISSIONER BECK:** All right. From the
20 Defendant's standpoint, they deny compensability of
21 this claim or entitlement to benefits in this claim
22 in it's entirety and base that on three grounds.

23 First, that the Claimant was not working at
24 the time of the accident, therefore, not in the
25 course and scope of his employment. Number two, if

1 he, in fact, had been working that he substantially
2 deviated from his employment such that he would be
3 barred from benefits. And third, that the Claimant
4 failed to file a Form S-2 within 30 days in
5 accordance with Section 42-1-560(B), therefore
6 electing a remedy, and as a result is barred from
7 benefits under the Act.

8 Ms. Pugh, anything in addition that you'd like
9 to add to the record or that we're here to litigate
10 today, ma'am?

11 MS. PUGH: Your Honor, I would just add that
12 we believe, and I would like on the record, that
13 the Claimant's barred by the going and coming rule,
14 specifically, and that there are no applicable
15 exceptions.

16 COMMISSIONER BECK: That's under Medlin?

17 MS. PUGH: Yes.

18 COMMISSIONER BECK: Anything else?

19 MS. PUGH: No, your Honor.

20 COMMISSIONER BECK: Mr. Anthony, you may call
21 your first witness, sir.

22 MR. ANTHONY: Your Honor, we call Sonya
23 Culbreth to the stand.

24 COMMISSIONER BECK: Ms. Culbreth.

25 *****

Whereupon,

Sonya Culbreth,

having been first duly sworn,
was examined and testified as follows:

COMMISSIONER BECK: Please state your full
name for the record.

THE WITNESS: Sonya Culbreth.

COMMISSIONER BECK: Mr. Anthony.

MR. ANTHONY: Thank you, your Honor.

DIRECT EXAMINATION

BY MR. ANTHONY:

Q. Ms. Culbreth, good morning. You know I'm Ken
Anthony and I represent Ms. Wofford here and I just
need to ask you a few questions about your work
with the City of Spartanburg and your
communications with Brian Wofford, particularly on
the day he passed away.

What is your position with the city?

A. Communications and Marketing Specialist.

Q. And how long have you been in that position?

A. It will eight years in September.

Q. Where is your office, physically?

A. Second floor of City Hall.

Q. Did you know Brian Wofford?

- 1 A. I did.
- 2 Q. And knew him for a number of years?
- 3 A. Yes, sir.
- 4 Q. Okay. Would you work with Brian from time to time?
- 5 A. Yes, sir.
- 6 Q. On what types of things?
- 7 A. Any programming that was going on at the community
- 8 centers. I would help promote those, do form
- 9 layers, content management for the website, that
- 10 type thing.
- 11 Q. So you were in one department, promotions and
- 12 public relations, more or less, and he was in parks
- 13 and recreation, correct?
- 14 A. Yes, sir.
- 15 Q. But you did need to work together at times on
- 16 different projects?
- 17 A. Yes, sir.
- 18 Q. And were there, in fact, one or two projects going
- 19 on on the day of his death that the two of you had
- 20 worked on together?
- 21 A. Yes, sir.
- 22 Q. All right. I think you were off that day, weren't
- 23 you?
- 24 A. Yes, sir, I was.
- 25 Q. Okay. Because your son was home?

- 1 A. From the Air Force, yes.
- 2 Q. Right. But did you communicate with Brian that day
- 3 even though you were not physically in the office?
- 4 A. Yes, sir, I did.
- 5 Q. Specifically, did you send him an email at 7:20 in
- 6 the morning?
- 7 A. Yes, sir.
- 8 Q. Okay. And I'll just read it. I think the text of
- 9 it was (As Read): Hey, just reminding you about
- 10 the podium this morning. Thanks.
- 11 A. Correct.
- 12 Q. Is that correct?
- 13 A. Uh-huh.
- 14 Q. And tell us about that was referring to.
- 15 A. There was an event, Partners for Active Living,
- 16 it's a Pedal with your Politician, it's an annual
- 17 event and I had asked Brian probably about a couple
- 18 weeks prior about using the podium for that event
- 19 because we've done it in the past.
- 20 Q. So his department would have charge of the podium?
- 21 A. Yes, sir.
- 22 Q. And so that morning you were just reminding him
- 23 that that was going to be needed?
- 24 A. Yes, sir.
- 25 Q. Correct? And, obviously, that communication was

1 work related?

2 A. Yes, sir.

3 Q. It wasn't just a personal, How are you doing?

4 A. No.

5 Q. And so at 7:41 did he respond to you and ask where
6 is it going again?

7 A. Yes.

8 Q. Right? So it sounds like it was a good idea for
9 you to remind him?

10 A. Yes, sir, it was.

11 Q. And then you responded to him at 7:58 (As Read):
12 B-cycle station in the grass. The cycles are
13 behind it, speaker facing away from cycles and
14 spectators are looking at cycles?

15 A. Yes, sir.

16 Q. Right? So you were telling him about a location
17 where this event was going to occur and actually
18 telling him where to put it at that location?

19 A. Yes, sir.

20 Q. And then he responded to you at 8:01 with just the
21 word time and a question mark, wanting to know, I
22 guess, when to get it there?

23 A. Yes, sir.

24 Q. A review of his cell phone records indicates that
25 at 9:36 you sent him another email (As Read): Did

1 you get it there in time. Does that sound right?

2 A. Yes, sir, it does.

3 Q. And I don't think you ever got a response to that?

4 A. Not that I recall.

5 Q. Okay. Was this communication between you and Brian
6 by email anything unusual?

7 A. No, sir, it wasn't.

8 Q. Did it occur on a daily or at least weekly basis
9 back and forth?

10 A. Any time, you know, not just Brian, if I've got
11 something else going on I would communicate that
12 way.

13 Q. All right. And that was true if you were
14 physically in your office?

15 A. Yes, sir.

16 Q. But it was also true if you weren't in your
17 office --

18 A. Yes, sir.

19 Q. -- you might be communicating by email, right?

20 A. Yes, sir.

21 Q. In fact, the city had issue you and Brian cell
22 phones for use at work?

23 A. That's correct.

24 Q. So you had the ability to call each other on the
25 cell phone, right?

- 1 A. Yes, sir.
- 2 Q. Call each other on the land lines?
- 3 A. Yes, sir.
- 4 Q. From the offices? Text message?
- 5 A. Yes, sir.
- 6 Q. Email?
- 7 A. Yes, sir.
- 8 Q. And you used all of those different forms of
- 9 communication with Brian at one time or another?
- 10 A. Probably, yes, sir.
- 11 Q. And again, every time you did it was work related?
- 12 A. Yes, sir.
- 13 Q. And when you would text, email, call him on the
- 14 cell phone, you didn't know if he was in office or
- 15 not?
- 16 A. No, sir.
- 17 MR. ANTHONY: Objection, leading.
- 18 COMMISSIONER BECK: Sustained. Rephrase.
- 19 MS. PUGH: Okay.
- 20 Q. Did you know where he was when you texting him or
- 21 emailing?
- 22 A. I did not.
- 23 Q. And did he necessarily know where you were?
- 24 A. I wouldn't think so.
- 25 Q. Okay. And even if he weren't physically in his

1 office was your communication something he was
2 doing as part of his job?

3 A. Yes, sir.

4 Q. And as long as he got the podium to the bicycle
5 station that morning did you care where he was?

6 A. I didn't have any reason to. I just needed to make
7 sure the podium was there.

8 MR. ANTHONY: I think that's all I have of
9 this witness, your Honor.

10 COMMISSIONER BECK: Ms. Pugh.

11 CROSS-EXAMINATION

12 BY MS. PUGH:

13 Q. Ms. Culbreth, did you fully expect Brian to get the
14 podium to this event for you?

15 A. I really didn't think, you know, much about who's
16 going to get it there. I just know in the past
17 when I have asked to use the podium he would say,
18 Be sure to remind me. So I reminded him.

19 Q. So you reminded him and you actually ended up
20 checking making sure that it had gotten there, I
21 believe you asked him, Did you get it there in
22 time, is that correct?

23 A. Yes.

24 Q. And he never responded?

25 A. Not that I recall.

1 MS. PUGH: Nothing further.

2 COMMISSIONER BECK: Anything further?

3 MR. ANTHONY: Nothing further of this witness.

4 COMMISSIONER BECK: You may step down, ma'am,
5 and if you need to get back to your employment
6 you're certainly welcome to do that. Thank you.

7 Mr. Anthony, your next witness.

8 MR. ANTHONY: I would like Mr. Page, please.
9 Scott Page.

10 *****

11 Whereupon,

12 SCOTT PAGE,

13 having been first duly sworn,
14 was examined and testified as follows:

15 *****

16 COMMISSIONER BECK: Please state your full
17 name for the record.

18 THE WITNESS: Michael Scott Page

19 COMMISSIONER BECK: Mr. Anthony.

20 MR. ANTHONY: Thank you, your Honor.

21 DIRECT EXAMINATION

22 BY MR. ANTHONY:

23 Q. Mr. Page, you know I'm Ken Anthony and I represent
24 the Wofford family and I need to ask you a few
25 questions, please.

1 You are an employee of the City of
2 Spartanburg?
3 A. I am.
4 Q. And what is your position?
5 A. Parks Manager.
6 Q. How long have you been with the city?
7 A. I've been with the city for going on 13 years in
8 December.
9 Q. Okay. What was your relationship with Brian
10 Wofford?
11 A. He was my direct supervisor.
12 Q. Where is your office physically located?
13 A. 100 North Liberty Street, Second Floor.
14 Q. And is that in the Sparta location or what some
15 people might call the --
16 A. Yes, sir, the floor above it.
17 Q. And where was Brian's physical office?
18 A. That same location.
19 Q. So right there on the same floor, same...
20 A. Yes.
21 Q. Close to each other?
22 A. Yes..
23 Q. So would you see Brian, pretty much, on a daily
24 basis?
25 A. I would see him at times. I didn't always go into

1 the office first thing in the morning and he also
2 worked out of the office at Recreation Center, CC
3 Woodson. So most of the time I would see him at
4 some point during the day, it may be brief
5 sometimes. And other times, if we had meetings or
6 such together, it may be longer.

7 Q. So in your job you did not necessarily report to
8 your physical office first thing in the morning?

9 A. Not always.

10 Q. All right. And is that true for Brian, as well?

11 A. Probably so if he had a -- I can't answer that.

12 I'm not a hundred percent sure. But I know that he
13 might go straight to CC Woodson sometimes if he was
14 working out of that Rec Center office or if he had
15 a meeting or something. I don't know. Early in
16 the morning he might not go there first thing, as
17 far as I know.

18 Q. Neither one of you punched a time clock?

19 A. No.

20 Q. Okay. Can the hours of Parks and Recreation be a
21 little irregular?

22 A. They can depending on what's going on. If we have
23 -- from my standpoint and my job, if I have
24 maintenance that I have to do sometimes it may take
25 place earlier or after hours or if we have a Parks

1 and Rec function going on, that might take place
2 after hours also.

3 Q. And you attend those even if they are after hours?

4 A. Yes.

5 Q. You may have some job or duties there?

6 A. I may have, yes.

7 Q. Was that true for Brian as well?

8 A. Yes.

9 Q. Okay. And did his job require him to get out of
10 his office for long periods of time?

11 A. I'm sure it would. I can't answer that, but I'm
12 sure that it would for if he had to go to meetings
13 or to go -- whatever he might be working on, if he
14 had to look at something at a recreation center or
15 at a park I'm sure it would.

16 Q. And there are a number of parks that fall under
17 Parks and Recreation?

18 A. Yes.

19 Q. And he and you would have to travel those at times?

20 A. Yes.

21 Q. And then when there were events held would the two
22 of you have to go to those events sometimes --

23 A. Yes.

24 Q. -- wherever they may be at?

25 A. Yes, sir.

- 1 Q. All right. When you -- of course, when you saw
- 2 Brian there at the office y'all could speak to each
- 3 other or sit down in each others office?
- 4 A. Yes, depending -- I mean, if we were talking about
- 5 work related things or...
- 6 Q. Right. But are there other times you would
- 7 communicate not person to person but by other
- 8 methods?
- 9 A. Yes.
- 10 Q. And you were issued a city cell phone, I think?
- 11 A. I do. I have.
- 12 Q. Okay. And you were free to use that to call Brian
- 13 or anybody else on your cell phone?
- 14 A. Yes, work related.
- 15 Q. All right. And y'all also text, sent text
- 16 messages?
- 17 A. Yes, not as much as through email or just verbal,
- 18 but yes.
- 19 Q. But were those common methods of communication
- 20 between you and Brian?
- 21 A. Yes, sir.
- 22 Q. And other city employees?
- 23 A. Yes, sir.
- 24 Q. When you would communicate with Brian other than
- 25 face to face, if you would use one of these methods

1 of email, or text, or cell phone, would you know
2 where he was?

3 A. No, I may not.

4 Q. Would he know where you are?

5 A. He may not.

6 Q. None the less, when he was communicating with you
7 was it always work related?

8 A. With my relationship with Brian, yes, it was,
9 pretty much.

10 Q. And I think the morning of his death you had some
11 communication with him, and I'm just going to tell
12 you from the records we got from the phone, I think
13 at 8:05 you sent him -- or Brian actually sent you
14 a text message that said (As Read): Can your first
15 stop be CC to get the podium, do you remember that?

16 A. Yes, sir.

17 Q. And CC, again, for the record is CC Woodson Center?

18 A. Yes, sir, one of our recreation centers.

19 Q. Okay. And so he was asking you can your first stop
20 be CC to get the podium?

21 A. Yes.

22 Q. Were you already at work?

23 A. I was. That came shortly after eight, so he
24 probably said first stop referring to if I got in
25 at eight o'clock. But we were having an event out

1 at Barnett Park that day, a luncheon for city
2 employees, so I had actually already been to work
3 for about an hour or so before that.

4 Q. You responded to him at 8:09 with a text message
5 (As Read): Taking it -- Ray, taking it to question
6 mark?

7 A. Yes, he asked me to stop by CC Woodson and get the
8 podium and that is a reference -- I didn't know
9 exactly where -- once I got it where I needed it to
10 go.

11 Q. And then at 8:10, the next minute, did he text you
12 back (As Read): The B-cycle station downtown. Is
13 there power in that area?

14 A. Yes.

15 Q. Do you remember that?

16 A. Yes.

17 Q. And then I think at 8:15 you responded to him by
18 text (As Read): If you are talking power I guess
19 you mean the smaller podium, question mark. There
20 should be power at least on a streetlight. Been
21 here since seven. On my way to get it.

22 A. Yes, sir.

23 Q. Correct? And then the record shows at 8:18 a cell
24 phone call from you to Brian. So y'all must have
25 had some conversation about --

- 1 A. Yes.
- 2 Q. -- what was --
- 3 A. Yes.
- 4 Q. -- following up on those text messages?
- 5 A. I was following up on that -- on who that podium
- 6 was for in downtown off of Spring Street called
- 7 Pedaling with Politicians, and that's where I was
- 8 taking the podium. And we were just clarifying
- 9 that and that was following up to those text
- 10 messages.
- 11 Q. And did you, in fact, go get that podium?
- 12 A. I did. I don't recollect if it was actually at CC
- 13 Woodson or not, it might have been in one of your
- 14 other storage facilities, but I located it and took
- 15 it down there.
- 16 Q. Okay. Insofar as you know it was used for that
- 17 event?
- 18 A. It was used for that event, yes.
- 19 Q. Could you or Brian, either one, do your jobs just
- 20 by sitting in your physical offices all day?
- 21 A. No, I don't think so.
- 22 Q. So is it necessary for the two of you to be able to
- 23 communicate by all these other methods during the
- 24 day while you move around from place to place?
- 25 A. Yes, sir, I would think so.

1 MR. ANTHONY: I think that's all I have of
2 this witness.

3 COMMISSIONER BECK: Ms. Pugh.

4 CROSS-EXAMINATION

5 BY MS. PUGH:

6 Q. Mr. Page, was this the first -- the morning of the
7 18th, was that the first time you had ever heard
8 about taking that podium over to the bicycling
9 event?

10 A. Yes.

11 Q. Yes?

12 A. Yes.

13 Q. And had you not taken it would Mr. Wofford have
14 been capable of taking that himself?

15 A. He probably could have. If he came in I guess he
16 could have gotten a truck.

17 Q. And taken it himself?

18 A. Uh-huh.

19 Q. And now, would you defer to Brian's boss and his
20 job description regarding his job duties in
21 particular?

22 A. What was that again?

23 Q. Would you defer to Brian's boss and his job
24 description regarding what Brian's job duties were?

25 A. I don't understand the question.

- 1 Q. Mr. Anthony asked you some questions about Brian's
- 2 job duties?
- 3 A. Right.
- 4 Q. Would you defer to Mitchell Kennedy and Brian's job
- 5 description regarding what Brian's job duties were
- 6 while he worked with the City of Spartanburg?
- 7 A. What his job description was?
- 8 Q. Yes.
- 9 A. Do I know what his job description is?
- 10 Q. Okay. Mr. Anthony asked you some questions
- 11 regarding what Brian would typically do, what he
- 12 had to do --
- 13 A. Yes.
- 14 Q. -- his job duties --
- 15 A. Yes.
- 16 Q. -- would you defer to Mitch Kennedy, his boss, and
- 17 Brian's job description regarding what Brian had to
- 18 do on a daily basis or what fell under Brian's
- 19 command?
- 20 A. I guess so, yes.
- 21 Q. Okay. And the conversation that you had with Brian
- 22 lasted about one minute and forty-four seconds, is
- 23 that correct?
- 24 A. Yes.
- 25 Q. Very short?

1 A. I don't know the exact length, but I'm sure it was
2 short.

3 MS. PUGH: Nothing further.

4 COMMISSIONER BECK: Anything further,
5 Mr. Anthony?

6 MR. ANTHONY: No, sir.

7 COMMISSIONER BECK: You may be excused, sir,
8 to return to your job if you like. Thank you.

9 Mr. Anthony, your next witness, please.

10 MR. ANTHONY: We'll call James Rice.

11 *****

12 Whereupon,

13 JAMES RICE,

14 having been first duly sworn,
15 was examined and testified as follows:

16 *****

17 COMMISSIONER BECK: Please state your full
18 name for the record.

19 THE WITNESS: James Tyrate Rice.

20 COMMISSIONER BECK: Mr. Anthony.

21 MR. ANTHONY: Thank you, your Honor.

22 DIRECT EXAMINATION

23 BY MR. ANTHONY:

24 Q. Mr. Rice, I'm Ken Anthony, I represent the Wofford
25 family. I just need to ask you a few questions

1 about the city and about Brian Wofford.

2 What's your position with the city?

3 A. Athletic Supervisor.

4 Q. And how long have you been in that position?

5 A. Nearly five years.

6 Q. How long have you been with the city?

7 A. Going on 11 years, sir.

8 Q. Okay. Where's your office physically located?

9 A. 100 North Liberty, that's the Sparta bus station on
10 the second floor.

11 Q. Is that the same place Brian Wofford's physical
12 office was located?

13 A. Yes, sir.

14 Q. How did you know Brian?

15 A. Brian and I have been friends since junior high
16 school.

17 Q. So y'all were friends, as well as colleagues?

18 A. Yes, sir.

19 Q. And you familiar with Brian -- what Brian had to do
20 in his job?

21 A. Yes, sir.

22 Q. Can Parks and Recreation employees have somewhat
23 irregular hours at times?

24 A. Yes, depending on what type of programing we have
25 going on.

- 1 Q. In fact, had you and Brian been at an event the
- 2 night before his death?
- 3 A. Yes, sir.
- 4 Q. All right. And it went kind of late, didn't it?
- 5 A. Yes.
- 6 Q. Could Brian do his job or could you do your job if
- 7 you sat in your office all day long?
- 8 A. Yes, sir, if we had someone to assist us with
- 9 different things, yes.
- 10 Q. But was it part of your job and his to travel to
- 11 these various recreation centers and parks and see
- 12 that things were operating properly?
- 13 A. Yes, that was a requirement, yes.
- 14 Q. And when you did that would you communicate with
- 15 each other by various methods?
- 16 A. Yes, either by phone or text message.
- 17 Q. Yeah. And you had a city issued cell phone, I
- 18 think --
- 19 A. Yes, sir.
- 20 Q. -- and so did Brian? And would you, at times, call
- 21 each other on the cell phones?
- 22 A. Yes.
- 23 Q. Would you send text messages on the cell phones?
- 24 A. Yes.
- 25 Q. Would you send emails --

1 A. Yes, sir.

2 Q. -- on the cell phones? And when you would
3 communicate with Brian like that did you always
4 know where he was?

5 A. Not always.

6 Q. Did it matter to you where he was, necessarily, as
7 long as y'all were getting the job done?

8 A. No, it didn't matter. I mean, it was just an
9 assumption he was where he needed to be, as well as
10 myself.

11 Q. And that communication is an essential part of your
12 job?

13 A. Right.

14 Q. When you would communicate at work on the cell
15 phone, or email, or text, was it primarily work
16 related?

17 A. Yes, sir.

18 Q. I mean, y'all weren't just shooting the breeze or
19 telling job, you were --

20 A. Mainly work related.

21 Q. The morning of his death I think you had some
22 communication with him. And I'll just tell you
23 that the phone record seems to show that at 9:22
24 you called Brian and talked for about 14 seconds.
25 Do you remember talking to him on the cell phone

1 that morning?

2 A. The 18th?

3 Q. Yes.

4 A. He and I didn't talk --

5 **COMMISSIONER BECK:** Mr. Anthony, I believe
6 that was the one that we struck earlier as actually
7 occurring the night before.

8 **MR. ANTHONY:** You're right. My fault. I'm
9 sorry, your Honor.

10 Q. Did you try to call him about 9:30 that morning and
11 didn't get an answer?

12 A. Yeah, I did call him at that.

13 Q. And when you called him did you assume that he was
14 on the job?

15 A. Yes, that was the morning of Spring Fever, employee
16 luncheon that human resources does for city
17 employees, so it was my assumption that he was
18 helping out with that event.

19 Q. And, I mean, when you were calling him at 9:30, I
20 mean, that's well within his normal work hours,
21 right?

22 A. Yes.

23 Q. And your normal work hours?

24 A. Yes.

25 Q. And this was a Friday, wasn't it?

1 A. Yes, sir.

2 Q. Friday's a normal work day for both of you?

3 A. Yes.

4 Q. So regardless of where he was, you were calling him
5 about work and assuming that he was on the job
6 somehow?

7 A. Yes.

8 MR. ANTHONY: I think that's all I have of
9 this witness, your Honor.

10 COMMISSIONER BECK: Ms. Pugh.

11 CROSS-EXAMINATION

12 BY MS. PUGH:

13 Q. Mr. Rice, you were close friends with Brian, is
14 that correct?

15 A. Yes.

16 Q. And I believe you testified at your depositions
17 that most days you arrived at eight o'clock in the
18 morning, is that correct?

19 A. Yes.

20 Q. And although there would be some special events
21 going on, typical, your work day is from eight to
22 five, is that correct?

23 A. Yes.

24 Q. It does have flexibility?

25 A. Right.

- 1 Q. And so did Brian's, is that correct?
- 2 A. Yes.
- 3 Q. And the night before you and Brian did attend an
- 4 event, not a city event, but some event he was on a
- 5 board for or something --
- 6 A. Yes.
- 7 Q. -- is that correct?
- 8 A. Yes.
- 9 Q. And after that you and Brian went out to Wild
- 10 Wings, is that correct?
- 11 A. Yes.
- 12 Q. Stayed out to 11 or 12 p.m., is that correct?
- 13 A. Yes.
- 14 Q. Okay. Now, you testified on direct that you
- 15 assumed Brian was working and helping out with
- 16 Spring Fever Day?
- 17 A. Yes.
- 18 Q. Did you ever see Brian helping out at Spring Fever
- 19 Day on the date of his death?
- 20 A. Not on the day of his death.
- 21 Q. Okay. Now, where were you when you received
- 22 Brian's text?
- 23 A. I was in the office.
- 24 Q. You were in the office?
- 25 A. Yes.

1 Q. And at that point did you leave to go get the music
2 equipment that was needed for Barnett Park?

3 A. Well, no, let me back up.

4 Q. Okay.

5 A. When I got his text message I was heading into the
6 office and so that's why I swung in CC Woodson to
7 pick up the Fender. That's why you'll see in that
8 text message I asked him, Where is the Fender,
9 also. So, but I never got a response back at that
10 time so I went by CC instinctively to go pick it
11 up.

12 Q. Okay. So when you received his text -- or when you
13 responded to his text at 11:08 you were still at
14 your house as well?

15 A. Yes.

16 Q. Had you not picked up that Fender or the music
17 equipment for Barnett Park would that be something
18 that Brian would have done himself?

19 A. Yes.

20 MS. PUGH: Nothing further, your Honor:

21 COMMISSIONER BECK: Anything further,
22 Mr. Anthony.

23 MR. ANTHONY: If the Court -- please.

24 REDIRECT EXAMINATION

25 BY MR. ANTHONY:

1 Q. Mr. Rice, let's talk for another minute about this
2 event, it's called Spring Fever?

3 A. Yes, sir.

4 Q. And can you describe it for us.

5 A. It's just an event where we would partner with
6 human resources to provide lunch for city
7 employees. We would help set up tents, tables,
8 provide music, and also assist with getting the
9 food there.

10 Q. Okay. And the music is part of what you came into
11 play on, right?

12 A. Yes.

13 Q. And there's a piece of equipment called a Fender?

14 A. Right.

15 Q. Tell us what that is.

16 A. It's basically a music system in a box where you
17 can play your Ipod through the system, has a
18 microphone, CD player, so all the components of a
19 music system right there.

20 Q. So this was kind of an employee appreciation day,
21 would that be one way --

22 A. Yes.

23 Q. -- to characterize it?

24 A. I guess you can call it that, yes.

25 Q. Sort of a Thank You event, and so there was food

1 and there was going to be music --

2 A. Yes.

3 Q. -- to make it kind of a more festive --

4 A. Right.

5 Q. -- atmosphere, is that right? And so that's --

6 Brian sends you a -- y'all are actually

7 participating in a chat, I think, at 11:07 where he

8 sends you a message says (As Read): The Fender and

9 Ipod at Barnett Park. And you respond almost

10 immediately (As Read): Not yet. Where is the

11 Fender?

12 And we didn't see any communication back from

13 Brian, but apparently you found it?

14 A. Yes, it was at CC Woodson.

15 Q. And you, then, at 11:49 -- actually after he had
16 already had his wreck but you didn't know it -- you

17 sent him a chat (As Read): I just dropped off the

18 Fender and Ipod?

19 A. Right.

20 Q. Right? And so when he communicated with you you
21 were on your way in and you went by CC Woodson and
22 picked up the Fender and Ipod?

23 A. Yes, sir.

24 Q. When you went to CC Woodson and picked up the

25 Fender and Ipod did you consider yourself on the

1 job?

2 A. Yes, I did.

3 Q. Okay. When you received messages from Brian did
4 you consider that a part of your job?

5 A. Yes, sir, if we were communicating about work.

6 Q. Okay.

7 A. He would normally ask me to assist him with
8 something or communicate something he needed done.

9 Q. So when you were going to CC Woodson to pick up
10 temp [sic] you felt like you were on the job?

11 A. Yes, sir.

12 Q. And then -- and same when you took it to Barnett
13 Park?

14 A. Yes, sir.

15 MR. ANTHONY: That is all I have.

16 COMMISSIONER BECK: Anything further,

17 Ms. Pugh?

18 RE-CROSS-EXAMINATION

19 BY MS. PUGH:

20 Q. James, there was a couple of missed calls from you
21 to Brian the morning of his death, you were
22 actually looking for him, weren't you?

23 A. Yes.

24 MS. PUGH: Nothing further, your Honor.

25 MR. ANTHONY: Thank you.

1 **COMMISSIONER BECK:** You may be excused, sir.
2 Thank you very much.

3 Mr. Anthony, your next witness, please.

4 **MR. ANTHONY:** Yes. We'll call Tracy Ballew,
5 please.

6 ****

7 Whereupon,

8 **TRACY BALLEW,**

9 having been first duly sworn,
10 was examined and testified as follows:

11 ****

12 **COMMISSIONER BECK:** Please state your full
13 name for the record.

14 **THE WITNESS:** Tracy Ann Ballew.

15 **COMMISSIONER BECK:** Mr. Anthony.

16 **DIRECT EXAMINATION**

17 BY MR. ANTHONY:

18 Q. Ms. Ballew, you know I'm Ken Anthony and I
19 represent the Wofford family and I just need to ask
20 you a few questions.

21 Are you employed with the City of Spartanburg?

22 A. Yes.

23 Q. Have been for how long?

24 A. Well, the city took Parks and Recreation over on
25 January 1, 2005.

- 1 Q. All right. And you were already working for Parks
- 2 and Recreation at that point?
- 3 A. I was, I was with the county and we transferred
- 4 over.
- 5 Q. I see. What's your job now?
- 6 A. Little bit of change. I'm an aquatics director and
- 7 doing some special events work as well.
- 8 Q. Back when -- on the day that Brian Wofford was
- 9 killed you were in another position?
- 10 A. I was just the aquatics director.
- 11 Q. And you were at what they call the Swim Center,
- 12 right?
- 13 A. My office was at the Swim Center, yes.
- 14 Q. Okay. And the Swim Center has since closed?
- 15 A. No, the Swim Center will close at the end of
- 16 September.
- 17 Q. I see. But back then that was your primary
- 18 function?
- 19 A. Yes, sir.
- 20 Q. And as such were you working under Brian Wofford?
- 21 A. I was.
- 22 Q. Because he was the head of the Parks and Recreation
- 23 division?
- 24 A. Correct.
- 25 Q. So would you have fairly frequent communication

1 with him?

2 A. Daily.

3 Q. And what kinds of communication would that be?

4 A. Phone, email, in person.

5 Q. When it was in person would it be because he has
6 come to the Swim Center?

7 A. One of the other, I mean, I -- in Parks and
8 Recreation I supervise about thirty people, so the
9 bulk of the employees were under my supervision, so
10 daily we would be communicating about all kinds of
11 issues. But whether he was coming to the Swim
12 Center or I was at his office, on the phone, by
13 text, by email, we communicated daily.

14 Q. Okay. Was it common for him to come to the Swim
15 Center?

16 A. Absolutely.

17 Q. And do you know whether it was common for him to go
18 to other Parks and Recreation facilities?

19 A. He went to others, yes.

20 Q. Okay. Now, when you would communicate with him,
21 you've already described the various methods; cell
22 phone, text, email, did you have a city issued cell
23 phone?

24 A. I turned it off.

25 Q. But you had been issued one?

- 1 A. I did. I was issued one.
- 2 Q. You preferred to use your personal --
- 3 A. Correct.
- 4 Q. -- phone? And when you did that with Brian would
- 5 you communicate with him on his city phone?
- 6 A. I have Brian's personal number and his city number.
- 7 Most of the time I tried to communicate with him on
- 8 his city number, sometimes when I couldn't reach
- 9 him there I would communicate with him on his
- 10 personal phone.
- 11 Q. So he couldn't get away from you?
- 12 A. Never. I was definitely one of his headaches.
- 13 Q. When you would communicate with him by text, by
- 14 email, would you necessarily know where he
- 15 physically was?
- 16 A. No.
- 17 Q. He might be in his physical office?
- 18 A. Possibly.
- 19 Q. But he could also be at one of the other centers or
- 20 parks --
- 21 A. Correct.
- 22 Q. -- in the city?
- 23 A. In the field.
- 24 Q. And when you would communicate with him was it
- 25 always work related?

1 A. Well, that's a hard question.

2 Q. Okay.

3 A. Most of the time it was work related.

4 Q. Okay. When you were sending him a message or
5 receiving a message from him that was work related,
6 I mean, did you consider yourself to be working?

7 A. Absolutely.

8 Q. You considered yourself to be on the job for the
9 City of Spartanburg?

10 A. Yes, sir.

11 Q. And did you consider Brian to be, similarly, on the
12 job?

13 A. Yes, sir.

14 Q. On the morning of his death did you have some
15 communication with him via cell phone?

16 A. I did.

17 Q. And can you describe what you were communicating
18 with him about?

19 A. The morning that he died I called him on the phone,
20 we were discussing -- we were doing the summer
21 hiring. He was hiring for Playground Program, I
22 was hiring for Lifeguard Aquatic Style. I needed
23 for him to come over and sign some PACs, so I
24 called him on the telephone. We were talking about
25 meeting up somewhere in the field to get him to

1 sign those PACs for the day. And then one of my
2 managers had broken a key off in our outdoor pool
3 and I needed him to go by the CC Woodson Rec Center
4 and get a key out of the key box.

5 Q. So did you ask him to go by CC Woodson and get that
6 key --

7 A. I did.

8 Q. -- and bring it to the Swim Center? Did he agree
9 to do that?

10 A. Yes.

11 Q. And you also volunteered, I think, to take those
12 forms to the Spring Fever event?

13 A. Correct.

14 Q. But y'all agreed -- he volunteered to come by the
15 Swim Center --

16 A. Right.

17 Q. -- with the key and just sign the forms right there
18 for you?

19 A. He did.

20 Q. Is that right? Again, was the going by to get the
21 keys at CC Woodson, was that an important thing
22 that you needed?

23 A. Yes.

24 Q. And it was work related?

25 A. It was.

1 Q. Same way with the forms that he needed to sign, was
2 that work related?

3 A. Yes.

4 Q. And when you were talking with him on the cell
5 phone did you necessarily know where he was
6 physically?

7 A. I did not.

8 Q. Okay. But you wanted him to and he agreed to come
9 by and do those tasks for you?

10 A. Yes.

11 MR. ANTHONY: I think that's all. Thank you,
12 your Honor.

13 COMMISSIONER BECK: Ms. Pugh.

14 CROSS-EXAMINATION

15 BY MS. PUGH:

16 Q. Ms. Ballew, I believe you testified Brian
17 frequently came to the Swim Center, is that
18 correct?

19 A. Right.

20 Q. He oversaw you, the center, and your staff, is that
21 correct?

22 A. Yes.

23 Q. So that would have been his normal job duties, is
24 that correct?

25 A. Yes.

- 1 Q. And these personnel forms that you needed him to
- 2 sign, you had to have a supervisor's signature on
- 3 there, is that correct?
- 4 A. Yes.
- 5 Q. So he had to sign those, is that correct?
- 6 A. Yes.
- 7 Q. And that would be his normal job duty, is that
- 8 correct?
- 9 A. Yes.
- 10 Q. Okay. Now, I believe you spoke to Brian for about
- 11 one minute the day of his death, is that correct?
- 12 A. Right.
- 13 Q. And you called him because you needed him to do
- 14 things that were work related, isn't that correct?
- 15 A. Yes.
- 16 Q. And that was his responsibility to sign those PAC
- 17 forms and get you a key, is that correct?
- 18 A. Yes.
- 19 Q. Okay. Actually, prior to talking to Brian for that
- 20 one minute you had tried to call him before hand
- 21 and he didn't answer, is that correct?
- 22 A. Yes.
- 23 Q. And I believe that even after that you had tried to
- 24 call again and he didn't answer, is that correct?
- 25 A. Yes.

1 MS. PUGH: No further questions, your Honor.

2 COMMISSIONER BECK: When did you speak with
3 Brian that morning, what time?

4 WITNESS: I don't specifically remember the
5 time.

6 COMMISSIONER BECK: Well, right after you got
7 to work, had you been at work for some period of
8 time?

9 WITNESS: Honestly, I don't remember because
10 it was so long ago. On the phone records -- in the
11 deposition they just gave me the phone records and
12 it had the times on it.

13 COMMISSIONER BECK: Do you know when he was to
14 go by the CC center to pick up the key?

15 WITNESS: Well, the morning that he got killed
16 I would have been in early. I had interviews
17 starting at 7:30 that morning, so sometime after
18 7:30 until he died at 11 we were communicating.
19 But there were lots of things going on in the city
20 that day for Parks and Recreation, so I assumed
21 that he was already in having to handle all that.
22 So, I mean, I didn't...

23 COMMISSIONER BECK: Was there an expectation
24 that he was coming directly to the Swim Center?

25 WITNESS: Yes.

1 COMMISSIONER BECK: Mr. Anthony.

2 MR. ANTHONY: Thank you, your Honor.

3 DIRECT EXAMINATION

4 BY MR. ANTHONY:

5 Q. Ms. Littlejohn, you were Brian Wofford's mother?

6 A. Yes.

7 Q. While you were out of the courtroom condolences
8 were expressed, so everybody here is, of course,
9 sad about what happened.

10 A. Thank you.

11 Q. I need to ask you a few questions just about the
12 morning that he passed away.

13 A. Okay.

14 Q. Did he come to your home?

15 A. Yes.

16 Q. And for what reason did he come to your home?

17 A. To pick up his motorcycle was one of the reasons, I
18 would like to think to see me, but he did pick up
19 his motorcycle.

20 Q. He drove there in his car?

21 A. In his car, yes, sir.

22 Q. Parked the car and then came in to get the
23 motorcycle?

24 A. Yes.

25 Q. While he was at your house did you hear him

1 conducting any business?

2 A. Yes.

3 Q. What did you hear?

4 A. Actually two conversations and I made the
5 assumption of who I thought one was but the other
6 one I don't know. But he was talking about going
7 to CC Woodson -- somebody was going to meet him at
8 CC Woodson to get some trash cans or something --
9 get something from CC Woodson to take downtown.
10 And then I heard him speak with another person that
11 had something to do with an event going on
12 downtown. I can't remember all of that
13 conversation.

14 Q. Okay. But was he on the cell phone --

15 A. He was.

16 Q. -- on these two occasions --

17 A. Yes.

18 Q. -- clearly talking with city employees about the
19 events going on that day?

20 A. Yes.

21 MR. ANTHONY: I think that's all I have of
22 this witness, your Honor.

23 COMMISSIONER BECK: Ms. Pugh.

24 CROSS-EXAMINATION

25 BY MS. PUGH:

1 Q. Ms. Littlejohn, what is your current address?

2 A. 343 Collin Rogers Drive in Moore.

3 Q. Is that the same address you were living at the
4 time of Brian's death?

5 A. Yes, it is.

6 Q. Okay. And you mentioned some conversations you
7 heard Brian having when he was at your house, did
8 you also hear him talking to anyone named Cherie?

9 A. He never called her name out. I have no idea who
10 he was talking to. I made the assumption that one
11 person could have been James Rice, but I don't even
12 know that to be sure.

13 Q. Okay. So in terms of who he was actually talking
14 to, you don't know?

15 A. I don't know.

16 Q. So anything on his personal cell phone records you
17 wouldn't know about either, is that correct?

18 A. That's correct.

19 Q. Okay. Now, at the time of Brian's accident he was
20 separated from his wife and living in an apartment
21 in Spartanburg, is that correct?

22 A. Yes.

23 Q. And the reason why his motorcycle was at your house
24 is because he moved it from their joint home and
25 put it in your -- you had a garage at your house in

- 1 Moore, is that correct?
- 2 A. Yes.
- 3 Q. And I believe you testified that on the morning of
- 4 his death he came to your house early that morning,
- 5 is that correct?
- 6 A. Yes.
- 7 Q. And again, your house is located in Moore, South
- 8 Carolina?
- 9 A. Yes.
- 10 Q. Now, regarding where his apartment was in
- 11 Spartanburg, would that have been on his way to
- 12 work, or in the opposite direction, or do you know?
- 13 A. It would have been in the opposite direction.
- 14 Q. All right. Now, when Brian left your house he told
- 15 you that he was on his way to work, is that
- 16 correct?
- 17 A. Yes. Well, he was on his way downtown to, I guess,
- 18 the events.
- 19 Q. Okay. Now, in your deposition you said he said he
- 20 was on his way to work, what is your testimony
- 21 today?
- 22 A. That's been so long ago I don't remember. I
- 23 remember him saying that he was on his way, and
- 24 when I say on his way, I'm assuming he was on his
- 25 way to CC Woodson to take care of whatever he had

- 1 talked to the two people with on the phone.
- 2 Q. So you don't know if he was on his way anywhere
- 3 else, is that correct?
- 4 A. On his way to do his job, whatever that job --
- 5 particular job was at that time.
- 6 Q. Did he say he was on his way to do his job?
- 7 A. No, he didn't say he was on his way to do a job, he
- 8 said he was on his way to...
- 9 Q. Wherever, somewhere?
- 10 A. To where -- I don't remember the exact word, I
- 11 really don't. I don't even remember what I said in
- 12 the deposition, but what I remember him saying is
- 13 -- it could have been, On my way to work.
- 14 Q. All right.
- 15 A. I just know he was on his way to take care of
- 16 business for the city.
- 17 Q. And how do you know that he was on his way to take
- 18 care of business with the city, as opposed to --
- 19 A. Because he --
- 20 Q. Let me finish my question, if you don't mind.
- 21 A. Sorry.
- 22 Q. -- as opposed to meeting someone that he had just
- 23 talked to on his personal phone or as opposed to
- 24 going somewhere to get his motorcycle looked at,
- 25 how do you know that?

- 1 A. Because the two conversations he had was business
- 2 conducted.
- 3 Q. The ones that you heard?
- 4 A. The ones that I heard in my house. And when left
- 5 my house he says, I'm on my way, you can just meet
- 6 -- I'll meet you at CC Woodson, I think that's what
- 7 he said.
- 8 Q. Okay.
- 9 A. So CC Woodson was part of his job.
- 10 Q. Okay. And you -- regrettably, you and your mother
- 11 actually drove up on Brian's accident --
- 12 A. I did.
- 13 Q. -- is that correct? I believe you testified that
- 14 was about 15 minutes after he left your house?
- 15 A. It was about -- yes, uh-huh.
- 16 Q. It's about two miles up the road from your house,
- 17 is that right?
- 18 A. Uh-huh, he left about 15 minutes prior to me, but
- 19 he wasn't there at the accident site when I got
- 20 there.
- 21 Q. He was already taken away?
- 22 A. Yes.
- 23 Q. By EMS?
- 24 A. Yes.
- 25 Q. Okay. And that was about two miles up the road

1 from your home, is that correct?

2 A. I guess, I don't know how far that is from my
3 house. It's not that far.

4 Q. Do you recall where the accident took place?

5 A. Yes.

6 Q. Was it the corner of Reidville and Plateau Road?

7 A. I don't know the name of the road --

8 Q. All right.

9 A. -- I know it was right there at --

10 Q. It's okay to say you don't know, we have records
11 that we'll refer to, okay?

12 A. Okay.

13 MS. PUGH: That's at Exhibits 2 and 3, your
14 Honor.

15 Nothing further.

16 COMMISSIONER BECK: Ma'am, what time did he
17 arrive at your residence that morning?

18 WITNESS: I actually don't remember. I don't
19 remember. I know I have to be at work at ten
20 o'clock and I had some trouble with a receiver -- a
21 Direct TV receiver, so a cable guy was there. And
22 he got there about -- 'cause they give you like a
23 two hour span or something -- he said he'd be there
24 between eight and ten, and this guy was there about
25 five or ten minutes after eight. And Brian was

1 there shortly after him, because...

2 COMMISSIONER BECK: So sometime shortly
3 after --

4 WITNESS: After eight o'clock, yes.

5 COMMISSIONER BECK: After eight o'clock.

6 WITNESS: Yes, sir.

7 COMMISSIONER BECK: And if I've done my math
8 right, he would have left somewhere around 11
9 o'clock to go wherever he was going. I think the
10 accident was at 11:15?

11 WITNESS: Yeah.

12 COMMISSIONER BECK: And he had been gone about
13 fifteen minutes, you indicated. So he would have
14 been at your house shortly after eight until about
15 eleven o'clock?

16 WITNESS: Yes, because he was there the whole
17 time the cable guy was there.

18 COMMISSIONER BECK: All right. The two
19 conversations that you heard that you believe were
20 work related, what was the duration of those calls?

21 WITNESS: Actually, he stood at my kitchen
22 sink and talked a good little while, but I don't
23 know, like I said, who it was. Maybe ten minutes.
24 I don't know, five or ten minutes.

25 COMMISSIONER BECK: What else did he do while

1 he was there?

2 WITNESS: Excuse me?

3 COMMISSIONER BECK: What else did he do while
4 he was there? Appears as though he was there,
5 roughly, an hour and forty-five minutes to two
6 hours. He had two phone calls that were five to
7 ten minutes in duration. What did he do for the
8 remaining hour and a half?

9 WITNESS: He ate. My mom had cooked
10 breakfast, so he ate. I left the cable guy in the
11 livingroom, and him in the kitchen, and my mom in
12 her room, and went and took a shower. So to tell
13 you what he was doing while I was in the shower, I
14 don't know.

15 COMMISSIONER BECK: Okay. Mr. Anthony,
16 anything further?

17 MR. ANTHONY: Nothing further.

18 COMMISSIONER BECK: Ms. Pugh?

19 MS. PUGH: Nothing further, your Honor.

20 MR. ANTHONY: Can this witness be excused?

21 COMMISSIONER BECK: Yes, she may. Thank you
22 very much for being here today.

23 WITNESS: You're welcome.

24 *****

25 Whereupon,

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DEBORAH McCLARY,

having been first duly sworn,
was examined and testified as follows:

COMMISSIONER BECK: Please state your full
name for the record.

THE WITNESS: Deborah H. McClary.

COMMISSIONER BECK: Mr. Anthony.

DIRECT EXAMINATION

BY MR. ANTHONY:

Q. Ms. McClary, I'm Ken Anthony and represent the
Wofford family. I just need to ask you a few
things.

Are you an employee of the City of
Spartanburg?

A. Yes, I am.

Q. And what's your position?

A. Administrative Assistant for the Parks, Recreation,
and Special Events Department.

Q. How long have you been with the city?

A. I've actually been with the city since 2000,
temporary, and became full time August 31, 2001.

Q. Okay. In your work with the city where is your
office physically located?

A. It's physically located at the Sparta Passenger

1 Center, which is located at 100 North Liberty
2 Street, on the second floor.

3 Q. Is that the same place Brian Wofford's office was?

4 A. It is.

5 Q. And did you work with Brian?

6 A. I did.

7 Q. Would you see Brian most every day?

8 A. Yes.

9 Q. But was his work always done there physically in
10 the office or did he get out of the office?

11 A. Not necessarily, he had several different locations
12 he would be at at times.

13 Q. Okay. Did his job really require him to go from --

14 A. From place to place, because we had centers --
15 recreation centers; CC Woodson, Northwest, we had
16 the Swim Center, and we also have park locations.

17 Q. So when he was not physically in the office there
18 would the two of you still communicate?

19 A. We would.

20 Q. And by what methods?

21 A. Usually, if I'm in the office it would usually be
22 by phone unless he could not reach me, perhaps
23 sometimes it would be by text.

24 Q. Did he have a city issued cell phone?

25 A. He did.

- 1 Q. And did you?
- 2 A. I did not.
- 3 Q. Okay. But so when you needed to communicate with
- 4 him and he wasn't there in the office would you
- 5 either call, or text, or email him on his city
- 6 issued cell phone?
- 7 A. That is correct.
- 8 Q. And when you were communicating with him was it
- 9 almost always work related?
- 10 A. Always.
- 11 Q. Okay. When you would communicate with him by those
- 12 methods did you necessarily know where he
- 13 physically was?
- 14 A. Not always.
- 15 Q. And did it matter?
- 16 A. It didn't to me, 'cause we usually were discussing
- 17 something specific, something he needed to have an
- 18 answer to.
- 19 Q. Did you talk with him the morning of his death?
- 20 A. Yes, I did.
- 21 Q. And that was by -- you called him on his cell
- 22 phone?
- 23 A. Actually, he called me.
- 24 Q. Okay.
- 25 A. On the desk phone in my office.

1 Q. All right. And do you remember anything about that
2 conversation?

3 A. I do remember somewhat. I think my mind went blank
4 a little bit after the fact. But I do remember he
5 called about 9:15 that morning.

6 Q. Do you remember a part of the conversation where
7 there seemed to be somebody else in the room?

8 A. Yes, I remember -- I don't remember exactly what
9 was said but I remember thinking he was speaking to
10 me and he said -- or else it was vice versa -- I
11 wasn't speaking to you, Mom, I was speaking to
12 Deborah -- or else it was vice versa.

13 Q. All right. And during that -- and the conversation
14 in which that occurred, again, was a work related
15 conversation?

16 A. Yes, he was always calling me work related wise.

17 Q. You considered -- at the time you were talking to
18 him on the phone you considered yourself to be
19 working?

20 A. Yes.

21 Q. And you considered him to be working?

22 A. Yes.

23 MR. ANTHONY: That's all I have of this
24 witness. Thank you, your Honor.

25 COMMISSIONER BECK: Ms. Pugh.

CROSS-EXAMINATION

BY MS. PUGH:

Q. Ms. Deborah, I believe you testified that you assumed that after you talked to him that Brian would be headed into work that day, is that correct?

A. Yes.

Q. So when you found out that he had a motorcycle accident two hours later and more were you shocked?

A. Of course.

Q. You never saw Brian on the day of the accident, did you?

A. I did not.

MS. PUGH: Nothing further, your Honor.

COMMISSIONER BECK: Anything further?

MR. ANTHONY: Nothing further.

COMMISSIONER BECK: Thank you for your presence today. You may be excused.

WITNESS: Thank you.

MR. ANTHONY: Call Mr. Kennedy, please.

Whereupon,

MITCH KENNEDY,

having been first duly sworn,
was examined and testified as follows:

1 COMMISSIONER BECK: Please state your full
2 name for the record.

3 THE WITNESS: Mitchell Levon Kennedy.

4 COMMISSIONER BECK: Mr. Anthony.

5 MR. ANTHONY: Thank you, your Honor.

6 DIRECT EXAMINATION

7 BY MR. ANTHONY:

8 Q. Mr. Kennedy, as you know, I'm Ken Anthony, I
9 represent the Wofford family and I need to ask you
10 a few questions similar to some of those I've been
11 asking all morning.

12 You are an employee of the City of
13 Spartanburg?

14 A. Yes, sir.

15 Q. And what's your position?

16 A. Director of Community Services.

17 Q. And how long have you been in that position?

18 A. I've been with the city since June of 2005.

19 Q. All right. You knew Brian Wofford?

20 A. I did.

21 Q. What would be the relationship between you and
22 Brian?

23 A. I was Brian's supervisor.

24 Q. Okay. In fact, did you have an instrumental part
25 in hiring him, did you not?

1 A. I did.

2 Q. You had -- I think you testified you met him -- or
3 you had known him before because you had actually
4 coached at Spartanburg High School when he was a
5 player there?

6 A. I met him when he was a high school student -- high
7 school football player at Spartanburg High School
8 and I was coaching at Spartanburg High School.

9 Q. All right. And I think you told us that was kind
10 of part of your job to be sure you knew everybody
11 because you were the color commentator and had to
12 know everybody's names on Friday night?

13 A. Correct. I knew him very -- as a football player
14 -- as a football player I knew him very well.

15 Q. And then I think y'all kind of went different
16 directions until you ran into him again at a
17 conference?

18 A. It was a Parks and Rec conference in Charleston,
19 South Carolina.

20 Q. And he was working?

21 A. For the City of Florence -- County of Florence.

22 Q. Okay. And you knew that a position might be coming
23 open up here?

24 A. I knew that we had a vacancy that was vacant for a
25 long period, but at some time we would be filling

1 that vacancy and discovered that what he was doing
2 in Florence was consistent with what we might be
3 looking for.

4 Q. And you thought he might be interested in moving
5 back to Spartanburg?

6 A. It was his hometown.

7 Q. Yeah.

8 A. So I thought he might have interest.

9 Q. So it kind of all worked out?

10 A. It did.

11 Q. And y'all had a good relationship, personal and
12 professional, didn't you?

13 A. Yeah, it was fine, I mean, but mostly professional.
14 Most of our relationship was professional. But
15 personally, due to being from -- having both being
16 from Spartanburg High School, both playing
17 football, football players both playing college
18 football, we had things that were in common.

19 Q. Describe his job for us.

20 A. As a Parks and Rec Superintendent Brian was
21 directly responsible for the day to day operations
22 of Parks and Recreation. He was the ultimate
23 manager over the entire staff for the Parks and Rec
24 for the city, which included our community centers,
25 which was, at the time of Brian's death, that would

1 have been four locations; CC Woodson Community
2 Center, TK Gregg Community Center, Northwest
3 Community Center, and the Swim Center. In
4 addition, in upwards of well over 20 parks. He had
5 individuals that was responsible for the day to day
6 operations of those facilities, but he was their
7 supervisor.

8 Q. So would his job necessarily involve traveling to
9 these different locations at times?

10 A. From time to time based upon what was needed from a
11 manager. But he was not responsible for the day to
12 day operations of those facilities, but he was
13 responsible for the managers of those sites.

14 Q. Could he do his job just sitting in an office all
15 day?

16 A. No, as a manager, given the remote locations, from
17 time to time you do have to travel.

18 Q. And he was a salaried employee, wasn't he?

19 A. Correct.

20 Q. As you are?

21 A. Correct.

22 Q. And you, too, can't really -- can't do your job
23 sitting in an office all day?

24 A. I often times communicate when I'm outside of the
25 office.

1 Q. And you would travel to these same facilities at
2 times?

3 A. I do.

4 Q. When you were out or he was out would you
5 communicate by these various methods we've talked
6 about; email, text, cell phone?

7 A. When I'm out of my office?

8 Q. Yes.

9 A. Physically out of my office? Yes, I would often
10 communicate to individuals within the city.

11 Q. Okay. And when you are sending those messages,
12 whether they're text messages, emails, cell phone
13 calls, do you consider yourself to be working?

14 A. I do not.

15 Q. You do not consider yourself working when you're
16 communicating with other city employees?

17 A. If I'm at home watching ESPN I don't consider
18 myself working. I just consider it's just a part
19 of the professional responsibilities of my job.
20 But do I look at it as work? I do not.

21 Q. Well, let's ask -- if you were going from -- is
22 your office in the Sparta Station as well?

23 A. No, it's in City Hall.

24 Q. If you were going from City Hall to the CC Woodson
25 Center, for instance, and you -- would you, at

1 times, make a cell phone call --

2 A. Oh, yeah, I'm on the job. I'm on the job, yes,
3 sir.

4 Q. So when you're communicating to other employees
5 going from City Hall to CC Woodson you consider
6 yourself on the job?

7 A. Absolutely.

8 Q. And you consider the employee you're talking to on
9 the job?

10 A. It depends on that employee's situation. I have
11 communicated with employees, based upon certain
12 circumstances, where I knew that they were not at
13 work and I may have a task or something I need of
14 them. So I would not consider themselves on the
15 job if I knew that that person was not at work.

16 Q. Well, if you don't know where they are?

17 A. If you don't know where they are and it hasn't been
18 communicated to me that you're off then I make an
19 assumption that they are working, yes, sir.

20 Q. Well, particularly, 11 o'clock on a Friday you
21 would expect -- that's normal work hours?

22 A. Yes, sir.

23 Q. Right? And if you communicated with some city
24 employee, not knowing their location, during -- at
25 11 o'clock on Friday morning, would you make the

1 assumption that they're on the job?

2 A. Absolutely.

3 Q. Okay. And your job, like Brian's, is basically a
4 get ur done job, right?

5 A. Yes, sir.

6 Q. I mean, it might go late, it might start early, and
7 it doesn't matter where you are, if a question
8 comes up that needs to be answered you're going to
9 try to answer it?

10 A. Yes, sir.

11 Q. Or get somebody else to handle it if that's what
12 needs to be done, right?

13 A. Yes, sir.

14 Q. There were two events going on that day, as I
15 understand it, one, a bicycle event near Morgan
16 Square, and the Spring Fever event at Barnett Park,
17 right?

18 A. Yes, sir.

19 Q. And both of those are city events?

20 A. Yes, sir.

21 Q. Both of those are events in which the Parks and
22 Recreation had a large part?

23 A. I wouldn't necessarily define them as a large part.
24 The bicycle event is not a city event. The bicycle
25 event was conducted by a non-profit that we were

1 providing assistance to that organization.

2 Q. If --

3 A. Which is normal. Which is normal for an
4 organization to request assistance from the city,
5 whether it's Parks and Recreation, Traffic
6 Engineering, for us to provide. I mean, we're a
7 service organization, so we're providing service to
8 that non-profit.

9 Q. Okay. At the time of Brian's death the Swim Center
10 fell under his supervision?

11 A. Yes, sir.

12 Q. Right? And you know Tracy Ballew, who just
13 testified, she was the director of the Swim Center?

14 A. Yes, sir.

15 Q. If she needed something there at the Swim Center,
16 such as a key, which was located at another center,
17 CC Woodson, and asked Brian to get it from there
18 and bring it to her, would you expect him to do
19 that?

20 A. That was a part of -- that would have been a part
21 of his duties and responsibilities, yes. It would
22 not have been unusual for him to conduct that task.

23 Q. And that would certainly be a work related --

24 A. Absolutely.

25 Q. -- task?

1 A. Absolutely.

2 Q. Right? Similarly, if he's going to the Swim Center
3 to sign some forms having to do with new hires for
4 the Swim Center, that's job related, isn't it?

5 A. Absolutely.

6 Q. Okay. And there would be nothing unusual about
7 Tracy asking Brian to do things like that for her?

8 A. No, sir.

9 Q. Nothing unusual about him agreeing to do that?

10 A. No, it would not.

11 Q. Because that's part of his job?

12 A. Correct.

13 Q. And again, Friday, in the middle of the day, would
14 certainly be considered a part of Brian's work
15 hours?

16 A. Yes.

17 Q. Okay. And yours?

18 A. Yes.

19 Q. Even if the day was going to stretch late and go to
20 seven, eight, or nine o'clock at night?

21 A. We are allowed to -- Brian's job, as well as my
22 job, permitted us discretion in those areas. I was
23 not aware of Brian's work schedule for the day
24 prior to his death.

25 MR. ANTHONY: That's all I have, your Honor.

1 Thank you.

2 COMMISSIONER BECK: Ms. Pugh.

3 CROSS-EXAMINATION

4 BY MS. PUGH:

5 Q. Mr. Kennedy, I believe you testified to this, but
6 as Brian's -- as the Parks and Recreation
7 Superintendent he oversaw the parks and he over saw
8 the recreations centers, and well as the Swim
9 Center, is that correct?

10 A. Correct.

11 Q. Because of his job duties it would be normal for
12 him to go to one of the centers, it would be normal
13 for him to go to the Swim Center, is that correct?

14 A. Yes, ma'am.

15 Q. All right. It would also be normal for him to sign
16 personnel acquisition forms because he was required
17 to do that, is that correct?

18 A. Yes, ma'am.

19 Q. And it would be normal for him to pick up keys for
20 his employees for centers, correct?

21 A. Yes, ma'am.

22 Q. Now, Brian did not sit behind a desk all day, did
23 he?

24 A. No, he did not.

25 Q. I believe you testified it would be required for

1 him to go out and about to the centers that he
2 supervises?

3 A. Yes, ma'am.

4 Q. All right. And you just testified you weren't
5 aware of his specific schedule on the date of his
6 accident, is that correct?

7 A. I was not.

8 Q. Now, regarding this Spring Fever Day, which was a
9 city event, that was put on by HR, is that correct?

10 A. That's correct.

11 Q. Other than the sound or music, you know of no
12 responsibilities he had that day, do you?

13 A. I do not.

14 Q. And he actually delegated the duty he did have to
15 James Rice, isn't that correct?

16 A. I was made aware of that after his death.

17 Q. All right. And on direct you were asked about
18 assumptions, assuming he was at work. You assumed,
19 on the date of his accident, that Brian was in his
20 office at one of the centers out in the field
21 somewhere, is that correct?

22 A. That's the assumption I made.

23 Q. The normal expectation would have been for him to
24 be work at eight o'clock in the morning, is that
25 correct?

- 1 A. Correct.
- 2 Q. So were you surprised to hear that Brian was
- 3 involved in a motorcycle accident in Moore, South
- 4 Carolina at that time that he was injured?
- 5 A. Very surprised.
- 6 Q. Did he have any work related duties in Moore, South
- 7 Carolina on May 18, 2012?
- 8 A. Not to my knowledge.
- 9 Q. Did he have any work related duties that required
- 10 him to go pick up his motorcycle in Moore, South
- 11 Carolina?
- 12 A. No.
- 13 Q. Any work related duties that required the use of a
- 14 motorcycle?
- 15 A. No, ma'am.
- 16 Q. Did he have any work related duties that required
- 17 him to go visit his mom?
- 18 A. No, ma'am.
- 19 Q. You didn't make Brian go pick up his motorcycle
- 20 from Moore, South Carolina, did you?
- 21 A. No, ma'am.
- 22 Q. You didn't make him go visit his mom, did you?
- 23 A. No, ma'am.
- 24 Q. All of his duties on that day that you know about
- 25 were in the City of Spartanburg, is that correct?

1 A. Yes, but, you know, I would -- there would be times
2 that he could have duties outside of Spartanburg,
3 but on that particular day I was not aware of and I
4 don't know of any responsibilities or partnerships
5 that we have in that area.

6 Q. And after the accident you learned that he had
7 delegated the duties he did have that morning to
8 James Rice and Scott Page, is that correct?

9 A. After the fact, yes.

10 Q. After the fact. Had he not delegated those duties
11 would Brian have had to perform those duties
12 himself?

13 A. If they were not delegated to someone he would have
14 taken care of those tasks.

15 Q. So was it a mere convenience, I guess, in your
16 opinion, for him to contact those employees by
17 telephone to delegate those duties?

18 A. It is. In our task -- in our professional duties
19 -- and it's my point about not being on the job
20 when I'm doing those things, people view --
21 depending on where you are in our organization,
22 people would classify certain tasks as work related
23 or just a part of it. In my view point, I -- you
24 know, I view what I do as a seven day a week type
25 job. So my classification of working and not

1 working might differ from another employee based
2 upon where they are in the organization.

3 Brian's was a very highly responsible job from
4 an administrator's standpoint. It might require
5 him to constantly communicate to others outside of
6 the traditional work hour.

7 Q. Okay. After his accident did you go to his
8 mother's home?

9 A. To pay my condolences.

10 Q. All right. Are you familiar to where she lives?

11 A. I am now, yes.

12 Q. Are you also familiar where the accident took
13 place?

14 A. I am. Yes, I am.

15 Q. Okay. And at some point you became aware of
16 Brian's apartment in Spartanburg, is that correct?

17 A. Several days after the fact.

18 Q. Would Brian have driven in the opposite direction
19 from his -- well, driven in the opposite direction
20 to his mother's house than what he would have
21 driven to get to work from his apartment?

22 A. No.

23 Q. I'm sorry, what?

24 A. No, ma'am. I'm sorry.

25 Q. I'm sorry. Would he have driven -- to get from his

1 apartment to his mother's house did he drive in the
2 opposite direction than what he what have had to
3 driven to get to work?

4 A. Yes, he was driving in the opposite direction.

5 Q. All right. Now, regarding where his accident
6 actually took place, was it in the City of
7 Spartanburg?

8 A. No, ma'am.

9 Q. It was located in Moore, South Carolina, is that
10 correct?

11 A. Yes, ma'am.

12 MS. PUGH: Nothing further, your Honor.

13 COMMISSIONER BECK: Mr. Anthony?

14 MR. ANTHONY: If it pleases the Court.

15 REDIRECT EXAMINATION

16 BY MR. ANTHONY:

17 Q. Mr. Kennedy, if you were in your car, first thing
18 in the morning, left your house and got a call from
19 somebody, let's just say it's Tracy Ballew, asked
20 you if you could stop by CC Woodson Center and pick
21 up keys, would you consider that work related
22 activity?

23 A. If I'm on my way to work.

24 Q. Yeah, but is that a work related task --

25 A. Yes.

1 Q. -- to go by and pick up --

2 A. Yes, sir.

3 Q. -- the keys and take them over there?

4 A. Yes, sir.

5 Q. Okay. And if you picked up the cell phone and
6 called Brian or somebody else and asked them if
7 they would go pick up the keys, would that call be
8 work related activity?

9 A. Yes, sir.

10 Q. Yeah.

11 MR. ANTHONY: Thank you.

12 COMMISSIONER BECK: Ms. Pugh, anything
13 further?

14 MS. PUGH: No, sir.

15 COMMISSIONER BECK: You may step down, sir.
16 Thank you very much.

17 Mr. Anthony.

18 MR. ANTHONY: Thank you. We'll call Boisha
19 Wofford.

20 COMMISSIONER BECK: Ms. Wofford.

21 ****

22 Whereupon,

23 BOISEA WOFFORD,

24 having been first duly sworn,

25 was examined and testified as follows:

1 correct?

2 A. Yes, but we still had a joint bank account.

3 Q. He still had access to the one you used, is that
4 right?

5 A. Yes.

6 Q. Okay. And on the day of his accident you spoke to
7 him, I believe, for about four minutes on his
8 personal phone, is that correct?

9 A. Yes.

10 MS. PUGH: And that's at APA 242.

11 Q. Are you now aware, after pulling his cell phone
12 records with my subpoena, that he had multiple
13 other personal phone calls that day as well?

14 A. I didn't look at those records, I just gave them to
15 the lawyer.

16 Q. Okay. During your four minute conversation with
17 Brian did he say where he was, where he had been,
18 anything like that?

19 A. No.

20 Q. Brian had a motorcycle that's typically referred to
21 as a sport bike, is that correct?

22 A. Yes.

23 Q. I believe he purchased it in 2009, is what you said
24 in your deposition?

25 A. Yes.

1 Q. And that has not been purchased, you've not
2 received that, have you?

3 A. I haven't received that commission.

4 Q. Okay. You and Kaelyn were still dependent on
5 Brian, he was still paying bills at the house
6 and...

7 A. Yes.

8 Q. And there are no other children that Brian had?

9 A. No.

10 Q. Nobody else that was dependent on him other than
11 you and Kaelyn?

12 A. No.

13 MR. ANTHONY: Thank you. That's all.

14 COMMISSIONER BECK: Ms. Pugh, anything
15 further?

16 MS. PUGH: Nothing further.

17 COMMISSIONER BECK: You may step down, ma'am.
18 Thank you very much.

19 Any other witnesses on behalf of the Claimant?

20 MR. ANTHONY: No other witnesses, your Honor.

21 COMMISSIONER BECK: Any witnesses on behalf of
22 the Defendants?

23 MS. PUGH: None from Defendants, your Honor.

24 COMMISSIONER BECK: Anything other matters to
25 be discussed today?

1 MR. ANTHONY: No, your Honor.

2 MS. PUGH: No, your Honor

3 COMMISSIONER BECK: All right. That will
4 conclude this proceeding.

5 *****

6 (Whereupon, the hearing concluded at 1:55 p.m.)

SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION
W.C.C. FILE NO: 1207113

Boisha Wofford, alleged surviving spouse, and
Kaelyn Wofford, surviving child, on behalf of
Brian Wofford, Deceased employee

Claimants,

v.

City of Spartanburg,
Employer and Self-Insurer,

through the

South Carolina Municipal Insurance Trust,

Defendants.

ORDER OF THE SOUTH CAROLINA
WORKERS' COMPENSATION
COMMISSION

Hearing:	Held in Spartanburg, South Carolina on August 15, 2013
Appearances:	Claimants represented by Kenneth C. Anthony, Jr., Esquire of The Anthony Law Firm PA. Defendant represented by Stephanie Lamb Pugh, Esquire of Turner, Padgett, Graham and Laney.
Purpose of Hearing:	To address the issues raised on Claimants' Form 52 and Defendants' Form 53
Decision and Order:	T. Scott Beck, South Carolina Workers' Compensation Commissioner
Filed:	November 7, 2013

STIPULATIONS

Counsel for all parties stipulate to the following issues:

1. Notice of Hearing was timely and properly served upon all parties of interest.
2. The parties agree that venue was properly set in Spartanburg County.
3. Boisha Wofford, as the mother of the minor child, Kaelyn Wofford, is the guardian ad litem for Kaelyn Wofford.
4. The applicable average weekly wage and corresponding compensation rate are \$1234.26 and \$725.47 respectively.
5. The parties agreed that should the claim be found compensable, that Defendants would have a lien on the third party settlement proceeds that were received as a result of the motor cycle accident.
6. Claimants seek benefits under the South Carolina Workers' Compensation Act for a denied injury/death, which took place on May 18, 2012.

APA SUBMISSIONS

The following documents were submitted without objection pursuant to the Administrative Procedures Act:

Claimants' APA Submissions

APA#	NAME OF PROVIDER/OTHER	DATE(S) OF RECORD(S)	PAGE NUMBERS
<u>Exhibits</u>			
1	Information from Decedent's Employer-Issued Cell Phone		1 - 147
	a) Summary		
	b) Extraction Report		
	c) E-mails		
	d) Incoming Calls		
	e) Missed Calls		
	f) Outgoing Calls		

- g) Chats
- h) Contacts
- i) Text (SMS) Message – Inbox
- j) Text (SMS) Message – Sent
- k) Text (SMS) Message – Photos
- l) Text (SMS) Message – Video

Defendants' APA Submissions

APA#	NAME OF PROVIDER/OTHER	DATE(S) OF RECORD(S)	PAGE NUMBERS
2	Accident Report	5/18/2012	148 – 150
3	Spartanburg EMS Report	5/18/2012	151 – 155
4	Spartanburg Regional Emergency Room Report	5/18/2012	156 – 169
5	Spartanburg City Limits. Map		170
6	Map – Route of Decedent on Day of Accident		171 - 173
7	Deposition Transcript of Boisha Wofford	3/19/2013	174 – 183
8	Deposition Transcript of Janice Littlejohn	3/19/2013	184 – 190
9	Work Phone Records of Brian Wofford		191 - 239
10	Personal Cell Phone Records of Brian Wofford		240 – 242
11	Workers' Comp. Commission File		243 – 259
12	Correspondence from Kenneth Anthony to William Shaughnessy	10/19/2012	260
13.	Section 42-1-560 and supporting case law		261 – 285
14	City of Spartanburg – Job Description: Parks and Recreation Superintendent		286
15	Civil Action #2012-CP-42-4451 Boisha Wofford, as personal representative of the Estate of Brian Oneal Wofford, deceased vs. Jewell Nicole Cote		287 - 197

STATEMENT OF THE CASE

Brian Wofford (Decedent), the Parks and Recreation Director for the City of Spartanburg, died in a motorcycle accident on May 18, 2012, in Moore, South Carolina, presumably on his way to work, around 11:15am. Decedent is survived by his wife, Boisha Wofford and a child, Kaelyn Wofford (Claimants). Boisha Wofford is the personal representative of Decedent's estate and the mother of Kaelyn Wofford. Claimants filed a Form 52, on April 3, 2013, alleging that Decedent's accident and death arose out of and in the course of his employment. Claimants then asserted the same allegations in their Form 52, hearing request, on April 3, 2013. Defendants filed a Form 53, Employer's Answer to Request for Hearing, Death Case, on May 2, 2013, denying the compensability of Decedent's accident. A hearing was set in this matter for August 15, 2013.

Claimants argue that Decedent's motorcycle accident, which took place on May 18, 2012, arose out of and in the course of Decedent's employment. They submit that Decedent's remote, telephonic communication with his co-workers earlier on the day of his death brings his accident within the course and scope of his employment. Further, Claimants argue that this claim is not barred by the going and coming rule, because Decedent was acting in furtherance of his employment at the time of his accident, so that the "duty or task" exception is applicable to the claim, resulting in the claim's compensability. Lastly, it is argued by Claimants that the failure to file a Form S-2 is not a bar to compensation, because an action, as contemplated by the South Carolina Rules of Civil Procedure, was never filed regarding the third party settlement. (*See* S.C. Code Ann. § 42-1-560).

Defendants deny that Decedent's accident arose out of and in the course and scope of his employment. They assert that Decedent had not been to work on the day of his accident and that Decedent's decision to communicate telephonically/electronically prior to his death did not bring his actions within the course and scope of his employment. Alternatively, Defendants argue that even if it

can be said that Decedent was working on the morning of his accident that Decedent's decision to drive in the opposite direction from his work to his mother's home in Moore, South Carolina to visit her and to pick up his motorcycle, constituted a substantial deviation from employment. Further, Defendants argue that Claimants' claim is barred by the going and coming rule. Defendants assert that even if Decedent was on his way to work, this was a personal mission, and that there are no applicable exceptions to the going and coming rule. Lastly, Defendants assert that Claimants' failure to file a Form S-2 and failure to hold the third party settlement proceeds in trust resulted in an election of remedies.

This Commissioner must now decide: (1) whether Decedent's accident arose out of and in the course and scope of his employment; and (2) whether Claimants elected their remedy by failing to hold the third party settlement proceeds in trust and by failing to file a Form S-2.

EVIDENCE OF THE CASE

All the evidence, both medical and otherwise, was taken into consideration in determining this matter.

Records submitted into Evidence

The Decedent's work phone records reveal that he used his phone on the morning of his accident. He talked on the phone approximately four to five minutes, sent/received nine very brief text messages/emails, and engaged in one very brief chat with a subordinate. This amounts to approximately ten minutes of telephone usage.

The Decedent's personal cell phone records reveal that he used his personal cell phone to make/receive personal calls lasting at least eleven minutes on the day of his accident. Defendants were unable to retrieve Decedent's personal text messages or chats from this phone, because his wife now uses the phone.

The South Carolina Traffic Collision Report Form reveals that Decedent's accident took place near the intersection of Reidville Road and Plateau Road at about 11:15am.

The records of Spartanburg EMS reveal that Decedent's accident took place at Reidville Road and Plateau Street in Moore, South Carolina and that CPR was commenced and terminated on the way to the hospital, as Decedent was unresponsive.

The Spartanburg City Limits Map reveals that Decedent's accident took place a significant distance outside of the city limits. The map of Decedent's alleged route on the day of his accident reveals that he drove from his apartment and in the opposite direction of his work to get to his mother's home in Moore, South Carolina. His accident, which occurred after visiting with his mother, took place two miles from his mother's home in Moore, South Carolina.

The records of the workers' compensation file for this claim reveal that no Form S-2 was ever filed by Claimants, and the records of Civil Action #2012-CP-42-4451 reveal that a settlement was paid by the at fault driver's insurance company to Decedent's estate in the amount of \$250,000.00.

Live testimony

Live testimony was taken of multiple witnesses in this claim to include Boisha Wofford, Janice Littlejohn, Mitchell Kennedy, Tracy Ballew, Michael Scott Page, Sonya Culbreath, Deborah McClary, and James Rice.

The testimony of Boisha Wofford revealed that she was married to Decedent at the time of his accident, but that they were living separately. The two had known each other since high school and had been married on two separate occasions. The decision to separate two months before Decedent's death was a mutual decision, but they were working on their marriage. The couple had one minor child together, who is currently twelve years of age. Ms. Wofford testified that she and her daughter had received a \$250,000.00 settlement from the insurance company of the at-fault driver involved in

the motor vehicle accident, and that the proceeds had already been disbursed to her and her daughter (the money for her daughter had been put away). She then stated on re-direct that she had not received the paperwork for the daughter's annuity, yet. She further testified that she spoke to her husband on the morning of his death on his personal cellphone, but that she had no idea what he was doing or where he had been that morning.

The testimony of Janice Littlejohn revealed that she was Decedent's mother. She testified that Decedent came to her house in Moore, South Carolina on the morning of his accident a little after 8:00am. She recalls him talking on the phone, while he was at her home, and she believes a couple of the calls were work-related, but she was not certain. She stated that Decedent came to her home to visit her and to pick up his motorcycle, which was stored in her garage, since his separation from his wife. After his separation, Decedent moved into an apartment. Ms. Littlejohn testified that her home was in the opposite direction of where Decedent would have driven had he left his apartment and gone to work. When Decedent left Ms. Littlejohn's home, he told her that he was headed to work. Ms. Littlejohn further testified that she and her mother actually drove up on Decedent's accident, because Ms. Littlejohn was headed to work. Decedent's accident took place only a few miles from Ms. Littlejohn's home around 11:15am, and Ms. Littlejohn drove on the accident about fifteen minutes after Decedent had left her home.

The testimony of Mitchell Kennedy revealed that he is the Director of Community Services for the City of Spartanburg, and as such, he was Decedent's direct supervisor. He had actually known Decedent, since Decedent was a high school student. Mr. Kennedy testified that Decedent was the Parks and Recreation Director, and as such, Decedent supervised the swim center, all of the recreation centers, and all of the parks owned by the City of Spartanburg, as well as the staff of those centers and parks. He explained that Decedent's job would require that he visit those centers and parks in the City

of Spartanburg. The witness explained that Decedent had some discretion regarding his work hours because of timing of various events on any given day. However, a normal work day began at 8am, so he was shocked to hear that Decedent had been killed in a motorcycle accident at 11:15am in Moore, South Carolina. He had actually assumed that Decedent was at work, meaning that Decedent was either in his office or doing field work at one of the centers or parks. Mr. Kennedy further testified that all of the job duties Decedent delegated to his subordinates were duties Decedent would have done, or could have done, had he come to work on the morning of his accident. Furthermore, all of Decedent's job duties on the day of his death were to have been performed in the City of Spartanburg. Nothing about Decedent's job required him to travel to Moore, South Carolina to visit his mother, or to pick up his motorcycle. Mr. Kennedy further testified that if Decedent had ultimately come to work at the City of Spartanburg on the day of his accident, the only duties he had were typical duties that would normally fall within Decedent's job description. Mr. Kennedy also explained that both he and Mr. Wofford had city issued cell phones and that when emails come through to his work cell phone when he is on his personal time, that he does not consider himself working. The witness testified that he did not speak to or hear from Decedent on the day of Decedent's death.

The testimony of Tracy Ballew revealed that she was the Aquatics Director at the time of Decedent's accident and that she fell under the supervision of Decedent. She had daily communication with Decedent, either in-person, by phone, by text, or by email. It was a normal event for Decedent to come by the Swim Center, where she worked, and for him to go to the other centers he supervised. On the date of Decedent's accident, Ms. Ballew made multiple calls to Decedent, but she only made contact with him once. During that one minute conversation, Decedent informed her that he would go to the CC Woodson Center to pick her up a key, come by the swim center to sign some employee acquisition forms and to give her the key, and that he would then go to the City's Spring

Fever event (employee appreciation lunch). She assumed that when she spoke to Decedent on the day of his death, that he was already at work, assisting with the events going on in the City.

The testimony of Sonya Culbreth, a communications and marketing specialist for the City of Spartanburg, revealed that she and Decedent would work together from time to time on certain projects. On the morning of Decedent's death, Ms. Culbreth and Decedent sent several emails back and forth regarding the fact that Decedent was supposed to provide sound equipment at the bicycle station for a Peddling with the Politicians event. She testified that she was not working on the day of Decedent's death, so she sent him emails just to remind him of his responsibility. She explained that she often used email to communicate with people concerning work, and that she had no idea where Decedent was when he was emailing her.

The testimony of Michael Scott Page revealed that he is the Parks Manager for the City of Spartanburg, and that Decedent was his direct supervisor. On the day of Decedent's death, Mr. Page and Decedent sent several text messages back and forth and that they had one brief telephone call concerning whether Mr. Page could take a podium to a bicycle station for an event where the City had promised to provide sound equipment. Mr. Page testified that had Decedent not delegated this job duty to him that Decedent could have come in to work and did it himself.

The testimony of Deborah McClary revealed that she was the administrative assistant for the Parks & Recreation Department at the City of Spartanburg. She testified that Decedent's job required that he be out of the office and in the city at the centers and parks, so she was the one mainstay in the office. She spoke to Decedent on the date of his accident for approximately twenty-nine seconds at 9:14am. She testified the conversation was very brief, but that it was about something related to work. She cannot remember the exact subject. She recalls hearing Decedent speak to his mother in the background, so she knew he was with his mother. She testified that she was surprised to hear about

Decedent's motorcycle accident, which occurred two hours later, because she assumed he was headed in to work after their 9:14am conversation.

The testimony of James Rice revealed that he works as the Athletic Supervisor for the City of Spartanburg and that he was supervised by Decedent. He had gone out with Decedent the night before to a restaurant, after they had been to charity event. They stayed out until around midnight. On the day of Decedent's accident, Mr. Rice called Decedent but did not reach him. However, he and Decedent did send several messages back and forth regarding transporting a fender and iPod to Barnet Park for the employee appreciation picnic. When this exchange was going on, around 11:08am, Mr. Rice was still at his own home. Mr. Rice further testified that had Decedent not delegated the job duty of picking up the fender and iPod to Mr. Rice, that Decedent would have done it himself. Mr. Rice did not know where Decedent was or what Decedent was doing at the time he sent those text messages.

FINDINGS OF FACT

Based upon the evidence, I find the following findings of fact.

1. Claimants allege that Decedent's accident, which took place on May 18, 2012, and resulted in Decedent's death, arose out of and in the course of Decedent's employment with the City of Spartanburg. Defendants deny these allegations.

2. Decedent worked as a Parks & Recreation Director for the City of Spartanburg and as such, he was a salaried employee. His typical workday was from 8am-5pm, but he had the ability to flex his schedule depending on his job responsibilities.

3. I find that Decedent was not working at the time of his death. He never reported to work on the day of his accident; instead, he delegated his job duties to his subordinates. He made/received four to five minutes worth of phone calls, sent/received nine very brief text messages/emails, and engaged in one very brief chat with his subordinate. Therefore, on the date of his death, he spent approximately

ten minutes communicating remotely with his subordinates. I find that Decedent's use of his work phone to communicate with his subordinates on the morning of his accident was a convenience to Decedent. The fact that he made a few work related calls, texts, etc. is not dispositive. Because he communicated remotely with his subordinates, he did not have to come in to work to perform his job duties. I find that this remote, telephonic/electronic communication does not rise to the level that would bring Decedent's actions within the course and scope of his employment.

4. Instead of coming to work on the day of his accident, Decedent drove approximately nine miles from his apartment in the opposite direction to his mother's home in Moore, South Carolina to pick up his motorcycle and visit with his mother. He remained at his mother's home approximately three hours. This visit to his mother's house was of a purely personal nature. I find that even if it can be said that Decedent was working at some point on his date of his accident, that the trip and visit to his mother's house in Moore, South Carolina, was a substantial deviation from his employment.

5. I find that Decedent's accident, which occurred at the corner of Reidville Road and Plateau Street in Moore, South Carolina, and was approximately two miles from his mother's house, took place at a location that Decedent's work duties did not require him to be. Nothing about Decedent's job, on the date of his accident, required that he travel to or visit any location in Moore, South Carolina or that he go and pick up his motorcycle in Moore, South Carolina. The only job duties Decedent had on the day of his accident were located in the City of Spartanburg, which was about ten and half miles or twenty-five minutes away from Decedent's mother's home.

6. This claim is barred by the going and coming rule, and there are no applicable exceptions.

7. I find that Decedent was not charged with any work related duties at the time of his accident but instead was on a purely personal mission to get to work. There is no evidence establishing that

Decedent was tasked with any work related responsibility at the time of his accident. He was merely on his way to work to engage in his typical job responsibilities.

8. I find that Decedent was not performing a special task, service, mission, or errand for the City of Spartanburg at the time of his accident. Whether Decedent was headed to his office, the City's employee appreciation lunch, or to one of the recreation centers that he supervises, all of these activities were a customary part of his employment with the City of Spartanburg. The evidence establishes that Decedent was on his way to work to perform his typical job duties, duties that fell within his job description and duties that were expected of him on a regular basis.

9. A \$250,000.00 settlement was given to Claimants as a result of the motorcycle accident that resulted in Decedent's death. A portion of the settlement proceeds have already been disbursed. The remainder of the settlement proceeds is being placed in an annuity for the minor child. No proceeds from the settlement were held in trust for Defendants' statutory lien. Therefore, if this claim had been deemed compensable, Defendants would have been entitled to take credit for their lien against the award for death benefits.

10. I find that Claimants never filed a Form S-2, but that because an action was not commenced in the civil court regarding the third party case, that this failure does not bar their claim.

CONCLUSIONS OF LAW

1. The Findings of Fact set forth above are construed to be conclusions of law, if applicable.

2. Pursuant to South Carolina Code Annotated § 42-1-160, Decedent did not suffer a compensable injury under the Act. Claimants failed to establish that Decedent's accident arose out of and in the course of his employment, as Decedent was not working at the time of his accident.

3. Even if Decedent's electronic or telephonic communication with his co-workers could be said to bring this claim within the purview of the Act, the Decedent's decision to drive nine miles to his mother's house in Moore, South Carolina, to stay at his mother's house for approximately three hours, and to pick up his motorcycle from his mother's house resulted in a substantial deviation from employment. See White v. S.C. State Highway Dep't, 226 S.C. 380, 85 S.E.2d 290 (1955); Falconer v. Beard-Laney, Inc., 215 S.C. 321, 54 S.E.2d 904 (1949).

4. Pursuant to Sola v. Sunny Slope Farms, 244 S.C. 6, 135 S.E.2d 321 (1964) and Matute v. Palmetto Health Baptist, 391 S.C. 291, 705 S.E.2d 472 (Ct. App. 2011), Claimants' claim for benefits is barred by the going and coming rule.

5. There are no applicable exceptions to the going and coming rule. See Matute v. Palmetto Health Baptist, 391 S.C. 291, 705 S.E.2d 472 (Ct. App. 2011).

6. Pursuant to Whitworth v. Window World, Inc., 377 S.C. 637, 661 S.E.2d 333 (2008), the duty or task exception to the going and coming rule is inapplicable, because Decedent's accident, near his mother's home, took place on his way to work. This trip was serving the personal objective of getting Decedent to work. Decedent had no work-related duties to perform on his way to work, nor was he under the control of the City of Spartanburg on his way to work. See also Gregg v. Dorchester County Schools System, 270 S.C. 189, 241 S.E.2d 554 (1978).

7. Pursuant to Bickley v. South Carolina Electric & Gas Company, 259 S.C. 463, 192 S.E.2d 866 (1972), the special errand exception to the going and coming rule is inapplicable, because Decedent was not charged with any task on his way to work. In fact, the testimony revealed that the only job duties Decedent had on the day of his accident were his typical job duties in the City of Spartanburg, which were all contemplated by his job description. At the time of his accident, Decedent was on a personal mission to get to work. Whether Decedent was headed to his office, the

City's employee appreciation lunch, or to one of the recreation centers that he supervises, all of these activities were a customary part of his employment with the City of Spartanburg. Nothing was unique or special about any of the aforementioned activities. See also Sylvan v. Sylvan Bros., Inc., 225 S.C. 429, 82 S.E.2d 794 (1954)

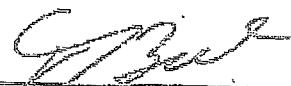
8. Claimants' failure to file a Form S-2 is not a bar to benefits. South Carolina Code Annotated § 42-1-560(b) requires that an action be commenced for the section to be applicable. Pursuant to Rule 3 of the South Carolina Rules of Civil Procedure, an action is commenced when a summons and complaint are filed with the clerk of court. No action was ever filed in Claimants' third party claim. Therefore, Claimants were not required to file a Form S-2.

9. Pursuant to South Carolina Code Annotated § 42-1-560 and by stipulation of the parties, if Claimants had prevailed on this claim, Defendants would have a statutory lien on the third party settlement proceeds.

ORDER

Based upon the foregoing Findings of Fact and Conclusions of Law, IT IS HEREBY ORDERED that Claimants' claim to workers' compensation benefits under the South Carolina Workers' Compensation Act be denied, as Decedent's accident did not arise out of and in the course and scope of his employment.

IT IS SO ORDERED.


T. Scott Beck, Commissioner

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 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).

November 7, 2013

By: Amy Bracy, Administrative Assistant to Commissioner Beck

STATE OF SOUTH CAROLINA
BEFORE THE
SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION
WCC No. 1207113

Brian Wofford,

Employee,

v.

City of Spartanburg,

Employer,

and

South Carolina Municipal Insurance
Trust,

Carrier/Defendants.

COPY

FULL COMMISSION HEARING

Tuesday, February 18, 2014
2:47 p.m. - 3:08 p.m.

The Full Commission Hearing was heard before Commissioners Susan S. Barden, Gene McCaskill and Aisha Taylor at the Workers' Compensation Commission, 1333 Main Street, Suite 500, Columbia, South Carolina, on the 18th day of February, 2014, before Andrea R. Taylor, Court Reporter and Notary Public in and for the State of South Carolina.

CREEL COURT REPORTING, INC.

0094

APPEARANCES

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EXHIBITS

(There were no exhibits marked during this hearing.)

STIPULATIONS

It is stipulated and agreed that this hearing is being taken pursuant to the Administrative Procedures Act and the South Carolina Rules of Civil Procedure.

1 COURT REPORTER: Today is February 18, 2014. This
2 is South Carolina Workers' Compensation Case.
3 Number 1207113. This is the case of Brian
4 Wofford, Claimant, versus City of Spartanburg,
5 Employer, and South Carolina Municipal Self
6 Insurance Trust Fund, Carrier. This is a cross
7 appeal. The first appellant is the claimant
8 represented by Kenneth Anthony, Jr. The second
9 appellant is the defendant represented by
10 Stephanie Lamb. Each side is allowed ten
11 minutes for oral argument and the appellant
12 three minutes in reply. You are requested to
13 argue the grounds of exception and stay within
14 the record.

15 THE CHAIR: Would it suit the attorneys to divide
16 your time into eight, eight, three, three?

17 MS. PUGH: That's fine.

18 MR. ANTHONY: Whatever the court believes.

19 THE CHAIR: Thank you so much.

20 MS. PUGH: That's fine with me.

21 THE CHAIR: Okay. All right. Mr. Anthony, you
22 filed first, so we're going to start with you,
23 sir.

24 MR. ANTHONY: Thank you. I was just saying outside
25 I was catching my breath. There was paving all

1 the way down the interstate and then a wreck up
2 here in Columbia so I'm just barely here.

3 Thank you.

4 COMMISSIONER McCASKILL: But you're here.

5 MR. ANTHONY: I am here. Thank you for hearing me
6 today. I am Ken Anthony from Spartanburg, and
7 I represent Boisha Wofford who is the widow of
8 a man who was named Brian Wofford. Brian was
9 the chief of the head of the city parks and
10 recreation department in Spartanburg. He was
11 a high school and college football star and
12 just a very well loved member of the city staff
13 and community. May 18, 2012, he was on his way
14 into town on his motorcycle when someone pulled
15 out in front of him. He struck the vehicle,
16 fell from the motorcycle, and died there either
17 at the scene or in the ambulance on the way to
18 the hospital. He did leave Boisha, his widow,
19 and a daughter. Brian -- this was a Friday.
20 There were two city events going on that day.
21 Brian was on the way into town. His office was
22 in the second floor of what's called the Sparta
23 Building, which is just a fancy name for the
24 bus station right in downtown Spartanburg. He
25 had been communicating with other city

1 employees from 7:20 that morning. He'd got a
2 text message from another employee; he had a
3 city-issued cell phone that he used for that.
4 And all throughout the morning he was
5 communicating back and forth by cell phone, by
6 text, by email, by chat with other city
7 employees. We downloaded all the information
8 off of his phone so that we would know what he
9 was doing. And he was constantly back and
10 forth with these people arranging things for
11 these events that were going to take place that
12 day.

13 COMMISSIONER McCASKILL: But he had left his
14 apartment and gone to Moore to his mama's, had
15 he not?

16 MR. ANTHONY: He had left the apartment and gone to
17 Moore to his mother's house to swap his car out
18 for this motorcycle, and he made some calls
19 there at his mother's house. And the last call
20 that he that day was with a lady named Tracy
21 Ballew. She was the director of the swim
22 center. Now the swim center is not downtown
23 where his office is; it's somewhere else. And
24 he promised to go by as he was leaving. He was
25 leaving then, and he promised to go by another

1 recreation center, C.C. Goodson, pick up some
2 keys that Tracy needed, take them to Tracy at
3 the swim center. She also had some forms she
4 needed him to sign out there at the swim
5 center. That was the last conversation he had,
6 and he promised that he was going to do those
7 two things and that's where he was headed when
8 he had his wreck. So the -- everybody agreed,
9 all the witnesses were consistent in their
10 testimony that it wasn't unusual for him to be
11 out of the office working, that he communicated
12 with people all day long on his cell phone like
13 that and there's various methods that they were
14 -- they never knew where he was ---

15 **THE CHAIR:** But he was at his mother's, wasn't he?
16 Didn't he go the opposite way of work from his
17 house to his mother's?

18 **MR. ANTHONY:** From where he was living he did not --
19 certainly his mother's was not in a straight
20 line to his office. No question he went to his
21 mother's, and he was there when he talked to
22 Tracy Ballew apparently at the swim center and
23 promised to leave there and go pick up these
24 keys. So ---

25 **COMMISSIONER MCCASKILL:** And wasn't that at like

1 11:00 in the morning?

2 MR. ANTHONY: That's right. That's right.

3 COMMISSIONER McCASKILL: What time was he supposed
4 to be at work? Now I understand he had some
5 flexibility, but what were his hours?

6 MR. ANTHONY: I think his normal hours were 9:00.
7 But again, all the witnesses testified he
8 didn't always go straight to the office. He
9 might go to these rec centers, he might go to
10 the swim center. Wherever he was needed, he
11 went. Which this brings me to the two points.
12 One, we take -- first we take the position he
13 was working all morning long because he was
14 doing the same thing he would be doing if he
15 were sitting in his office. But the more --
16 the even stronger evidence that this is a
17 compensable claim is there is no contradicting
18 the testimony of Tracy Ballew he was on a
19 special errand. Special errand, of course, is
20 an exception to the coming and going rule where
21 you're not supposed to be compensated for just
22 coming back and forth to work. But from the
23 time he hung up the phone with her saying I'll
24 bring you -- I'll pick up the keys, bring them
25 to you, sign your forms, he was on a special

1 errand that falls right within the exception.
2 I've cited Medlin vs. Upstate. But first let
3 me just read her testimony, Tracy Ballew, "When
4 I verbally spoke to him on the phone at that
5 point he said he was going directly to CC,"
6 which is the rec center, "to get the key and
7 then come into the swim center to sign PACS,"
8 which are forms, "and then go to the Spring
9 Fever event." So, I mean, there's nothing to
10 contradict the fact that that's what he was
11 about at the time that he had his wreck. He
12 was about getting those keys, taking them to
13 the swim center, signing the forms. So Medlin
14 vs. Upstate Plaster Service case I cited in my
15 brief that there's -- has recognized a number
16 of exceptions to the coming and going rule.
17 Number two, is where the employee on his way to
18 or from his work is still charged with some
19 duty or task in connection with his employment.

20 **COMMISSIONER TAYLOR:** But he was coming from his
21 mother's house and not work. I think that's
22 what hinges, he wasn't at work.

23 **MR. ANTHONY:** Well, he was going to work, and he had
24 a special errand he had to perform on the way
25 to work, which is just what these cases say.

1 COMMISSIONER TAYLOR: But he had already gone to
2 work for that day; is that right? He had
3 already been in the office ---

4 MR. ANTHONY: No.

5 COMMISSIONER TAYLOR: --- earlier that morning?

6 MR. ANTHONY: Oh, no, no. No, no, he had not been
7 to the office that morning.

8 COMMISSIONER TAYLOR: Okay.

9 MR. ANTHONY: He was on his way to begin work, and
10 probably would have gone, we don't know,
11 probably would have gone straight to his
12 office, but for this call from Tracy Ballew
13 saying I need these keys ---

14 COMMISSIONER McCASKILL: Where are these keys he's
15 got to pick up?

16 MR. ANTHONY: They are at a recreation center, which
17 is about half a mile from the swim center,
18 maybe a mile-and-a-half from his office. So
19 he's making a route that ---

20 COMMISSIONER McCASKILL: So it's your contention
21 because he had had that conversation and he was
22 headed to the rec center that he was already on
23 a special errand?

24 MR. ANTHONY: I don't see how we can characterize it
25 any other way. And, you know, a better case I

1 probably didn't cite in my brief, but Stough,
2 S-T-O-U-G-H, vs. Westinghouse Savannah River
3 says, the general rule does not apply if, among
4 other things, the employee on his way to or
5 from his work is still charged with some duty
6 or task in connection with his employment. An
7 injury incurred during a trip which serves both
8 a business and a personal purpose is within the
9 scope of employment if the trip involves the
10 performance of a service for the employer,
11 which would have caused the trip to be taken by
12 someone even if it had not coincided with his
13 personal journey. Stated another way, if the
14 work of the employee necessitates his travel,
15 he is in the course of employment even though
16 he is serving at the same time some purpose of
17 his own. The service of the employee must be
18 at least a concurrent cause of the trip, not
19 necessarily the sole cause. Well, if he hadn't
20 gone to pick up these keys for Tracy Ballew,
21 some city employee was going to have to.

22 MR. McCASKILL: But if he had gone from his
23 apartment to pick up those keys and then -- he
24 would have never been in Moore to have been in
25 this accident.

1 MR. ANTHONY: Well, that's true, but you know,
2 employers ---

3 COMMISSIONER McCASKILL: Isn't that a substantial
4 deviation?

5 MR. ANTHONY: I don't -- I submit that it's not a
6 deviation at all. If he had been -- if we were
7 here talking about a wreck that happened
8 between his apartment and his mother's house,
9 I wouldn't be here arguing this. But going
10 from his mother's house, he's going directly to
11 work. You know, except for ---

12 COMMISSIONER McCASKILL: But he's not going directly
13 to work. Directly to work is from his
14 apartment.

15 MR. ANTHONY: He's going directly from where he was.
16 You know, except for oil rig workers, I don't
17 know of any employers who tell their employees
18 where they've got to spend the night. In other
19 words, he could have spent the night at his
20 mother's; he could have spent the night at his
21 apartment; he could have spent the night in
22 Greenville. It doesn't matter where he is
23 leaving from, if he is on this errand that the
24 City is requiring him to do -- I mean, none of
25 us necessarily spend the night every night at

1 the same location. And so -- and the City
2 seems to take the -- can I finish my sentence?

3 THE CHAIR: Finish your thought.

4 MR. ANTHONY: -- that he has to always take the path
5 from his apartment to work. And nobody does
6 that. People go to Waffle House in the morning
7 and then leave from there to go to work.. They
8 go to the dry cleaners and go there. So the
9 mere fact -- the question I think is not where
10 he's coming from, but where is he going to.

11 THE CHAIR: All right.

12 MR. ANTHONY: Thank you.

13 MR. MCCASKILL: Thank you.

14 THE CHAIR: All right. Ms. Pugh.

15 MS. PUGH: May it please the Commission. My name is
16 Stephanie Pugh, and I represent the City of
17 Spartanburg and the South Carolina Municipal
18 Insurance Trust. We have cross-appealed this
19 matter, but I'll address the issues in response
20 to the claimant's appeal first. I was going to
21 hold the preservation issues for the end, but
22 now it's even more confused. If you have a
23 Form 30 in front of you, the claimant --
24 claimant has failed to appeal as required by
25 the regulation. And that becomes important

1 because now new arguments are coming up today
2 that I think are not even preserved for appeal
3 even further. And I'll get to that in a
4 minute, but let's not get off track. It's our
5 position that decedent had not worked on the
6 date of his accident, nor was he working at the
7 time of his accident. Secondly, we believe the
8 hearing Commissioner decided correctly that the
9 going and coming rule was applicable and that
10 there were no exceptions. Additionally, we do
11 take the position that this appeal has not --
12 that the issues on appeal have not been
13 properly preserved, and even if some of them
14 have, the substantial deviation issue has
15 definitely not been preserved as it is not
16 going to be on the Form 30 nor is it briefed.
17 Going to the first issue. Decedent was not
18 working the date of the accident, nor was he
19 working at the time of his accident. The
20 evidence shows that there was about ten minutes
21 out of Mr. Wofford's four hour morning that he
22 did anything work related, and this was remote
23 communication that he did instead of coming
24 into work. His work duties were all within the
25 City of Spartanburg. The testimony reveals

1 that nothing about the claimant's work required
2 him to be outside of the city of Spartanburg.
3 For an accident to be compensable under the
4 Comp Act, it has to arise out of and in course
5 of employment. This accident was not at all
6 work related to Mr. Wofford's work. He was
7 riding his sport bike on a road at a place
8 where his work did not require him to be, and
9 he was injured in an accident. The fact that
10 he had spent ten minutes communicating is not
11 enough to bring this injury within the purview
12 of the Act, or every white collar worker that
13 has a cell phone will now sustain --, will now
14 argue that they have compensable acts on the
15 way to work. This is a huge policy concern for
16 us, and we think it needs to be taken into
17 consideration. Mr. Wofford's accident happened
18 two miles away from his mother's house. So if
19 you look at my APA 171, there's an actual map
20 of the deviation. I have extra copies if you
21 would like for me to hand those up, but the
22 deviation is pretty substantial. He starts at
23 his apartment, which is A, goes all the way to
24 B, his accident at C, and then his work is all
25 the way up at D. So this deviation was

1 substantial, not only in distance but in time.
2 He stayed at his mom's house three hours before
3 he left. While he was there he may have had
4 some remote communication that was work
5 related, but he also had personal communication
6 that we see on his cell phone bills. We do not
7 believe this accident arose out of and in the
8 course of employment. Secondly, the going and
9 coming rule. The evidence establishes we
10 believe, although it's speculative in nature,
11 that the decedent was on his way to work, and
12 the claimants agree with that but the -- so the
13 only way they can bring this into the purview
14 of the Act is to say that there's exception.
15 Now, on their Form 30 they have only mentioned
16 the duty or task exception, which is the act --
17 acting in furtherance of your employment on the
18 way to work. The special errand exception is
19 a whole other exception. That is not on the
20 Form 30. And although it's discussed in my
21 brief, I think this is a due process problem,
22 even more of a due process problem now that
23 something in addition has been argued here
24 today. But even if it is the -- under the duty
25 or task exception it's definitely -- he wasn't

1 acting in furtherance of employment. Nothing
2 about his work made him be at this location.
3 The most recent case -- he was just trying to
4 get back to the city where all of his duties
5 were to be performed. Those rec centers that
6 he was going to, the swim center, the
7 recreation center that Mr. Anthony mentioned
8 are all things he did on a daily basis. Those
9 are his normal job duties. That was nothing
10 special, nothing unusual, nothing unique. That
11 is his daily responsibility, and that's in his
12 job description that's in the APAs as well as
13 the testimony that was borne out through his
14 supervisor, Mitchell Kennedy, and Tracy Ballew
15 that was just quoted. There's a recent case of
16 Whitworth vs. Window World that is somewhat
17 helpful in understanding this duty or task
18 exception, which is the one that was actually
19 appealed on the Form 30, and in that case a
20 gentleman was driving to work, had a trailer,
21 was pulling some type of equipment behind his
22 truck, injured on the way to work, and the
23 South Carolina Supreme Court in 2008 says no,
24 this is not a compensable injury; he was simply
25 trying to get to the place where his work was

1 to be performed. That's exactly what happened
2 here. Mr. Wofford was just trying to get to
3 the place where his work was to be performed.
4 He was free to conduct personal business. He
5 was not under the control of his employer. He
6 was simply trying to get to work like all of us
7 do. Again, to decide this case as claimant
8 suggests that you should would mean that the
9 compensation act is now swallowing up pretty
10 much the entire going and coming rule. Next,
11 we believe that the hearing Commissioner
12 correctly decided that the decedent, even if he
13 had been working, even if Mr. Wofford was
14 working, if it can be said that he was working
15 by this remote communication, that he
16 substantially deviated bringing this injury --
17 I mean, resulting in this injury being not
18 compensable. Not only did he drive in the
19 opposite direction of his work from his
20 apartment, which his mom actually admitted on
21 the stand and so did his supervisor, but he
22 also stayed there for four hours -- I mean,
23 sorry, three hours. He ate with her, visited
24 with her, got on his motorcycle, drove two
25 miles, still in the city of Moore, was injured

1 and regretfully killed in that accident. In
2 the Falconer case, which you're all probably
3 familiar, that was a truck driver, he drove in
4 the opposite direction of what his work
5 required him to go. The court in that case
6 said not compensable because that claimant was
7 not at a place where his work required him to
8 be. Nothing about Mr. Wofford's work required
9 him to be in Moore, South Carolina, and that is
10 clear in the testimony. So even if it can be
11 said that decedent was working on the day of
12 this accident, he had substantially deviated.
13 Lastly, regarding the preservation of the
14 claimant's failure to preserve their grounds
15 for appeal, the Form 30 only notes two very
16 broad assertions on -- for appeal. We believe
17 there's a lack of compliance with 67-7013 and
18 that has resulted in a violation of our due
19 process. Quite frankly, it was hard to even
20 know what to argue or what to prepare for or
21 what to brief because we did not know exactly
22 what conclusions of law or findings of fact
23 they were appealing. But whatever be the case,
24 we do believe that it results in a -- in the
25 case being not compensable. As defendants we

1 have a right just like every other party does
2 and have notice of what is to be heard on
3 appeal. Even if you decide that these two
4 broad statements can cover some of the issues,
5 the substantial deviation issue is definitely
6 not on the Form 30, nor is it briefed, and we
7 believe that a failure to brief an issue
8 results in the abandonment of a claim as
9 established by South Carolina case law. Now,
10 that is the conclusion of our reply, but we
11 also have an appeal pending, which I'll go
12 ahead and briefly address.

13 **THE CHAIR:** You've got about 14 seconds.

14 **MS. PUGH:** Okay. Okay. I mean, I'll rely on my
15 brief for the most part, but we submit as
16 appellants that the claimants have elected
17 their remedy. They received a third party
18 settlement, \$250,000, never filed an S2.
19 Although they did not officially file an action
20 under Rule 3, it was treated with an -- well,
21 there was an action cover sheet, an action
22 number, the judge in the civil action wrote an
23 order saying this action is dismissed. All the
24 settlement proceeds were disbursed, so even if
25 they had won we would have had nothing to take

1 our money from.

2 **THE CHAIR:** Three more minutes. All right, Mr.
3 Anthony.

4 **MR. ANTHONY:** Thank you. Is this my final reply?

5 **THE COURT:** Yes, sir.

6 **MR. ANTHONY:** Okay. First, I'll go to the case that
7 was cited which is recent, Whitworth vs. Window
8 World, supports our position. I just note the
9 language in that document where they
10 distinguish and the court points out that the
11 respondent had no work-related duties to
12 perform on the way to work. Well, Mr. Wofford
13 had work-related duties. As to the procedural
14 positions, we think everything was covered in
15 our Form 30, the fact that he was on the way --
16 we disagree with the finding he was not on the
17 way to work, we disagree with the finding that
18 he was not on a special errand or task. And as
19 far as the S2 argument, I really just cannot
20 see the merit of that at all. That form has to
21 be filed before we can file a lawsuit. We
22 never filed a lawsuit in this case. There
23 could be one filed tomorrow by us or by the
24 employer. It's never been filed. You have to
25 have a death settlement approved. And I

1 pointed out in my brief on this issue, there
2 are all kinds of things that gets filed with
3 the clerk of court that get a civil action
4 number, but that doesn't make them a civil
5 action, and they're not suing anybody and
6 they're not asking for damages. A civil action
7 can only be commenced by a summons and
8 complaint; that's what the rule says. We never
9 filed a summons and complaint in this case; it
10 could still be filed though. The defendant in
11 that third party action could still be sued at
12 this point. And I've given you a list of a
13 number of things that were filed from name
14 changes to appointing guardians to lis pendens
15 to notice of intent to file suit; all those get
16 a civil action number. In Spartanburg we have
17 a little ceremony every year where we honor the
18 lawyers who have died that year. And at the
19 end of it usually the speaker hands the notes
20 to the clerk and says I want to file this with
21 the clerk. I'm confident it gets a civil
22 action number, but it's not any kind of
23 lawsuit. The civil action number is just how
24 they keep track of things in the clerk's
25 office. So ---

1 COMMISSIONER TAYLOR: What was the settlement for if
2 it was not for a lawsuit? What was the purpose
3 of the settlement?

4 MR. ANTHONY: We just -- it was a claim. It was an
5 insurance claim. It never got to the point of
6 being a lawsuit.

7 COMMISSIONER TAYLOR: Because they paid it ---

8 MR. ANTHONY: Because they paid it.

9 COMMISSIONER TAYLOR: --- before you had to sue
10 them?

11 MR. ANTHONY: Right. Thank you.

12 THE CHAIR: Thank you. All right. Ready to go?

13 MS. PUGH: Just a few responses. Mr. Wofford was
14 not charged with any work-related duties on his
15 way to work. He had to get to work before he
16 could do any of his job. Furthermore, in 67-
17 701(3) requires that findings and facts and
18 conclusions of law be addressed, so we think
19 that violated our due process by them not doing
20 so. And I know that you probably cannot rule
21 on the due process argument, but we would like
22 to preserve that for appeal moving forward in
23 the legal court should we have to. Thank you.

24 THE COURT: All right. Thank you. That concludes
25 this hearing. Y'all have a good afternoon.

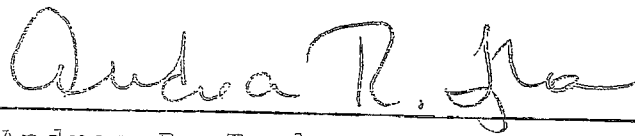
1 (There being nothing further, the hearing was
2 concluded at 3:08 p.m.)
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CERTIFICATE

This is to certify that the within hearing consisting of twenty-three (23) pages, is a true and correct transcript of the testimony given by said witnesses after being duly sworn; said hearing was reported by the method of Stenomask with Backup.

I further certify that I am neither employed by nor related to any of the parties in this matter or their counsel; nor do I have any interest, financial or otherwise, in the outcome of same.

IN WITNESS WHEREOF I have hereunto set my hand and seal on July 14, 2014.



Andrea R. Taylor
Court Reporter

Notary Public for South Carolina
My Commission Expires: February 18, 2024

APPELLATE PANEL
DECISION AND ORDER
OF THE
SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION
1207113

Boisha Wofford, alleged surviving spouse,
and Kaelyn Wofford, surviving child, on behalf
of Brian Wofford, deceased employee,

CLAIMANTS/APPELLANTS,

v.

City of Spartanburg,

EMPLOYER AND SELF-INSURER,

through the

South Carolina Municipal Insurance Trust,

DEFENDANTS/RESPONDENTS.

Appellate Panel Review held in
Columbia, South Carolina on February 18, 2014

Appellate Panel Decision and Order
Filed _____, 2014.

APPEARANCES:

Claimant/Appellant represented by Kenneth C. Anthony, Esquire of The Anthony Law Firm, PA.
Defendants/Respondents represented by Stephanie Lamb Pugh, Esquire, of McAngus Goudelock
& Courie, L.L.C. of Greenville, South Carolina.

STATEMENT OF THE CASE

The underlying claim was heard by Commissioner T. Scott Beck on August 15, 2013. On November 7, 2013, Commissioner Beck issued the following Findings of Fact, Conclusions of Law, and Order:

FINDINGS OF FACT

1. Claimants allege that Decedent's accident, which took place on May 18, 2012, and resulted in Decedent's death, arose out of and in the course of Decedent's employment with the City of Spartanburg. Defendants deny these allegations.
2. Decedent worked as a Parks & Recreation Director for the City of Spartanburg and as such, he was a salaried employee. His typical workday was from 8am-5pm, but he had the ability to flex his schedule depending on his job responsibilities.
3. I find that Decedent was not working at the time of his death. He never reported to work on the day of his accident; instead, he delegated his job duties to his subordinates. He made/received four to five minutes worth of phone calls, sent/received nine very brief text messages/emails, and engaged in one very brief chat with his subordinate. Therefore, on the date of his death, he spent approximately ten minutes communicating remotely with his subordinates. I find that Decedent's use of his work phone to communicate with his subordinates on the morning of his accident was a convenience to Decedent. The fact that he made a few work related calls, texts, etc. is not dispositive. Because he communicated remotely with his subordinates, he did not have to come in to work to perform his job duties. I find that this remote, telephonic/electronic communication does not rise to the level that would bring Decedent's actions within the course and scope of his employment.
4. Instead of coming to work on the day of his accident, Decedent drove approximately nine miles from his apartment in the opposite direction to his mother's home in Moore, South Carolina to pick up his motorcycle and visit with his mother. He remained at his mother's home approximately three hours. This visit to his mother's house was of a purely personal nature. I find that even if it can be said that Decedent was working at some point on his date of accident, that the trip and visit to his mother's house in Moore, South Carolina, was a substantial deviation from his employment.
5. I find that Decedent's accident, which occurred at the corner of Reidville Road and Plateau Street in Moore, South Carolina, and was approximately two miles from his mother's house, took place at a location that Decedent's work duties did not require him to be. Nothing about Decedent's job, on the date of his accident, required that he travel to or visit any location in Moore, South Carolina or that he go and pick up his motorcycle in Moore, South Carolina. The only job duties Decedent had on the date of his accident were located in the City

of Spartanburg, which was about ten and a half miles or twenty-five minutes away from Decedent's mother's home.

6. This claim is barred by the going and coming rule, and there are no applicable exceptions.

7. I find that Decedent was not charged with any work related duties at the time of his accident but instead was on a purely personal mission to get to work. There is no evidence establishing that Decedent was tasked with any work related responsibility at the time of his accident. He was merely on his way to work to engage in his typical job responsibilities.

8. I find that Decedent was not performing a special task, service, mission, or errand for the City of Spartanburg at the time of his accident. Whether Decedent was headed to his office, the City's employee appreciation lunch, or to one of the recreation centers that he supervises, all of these activities were a customary part of his employment with the City of Spartanburg. The evidence establishes that Decedent was on his way to work to perform his typical job duties, duties that fell within his job description and duties that were expected of him on a regular basis.

9. A \$250,000.00 settlement was given to Claimants as a result of the motorcycle accident that resulted in Decedent's death. A portion of the settlement proceeds have already been disbursed. The remainder of the settlement proceeds is being placed in an annuity for the minor child. No proceeds from the settlement were held in trust for Defendants' statutory lien. Therefore, if this claim had been deemed compensable, Defendants would have been entitled to take credit for their lien against the award for death benefits.

10. I find that Claimants never filed a Form S-2, but that because an action was not commenced in the civil court regarding the third party case, that this failure does not bar their claim.

CONCLUSIONS OF LAW

1. The Findings of Fact set forth above are construed to be conclusions of law, if applicable.

2. Pursuant to South Carolina Code Annotated § 42-1-160, Decedent did not suffer a compensable injury under the Act. Claimants failed to establish that Decedent's accident arose out of and in the course of his employment, as Decedent was not working at the time of his accident.

3. Even if Decedent's electronic or telephonic communication with his co-workers could be said to bring this claim within the purview of the Act, the Decedent's decision to drive nine miles to his mother's house in Moore, South Carolina, to stay at his mother's house for approximately three hours, and to pick up his motorcycle from his mother's house resulted in a substantial deviation from employment. See White v. S.C. State Highway Dep't, 226 S.C. 380, 85 S.E.2d 290 (1955); Falconer v. Beard-Laney, Inc., 215 S.C. 321, 54 S.E.2d 904 (1949).

4. Pursuant to Sola v. Sunny Slope Farms, 244 S.C. 6, 135 S.E.2d 321 (1964) and Matute v. Palmetto Health Baptist, 391 S.C. 291, 705 S.E.2d 472 (Cl. App. 2011), Claimant's claim for benefits is barred by the going and coming rule.

5. There are no applicable exceptions to the going and coming rule. See Matute v. Palmetto Health Baptist, 391 S.C. 291, 705 S.E.2d 472 (Cl. App. 2011).

6. Pursuant to Whitworth v. Window World, Inc., 377 S.C. 637, 661 S.E.2d 333 (2008), the duty or task exception to the going and coming rule is inapplicable, because Decedent's accident, near his mother's home, took place on his way to work. This trip was serving the personal objective of getting Decedent to work. Decedent had no work-related duties to perform on his way to work, nor was he under the control of the City of Spartanburg on his way to work. See also Gregg v. Dorchester County Schools System, 270 S.C. 189, 241 S.E.2d 554 (1978).

7. Pursuant to Bickley v. South Carolina Electric & Gas Company, 259 S.C. 463, 192 S.E.2d 866 (1972), the special errand exception to the going and coming rule is inapplicable, because Decedent was not charged with any task on his way to work. In fact, the testimony revealed that the only job duties Decedent had on the day of his accident were his typical job duties in the City of Spartanburg, which were all contemplated by his job description. At the time of his accident, Decedent was on a personal mission to get to work. Whether Decedent was headed to his office, the City's employee appreciation lunch, or to one of the recreation centers that he supervises, all of these activities were a customary part of his employment with the City of Spartanburg. Nothing was unique or special about any of the aforementioned activities. See also Sylvan v. Sylvan Bros. Inc., 225 S.C. 429, 82 S.E.2d 794 (1954).

8. Claimants' failure to file a Form S-2 is not a bar to benefits. South Carolina Code Annotated § 42-1-560(b) requires that an action be commenced for the Section to be applicable. Pursuant to Rule 3 of the South Carolina Rules of Civil Procedure, an action is commenced when a summons and complaint are filed with the clerk of court. No action was ever filed in Claimants' third party claim. Therefore, Claimants were not required to file a Form S-2.

9. Pursuant to South Carolina Code Annotated § 42-1-560 and by stipulation of the parties, if Claimants had prevailed on this claim, Defendants would have a statutory lien on the third party settlement proceeds.

ORDER

Based upon the foregoing Findings of Fact and Conclusions of Law, IT IS HEREBY ORDERED that Claimant's claim to workers' compensation benefits under the South Carolina Workers' Compensation Act be denied, as Decedent's accident did not arise out of and in the course and scope of his employment.

IT IS SO ORDERED.

Within the statutory period, counsel for both parties filed an Application for Review in the case setting forth their reasons for appeal, copies of which were furnished to all interested parties, prior to oral arguments, which took place before the Appellate Panel on February 18, 2014.

By way of appeal, Claimants/Appellants assert the Hearing Commissioner erred in the following:

1. Did the Commissioner err in finding that the decedent was not working at the time of his death?
2. Did the Commissioner err in finding that the claim was barred by the going and coming rule, and that there was no applicable exceptions? Specifically, did the Commissioner err in failing to find that the decedent, on his way to or from his work, was still charged with some duty or task in connection with his employment? Medlin v. Upstate Plaster Services, 329 S.C. 92, 495 S.E.2d 447 (1997).

By way of appeal, Defendants/Appellants assert the Hearing Commissioner erred in the following:

1. Whether the Hearing Commissioner erred in Finding of Fact Number Ten wherein he states, "I find that Claimants never filed a Form S-2, but that because an action was not commenced in the civil court regarding the third party case, that this failure does not bar their claim," when such a factual finding is against the greater weight and preponderance of the evidence in the record.
2. Whether the Hearing Commissioner erred in Conclusion of Law Number Eight, wherein he concludes, "Claimants' failure to file a Form S-2 is not a bar to benefits. South Carolina Code Annotated § 42-1-560(b) requires that an action be commenced for the section to be applicable. Pursuant to Rule 3 of the South Carolina Rules of Civil Procedure, an action is commenced when a summons and complaint are filed with the clerk of court. No action was ever filed in Claimants' third party claim. Therefore, Claimants were not required to file a Form S-2," when such a conclusion of law is against the greater weight and preponderance of the evidence in the record and is based upon erroneous factual findings.
3. Whether the Hearing Commissioner erred in failing to find as a fact and as a conclusion of law that Claimants' failure to maintain the third party settlement

proceeds in trust and/or disbursement of these proceeds is/are a bar to recovery under the South Carolina Workers' Compensation Act.

4. Whether the Hearing Commissioner erred in failing to order that Claimants' claim for benefits under the Act is barred as a result of their election of remedies.

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

Pursuant to South Carolina Code Annotated § 42-17-50, the Appellate Panel shall review the award, weigh the evidence that was presented at the initial hearing, and if good grounds be shown therefore, make its own Findings of Fact and reach its own Conclusions of Law consistent with or inconsistent with those of the Hearing Commissioner. Based upon a review of the foregoing, we hereby grant a *FULL AFFIRMATION* of the Hearing Commissioner's Decision and Order. Accordingly, the Findings of Fact, Conclusions of Law, and Order of the Hearing Commissioner and as set forth below shall become and hereby are the law of the case:

FINDINGS OF FACT

1. Claimants allege that Decedent's accident, which took place on May 18, 2012, and resulted in Decedent's death, arose out of and in the course of Decedent's employment with the City of Spartanburg. Defendants deny these allegations.

2. Decedent worked as a Parks & Recreation Director for the City of Spartanburg and as such, he was a salaried employee. His typical workday was from 8am-5pm, but he had the ability to flex his schedule depending on his job responsibilities.

3. We find that Decedent was not working at the time of his death. He never reported to work on the day of his accident; instead, he delegated his job duties to his subordinates. He made/received four to five minutes worth of phone calls, sent/received nine

very brief text messages/emails, and engaged in one very brief chat with his subordinate. Therefore, on the date of his death, he spent approximately ten minutes communicating remotely with his subordinates. We find that Decedent's use of his work phone to communicate with his subordinates on the morning of his accident was a convenience to Decedent. The fact that he made a few work related calls, texts, etc. is not dispositive. Because he communicated remotely with his subordinates, he did not have to come in to work to perform his job duties. We find that this remote, telephonic/electronic communication does not rise to the level that would bring Decedent's actions within the course and scope of his employment.

4. Instead of coming to work on the day of his accident, Decedent drove approximately nine miles from his apartment in the opposite direction to his mother's home in Moore, South Carolina to pick up his motorcycle and visit with his mother. He remained at his mother's home approximately three hours. This visit to his mother's house was of a purely personal nature. We find that even if it can be said that Decedent was working at some point on his date of accident, that the trip and visit to his mother's house in Moore, South Carolina, was a substantial deviation from his employment.

5. We find that Decedent's accident, which occurred at the corner of Reidville Road and Plateau Street in Moore, South Carolina, and was approximately two miles from his mother's house, took place at a location that Decedent's work duties did not require him to be. Nothing about Decedent's job, on the date of his accident, required that he travel to or visit any location in Moore, South Carolina or that he go and pick up his motorcycle in Moore, South Carolina. The only job duties Decedent had on the date of his accident were located in the City of Spartanburg, which was about ten and a half miles or twenty-five minutes away from Decedent's mother's home.

6. This claim is barred by the going and coming rule, and there are no applicable exceptions.

7. We find that Decedent was not charged with any work related duties at the time of his accident but instead was on a purely personal mission to get to work. There is no evidence establishing that Decedent was tasked with any work related responsibility at the time of his accident. He was merely on his way to work to engage in his typical job responsibilities.

8. We find that Decedent was not performing a special task, service, mission, or errand for the City of Spartanburg at the time of his accident. Whether Decedent was headed to his office, the City's employee appreciation lunch, or to one of the recreation centers that he supervises, all of these activities were a customary part of his employment with the City of Spartanburg. The evidence establishes that Decedent was on his way to work to perform his typical job duties, duties that fell within his job description and duties that were expected of him on a regular basis.

9. A \$250,000.00 settlement was given to Claimants as a result of the motorcycle accident that resulted in Decedent's death. A portion of the settlement proceeds have already been disbursed. The remainder of the settlement proceeds is being placed in an annuity for the minor child. No proceeds from the settlement were held in trust for Defendants' statutory lien. Therefore, if this claim had been deemed compensable, Defendants would have been entitled to take credit for their lien against the award for death benefits.

10. We find that Claimants never filed a Form S-2, but that because an action was not commenced in the civil court regarding the third party case, that this failure does not bar their claim.

CONCLUSIONS OF LAW

1. The Findings of Fact set forth above are construed to be conclusions of law, if applicable.
2. Pursuant to South Carolina Code Annotated § 42-1-160, Decedent did not suffer a compensable injury under the Act. Claimants failed to establish that Decedent's accident arose out of and in the course of his employment, as Decedent was not working at the time of his accident.
3. Even if Decedent's electronic or telephonic communication with his co-workers could be said to bring this claim within the purview of the Act, the Decedent's decision to drive nine miles to his mother's house in Moore, South Carolina, to stay at his mother's house for approximately three hours, and to pick up his motorcycle from his mother's house resulted in a substantial deviation from employment. See White v. S.C. State Highway Dep't, 226 S.C. 380, 85 S.E.2d 290 (1955); Falconer v. Beard-Laney, Inc., 215 S.C. 321, 54 S.E.2d 904 (1949).
4. Pursuant to Sola v. Sunny Slope Farms, 244 S.C. 6, 135 S.E.2d 321 (1964) and Matute v. Palmetto Health Baptist, 391 S.C. 291, 705 S.E.2d 472 (Ct. App. 2011), Claimant's claim for benefits is barred by the going and coming rule.
5. There are no applicable exceptions to the going and coming rule. See Matute v. Palmetto Health Baptist, 391 S.C. 291, 705 S.E.2d 472 (Ct. App. 2011).
6. Pursuant to Whitworth v. Window World, Inc., 377 S.C. 637, 661 S.E.2d 333 (2008), the duty or task exception to the going and coming rule is inapplicable, because Decedent's accident, near his mother's home, took place on his way to work. This trip was serving the personal objective of getting Decedent to work. Decedent had no work-related duties

to perform on his way to work, nor was he under the control of the City of Spartanburg on his way to work. See also Gregg v. Dorchester County Schools System, 270 S.C. 189, 241 S.E.2d 554 (1978).

7. Pursuant to Bickley v. South Carolina Electric & Gas Company, 259 S.C. 463, 192 S.E.2d 866 (1972), the special errand exception to the going and coming rule is inapplicable, because Decedent was not charged with any task on his way to work. In fact, the testimony revealed that the only job duties Decedent had on the day of his accident were his typical job duties in the City of Spartanburg, which were all contemplated by his job description. At the time of his accident, Decedent was on a personal mission to get to work. Whether Decedent was headed to his office, the City's employee appreciation lunch, or to one of the recreation centers that he supervises, all of these activities were a customary part of his employment with the City of Spartanburg. Nothing was unique or special about any of the aforementioned activities. See also Sylvan v. Sylvan Bros. Inc., 225 S.C. 429, 82 S.E.2d 794 (1954).

8. Claimants' failure to file a Form S-2 is not a bar to benefits. South Carolina Code Annotated § 42-1-560(b) requires that an action be commenced for the Section to be applicable. Pursuant to Rule 3 of the South Carolina Rules of Civil Procedure, an action is commenced when a summons and complaint are filed with the clerk of court. No action was ever filed in Claimants' third party claim. Therefore, Claimants were not required to file a Form S-2.

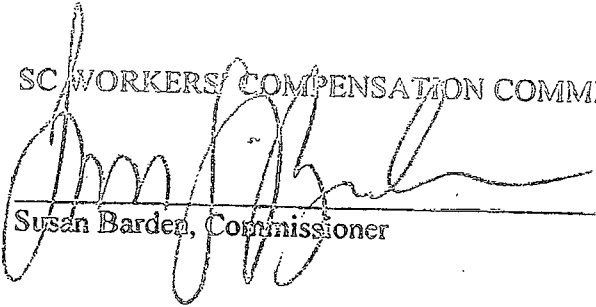
9. Pursuant to South Carolina Code Annotated § 42-1-560 and by stipulation of the parties, if Claimants had prevailed on this claim, Defendants would have a statutory lien on the third party settlement proceeds.

ORDER

Based upon the foregoing Findings of Fact and Conclusions of Law, IT IS HEREBY ORDERED that Claimants' claim to workers' compensation benefits under the South Carolina Workers' Compensation Act be denied, as Decedent's accident did not arise out of and in the course and scope of his employment.

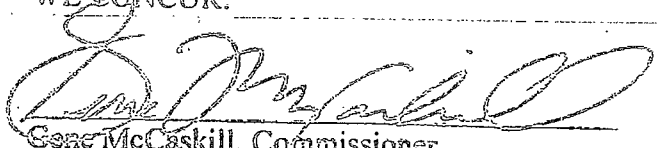
IT IS SO ORDERED.

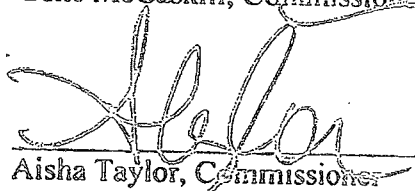
SC WORKERS' COMPENSATION COMMISSION


Susan Barden, Commissioner

FULL AFFIRMATION

WE CONCUR:


Gene McCaskill, Commissioner


Aisha Taylor, Commissioner

Columbia, South Carolina

_____, 2014

CERTIFICATE OF SERVICE

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

By Kim Falls on May 12, 2014

0128

ORIGINAL-CORRECTED

SOUTH CAROLINA DEPTHS & DATA ONLY										SOUTH CAROLINA TRAFFIC COLLISION REPORT FORM										# Of Units		Accepted - Attach Copy of Original Report		Notified		Arrived																																																															
Page #										TR-310 (Rev. 11/2010)										02		Correct		1118		1130																																																															
Date		Time of Collision		Temp.		1- Interstate 2- US Primary 3- SC Primary		4- Secondary 5- County 6- PP		Collision Location (Rt. # / Name)				① Main 2- Alternate 3- Spur		4- Connection 5- Business		Miles: 1.20		Dir. N (E) S W		In: (Near) City or Town of: REIDVILLE																																																																			
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Home Telephone		(310) 5036004		Owner's Full Name		COTE JEWELL NICOLE						Home Telephone		(864) 5749003		Owner's Full Name		WOFFORD BRIAN ONEAL																																																																							
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NOTICE - THE TR-310 IS FOR STATISTICAL REPORTING PURPOSES ONLY AND IS A REFLECTION OF THE OFFICER'S BEST KNOWLEDGE, OPINION AND BELIEF COVERING THE COLLISION BUT NO WARRANT IS MADE AS TO THE FACTUAL ACCURACY THEREOF.										NOTICE - THE TR-310 IS FOR STATISTICAL REPORTING PURPOSES ONLY AND IS A REFLECTION OF THE OFFICER'S BEST KNOWLEDGE, OPINION AND BELIEF COVERING THE COLLISION BUT NO WARRANT IS MADE AS TO THE FACTUAL ACCURACY THEREOF.										NOTICE - THE TR-310 IS FOR STATISTICAL REPORTING PURPOSES ONLY AND IS A REFLECTION OF THE OFFICER'S BEST KNOWLEDGE, OPINION AND BELIEF COVERING THE COLLISION BUT NO WARRANT IS MADE AS TO THE FACTUAL ACCURACY THEREOF.										NOTICE - THE TR-310 IS FOR STATISTICAL REPORTING PURPOSES ONLY AND IS A REFLECTION OF THE OFFICER'S BEST KNOWLEDGE, OPINION AND BELIEF COVERING THE COLLISION BUT NO WARRANT IS MADE AS TO THE FACTUAL ACCURACY THEREOF.																																																											
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FINAL

Patient Care Report



Spartanburg EMS

525 UNION STREET
SPARTANBURG, SC 29306
(864) 560-9300 Ext.

Run Number: 17089

Patient Number 1 of 1

Date of Service: 5/18/2012

Patient Name: BRIAN WOFFORD

Medical Record # 000126062

Account # 1213900796

CREW INFO	RESPONSE INFO	DISPOSITION	TIMES
Vehicle: 05730 Call Sign: Medic 8 Crew #1: ALEXANDER, L MICHAEL Crew #2: DANIEL, CANDICE Doc'd By: ALEXANDER, L MICHAEL Assisted By: 2 10 3	Med/Trauma: Trauma Response Priority: Emergency Nature Of Call: Motorcycle- vs Auto Start Mileage: 21,146.3 At Scene Mileage: 21,149.4 At Dest. Mileage: Response Mileage: 3.1 Resp. Delay: No Delay Trans. Delay: No Delay Call Taken by: 911 Resp. with: Fire Highway Patrol Other EMS Location: REIDVILLE RD AND PLATEAU ST Moore, SC 29369 PL Found: At Scene	Outcome: Hospital / Rescue Dest. Reason: Protocol Transport Priority: Condition at Dest.: Level of care: BLS ER Disposition: Not Known Barriers to Care: PL Transported: Scene Delay: No Delay Destination: Spartanburg Regional Medical Center Dept: Trauma Center 101 E. WOOD ST SPARTANBURG, SC 29303 Recv Doctor: DEGENHARDT, DAVID Transporting Agency: Rescue 21	Recvd: 11:26 05-18-12 Dispatch: 11:26 05-18-12 En route: 11:26 05-18-12 At scene: 11:30 05-18-12 At patient: Transport: 11:35 05-18-12 At dest.: 11:51 05-18-12 In service: 12:00 05-18-12

PATIENT INFORMATION

Name: BRIAN WOFFORD
 SSN:
 Sex: Male
 Race: African American
 Marital Status: Married
 Doctor:
 Doctor:
 Phone:
 DOB: 01/31/1978 (34 yrs)
 Home Addr.: HOLLY TREE CIR
 DUNCAN, SC 29334
 DL info:
 Weight:
 Mailing Addr.: HOLLY TREE CIR
 DUNCAN, SC 29334
 Marital Status: Married

NEXT OF KIN

Name:
 SSN:
 Sex:
 Phone:
 DOB:
 Home Addr.:
 Relationship:

FINAL

Patient Care Report



Spartanburg EMS

525 UNION STREET
SPARTANBURG, SC 29306
(864) 560-9300 Ext.

Run Number: 17089

Patient Number 1 of 1

Date of Service: 5/18/2012

Patient Name: BRIAN WOFFORD

Medical Record # 000126062

Account # 1213900796

Charges

Account # _____

Admitted Yes / No

Base Charge

Mileage Type

Miles

Origin Modifier S - Scene of Accident / Injury

Destination Modifier H - Hospital

Medicare Questions

Retirement Date

Pt on Dialysis?

Pt receive VA benefits?

Pt in Black Lung Program?

Pt had Kidney Transplant?

INSURANCE

no insurance information entered

HISTORY

Allergies

Unknown

Chief Complaint

Trauma - MVA

Cardiac Arrest

Medications

Unknown -

Past Medical History

Unknown

ASSESSMENTS

no assessments entered

IMPRESSIONS

Primary Impression: Trauma (Multi) 958.4Secondary Impressions: Cardiac - Arrest 427.5

TRAUMA

no trauma entered

VITAL SIGNS

Time	BP	Pulse	Respiratory	SPO2	EtCO2	Glucose	GCS
11:30	0/0 Auscultated	0, Absent, Regular	0 Absent, Regular				E1 + V1 + M1 = 3
Skin Temp=Normal Skin Color=Normal Skin Moisture=Normal Lung Sounds Left=Absent Lung Sounds Right=Absent Level of Consciousness: Unresponsive; Pain Scale=0; ECG=Asystole							
Taken by:	ALEXANDER, L MICHAEL						

FINAL

Patient Care Report



Spartanburg EMS

525 UNION STREET
SPARTANBURG, SC 29306
(864) 560-9300 Ext.

Run Number: 17089

Patient Number 1 of 1

Date of Service: 5/18/2012

Patient Name: BRIAN WOFFORD

Medical Record # 000126062

Account # 1213900796

TRAUMA SCORES

no trauma scores entered

Comments:

TREATMENT SUMMARY

no treatments entered

NARRATIVE

DISPATCHED TO BE ALS BACK UP TO RESCUE 21 WITH A MVA CAR VS. MOTORCYCLE. UPON ARRIVAL RESCUE 21 HAD PT LOADED ONTO BACKBOARD DOING CPR WITH THE POPLAR SPRINGS FIRE DEPT ASSISTING. WE ARRIVED AND ASSISTED THEM GET STRETCHER AND LOADED PT INTO TRUCK I ASSISTED RESCUE 21 DO CPR ENROUTE TO ER WHILE THERE PARAMEDIC CALLED FOR ORDERS TO STOP CPR. WE DID GET ORDERS TO STOP SO NO OTHER TRATMENT DONE. PT WAS PLACED IN TRAUMA ROOM 4 WITH REPORT GIVEN TO RN.

FINAL**Patient Care Report**

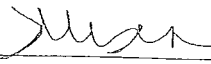
Spartanburg EMS
525 UNION STREET
SPARTANBURG, SC 29306
(864) 560-9300 Ext.

Run Number: 17089
Patient Number 1 of 1
Date of Service: 5/18/2012
Patient Name: BRIAN WOFFORD
Medical Record #: 000126062
Account #: 1213900796

SIGNATURES

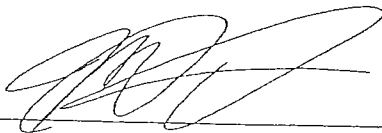
Time	Type	Who signed	Why patient did not sign
05/18/2012 12:14	Receiving Signature	RN - WISE, JANNA	<Not applicable>

I acknowledge receiving EMS Patient BRIAN WOFFORD on the time indicated in this report.

X 

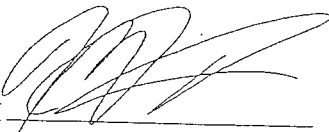
Witness

MICHAEL ALEXANDER

X 

05/18/2012 12:34	Standing Protocol	Crew Member #1 - ALEXANDER, L MICHAEL	<Not applicable>
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Interventions & treatments for BRIAN WOFFORD were performed under Standing Orders authorized by Dr. Chris Lombardozi, MD.

X 

Witness

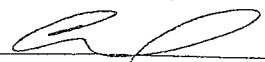
CREW INFORMATION

Start Date/Time: 05/18/2012 08:00

Name
ALEXANDER, L MICHAEL
EMT-Paramedic

Name
DANIEL, CANDICE
EMT-Intermediate

X 

X 



Spartanburg EMS

525 UNION STREET
SPARTANBURG, SC 29306
(864) 550-9300 Ext.

Run Number: 17089

Patient Number 1 of 1

Date of Service: 5/18/2012

Patient Name: BRIAN WOFFORD

Medical Record # 000126062

Account # 1213800798

Patient: Wofford, Brian
Arrival: 5/18/2012 1153
Pt Acct: 1213900796
Med Rcd: 000126062

ED RECORD

Patient: Wofford, Brian
Home Address: ☐ Holly Tree Circle
City: Duncan
State: SC Zip: 29334
Home Ph: (864)249-0095

DOB: 1/31/1978
Age: 34yr
Sex: M

Insurance Companies

Insurance Company

THE BLUES
THE BLUES

Acuity:

Mode of Departure: Stretcher
Disposition: Morgue
Condition at Dispo:

Arrival: 5/18/2012 1153
Mode of Arrival: Ambulance
EMS Agency: Rescue 21

Dispo Summary Printed: 5/18/2012 1427
Time Left ED: 5/18/2012 1501

Pt Weight:

Pt Height:

CC / Curr Imp: Injury-Site Nos

BMI:
BSA:

Nature of EMS Call: traumatic arrest

Rf Provider: Degenhardt, David V D.O.

Referring Phys:
Referring Phys Ph:
Consult Phys:
Cnslt Phys Ph:

Admit Info
Discharge

Degenhardt, David V D.O. Created: 5/18/2012 1423 Last Entry: 1423

Provider Note:
DISCHARGE - DOA

Degenhardt, David V D.O. Created: 5/18/2012 1424 Last Entry: 1426

PHYSICIAN H&P MVC

Patient seen at: Patient seen.

HPI:

MVC (Adult) - Per EMS, pt was a traumatic arrest prior to their arrival. Attempted CPR for 15 min after arrival on scene with blood "gushing out of mouth and nose." Code called after I received a phone call from EMS requested to stop resuscitative efforts.

History not limited.

CLINICAL DECISIONING:

NEXUS CRITERIA:

GLASGOW COMA SCORE:

PROVIDER NOTE:

After obtaining the patients history and performing the physical examination initial considerations based on the presenting problem included but were not limited to these Diagnosis:

CLINICAL IMPRESSION:

0136

Patient: Wofford, Brian
Arrival: 5/18/2012 1153
Pt Acct: 1213900796
Med Rcd: 000126062

DATA REVIEWED:

COUNSELING:

CRITICAL CARE TIME: critical care time none. Critical care time includes time spent with the patient and/o family, reviewing past medical charis, discussions with consultants and admitting physicians, review of diagnostic testing, and active treatment and assessment of response totreatments. Total criticalcare time does not include time spent on separately billed procedures.

Clinical Decision Support

Alert

CPT II

Compliance

No Entries

Vital Signs

Sys	Dia	Pulse	Resp	SAT	O2 Delivered	Temp (F)	Route	Pain Scale	Comment	Taken at	User Name
-----	-----	-------	------	-----	--------------	----------	-------	------------	---------	----------	-----------

No Entries

Home Medications

Arrival Medication

Indication

Last Dose

Comments

No Entries

Allergies

Allergic Substance

Reaction

No Entries

Input & Output

Fluid Type

Intake

Output

I/O Time

No Entries

Patient: Wofford, Brian
Arrival: 5/18/2012 1153
Pt Acct#: 1213900796
Med Rcd: 000126062

PMH

Condition

No Entries

PSH

Procedure

No Entries

Orders

Order

Sched D/T

Comp D/T

No Entries

Orders (Meds)

Order

Sched D/T

Administered D/T

TIMI Scale

Criteria Present

age >= 65

= 3 CAD risk factors

known coronary artery disease >= 50%

aspirin use in past 7 days

anginal episode in prior 24 hours

elevated serum cardiac markers

TT deviation >= 0.5mm on admission ECG

===== TOTAL TIMI Score

===== Mortality/Ischemia RISK

===== Date/Time Performed

===== User Name

0138

140

DATE

7/9/2012

Patient: Wofford, Brian
Arrival: 5/18/2012 1153
Pt Acct: 1213900796
Med Recd: 000126062

Pneumonia Scale		
Pneumonia Criteria	Present	Points
Age		+10
Female		+10
Nursing Home Resident		+10
Neoplastic Disease History		+30
Liver Disease		+20
Congestive Heart Failure		+10
Cerebrovascular disease		+10
Renal Disease		+10
Altered Mental Status		+20
Respiratory Rate > 28/min		+20
Systolic Blood Pressure < 90 mm Hg		+20
Temperature < 95F or > 103.8F		+15
Pulse > 124 beats/min		+10
pH < 7.35		+30
BUN > 29mg/dl		+20
Sodium < 130 mmol/liter		+20
Glucose > 250mg/dL		+10
Hematocrit < 30%		+10
Oxygen saturation < 90%		+10
Pleural Effusion on X-ray		+10
===== TOTAL Score		
===== MORTALITY RISK		
===== Performed on		
===== User Name		

NIH Stroke Scale

LOC Questions CommanGaze Visual FtrParesis RA MotorLA Motor RL MotorLL Motor Ataxia Sensory LanguageDysarthriaE

No Entries

Procedures

Procedure	Performed By	Quantity Entered	Billing No.
-----------	--------------	------------------	-------------

No Entries

Wise, Janna MR.N. (EC.) Created: 5/18/2012 1417 Last Entry: 1418

Clinical Note: pt presents to EC via EMS s/p traumatic arrest. pt was pronounced in field by EMS at 1135. Dr. Degenhardt gave order to stop CPR in field.

141

Wise, Janna MR.N. (EC.) Created: 5/18/2012 1419 Last Entry: 1420

Clinical Note:

0139

DATE

7/9/2012

Patient: Wofford, Brian
Arrival: 5/18/2012 1153
Pt Acct: 1213900796
Med Rcd: 000126062

ASSESS MVA: Assessment performed at 5/18/2012 1420.

Wise, Janna MRN. (EC.) Created: 5/18/2012 1420 Last Entry: 1422

Clinical Note:

DSP DISCHARGE - pt DOA - pronounced in field at 1135

Haynes, Cathy E (Cust Svc) Created: 5/18/2012 1139 Last Entry: 1141

Other Note: per Rescue 21, 33 yom, traumatic arrest from an MVC. Pt is in asystole, medic states blood coming from nose with every compression, down time is 15-20 min. Medic is requesting order to stop CPR. Order to discontinue CPR given by Dr. Degenhardt and repeated back by medic. Report to J. Wise clinical coordinator, trauma 4 assigned.

Moriel-Rodriguez, Yhanco Created: 5/18/2012 1349 Last Entry: 1351

Other Note: Compassionate pastoral presence, grief support and prayer. The pt's family was spiritually distressed, grieving, tearful, sad and in shock finding ways to process and cope with their loss.

Prescription/Rx

Disposition

Signatures

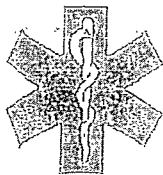
Electronically Authenticated: *Degenhardt, David V D.O. 5/18/2012 1427*

Electronically Authenticated: *Ed Staff 5/18/2012 1532*

© 2011 Wolters Kluwer Health | THIS IS THE LAST PAGE

FINAL

Patient Care Report



Spartanburg EMS

 525 UNION STREET
 SPARTANBURG, SC 29306
 (854) 560-9300 Ext.

Run Number: 17089

Patient Number 1 of 1

Date of Service: 05/18/2012

Patient Name: BRIAN WOFFORD

Medical Record # 000120062

Account # 1213500786

CREW INFO

 Vehicle : 05730
 Call Sign : M-00
 Crew #1: ALEXANDER, L MICHAEL
 Crew #2: DANIEL, CANDICE

 Doc'd By: ALEXANDER, L MICHAEL
 Assisted By: 2
 10
 0

RESPONSE INFO

Mech/Trauma: Trauma

Response Priority: Emergency

Nature Of Call: Motorcycle- vs Auto

Start Mileage: 21,146.3

At Scene Mileage: 21,149.4

At Dest. Mileage:

Resp. Delay: No Delay

<None>

Trans. Delay: No Delay

<None>

Call Taken by: 911

 Resp. with: Fire
 Highway Patrol
 Other EMS

 Location: REIDVILLE RD AND PLATEAU ST
 Moore, SC 29369

Pt. Found: At Scene

DISPOSITION

Outcome: Hospital / Rescue

Dest. Reason: Protocol

Transport Priority:

Condition at Dest.:

Level of care: BLS

 Barriers to Care: None
 None
 None

Hospital Disposition: Not Known

Pt. Transported:

Scene Delay: No Delay

 Destination: Spartanburg Regional Medical
 Center
 Dept: Trauma Center
 101 E. WOOD ST
 SPARTANBURG, SC 29303

Recv Doctor:

DEGENHARDT, DAVID

Transporting Agency: Rescue 21

TIMES

Recvd: 11:26 05-18-12

Dispatch: 11:26 05-18-12

Enroute: 11:28 05-18-12

At scene: 11:30 05-18-12

At patient:

Transport: 11:35 05-18-12

At dest.: 11:51 05-18-12

In service: 12:00 05-18-12

At base:

PATIENT INFORMATION

Name : BRIAN WOFFORD

Phone :

DL Info :

SSN :

DOB : 01/31/1976 (34 yrs)

Weight :

Sex : Male

Home Addr. : DUNCAN, SC 29334

 Mailing Addr. : HOLLY TREE CIR
 DUNCAN, SC 29334

Race : African American

Marital Status : Married

NEXT OF KIN

Name :

Phone :

Relation

SSN :

DOB :

Sex :

Home Addr. :

CHARGES

Account #

Admitted Yes / No

Base Charge

Mileage Type

Transport Mileage:

Origin Modifier S - Scene of Accident / Injury

Destination Modifier H - Hospital

MEDICAL CONDITIONS

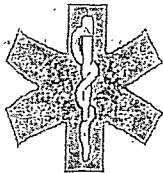
Retirement Date

Pt on Dialysis?

Pt receive VA benefits?

Pt in Black Lung Program?

Pt had Kidney Transplant?

FINAL**Patient Care Report**

Spartanburg EMS
525 UNION STREET
SPARTANBURG, SC 29306
(854) 560-9300 Ext.

Run Number: 17089

Patient Number 1 of 1

Date of Service: 05/18/2012

Patient Name: BRIAN WOFFORD

Medical Record # 000126062

Account # 1213900796

INSURANCE

Guarantor:

no insurance information entered

HISTORYAllergies

Unknown

Chief Complaint

Trauma - MVA

Cardiac Arrest

Medications

Unknown -

Past Medical History

Unknown

ASSESSMENTS

no assessments entered

IMPRESSIONS

Primary Impression: Trauma (Mult) 958.4

Secondary Impressions: Cardiac - Arrest 427.5

TRAUMA

no trauma entered

VITAL SIGNS

Time	BP	Pulse	Respiratory	SPO2	EtCO2	Glucose	GCS
11:30	0/0 Auscultated	0, Absent, Regular	0 Absent, Regular				E1 + V1 + M1 = 3
Skin Temp=Normal Skin Color=Normal Skin Moisture=Normal Lung Sounds Left=Absent Lung Sounds Right=Absent Level of Consciousness: Unresponsive; Pain Scale=0; ECG=Asystole							

Completed By: ALEXANDER, L MICHAEL

TRAUMA SCORES

no trauma scores entered

Comments:

TREATMENT SUMMARY

no treatments entered

NARRATIVE

DISPATCHED TO BE ALS BACK UP TO RESCUE 21 WITH A MVA CAR VS. MOTORCYCLE. UPON ARRIVAL RESCUE 21 HAD PT LOADED ONTO BACKBOARD DOING CPR WITH THE POPLAR SPRINGS FIRE DEPT ASSISTING. WE ARRIVED AND ASSISTED THEM GET STRETCHER AND LOADED PT INTO TRUCK I ASSISTED RESCUE 21 DO CPR ENROUTE TO ER WHILE THERE PARAMEDIC CALLED FOR ORDERS TO STOP CPR. WE DID GET ORDERS TO STOP SO NO OTHER TREATMENT DONE. PT WAS PLACED IN TRAUMA ROOM 4 WITH REPORT GIVEN TO RN.

0142

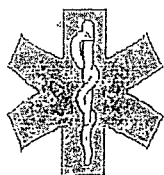
Page 2 of 4

DATE

7/9/2012

FINAL

Patient Care Report



Spartanburg EMS

525 UNION STREET
SPARTANBURG, SC 29306
(864) 560-9300 Ext.

Run Number: 17089

Patient Number 1 of 1

Date of Service: 05/18/2012

Patient Name: BRIAN WOFFORD

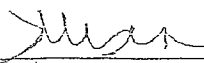
Medical Record # 000126062

Account # 1213900795

SIGNATURES

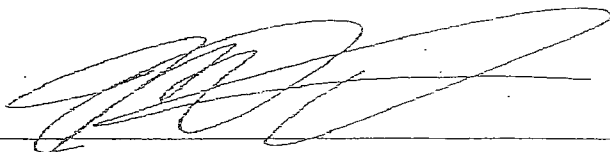
Time	Type	Who signed	Why patient did not sign
05/18/2012 12:14	Receiving Signature	RN - WISE, JANNA	<Not applicable>

I acknowledge receiving EMS Patient BRIAN WOFFORD on the time indicated in this report.

X 

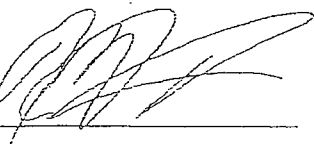
Witness

MICHAEL ALEXANDER

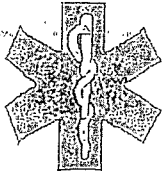
X 

05/18/2012 12:34	Standing Protocol	Crew Member #1 - ALEXANDER, L MICHAEL	<Not applicable>
------------------	-------------------	---------------------------------------	------------------

Interventions & treatments for BRIAN WOFFORD were performed under Standing Orders authorized by Dr. Chris Lombardozzi, MD.

X 

Witness



Spartanburg EMS

525 UNION STREET
SPARTANBURG, SC 29306
(854) 560-9300 Ext.

Run Number: 17089

Patient Number 1 of 1

Date of Service: 05/18/2012

Patient Name: BRIAN WOFFORD

Medical Record # 000126062

Account # 1213900796

CREW INFORMATION

Start Date/Time: 05/18/2012 09:00

Name

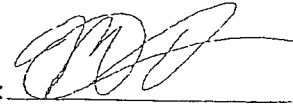
ALEXANDER, L MICHAEL

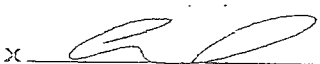
EMT-Paramedic

Name

DANIEL, CANDICE

EMT-Intermediate

X 

X 

CHANGE TRACKING

Field ID	Caption	Date/Time	Change	Who Changed	Previous Value
379	Middle Name	05/19/2012 9:03:47AM	Deleted	BRITT, EUGENIA	
913	Selected ID	05/19/2012 9:03:47AM	Inserted	BRITT, EUGENIA	
912	Entered Text	05/19/2012 9:03:47AM	Deleted	BRITT, EUGENIA	United States
216	Selected ID	05/19/2012 9:04:06AM	Inserted	BRITT, EUGENIA	
216	Selected ID	05/19/2012 9:04:06AM	Inserted	BRITT, EUGENIA	

Wellford Rescue 21

Patient Care Report

Service #: 110	Unit #: Unit 1	Trip #: 284	Report #: 100120234	Run Date: 5/18/2012
Address: P.O. Box 98, Wellford SC 29835			Phone: 1-864-439-7377	
Dispatched For: Trauma - MVA			Dispatch Signal: 912 - Unknown	
Times (24-Hour)			Patient Information	
Incident Onset: ---	Time At Patient: 11:23	Location: Wellford	Patient Name: Brian	
PSAP(911): 11:15	Depart Scene: 11:35	Street Address: Holly Tree Circle	City: [Apt 8]	
Call Received: 11:15	Arrive Destination: 11:51	City: Duncan	State: SC	Zip Code: 29334
Call Dispatched: 11:15	Available Time: 12:23	Phone: 999-999-9999	DOB: 1/31/1978	Age: 34 Years
Departed Base: 11:15	Home Time: 12:23	Gender: Male		
Arrived Scene: 11:22	1st Responder: ---	Ethnicity: Not Hispanic/Latino	Race: Black	
Delays: None	Minutes:	Chief Complaint		
	For Response: 007	Anatomic Location: General/Global		
	At Scene: 013	Organ System: Global		
	For Transport: 016	Primary Symptom: Death		
	Beginning to End: 068	Anatomical Injury: No	Site of Trauma: Multi-Site	

Primary Impression: 24 - Traumatic Injury

Secondary Impression:

Tertiary Impression:

Quaternary Impression:

Destination Information

Destination / Transferred To: Spartanburg Regional Hospital

Mode of Transport: Ambulance

Destination Determination: Protocol

Scene Information

Address: Hwy 417 And Reidville Rd

City: Duncan

State: SC

Zip Code: 29334

County: Spartanburg

Location Type: Street & Highway

To Scene: E - L/S

From Scene: E - L/S

Other Agencies on Scene:

Patient Disposition

Disposition: Treated, Transported by EMS

Patient Care Report Left: With

Vital Signs

Assessment Time	11:23	11:30			
Blood Pressure	000/000	000/000			
BP Method	Palpated	Palpated			
Pulse (Beats/Min)	0 bpm Regular	0 bpm Regular			
Respirations (Breaths/Min)	0 bpm Regular	0 bpm Regular			
Left Pupil Reaction	Dilated	Dilated			
Right Pupil Reaction	Dilated	Dilated			
Level of Consciousness	Unresponsive	Unresponsive			
Prior to Arrival	No	No			
Pain Scale	-1	-1			

POOR ORIGINAL

Patient Care Report

Supplemental Scene information

Safety Equipment in use : Helmet Worn;

Allergies

Unknown

Staff ID

POOR ORIGINAL

Wellford Rescue 21

Service #: 110

Unit #: Unit 1

Trip #: 204

Patient Care Report

Address: P.O. Box 98, Wellford, SC 29835

Report #: 100120234

Run Date: 5/18/2012

Phone: 1-864-439-7377

Additional Narrative:

34 Yr. old Black Male Not Hispanic or Latino. Patient found Lying supine in the road way with care being performed by Fire Department Personelle. Vehicle - Motorcycle collision, head-on extensive damage to Center Front of vehicle. Risk Factor: Ejection. Patient's Position in the vehicle is Driver. Patient's seat location in vehicle is row 1. Safety equipment is Helmet Worn and Protective Clothing. Patient ejected 20 feet. Chief duration time: 10 Minutes. Severity of Chief complaint: 10. Chief Complaint Anatomical Location: General/Global. Chief Complaint Organ System: Global. Chief Complaint Primary Symptom: Code Trauma. Blood coming from mouth and nose uncontrolled. Airway was compromised and suction was unsuccessful in clearing airway. Patient's airway was filling with blood faster than we could suction. Patient's abdomen was distended in all quadrants. Regional One was requested for launch and was cancelled shortly after due to patient in cardiac arrest. Medic 8 was responding to assist and arrived on scene shortly after the helicopter was canceled. Medic 8 crew assisted on scene and enroute to SRMC. 11:23 - PT Assessment #1: Pain Scale of NA PT Consciousness Level is Unresponsive. Airway is compromised. Tried to Stabilized with Positioning and Suction. PT breathing Absent. Lung Sounds not present bilaterally, absent bilaterally all lobes. Respiration ventilated with BVM 12 times per min. Oxygen administered via BVM at a flow rate of 15 lpm. PT pulseless. Chest compressions initiated. BP present. No JVD noted. 11:25 - EKG #1 Results: Asystole. 11:30 - PT Assessment #2: Pain Scale of NA PT Consciousness Level is Unresponsive. Airway remains unstable. Stabilized with Positioning and Suction. PT breathing Absent. PT pulseless. Peripheral and Carotid pulses absent. Chest compressions initiated. 11:35 - Transport initiated to Spartanburg Regional Hospital. During CPR a gross amount of blood was coming from the patient's mouth and nose and ventilation was not successful. The patient had a down time greater than 15 minutes at the point of initiating transport. Medical control was contacted for orders to discontinue CPR. All pertinent information was relayed to physician in SRMC ED and orders were granted to discontinue CPR. Patient with unknown previous medical history. Patient medications unknown. Patient drug allergies are unknown. No Delays. PostCare Condition: No Change. Communication Barrier(s): None.

POOR ORIGINAL

SPARTANBURG REGIONAL MEDICAL CENTER
Radiology Report

NAME: WOFFORD, BRIAN
ORDERING PHYSICIAN: WREN, JOHN D
LOC: DIS
Pt. Type: CON

DOB: 01/31/78
OPT REGISTRATION

UNIT #: 000126062
CI#: 3341886
AN#: S1213900993

FINAL

Exam

50669 XR SKULL P** (LESS THAN 4 VIEWS) Date: 05/18/12 1735
70250

Ord Diag: 959.9-INJURY-SITE NOS** Portable **

50268 XR ABDOMEN P**
74000

Date: 05/18/12 1735

Ord Diag: 959.9-INJURY-SITE NOS** Portable **

50354 XR CHEST P** 1 VIEW
71010

Date: 05/18/12 1735

Ord Diag: 959.9-INJURY-SITE NOS** Portable **

50681 XR SPINE CERVICAL P** (1 VIEW) Date: 05/18/12 1735
72020

Ord Diag: 959.9-INJURY-SITE NOS** Portable **

Imaging performed for Coroner Case only

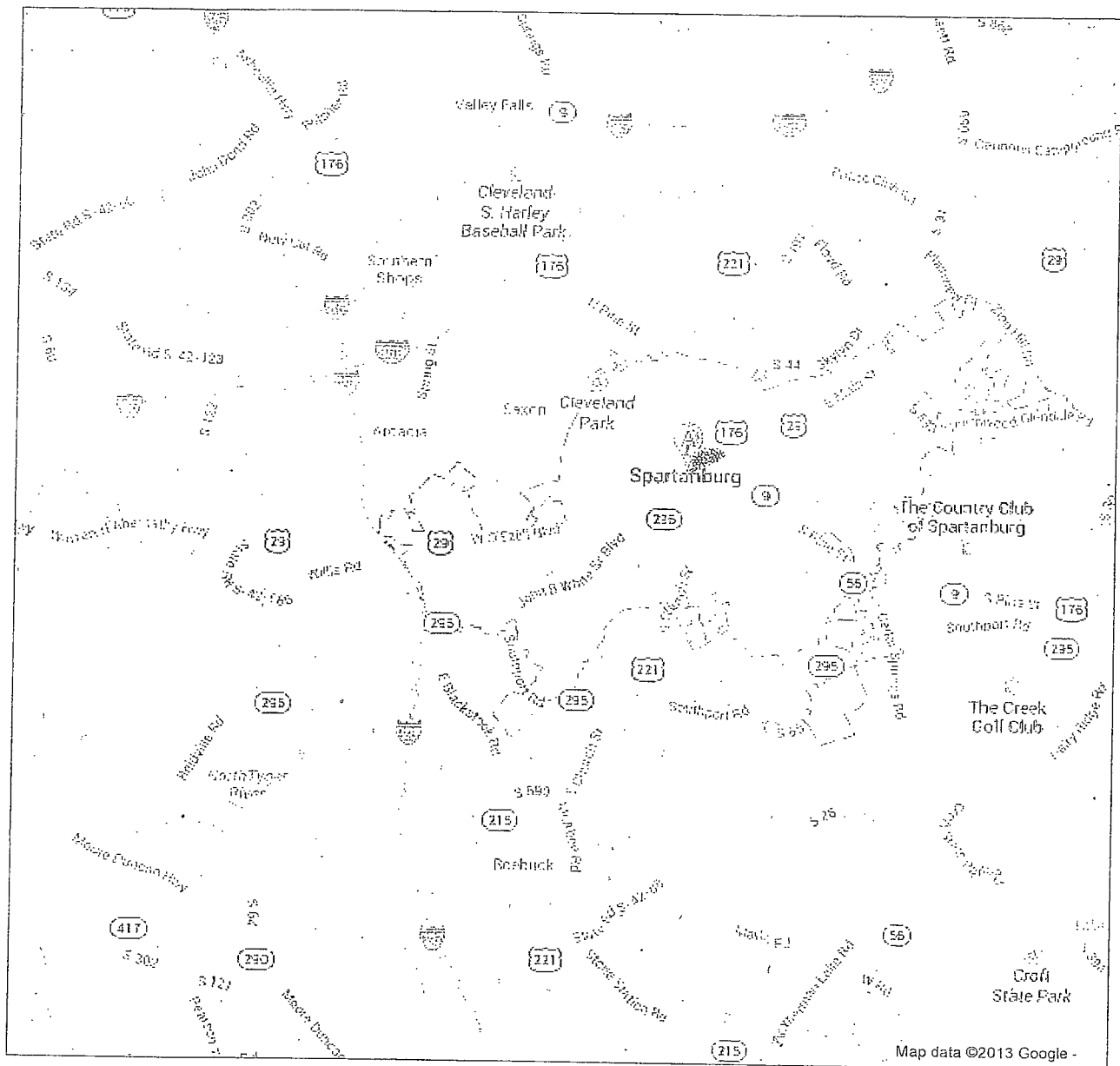
Transcriptionist- CHARMAYNE BELCHER
Reading Radiologist- NO REPORT FOR PROCEDURE
Releasing Radiologist- NO REPORT FOR PROCEDURE
Released Date Time- 05/21/12 0829

** Portable **

Page 1

Google

To see all the details that are visible on the screen, use the "Print" link next to the map.



A = Decedent's Apartment
B = Decedent's Mother's house
C = Location of Accident
D = City of Spartanburg City Hall

 100 Keats Dr, Spartanburg, SC 29301

1. Head east on Keats Dr toward SC-295 N/W Blackstock Rd
go 66 ft
total 66 ft
-  2. Turn right onto SC-295 S/W Blackstock Rd
About 2 mins
go 0.9 mi
total 0.9 mi
-  3. Turn right onto US-29 S/W O Ezell Blvd
Continue to follow US-29 S
About 1 min
go 0.4 mi
total 1.3 mi
-  4. Merge onto I-26 E via the ramp to Columbia
About 1 min
go 1.1 mi
total 2.4 mi
-  5. Take exit 22 for S Carolina 296/Reidville Road toward Spartanburg
go 0.2 mi
total 2.6 mi
-  6. Keep right at the fork, follow signs for South Carolina 296 W/Reidville
go 449 ft
total 2.7 mi
-  7. Turn right onto SC-296 W/Reidville Rd
About 7 mins
go 5.2 mi
total 7.9 mi
-  8. Turn left onto SC-290/Moore Duncan Hwy
About 2 mins
go 0.6 mi
total 8.5 mi
-  9. Take the 2nd right onto W Rd
go 0.2 mi
total 8.7 mi
-  10. Turn right onto Kaitlin Mac Dr
go 148 ft
total 8.7 mi
-  11. Take the 1st left onto Collins Rogers Dr
Destination will be on the left
go 0.1 mi
total 8.8 mi

Total: 8.8 mi – about 15 mins

 343 Collins Rogers Dr, Moore, SC 29369
total 0.0 mi

12. Head east on Collins Rogers Dr toward Kaitlin Mac Dr
go 0.1 mi
total 0.1 mi
-  13. Take the 1st right onto Kaitlin Mac Dr
go 148 ft
total 0.2 mi
-  14. Turn left onto W Rd
go 0.2 mi
total 0.3 mi
-  15. Turn left onto SC-290/Moore Duncan Hwy
About 2 mins
go 0.6 mi
total 0.9 mi
-  16. Take the 2nd right onto SC-296 E/Reidville Rd
About 2 mins
go 1.3 mi
total 2.2 mi
-  17. Turn right onto Plateau St
go 420 ft
total 2.3 mi

Total: 2.3 mi – about 6 mins

 Plateau St, Moore, SC 29369
total 0.0 mi

18. Head north on Plateau St toward SC-296 W/Reidville Rd
go 420 ft
total 420 ft
-  19. Turn right onto SC-296 E/Reidville Rd
go 7.0 mi

Continue to follow SC-296 E
About 14 mins

total 7.1 mi



20. Turn right onto **S Daniel Morgan Ave**
About 2 mins

go 0.9 mi
total 8.0 mi



21. Turn right onto **W Broad St**
Destination will be on the right

go 0.1 mi
total 8.1 mi



145 W Broad St, Spartanburg, SC 29306

Total: **8.1 mi** – about **17 mins**

These directions are for planning purposes only. You may find that construction projects, traffic, weather, or other events may cause conditions to differ from the map results, and you should plan your route accordingly. You must obey all signs or notices regarding your route.

Map data ©2013 Google

Directions weren't right? Please find your route on maps.google.com and click "Report a problem" at the bottom left.

1 Q. And where did he keep his motorcycle?

2 A. It was at his mom's house.

3 Q. Before you separated, did he keep it at your
4 home at Holly Tree?

5 A. Yes.

6 Q. So once you separated, he moved it to his mom's?

7 A. Yes.

8 Q. Did he ride your daughter on the bike?

9 A. No.

10 Q. Do you have any idea where -- I might have asked
11 you this already. Do you know where Brian was
12 at the morning of his accident?

13 A. No.

14 Q. You have no idea what he had been doing that
15 morning?

16 A. No.

17 Q. Who was his personal cell phone carrier?

18 A. Verizon.

19 Q. Was that on a joint plan with you?

20 A. Yes.

21 Q. And where is that phone now?

22 A. I use it.

23 Q. And did you keep the same phone number?

24 A. His phone number or my phone number?

25 Q. Yes. His phone number..

1 support?

2 A. No.

3 Q. Who was dependent upon Brian that you know of
4 for support, financial support?

5 A. Boisha and Kaelyn.

6 Q. Did Brian keep his motorcycle at your house?

7 A. Yes.

8 Q. Is that because you had a garage?

9 A. Yes.

10 Q. On the date of his accident, did he come to your
11 house?

12 A. Yes.

13 Q. And what time did he arrive at your home?

14 A. I'm not sure.

15 Q. Was it early in the morning?

16 A. Yes.

17 Q. Had he taken his daughter to school that
18 morning?

19 A. I don't know.

20 Q. And once he came to your house, what did he do
21 next?

22 A. Well, he had a key in the garage -- open to the
23 garage door. And he told me he was getting the
24 bike and leaving the car. And asked me to look
25 outside my window, my dining room window, to

1 A. Yes.

2 Q. And when you say he left his car there, what car
3 did he leave at your house?

4 A. A 2000 Mazda 626.

5 Q. I understand he had several vehicles. Is that
6 correct? Did he also have a Tahoe or something?

7 A. Yes.

8 Q. After he picked up his bike and left the house,
9 did he inform you where he was headed?

10 A. Yes.

11 Q. And where did he tell you he was going?

12 A. To work.

13 Q. Did he explain to you why he was going into work
14 late?

15 A. He just said it was a long day. He had two
16 events downtown that he had to oversee.

17 Q. Did he mention anything about having interviews
18 that evening?

19 A. No.

20 Q. Did he say anything else about his plans that
21 day?

22 A. No.

23 Q. Have you received any money from any insurance
24 policies as a result of Brian's death?

25 A. No.

Incoming (22)

#	Country Code	Network Code	Party	Time	Duration	Video Call	Source	Del?
1			8645963105 Deborah*	5/16/2012 2:15:22 PM(UTC+0)	00:00:11			
2			8645962785 Kennedy Mitch*	5/16/2012 2:21:18 PM(UTC+0)	00:06:57			
3			8645989529	5/16/2012 2:45:35 PM(UTC+0)	00:00:51			
4			8642490095	5/16/2012 3:54:34 PM(UTC+0)	00:01:57			
5			8642490095	5/16/2012 3:59:34 PM(UTC+0)	00:00:11			
6			8642490095	5/16/2012 4:00:26 PM(UTC+0)	00:00:11			
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7			8646217047 Mims Patrena*	5/16/2012 9:36:31 PM(UTC+0)	00:22:34			
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27		8649782854	Rice James*	5/18/2012 2:30:49 PM(UTC+0)	00:00:35			
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Chats (5)

Messages (5)

1

Participants				Identifier		Del?	
+18645900549 Holmen Jessica +18648097304							
5/3/2012 6:29:02 PM(UTC+0)							
5/3/2012 8:02:51 PM(UTC+0)							
Body file: Chat_0.txt							
From	To	Body	Attachment				
+18648097304 5/3/2012 6:29:02 PM(UTC+0)	+18645900549 Holmen Jessica*	We are going to close the center on Monday.					
+18645900549 5/3/2012 6:29:20 PM(UTC+0)		Why?					
+18648097304 5/3/2012 6:34:31 PM(UTC+0)	+18645900549	Spring Fling. Working all weekend					
+18645900549 5/3/2012 6:46:24 PM(UTC+0)		Great					
+18645900549 5/3/2012 7:41:52 PM(UTC+0)		Am I still getting paid?					
+18648097304 5/3/2012 7:45:51 PM(UTC+0)	+18645900549	No.					
+18648097304 5/3/2012 7:48:11 PM(UTC+0)	+18645900549	That's not going to happen.					
+18645900549 5/3/2012 7:48:16 PM(UTC+0)		I would like to revise my contract then. Last min cancellations that are not state holidays shouldn't come out of my pocket. That's not fair to me.					
+18648097304 5/3/2012 7:50:02 PM(UTC+0)	+18645900549	We will always reserve the right to cancel class.					
+18645900549 5/3/2012 8:01:04 PM(UTC+0)		Thanks for empathizing.					
Item was truncated due to length open full item file							

Detail for Brian Wofford: 864-415-9948

Voice, continued

Date	Time	Number	Rate	Usage Type	Origin/Location	Destination	Min.	Airtime Charges	Long Dist/ Other Chgs	Total
5/16	11:10P	800-762-8758	Off-Peak	N&W	Spartanbur SC	Toll-Free CL	2	--	--	--
5/17	8:42A	000-000-0006	Peak	PlanAllow	Spartanbur SC	Voice Mail CL	1	--	--	--
5/17	9:26A	864-576-8863	Peak	PlanAllow	Spartanbur SC	Spartanbg SC	1	--	--	--
5/17	9:28A	864-573-6462	Peak	PlanAllow	Spartanbur SC	Spartanbg SC	1	--	--	--
5/17	10:43A	864-415-9776	Peak	M2MAAllow	Spartanbur SC	Incoming CL	6	--	--	--
5/17	10:58A	864-978-4798	Peak	PlanAllow	Spartanbur SC	Spartanbg SC	1	--	--	--
5/17	12:19P	864-948-0000	Peak	PlanAllow	Spartanbur SC	Spartanbg SC	2	--	--	--
5/17	2:15P	864-316-3508	Peak	M2MAAllow	Spartanbur SC	Spartanbg SC	1	--	--	--
5/17	2:22P	828-429-7657	Peak	M2MAAllow	Spartanbur SC	Rutherford NC	6	--	--	--
5/17	4:12P	864-415-9776	Peak	M2MAAllow	Spartanbur SC	Spartanbg SC	1	--	--	--
5/17	4:12P	704-968-0568	Peak	PlanAllow	Spartanbur SC	Charlotte NC	3	--	--	--
5/17	4:15P	864-316-3508	Peak	M2MAAllow	Spartanbur SC	Spartanbg SC	1	--	--	--
5/17	4:16P	864-316-3508	Peak	M2MAAllow	Spartanbur SC	Incoming CL	9	--	--	--
5/17	4:55P	864-415-9776	Peak	M2MAAllow	Spartanbur SC	Spartanbg SC	4	--	--	--
5/17	4:58P	677-669-6877	Peak	PlanAllow	Spartanbur SC	Toll-Free CL	5	--	--	--
5/17	6:34P	864-415-8776	Peak	M2MAAllow	Spartanbur SC	Spartanbg SC	6	--	--	--
5/17	6:48P	864-329-7742	Peak	Friends & Family	Spartanbur SC	Greenville SC	12	--	--	--
5/17	9:09P	864-415-9776	Off-Peak	N&W	Spartanbur SC	Spartanbg SC	1	--	--	--
5/17	9:10P	864-249-0095	Off-Peak	N&W	Spartanbur SC	Lyman SC	20	--	--	--
5/17	9:36P	864-329-7742	Off-Peak	N&W	Spartanbur SC	Greenville SC	3	--	--	--
5/17	9:41P	864-541-4215	Off-Peak	N&W	Spartanbur SC	Incoming CL	8	--	--	--
5/17	10:57P	828-429-7657	Off-Peak	N&W	Spartanbur SC	Rutherford NC	11	--	--	--
5/17	11:09P	864-329-7742	Off-Peak	N&W	Spartanbur SC	Greenville SC	16	--	--	--
5/18	8:12A	864-316-3508	Peak	M2MAAllow	Spartanbur SC	Spartanbg SC	1	--	--	--
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5/18	10:46A	864-329-7742	Peak	Friends & Family	Spartanbur SC	Greenville SC	3	--	--	--

City of Spartanburg

Parks and Recreation Superintendent

Job Description:

Under general guidance and direction from the Community Services Director; manages the operations of the Parks and Recreation Division in the Parks Recreation and Special Events Department. The Superintendent provides leadership in the development and delivery of all programs related to Parks and Recreation. The position makes budget recommendations and provides oversight to the Parks and Recreational Facilities.

Essential Duties and Responsibilities

- Manages division operations; including personnel, facilities, grounds, and programs.
- Controls budget expenditures.
- Prepares reports, correspondence, and agenda items.
- Supervise, train, and evaluate personnel.
- Attends meetings and represents division.
- Develops and implements marketing plans.
- Provides assistance to other City Departments.
- Develops purchase specifications.
- Conducts staff meetings.
- Assist in managing capital projects.
- Studies the City's Parks and Recreation needs and develops programs and activities to address the needs.
- Makes recommendations for maintenance and improvement.
- Establish and maintain cooperative working relationship with staff, citizens, and community agencies.
- Develops and implements standard operating policies and procedures for all Parks and Recreational facilities.
- May assist and lead Special Events activities.
- Identifies and attains grants and sponsorships.
- Ensures staff compliance with all division, department, and City policies and procedures.

Requirements

Bachelor's Degree required in Parks and Recreation or related field with 4 years of Parks and Recreation Management experience. Certification as a Parks and Recreation Professional desired.

Salary

\$58,000 - \$63,000

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM SPARTANBURG COUNTY
Workers' Compensation Commission

Case No. 2014-001269

Boisha Wofford, alleged surviving spouse,
and Kaelyn Wofford, surviving child, on behalf
of Brian Wofford, deceased employee,

Appellants,

v.

City of Spartanburg, through the South Carolina
Municipal Insurance Trust,

Respondents.

CERTIFICATE OF COUNSEL

The undersigned hereby certifies that the Record on Appeal contains all material
proposed to be included by any of the parties and not any other material.


Kenneth C. Anthony, Jr.

K. Jay Anthony

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September 11, 2014

THE STATE OF SOUTH CAROLINA
in the Court of Appeals

APPEAL FROM SPARTANBURG COUNTY
Workers' Compensation Commission

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of Brian Wofford, deceased employee.

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City of Spartanburg, through the South Carolina
Municipal Insurance Trust.

Respondents

BRIEF OF APPELLANTS

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Brian Wofford, an employee with the City of Spartanburg, died in a motor vehicle accident on May 18, 2012. A workers' compensation action was timely filed by his surviving spouse, Boisha Wofford, alleging that, at the time of his death, Mr. Wofford was acting within the course and scope of his employment. Appellant's claim was denied by the single commissioner and his ruling was fully affirmed by the Full Commission. Appellant now appeals the ruling of the Full Commission.

STATEMENT OF CASE

At the time of his death, Brian Wofford was employed as superintendent at the City of Spartanburg Parks and Recreation Department (R. p. 62, lines 19-22). In this capacity, Brian was, as described by his supervisor Mitchell Kennedy, "the ultimate manager over the entire staff for the Parks and Rec for the city, which included [the city's] community centers" (R. p. 62, lines 22-24).

At the hearing, Appellant presented testimony from eight witnesses, six of whom worked with Brian. It was established that Brian had a physical office at 100 North Liberty Street in downtown Spartanburg (R. p. 16, lines 12-18). However, Brian's job could not be done in the office alone and it was common for him to be out of the office (R. p. 18, lines 9-15; p. 22, lines 19-21; p. 27, lines 10-13; p. 38, lines 14-19; p. 56, lines 9-16; p. 63, lines 22-25).

Brian's job required irregular hours (R. p. 26, lines 22-25) and his hours were therefore flexible (R. p. 30, lines 24-25). On the night before the accident, Brian had worked late at an event (R. p. 27, lines 1-5) and, consequently, did not go to his office immediately (R. p. 49, lines 3-9). Instead, Brian went first to his mother's home in Moore, South Carolina. Id.

While at his mother's house, Brian had multiple work-related conversations (R. p. 47, lines 3-20). The Parks and Recreation Department was involved in two City events taking place on that day – the Spring Fever event and a bicycling event called “Pedaling with Politicians” (R. p. 22, lines 4-10; p. 66, lines 14-20). Various City employees testified that they communicated with Brian on his cell phone regarding those events on the morning of the accident, discussing delivery of a podium to the bicycling event (R. p. 20, lines 10-16), inquiring as to a power source for the same event (R. p. 21, lines 11-16), and providing a music system for the Spring Fever event (R. p. 34, lines 5-14).

Additionally, the City's Aquatics Director, Tracy Ballew, testified that she had also communicated with Brian on the morning of his death (R. p. 40, lines 14-16). Ms. Ballew stated that she and Brian spoke by phone as she needed Brian to sign paperwork regarding a new hire and also needed him to retrieve a key from the C.C. Woodson Recreational Center (R. p. 40, line 17-p. 41, line 4). Ultimately, Brian agreed to go to the C.C. Woodson Center to pick up the key and to then bring the key to Ms. Ballew at the Swim Center, where he would also sign the forms (R. p. 41, lines 5-19). Importantly, Ms. Ballew testified that Brian told her that he was going “directly to CC to get the key, and then coming to the Swim Center to sign the paperwork, and then going to the Spring Fever event”(R. p. 45, lines 1-7). This conversation began at 10:48 AM (R. p. 157).

After these conversations, Brian left his mother's house (R. p. 51, lines 3-7). His mother recalled that, as he was leaving, Brian was speaking to someone on the phone and stated that he would meet the person at the C.C. Woodson Center. Id. Only minutes later, Brian was killed in a motor vehicle accident (R. p. 51, lines 10-17). It should be noted that the accident took place at 11:15 AM and only minutes after his conversation with Ms. Ballew (R. pp. 129-130).

ISSUES ON APPEAL

- I. The Full Commission erred in finding that the death of Brian Wofford did not arise out of and in the course and scope of his employment as Appellant's claim falls within an exception to the "going and coming" rule.¹

STANDARD OF REVIEW

When reviewing an appeal from the Workers' Compensation Commission, an appellate court may not weigh the evidence and substitute its judgment for that of the appellate panel as to the weight of evidence on questions of fact. See Therrell v. Jerry's Inc., 370 S.C. 22, 25, 633 S.E.2d 893, 894-95 (2006); Matute v. Palmetto Health Baptist, 391 S.C. 291, 294, 705 S.E.2d 472, 474 (Ct. App. 2011). However, the appellate court may reverse the appellate panel's decision if it is based on an error of law. Id. The parties are largely in agreement as to the facts of this case, and the question for the Court is therefore one of law.

ARGUMENT

Appellant respectfully contends that the Commission erred in finding that Brian Wofford's death is not compensable under the Workers' Compensation Act. Decedent was acting in the course and scope of his employment and therefore falls within an exception to the "going and coming" rule. The Commission's decision was based on the Conclusions of Law, holding that Brian's travel "was serving the personal objective of getting Decedent to work" and that "Decedent had no work-related duties to perform on his way to work, nor was he under the control of the City of Spartanburg on his way to work"² (R. pp. 118-128).

¹ Appellant has abandoned her second issue stated in the Notice of Appeal.

² The Commission included similar language in its Findings of Fact. This Finding of Fact is actually a conclusion of law, as it represents the Commission's *interpretation* of the facts themselves. However, assuming *arguendo* that the Court finds the statements to be Findings of Fact, Appellant submits that these "facts" are unsupported by the evidence, as no evidence was presented to suggest that Brian was driving anywhere other than to the C.C. Woodson Center at the request of Tracy Ballew.

A. “Going and Coming”

To sustain an award under the Workers’ Compensation Act, it must appear that the injury or death resulted from an accident which both arose out of and in the course of the employment. See Bickley v. South Carolina Elec. & Gas Co., 259 S.C. 463, 466, 192 S.E.2d 866, 868 (1972). Injuries sustained by an employee on his way to or from work have typically been addressed under the “going and coming” rule. This rule does not represent an independent test for compensability, but instead provides a “shortcut” for assessing compensability when an employee is injured in this situation. This “shortcut” is based on an assumption – that a person on his way to work “is not engaged in performing any service growing out of his employment.” See Matute, 391 S.C. at 296, 705 S.E.2d at 475. Given this assumption, “an injury sustained by accident at such time does not arise out of and in the course of his employment.” Id.

Of course, this assumption does not always hold true and the various exceptions to the “going and coming” rule are based on the recognition of this fact. Cases assessing the “going and coming” rule demonstrate that courts consider control, discretion, and personal purpose in determining whether a trip arises out of and is in the course and scope of employment. The rule originated in Gallman v. Springs Mills, 201 S.C. 257, 22 S.E.2d 715 (1942). In that case, the Supreme Court of South Carolina considered the claim of a mill employee who slipped and fell on an icy sidewalk while walking from his home to the mill. See id. at 259-60, 705 S.E.2d at 716. The Court found the claim not compensable, noting:

We do not consider it at all controlling that the respondent, on the occasion in question, was proceeding from his home to the mill to begin a day’s work. *In the course of this trip the respondent was in no sense under the control of his employer.* He could have changed his mind about entering the mill at the appointed time, or in the process of proceeding toward the mill he could have visited with other persons living in the neighborhood, or transacted business, *without in any way impinging on his obligation to his employer.*

Id. at 265, 705 S.E.2d at 718-19 (emphasis added).

Other courts have cited similar elements in assessing the compensability of an injury sustained while traveling. In Locke v. Steele County, 27 N.W.2d 285 (Minn. 1947), the Supreme Court of Minnesota considered an injury sustained by an employee while on the way to retrieve her employer's mail, following her lunch break. See id. at 286. The court noted that the reason for the "going and coming" rule was that, in general, an injury sustained on the way to work was sustained "before and not during his hours of service, *at a time when defendant (employer) had no control over him . . .*" Id. at 287 (emphasis added). Nonetheless, the court found the claimant's claim compensable given that the employee had been instructed to retrieve the mail and was injured after leaving home, on her way to the post office. Id. at 288. The court noted:

In her discretion, the employee was permitted to eat her lunch at her home, at a restaurant in some other part of the city, or, for that matter, possibly in her own office. That was a matter of personal choice. Immediately thereafter, however . . . her services for her employer were resumed. . . . She was not then engaged in her personal affairs, but was acting exclusively for the benefit of her employer and was fulfilling her contract of employment during her required hours of service.

Id. (emphasis added).

B. Comparable Caselaw

The instant case is most similar to two South Carolina cases addressing injuries sustained in travel. In Gray v. Club Group, Ltd., 339 S.C. 174, 528 S.E.2d 437 (2000), an employee who served as a bellman at Harbour Town, on Hilton Head Island, was asked by his employer to transport payroll and other items between Harbour Town and the Henderson Golf Club. See id. at 179, 528 S.E.2d at 438. This was in addition to his usual duties as a bellman. Id. Under this arrangement, the employee would leave his home in Savannah every Friday morning and would travel to the Henderson Golf Club, also located in Savannah. Id. at 180, 528 S.E.2d at 439. He would pick up the necessary documents and then drive to Harbour Town to perform his usual

work, then return to Henderson that afternoon, before going home. Id. The employee performed this task regularly on every Friday for five months before he was involved in a motor vehicle accident. Id. The accident took place one morning after the employee had left his home but before he arrived at the Henderson Golf Club. Id.

The employer argued that the employee's injuries were not compensable as the employee had not yet arrived at work. Id. at 186, 528 S.E.2d at 442. The Court of Appeals disagreed, finding that both requirements of the Workers' Compensation Act – that the injury arose out of and in the course and scope of employment – were met. The Court noted that evidence supported the finding that the employee was required to pick up his deliveries that morning and that the task was causally-related to his presence at the accident site. Id. at 187, 528 S.E.2d at 443. Moreover, the Court noted that the injury occurred in the course and scope of the employment as the employee “was on his way to Henderson to fulfill his employment duties.” Id. at 188, 528 S.E.2d at 443.

Similarly, in Beam v. State Workmen's Compensation Fund, 261 S.C. 327, 200 S.E.2d 83 (1973), the state supreme court considered claims made on behalf of two teachers who died in a car accident while on their way to a meeting, which they were encouraged to attend by their employer. The Court found the claims compensable, noting that the teachers “*were not exercising a personal privilege wholly apart from their employment or their employer's interest, but were about the performance of an act, incidental to and recognized as of value by their superintendent in connection with their duties as high school teachers.*” Id. at 332, 200 S.E.2d at 86 (emphasis added).

C. Instant Case

The facts of the instant case, like those in Gray and Beam, evince in Brian's travel the factors of control, lack of personal discretion, and lack of personal purpose and therefore is a case that falls outside of the "going and coming" rule. In short, the assumption on which the rule is based – that the employee "is not engaged in performing any service growing out of his employment" – is simply not true here. See Matute, 391 S.C. at 296, 705 S.E.2d at 475. While Brian's time spent at his mother's home was personal time – like the lunch hour of the employee in Locke, *supra* – once he departed his mother's home, he was in the process of executing a specific task given him by Tracy Ballew (R. p. 41, lines 5-19; p. 45, lines 1-7). This task was one of value to the employer – had he not completed the task, another City employee would have had to have done so. See Beam, 261 S.C. at 332, 200 S.E.2d at 86 (task recognized as of value to employer). As stated by Ms. Ballew, and confirmed by Brian's mother, Brian agreed to go "directly" from his mother's home to the C.C. Woodson Center to retrieve the spare key.³ See id. Consequently, upon embarking on this errand, unlike the employee in Gallman, Brian had no discretion – at that point he could not stop, for example, at the grocery store or for coffee without "impinging on his obligation to his employer." See Gallman, 201 S.C. at 265, 705 S.E.2d at 718-19. As in Beam, Brian "[was] not exercising a personal privilege wholly apart from [his] employment or [his] employer's interest, but [was] about the performance of an act, incidental to and recognized as of value by [his employer] in connection with [his] duties as [superintendent of the Parks & Recreation Department]." See Beam, 261 S.C. at 332, 200 S.E.2d at 86. As in Gray, Brian "was on his way to [C.C. Woodson Center] to fulfill his employment duties." See Gray, 339 S.C. at 188, 528 S.E.2d at 443. Moreover, as noted, at the time of the accident which resulted in his death, Brian was not traveling to his office at 100 North Liberty Street.

³ Additionally, based on the conversation overheard by Brian's mother as he departed, it seems Brian agreed to meet another City employee at C.C. Woodson.

Given these facts, it must be concluded that the accident which took Brian's life arose out of and occurred in the course and scope of employment and that the assumption which underlies the "going and coming" rule does not hold true here. Instead, this case falls squarely within an exception to the rule, as Brian's death occurred while Brian was on the way to work, but charged with a duty or task in connection with his employment. See Matute, 391 S.C. at 296, 705 S.E.2d at 475; see also Skinner v. Braum's Ice Cream Store, 890 P.2d 922 (Okla. 1995) (employee tasked with picking up supplies on way to work sustained compensable injury in motor vehicle accident). The Commission therefore erred in determining that, on these facts, Appellant's claim fell outside of the Workers' Compensation Act.

CONCLUSION

The "going and coming" rule serves as a general rule for addressing whether an injury sustained while traveling to or from work qualifies as an injury which arose out of and in the course and scope of employment. The assumption on which the rule is based – that a person on his way to work "is not engaged in performing any service growing out of his employment" is not true under the facts of the instant case. At the time of his death, Brian was not traveling to his office on North Liberty Street. Instead, he was engaged on an errand for his employer, of value to his employer, under the control of his employer, and without personal discretion. His death therefore falls outside of the "going and coming" rule and the Commission erred in finding otherwise.

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October 1, 2014
Spartanburg, South Carolina

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM SPARTANBURG COUNTY
Workers' Compensation Commission

Case No. 2014-001269

Boisha Wofford, alleged surviving spouse,
and Kaelyn Wofford, surviving child, on behalf
of Brian Wofford, deceased employee,

Appellants,

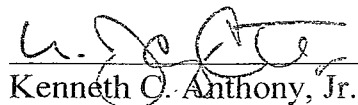
v.

City of Spartanburg, through the South Carolina
Municipal Insurance Trust,

Respondents.

CERTIFICATE OF COUNSEL

The undersigned certifies that this Brief of Appellants comply with Rule 211(a),
SCACR.



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October 1, 2014

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM THE SOUTH CAROLINA
WORKERS' COMPENSATION COMMISSION

WCC File No. 1207113

Boisha Wofford, alleged surviving spouse, and
Kaelyn Wofford, surviving child, on behalf of
Brian Wofford, deceased employee,

Appellants

City of Spartanburg, Employer and Self-Insurer,
through the South Carolina Municipal Insurance Trust,

Respondents

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STATEMENT OF ISSUES ON APPEAL

- I. Whether Appellants' claims are barred/defeated by the two issue rule?
- II. Whether the Full Commission properly held that Decedent's fatal accident does not fall within any exception to the going and coming rule?

STATEMENT OF THE CASE

Decedent Brian Wofford was involved in a fatal motorcycle accident on May 18, 2012, in Moore, South Carolina. He is survived by his wife, Boisha Wofford, and minor daughter, Kaelyn, who filed the instant case seeking workers' compensation death benefits (collectively referred to herein as "Appellants"). At the time of his fatal accident, Decedent was separated from his wife and living in an apartment in Spartanburg.

Decedent was employed by the City of Spartanburg as the Parks and Recreation Superintendent. In that capacity, he was responsible for overseeing and managing the "the development and delivery of all programs related to Parks and Recreation," including personnel, facilities, grounds, and programs, and assisting and leading Special Events activities. (R. 162). Mitch Kennedy, the City's Director of Community Services, was Decedent's supervisor. (Transcript of hearing before Single Commissioner T. Scott Beck, August 15, 2013 ("Hr'g Tr."), R. 60, lines 16-18). Decedent was a salaried employee. Although his normal working hours were 8 a.m. to 5 p.m., Monday through Friday, he was allowed to flex his schedule if necessary for work activities. (*Id.*, R. 30, line 16 – 32, line 2).

On May 18, 2012, Decedent did not go directly to work at 8 a.m.¹ but, instead, drove in the opposite direction from his apartment to his mother's house in Moore, South Carolina, where his motorcycle was being garaged. (Dep. of Janice Littlejohn, R. 155, lines 6-9)) (Dep. of Boisha Wofford, R. 154, lines 6-7)) (Hr'g. Tr., R. 46, lines 16-19) (*Id.*, R. 48, line 1 – 49, line 2) (*Id.*, R. 49, lines 10-13) (R. 151-153). Mr. Kennedy

¹ Decedent had attended an event the evening before and then gone to restaurant. (Hr'g Tr., R. 31, lines 3-13).

testified that Decedent had no work-related duties in Moore, South Carolina, nor did his work require him to pick up his motorcycle or visit his mother. (Hr'g Tr., R. 71, lines 2-23). Decedent stayed at his mother's house between two and three hours. (Id., R. 53, lines 2-11). While there, he visited with his mother and ate something. (Id., R. 54, lines 9-10). During that time, he had some brief work-related phone conversations and text messages. He also had personal calls and messages. (R. 157-160) (R. 161) (Hr'g. Tr., R. 76, lines 6-15).

The Parks and Recreation Department was involved in or assisting with two events on May 18, 2012: 1) an employee appreciation "Spring Fever" lunch, and 2) a bicycle event sponsored by an unrelated non-profit organization. Early on the morning of May 18, Decedent had a brief email conversation with Sonya Culbreth, Communications and Marketing Specialist with the City of Spartanburg, about providing a podium for the bike event. (Hr'g Tr., R. 8, line 9 – 12, line 4). Although Ms. Culbreth was emailing Decedent about the bike event, she was off work that day. (Id., R. 9, lines 22-24). She testified that communicating with Decedent about issues like this was not unusual. (Id., R. 12, lines 5-7).

Scott Page, the City's Parks Manager, testified that Decedent was his direct supervisor. (Hr'g Tr., R. 16, lines 9-11). Mr. Page testified that he "didn't always go into the office first thing in the morning and [Decedent] also worked out of the office at Recreation Center, CC Woodson I know that [Decedent] might go straight to CC Woodson sometimes if he was working out of that Rec Center office or if he had a meeting or something." (Id., R. 16, line 25 – 17, line 15). Mr. Page confirmed that both he and Decedent traveled to the various parks that fell under their department. (Id., R.

18, lines 16-20). He texted and had a short phone conversation with Decedent on the morning of May 18 about a podium for the bike event. (Id., R. 20, line 10 – 22, line 10) (Id., R. 24, line 21 – 25, line 2).

Tracy Ballew testified that, as the aquatics director for the City, she worked under Decedent. (Hr'g Tr., R. 37, lines 6-24) (Id., R. 42, lines 20-22). Ms. Ballew testified that it was common for Decedent to go to the Swim Center as well as the other Parks and Recreation facilities. (Id., R. 38, lines 14-19) (Id., R. 42, lines 16-25). On May 18, Ms. Ballew spoke with Decedent on the phone briefly about signing some forms for her and retrieving a key from the C.C. Woodson Center for the Swim Center. (Id., R. 40, line 19 – 41, line 19) (Id., R. 43, lines 10-12). According to Ms. Ballew, Decedent agreed and/or volunteered to come by the Swim Center with the key and sign the forms. (Id., R. 41, lines 8-18).

Mr. Kennedy testified that Decedent was “directly responsible for the day to day operations of Parks and Recreation ... which included our community centers, which was, at the time of Brian’s death, that would have been four locations[:] CC Woodson Community Center, TK Gregg Community Center, Northwest Community center, and the Swim Center,” as well as “over 20 parks.” (Hr'g Tr., R. 62, line 20 – 63, line 7) (Id., R. 69, lines 22-24). He confirmed that Decedent’s normal job required travel among the different locations “based upon what was needed from a manager.” (Id., R. 63, lines 8-11). He testified that it would have been normal for Decedent to go to the Swim Center or pick up keys for his employees, as his job was not strictly a desk job. (Id., R. 69, lines 5-24). However, he testified that Decedent did not have any work-related duties in Moore, South Carolina on that date, or any work-related reasons to travel to Moore to

visit his mother or pick up his motorcycle. (Hr'g Tr., R. 71, lines 6-23). Mr. Kennedy testified that, as a professional, he did not consider himself to be working when he texted, emailed or made phone calls when he was physically out of the office. (Id., R. 64, lines 4-20).

Deborah McClary, Administrative Assistant for the Parks, Recreation, and Special Events Department, (Hr'g. Tr., R. 55, lines 17-19), testified that, although her office was in the same location as Decedent's office, Decedent did not always work out of his physical office.

Q: But was his work always done there physically in the office or did he get out of the office?

A: Not necessarily, he had several different locations he would be at at times.

Q: Okay. Did his job really require him to go from - -

A: From place to place, because we had center - - recreation centers; CC Woodson, Northwest, we had the Swim Center, and we also have park locations.

(Id., R. 56, lines 9-16).

Decedent left his mother's house in Moore at about 11:15 a.m. on the morning of May 18. He told his mother he was going to work. (Hr'g Tr., R. 50, lines 6-13) (Dep. of Janice Littlejohn, R. 156, lines 8-12). Not long after, he was involved in an accident at the corner of Reidville Road and Plateau Street in Moore, which resulted in fatal injuries. (R. 129-130) (R. 131-135) (R. 136-149) (R. 150) (R. 151-153). The accident occurred approximately two miles from his mother's house in Moore. (Hr'g Tr., R. 51, lines 16-18) (R. 129-130) (R. 131-135).

Appellants filed for benefits under the South Carolina Worker's Compensation Act ("Act"). Respondents denied that their claim was compensable because Decedent was not acting within the course and scope of his employment at the time of his accident.

A hearing was conducted before the Single Commissioner on August 15, 2013. Subsequently, he issued a decision, denying workers' compensation benefits on the basis that Decedent's fatal accident did not arise out of and in the course of his employment. In addition, the Single Commissioner found that Decedent was not charged with any work-related duties at the time of his accident and was not performing a special task, service, mission or errand for his employer. Instead, Decedent was on a purely personal visit to his mother's house. The Single Commissioner specifically found that, even if Decedent had conducted some work-related activities that morning, his trip to Moore, South Carolina and his mother's house "was a substantial deviation from his employment." His accident occurred at "a location that Decedent's work duties did not require him to be." The Single Commissioner also held that the claim was barred by the going and coming rule and that none of the exceptions to that rule applied. (Order of the South Carolina Workers' Compensation Commission, T. Scott Beck, filed November 7, 2013, R. 80-92).

Appellants appealed to the Full Commission, raising two issues. First, Appellants argued that the Single Commissioner erred "in finding that the decedent was not working at the time of his death." Second, Appellants argued that the finding that the claim is barred by the going and coming rule was erroneous, asserting specifically that the Single Commissioner erred "in failing to find that the decedent, on his way to or from his work, was still charged with some duty or task in connection with his employment," and citing

Medlin v. Upstate Plaster Serv., 329 S.C. 92, 495 S.E.2d 447 (1998). (App. Form 30, dated Nov. 18, 2013, R. 1).

An Appellate Panel of the Full Commission (“Commission”) heard oral argument on February 18, 2014. The Commission upheld the Single Commissioner’s findings of fact and conclusions of law in their entirety. (Appellate Panel Decision & Order of the South Carolina Workers’ Compensation Commission, filed May 12, 2014 (“Commission Decision”), R. 118-128). Specifically, the Commission found as a matter of fact that Decedent “was not working at the time of his death,” and that, “[i]nstead of coming to work on the day of his accident, Decedent drove approximately nine miles from his apartment in the opposite direction to his mother’s home in Moore, South Carolina to pick up his motorcycle and visit with his mother ... This visit to his mother’s house was of a purely personal nature.” The Commission found that, even if it could be said that “Decedent was working at some point on his date of accident, that the trip and visit to his mother’s house in Moore, South Carolina was a substantial deviation from his employment.” Importantly, there was no finding that, following the substantial deviation, Decedent returned to his work duties. The Commission also found that the fatal accident occurred “at a location that Decedent’s work duties did not require him to be. Nothing about Decedent’s job, on the date of his accident, required that he travel to or visit any location in Moore, South Carolina or that he go and pick up his motorcycle in Moore, South Carolina.” Instead, all of Decedent’s job responsibilities were located within the City of Spartanburg.

The Commission also found that the claim was barred by the going and coming rule, from which “there are no applicable exceptions.” Decedent was not charged with

any work related duties but was “on a purely personal mission to get to work,” at the time of his accident. The Commission also found that “Decedent was not performing a special task, service, mission, or errand for the City of Spartanburg at the time of his accident,” but instead, all of the activities he planned to engage in once he got to work “were a customary part of his employment,” which were job duties “that fell within his job description” and “expected of him on a regular basis.” (Commission Decision, R. 123-125).

The Commission concluded as a matter of law that “Decedent was not working at the time of his accident.” Even if Decedent had been performing some work-related tasks that morning, the trip to Moore to visit his mother and pick up his motorcycle constituted a substantial deviation which, under White v. S.C. State Highway Dep't, 226 S.C. 380, 85 S.E.2d 290 (1955) and Falconer v. Beard-Laney, Inc., 215 S.C. 321, 54 S.E.2d 904 (1949), bar his claim.

In addition, the Commission ruled that, because none of the exceptions to the going and coming rule applied, Appellants’ claim was barred by that rule as the Decedent was on his own “personal mission” to get to work when the accident occurred. “Decedent had no work-related duties to perform on his way to work, nor was he under the control of the City of Spartanburg ...” The Commission held that the special errand exception is not applicable because “Decedent was not charged with any task on his way to work,” but instead, the only job duties Decedent had on the day of his accident were his typical and customary job duties. (Commission Decision, R. 126-127).

Appellants timely appealed to this Court. Although Appellants listed two issues in their notice of appeal, they have abandoned their argument that, in light of Decedent’s

“cell phone and other electronic communications on the morning of his death, he was acting in the course and scope of his employment at the time of his death.” (See App. Br. p. 3 n.1). The only issue raised on appeal is whether Appellants’ claim “falls within an exception to the ‘going and coming’ rule.” (*Id.*, p. 3).

STANDARD OF REVIEW

Judicial review of a Commission decision is directed by the substantial evidence rule of the Administrative Procedures Act, S.C. Code Ann. § 1-23-380(A)(5) (Supp. 2012). *Lark v. Bi-Lo, Inc.*, 276 S.C. 130, 276 S.E.2d 304 (1981). A reviewing court should affirm the decision of the Full Commission unless it is clearly erroneous in view of the substantial evidence of the whole record. *Id.*, at 136, 276 S.E.2d at 307. The reviewing court may not substitute its own judgment for that of the Full Commission as to the weight of the evidence on a question of fact, but may reverse if the decision is affected by an error of law. S.C. Code Ann. § 1-23-380(A)(5).

Substantial evidence is not a mere scintilla of evidence, nor the evidence viewed blindly from one side of the case, but is evidence which, considering the record as a whole, would allow reasonable minds to reach the same conclusion the administrative agency reached in order to justify its action. *Pierre v. Seaside Farms, Inc.*, 386 S.C. 534, 540, 689 S.E.2d 615, 618 (2010). “The possibility of drawing two inconsistent conclusions from the evidence does not prevent the Commission’s finding from being supported by substantial evidence.” *Sharpe v. Case Prod., Inc.*, 336 S.C. 154, 160, 519 S.E.2d 102, 105 (1999). Instead, the findings of the Full Commission are presumed correct and can be set aside only if unsupported by substantial evidence or based on an error of law. *McGuffin v. Schlumberger-Sangamo*, 307 S.C. 184, 186, 414 S.E.2d 162,

163 (1992). It is not within the appellate court's purview to reverse findings of the Full Commission which are supported by substantial evidence. Broughton v. South of the Border, 336 S.C. 488, 496, 520 S.E.2d 634, 637 (Ct. App. 1999).

It is well-established that, "the burden is upon the claimants to prove such facts as will render the injury and ensuing death compensable within the provision of the Workmen's Compensation Act, and such award must not be based upon surmise or conjecture or speculation." Sola v. Sunny Slope Farms, 244 S.C. 6, 10, 135 S.E.2d 321, 324 (1964). A key element of this burden is proving that the injury arose out of and in the course of the claimant's employment. *See, e.g., Falconer*, 215 S.C. at 330, 54 S.E.2d at 909 (the "burden of supplying evidence from which the inference can be legitimately drawn that [the claimant's] death arose out of and in the course of his employment rests upon [the claimant]").

ARGUMENTS

I. Appellants' claims are barred/defeated by the two issue rule.

This Court can and should dispose of this appeal by applying the two issue rule. That rule provides that, "where a decision is based on more than one ground, the appellate court will affirm unless the appellant appeals all grounds because the unappealed ground will become the law of the case." Lott v. Jones, 387 S.C. 339, 346, 692 S.E.2d 900, 803 (2010).

Here, the Commission denied the compensability of this claim on multiple grounds and legal theories. First, the Commission found as a matter of fact that Decedent "was not working at the time of his death." (Commission Decision, R. 123). The Commission further found that, even if Decedent had been working during the morning

of May 18, his trip to visit his mother and pick up his motorcycle constituted “a substantial deviation from his employment.” (*Id.*, R. 124). In its Conclusions of Law, the Commission held that Appellants “failed to establish [that] Decedent’s accident arose out of and in the course of his employment, as Decedent was not working at the time of his accident.” Even if he had been working, his accident occurred during “a substantial deviation from employment.” (*Id.*, R. 126). Critically, there is no finding that Decedent returned to his course of employment following the substantial deviation prior to his accident.

Appellants have appealed none of these findings of fact and conclusions of law, which are the law of the case. *See, e.g., Green v. City of Columbia*, 311 S.C. 78, 80, 427 S.E.2d 685, 687 (Ct. App. 1993) (“The findings of fact and law by the hearing commissioner become and are the law of the case, unless within the scope of the appellant’s exception to the full commission and its notice to the respondent of the issues the respondent would be required to meet,” *citing Ham v. Mullins Lumber Co.*, 193 S.C. 66, 7 S.E.2d 712 (1940)); *Colonna v. Marlboro Park Hosp.*, 404 S.C. 537, 548, 745 S.E.2d 128, 134 (Ct. App. 2013) (unappealed Commission rulings are the law of the case).

The bar from benefits because of a substantial deviation is a separate legal theory from the applicability of the going and coming rule. *Compare Matute v. Palmetto Health Baptist*, 391 S.C. 291, 705 S.E.2d 472 (Ct. App. 2011) (discussing going and coming rule), *with White v. S.C. State Highway Dep’t*, 226 S.C. 380, 85 S.E.2d 290 (1955) (discussing substantial deviation during travel). Even if this Court were to reverse the Commission’s decision on the applicability of the going and coming rule, there is still a

finding that Decedent substantially deviated from his employment at the time of this accident and no finding that he had returned to the course of his employment. Thus, the finding of a substantial deviation in and of itself results in the non-compensability of this claim. See White, 226 S.C. at 382, 85 S.E.2d at 291 (“we are constrained to hold ... that the accident occurred during a substantial deviation from duty which renders it noncompensable”); Falconer, 215 S.C. at 328, 54 S.E.2d at 908 (denying benefits because “the only reasonable inference warranted by the evidence is that the fatal accident occurred at a time when the deceased had deviated completely from his mater’s business and had gone on a personal errand”). Therefore, this case falls squarely within the “two issue” rule and this Court should affirm the Commission’s denial of benefits because Appellants failed to appeal the substantial deviation finding, which constitutes an alternate sustaining ground.

II. The Full Commission properly held that Decedent’s fatal accident does not fall within any exception to the going and coming rule.

In the alternative, this Court should uphold the Commission’s finding that Appellants’ claim is barred by the going and coming rule. “As a general rule, an employee going to or coming from the place where his work is to be performed is not engaged in performing any service growing out of and incidental to his employment, and, therefore, an injury sustained by accident at such time does not arise out of and in the course of his employment.” Medlin v. Upstate Plaster Serv., 329 S.C. 92, 95, 495 S.E.2d 447, 449 (1998). There are five well-recognized exceptions to the going and coming rule: 1) where the means of transportation is provided by the employer, or the time that is consumed is paid for or included in the wages; 2) “[w]here the employee, on his way to or from his work, is still charged with some duty or task in connection with his

(Transcript of Full Commission Hearing, held February 18, 2014, R. 100, line 15 – 101, line 2).² On appeal to this Court, Appellants have dropped their argument that Decedent's accident falls within the special errand exception, as that exception is neither identified in their statement of issues on appeal nor addressed anywhere in their Brief. Appellants cannot raise the special errand exception now. "It is axiomatic an issue cannot be raised for the first time in a reply brief." McClurg v. Deaton, 395 S.C. 85, 87 n.2, 716 S.E.2d 887, 888 n.2 (2011); *see also* Ahrens v. State of South Carolina, 392 S.C. 340, 357, 709 S.E.2d 54, 63 (2011) (even where issue is properly raised on appeal, if it is not argued in the brief, it is "deemed abandoned and will not be considered by the appellate court").

Appellants cite Bickley v. South Carolina Elec. & Gas Co., 259 S.C. 463, 192 S.E.2d 866 (1972) for the general proposition that, to be compensable, an injury must both arise out of and in the course of employment. (App. Br. p. 4). Although Bickley involved the special errand exception to the going and coming rule, merely citing a case for an unrelated issue does not raise or preserve an issue for appeal. Moreover, the facts of Bickley are readily distinguishable from the case at hand. In Bickley, the decedent had been called out in the middle of the night to travel from Columbia to Charleston to repair storm-damaged electrical lines. In adopting the special errand exception, the Supreme Court held that, "[w]here an employee is obligated to make emergency calls or to perform service at times other than during his regular working hours and goes on a special errand or mission for the employer, he is entitled to the protection of the compensation law from the time he leaves home until his return thereto." 259 S.C. at

² Although Medlin recites the recognized exceptions to the going and coming rule, that case was decided on the basis of the first exception – that the employer provided the means of transportation to and from work. 329 S.C. at 96, 495 S.E.2d at 450.

470, 192 S.E.2d at 870. Here, Decedent was injured during regular working hours when he normally would have been at work and nothing about the trip to Moore, South Carolina was for the benefit of his employer. Furthermore, there is abundant evidence in this record that the tasks Decedent was going to perform once he arrived at work were part of his normal job duties and fell well within his job description. *See* (Hr'g Tr., R. 12, lines 5-7) (Ms. Culbreath testifying that communicating with Decedent about events like the bike event was not unusual) (*Id.*, R. 18, lines 16-20) (Mr. Page testifying that it was not unusual for either him or Decedent to travel to the various parks that fell within their department) (*Id.*, R. 38, lines 14-19) (*Id.*, R. 42, lines 16-25) (Ms. Ballew testifying that it was normal for Decedent to go to the Swim Center as well as the other Parks and Recreation facilities) (*Id.*, R. 69, lines 5-24) (Mr. Kennedy testifying that it would have been normal for Decedent to go to the Swim Center or pick up keys) (*Id.*, R. 56, lines 9-16) (Ms. McClary testifying that Decedent did not always work out of his physical office but, instead, traveled among the various recreation centers and parks); *see also* (R. 162) (Decedent's job description). Thus, there was nothing special about what he was going to do once he arrived at work.

On appeal, Appellants argue that Decedent's injuries arose out of and in the course of his employment (which Respondents dispute) and, therefore, his accident "falls within an exception to the 'going and coming' rule." (App. Br. 3). At a minimum, Appellants have the analysis backwards – if an injury incurred on the way to work falls within an exception to the going and coming rule, it is deemed to arise out of and in the scope and course of employment, not the other way around. Critically, as noted above, Appellants did not appeal the Commission's determination that they failed to prove that

71, lines 2-23) (Dep. of Janice Littlejohn, R. 156, lines 8-12)) (R. 162), which should be upheld on appeal.

The weakness in Appellants' case is belied by their attempt to characterize the well-established going and coming rule as a mere "shortcut" for assessing liability," based on the premise that "a person on his way to work 'is not engaged in performing any service growing out of his employment.'" (App. Br. p. 4). Appellants argue that Decedent's accident is compensable because it does not fall within the premise or assumptions on which they argue the going and coming rule is based. Apparently, because they cannot establish that Decedent's accident falls within any of the recognized exceptions to the going and coming rule, they instead attempt to create an additional catch-all exception that is loosely comprised of "assumptions" or "the factors of control, lack of personal discretion, and lack of personal purpose." (App. Br. pp. 5, 7, 8). Such an exception has never been adopted by South Carolina courts and should not be given any credence here.

Furthermore, even if this Court were to analyze the elements put forth by Appellants — *i.e.*, consideration of "control, discretion, and personal purpose in determining whether a trip arises out of and is in the course and scope of employment," (App. Br. p. 4), their claim still fails. Although Appellants allege that Decedent was on an errand for and under the control of the City, that the errand was of value to the City, and that he had no personal discretion, (App. Br. p. 8), there is no evidence in the record to support any of these assertions. Instead, it is undisputed that retrieving his motorcycle and visiting with his mother were entirely personal and not work-related errands, which provided no value whatsoever to the City. (Hr'g Tr., R. 71, lines 2-23). It is also

undisputed that he agreed/volunteered to pick up a key from one of his normal work locations (the C.C. Woodson Center), and deliver it to a subordinate at another location (the Swim Center). (Id., R. 41, lines 8-18). Finally, there is no evidence whatsoever that Decedent was constrained from visiting someone else or performing other personal errands on his way to work, and Appellants' suggestion otherwise is no more than rank speculation.

Despite Appellants' focus on the element of control, (App. Br. pp. 3 n.2, 4-5, 7, 8), here Decedent was in no way under his employer's control at the time of his accident. Although Ms. Ballew requested that Decedent pick up a key from the C.C. Woodson Center and bring it to the Swim Center, Ms. Ballew was not Decedent's supervisor. In fact, the opposite is true – Decedent was Ms. Ballew's supervisor. (Hr'g Tr., R. 37, lines 20-24) (Id., R. 42, lines 20-22). Decedent was not instructed to pick the key up and deliver it; instead, he agreed and/or volunteered to do so. (Id., R. 41, lines 8-18). As a result, Appellants' assertion that Decedent "was in the process of executing a specific task given him by Tracy Ballew," (App. Br. p. 7), is nonsensical. It is, instead, further evidence of the lengths to which Appellants attempt to stretch the facts and the law to fit their case, which this Court should reject.

Furthermore, there is no evidence in this record that the tasks of picking up and delivering the key and signing papers were time sensitive. (Hr'g Tr., R. 40, line 19 – 41, line 19) (Id., R. 43, lines 1-12). Thus, Decedent could have stopped to perform any number of personal tasks on his way back to Spartanburg to start work.

Like the employee in Gallman v. Springs Mills, 201 S.C. 257, 22 S.E.2d 715 (1942), Decedent was merely on his way to work and could have changed his mind about

going to work at that precise time, visited with friends as he had visited with his mother, or transacted other business. To say that he would have impinged on his employer if he had not picked up and delivered the key as he had agreed/volunteered to do is tantamount to saying that a worker who was scheduled to work at the mill “at the appointed time” would not have impinged on his employer by not showing up for his shift. 201 S.C. at 265, 22 S.E.2d at 718-719. As was the case with the claimant in Gallman, no duty was required of Decedent until he arrived at work, which was in Spartanburg. Decedent was not tasked with picking up anything in Moore, or anywhere else, until he arrived at his regular place of work, which included both the C.C. Woodson Center and the Swim Center. *See* (Hr’g Tr., R. 38, lines 14-19) (Id., R. 42, lines 16-25) (Id., R. 69, lines 5-24) (Id., R. 56, lines 9-16) (Id., R. 71, lines 2-23); *see also* (R. 162).

Similarly, the instant case is comparable to Gregg v. Dorchester County Sch. Syst., 270 S.C. 189, 241 S.E.2d 554 (1978). There, the claimant, an assistant Summerville High School principal, was required to stay late on nights when football games were scheduled. The Claimant lived in Orangeburg and traveled to Summerville on Monday mornings and back home to Orangeburg on Friday evenings. On the evening in question, he stayed late for a football game and was injured while returning home to Orangeburg. The Court upheld the Commission’s denial of benefits because “[t]he trip was made solely because of appellant’s election to return to Orangeburg each weekend, and not in the performance of any service for which he was employed.” 270 S.C. at 193, 241 S.E.2d at 556. Here, Decedent’s decision to visit his mother during normal working hours was for purely personal reasons, and he was returning to his job in Spartanburg to perform his regular job duties when he was injured. Although he had made a few short

phone calls and communicated briefly via email and text during the morning, that did not convert his commute to work into a work-related trip. As the Supreme Court stated in Sylvan v. Sylvan Bros., “[i]t would be rash to announce a sweeping rule that whenever the employee performs any service at home, the intervening journey is in the course of employment.” 225 S.C. 429, 436, 82 S.E.2d 794, 797 (1954). In fact, such a finding would swallow the going and coming rule for just about all white collar workers.

Like the claimant in Whitworth v. Window World, Inc., 377 S.C. 637, 661 S.E.2d 333 (2008), Decedent was not tasked with any work to perform until he actually arrived at work. “The primary purpose of [claimant’s] trip served a personal objective, namely for [claimant] to travel to the place where his work was to be performed. [Claimant] had no work-related duties to perform on the way to work, was not under the control of Window World, and was free to conduct personal business on the way to the jobsite ... as evidenced by his personal deviation.”⁴ Id. at 641, 661 S.E.2d at 336. Unlike the claimant in Sola, 244 S.C. at 15-16, 135 S.E.2d at 321, Decedent was not injured while traveling between the places he was required to work nor did anything related to his trip to his mother’s house have any connection to or provide any benefit to his employer. Decedent’s accident, while indisputably tragic, simply is not compensable under the Act.

The Minnesota case relied on by Appellants, Locke v. Steele County, 27 N.W.2d 285 (Minn. 1947), is readily distinguishable from the case at hand. In Locke, the employee was instructed by her supervisor that, at the end of her normal lunch hour from 12 noon to 1 p.m., she was to travel to the post office and pick up the office mail. On the

⁴ At least the claimant in Whitworth was transporting a tool that was needed for his job that day, 377 S.C. at 639, 661 S.E.2d at 335, although even that fact did not bring his claim within the duty or task exception to the going and coming rule. Here, there is no evidence that Decedent was transporting any work-related items at the time of his accident.

that attendance at the meetings, which their supervisor admitted was expected of them, “was consistent with their contracts of hire and was logically related to their employment.” 261 S.C. at 333, 200 S.E.2d at 86. The key factual distinction between Beam and the instant case is that, in Beam, the claimants were not only encouraged but urged and expected to attend the out of town meeting and were injured on the way to that event. Here, nothing about Decedent’s job required to him to go to Moore or to visit his mother or to pick up his motorcycle. At the time he was injured, Decedent was merely on his normal way to work.

Finally, Appellants make much of the fact that Decedent agreed/volunteered/was planning to pick up a key at the C.C. Woodson Center and deliver it to the Swim Center. This was a normal part of his job responsibilities and would be performed entirely at places he normally worked. In short, Appellants’ argument appears to be that, because Decedent had work to do once he got to work, he comes within the “duty or task” exception to the going and coming rule. Their position would eliminate the “going” part from the going and coming rule because every employee is anticipated to engage in work-related activities once they arrive at work. This Court should reject any such argument.

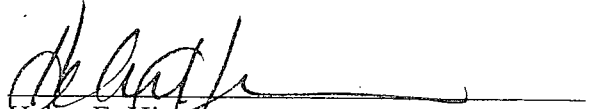
CONCLUSION

For all the reasons stated herein, this Court should affirm the Commission’s denial of benefits to Appellants.

Respectfully submitted,

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THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM SPARTANBURG COUNTY
Workers' Compensation Commission

Case No. 2014-001269

Boisha Wofford, alleged surviving spouse,
and Kaelyn Wofford, surviving child, on behalf
of Brian Wofford, deceased employee,

Appellants,

v.

City of Spartanburg, through the South Carolina
Municipal Insurance Trust,

Respondents.

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BACKGROUND

In their Initial Brief to this Court in support of the ruling of the Appellate Panel, Respondents argue: (1) that the Appellate Panel must be affirmed because of application of the two-issue rule, (2) that the standard for findings of fact apply to the question before the Court, and (3) that the actions of Brian Wofford on the morning of his death do not meet the requirements of the “going and coming” rule. We address each argument in turn.

ARGUMENT

I. Applicability of the “Going and Coming” Rule

This case boils down to this simple question: When Brian Wofford, rather than traveling to his physical office, instead traveled to the C.C. Woodson Center for the purpose of picking up keys at the request of Tracy Ballew and then delivering them to Ms. Ballew at the Swim Center, was he merely going to work or was he executing a work-related task? If the former, then Brian’s resulting death is not compensable. If the latter, then the claim is certainly compensable.

In arguing that Brian was simply going to work, Respondents point out (1) that he agreed to take on the task and (2) that the person who requested the task was a subordinate. See Initial Brief of Respondents, p.18-19. Yet these facts are unrelated to the ultimate question and Respondents cite no precedent to suggest that these are factors to be considered in analysis of the “going and coming rule.” In fact, it is difficult to imagine a situation where an employee executes a task he did not agree to. To exclude all such scenarios would be to eviscerate all exceptions to the “going and coming” rule. With regard to the rank of the person requesting the task, Courts have not found any importance in such qualifications and instead have inquired whether the task was of value to the employer. See Beam v. State Workmen’s Compensation

Fund, 261 S.C. 327, 332, 200 S.E.2d 83, 86 (1973) (employees “were about the performance of an act, incidental to and recognized as of value by their [employer]”).

Respondents fault Appellant for asserting the factors of control, lack of personal discretion, and lack of personal purpose in analyzing whether the “going and coming” rule applies, yet each of these factors is derived from South Carolina caselaw on the “going and coming” rule and was cited by South Carolina courts in analysis, as set forth in Appellant’s initial brief. See, e.g., Gallman v. Springs Mills, 201 S.C. 257, 265, 22 S.E.2d 715, 718-19 (1942) (upholding denial of claim because at the time of the injury, employee “was in no sense under the control of his employer” and had personal discretion); Beam, 261 S.C. at 332, 200 S.E.2d at 86 (analyzing whether employees were “exercising a personal privilege”). These were logical factors for a court to consider as they shed light on the ultimate question – was the employee simply going to work, or executing a task?

In attempting to characterize the action in question as simply Brian going to work, Respondents note that Brian “also worked out of the office at CC Woodson” and “might go straight to CC Woodson sometimes if he was working out of that Rec Center office or if he had a meeting” See Brief of Resp., p. 2. **But importantly, there is no evidence in the Record to suggest that Brian was planning to work out of an office at C.C. Woodson that morning or that he had a meeting at the Center.** Instead, all of the evidence shows that Brian’s only reason for traveling to the C.C. Woodson Center on the morning of his death was to take care of the task given him by Tracy Ballew. Had he not been given this task, Brian would not have traveled to the C.C. Woodson Center and would presumably have traveled to his physical office at 100 North Liberty Street in downtown Spartanburg. That Brian did not go directly to his

office demonstrates that his travel that morning was an exception to his morning commute and that he was instead executing a specific task.

For this reason, precedent cited by Respondents, Gregg v. Dorchester County Sch. Syst., 270 S.C. 189, 241 S.E.2d 554 (1978), is not on point. Gregg involved an injury sustained by an employee while driving home from work, in this case a football game. As the Court pointed out, while merely traveling home, the employee was not engaged “in the performance of any service for which he was employed.” See Gregg, 270 S.C. at 193, 241 S.E.2d at 556. Respondents’ own brief admits that, in traveling to pick up the keys and deliver them to Ms. Ballew, Brian was certainly accomplishing a task related to his employment, and one could hardly assert otherwise.¹ See Brief of Resp., p. 3. The Court’s analysis in Gregg therefore lends credence to Appellant’s argument that Brian’s accident falls outside of the general “going and coming” rule.²

On leaving his mother’s home on the morning of his death, Brian Wofford was engaged in a work-related task beyond a simple commute. Had the keys been located at Ms. Ballew’s house, for example, there would be little doubt that Brian’s travel constituted a task or errand. That the keys happened to be located at a building where Brian occasionally works does not change the character of the travel.

¹ It should be noted that, on multiple occasions in their Initial Brief, Respondents seem to analyze the instant case based on Brian’s travel from his apartment to his mother’s house. See, e.g., Brief of Resp., p. 18 (“[i]t is undisputed that retrieving his motorcycle and visiting with his mother were entirely personal and not work-related errands, which provided no value whatsoever to the City.”); Brief of Resp. p. 21 (“Decedent was not injured while traveling between the places he was required to work nor did anything related to his trip to his mother’s house have any connection to or provide any benefit to his employer.”). Appellant agrees that Brian’s trip from his apartment to his mother’s house was not work-related and, had the accident occurred during that portion of his travel, no claim could be made under workers’ compensation. The portion of travel which is of importance to the case is the travel after Brian left his mother’s home and was traveling “directly” to the C.C. Woodson Center to retrieve the keys.

² Respondents also notes Appellant’s “curious” “substantive reliance” on the case of Matute v. Palmetto Health Baptist, 391 S.C. 291, 705 S.E.2d 472 (Ct. App. 2011) and assert that Matute militates against Appellant’s position. Appellant did not cite Matute as comparable caselaw and instead cited it for only general propositions of law. However, like Gregg, Matute is supportive of Appellant’s argument when the facts are contrasted with the instant case. There, the Court affirmed the denial of benefits to a hospital employee injured by falling on a sidewalk ten minutes after clocking out. In its analysis, the Court pointed out that the employee “was not fulfilling any duty or task in connection with her employment . . . when she fell.” See Matute, 391 S.C. at 296, 705 S.E.2d at 475.

II. Standard of Review

In their brief, Respondents characterize the key question of the case – whether Brian was charged with any work-related duties at the time of his death – as a mere finding of fact. As such, Respondents assert that applicable standard of review is whether there is “sufficient evidence in the record to support the Commission’s factual findings” See Brief of Resp., p. 17. This is error, as the question for the Court is one of law rather than one of fact.

Although the Commission is the fact-finding body, where the evidence gives rise to but one reasonable inference the question becomes one of law for the courts to decide. See Kinsey v. Champion American Service Center, 268 S.C. 177, 232 S.E.2d 720 (1977). “[W]here the evidence is not in dispute, the question of whether or not the employee sustained an injury arising out of and in the course of his employment becomes a question of law for the court.” Smith v. Union Bleachery/Cone Mills, 276 S.C. 454, 456, 280 S.E.2d 52, 53 (1981).

Respondents cite the following statements as key “findings of fact”:

- (1) Decedent was not charged with any work related duties at the time of this accident but instead was on a purely personal mission to get to work.
- (2) Decedent was not tasked with any work related responsibility at the time of his accident. He was merely on his way to work to engage in his typical job responsibilities.

See Brief of Resp., p. 17. These statements must be read as conclusions of law, which is presumably why key phrases from caselaw – “duties” and “tasked” – were utilized.

As noted in Appellant’s Initial Brief, the parties are in agreement as to the facts of the matter. Respondents called no witnesses at the hearing and no witness testimony conflicted as to the underlying issues. For this reason, it is undisputed that, at the time of his death, Brian was traveling to the C.C. Woodson Center to retrieve keys and then to convey them to Tracy Ballew at the Swim Center. See Brief of Resp., p. 18 (“It is also undisputed that he agreed/volunteered.

to pick up a key from one of his normal work locations (the C.C. Woodson Center), and deliver it to a subordinate at another location (the Swim Center).”). There was no testimony at the hearing suggesting any other purpose for Brian’s travel. Whether the action of traveling to C.C. Woodson to pick up and then deliver the keys was sufficient to meet an exception to the “going and coming” rule is the key issue on appeal and the question on which the validity of the entire claim depends. Applying the facts to the law is, of course, the very essence of a conclusion of law and, therefore, this Court’s standard of review is a review for error of law. As the evidence is not in dispute, the question before the Court is, like that of Smith, simply one of law. See Smith, 276 S.C. at 456, 280 S.E.2d at 53 (holding that as evidence was not in dispute, question was one of law for the Court).

Assuming *arguendo* that the statements cited above are not conclusions of law and instead constitute findings of fact, the Appellate Panel decision must be overturned as the factual finding is not supported by competent evidence. Again, it is undisputed that, at the time of his death, Brian was traveling to the C.C. Woodson Center to retrieve keys and then to convey them to Tracy Ballew at the Swim Center and **no testimony or evidence suggests otherwise**. Importantly, Ms. Ballew testified that Brian told her that he was going “directly to CC to get the key, and then coming to the Swim Center to sign the paperwork, and then going to the Spring Fever event” (R. p. 45, lines 1-7). This conversation began at 10:48 AM (R. p. 157). At 11:15 AM, Brian was killed in a motor vehicle accident³ (R. p. 53, lines 10-17; pp. 129-130). Consequently, any determination that, at the time of the accident, Brian was not engaged in any work-related duty or task is simply unsupported by any evidence whatsoever and cannot stand. Whether these facts meet an exception to the “going and coming” rule is a question of law.

³ It should be noted that the time entries on the cell phone records are set forth in Greenwich Mean Time (GMT). Times stated in the briefs are converted to local time.

I. Two-Issue Rule

Respondents have filed a motion to dismiss Appellant's appeal on the basis of the two-issue rule as well as alleged deficiencies in the Notice of Appeal. Respondents again assert the two-issue rule in their brief. As Respondents elected to include this in their motion to dismiss, they should not be afforded a second bite at the apple in the event their motion is denied. Moreover, as set forth below, Respondents' position regarding the two-issue rule is groundless.

Under the two-issue rule, where a decision is based on two independent grounds the appellate court will affirm unless the appellant appeals all grounds because the unappealed ground will become the law of the case. See Jones v. Lott, 387 S.C. 339, 346, 692 S.E.2d 900, 903 (2010). In this situation, the two-issue rule resolves the appeal because "it would be pointless to consider the exceptions which do not reach [the] dispositive finding." See Buckner v. Preferred Mut. Ins. Co., 255 S.C. 159, 160, 177 S.E.2d 544 (1970). Respondents argue that the order of the Appellate Panel denying compensation was based on three grounds and Appellant appealed only two, and the appeal therefore fails. As demonstrated below, this argument is without merit.

Respondents take the position that there were three grounds for the ruling of the Appellate Panel: (1) the accident did not occur in the course and scope of employment as Brian was not working at the time of the accident; (2) even if Brian was working on the morning of the accident, his trip to his mother's house constituted a substantial deviation from his employment, such that the claim is not compensable, and (3) the claim for benefits is barred by the "going and coming" rule. Respondents argue that Appellant appealed only issues 1 and 3, and therefore issue 2 stands and causes this appeal to fail.

This position misunderstands the two-issue rule. The purpose of the rule is to avoid the need for unnecessary and “pointless” appeals where, even if the Court were to decide in favor of the appellant, the result would not be changed. For this reason, courts applying the two-issue rule often decline to decide the issue in question, as it would not change the result. A relevant example is cited in Anderson v. S.C. Dept of Highways and Pub. Transp., 322 S.C. 417, 472 S.E.2d 253 (1996): “[I]f a court directs a verdict for a defendant on the basis of the defenses of statute of limitations and contributory negligence, the order would be affirmed under the ‘two issue’ rule if the plaintiff failed to appeal both grounds” 322 S.C. at 420, 472 S.E.2d at 255. In this situation, if the appellate court were to rule in favor of the appellant on the one issue appealed (for example, inapplicability of the statute of limitations), the ruling of the appellate court would not conflict with the unappealed ground (contributory negligence) and therefore the result would not be changed.

The instant case is not comparable and is not suited to the two-issue rule. For example, if the Court were to side with Appellant’s position that, at the time of his death, Brian was engaged in a special task for his employer and therefore met an exception to the “going and coming” rule, then the Commission’s ruling on issues 1 and 2 would be in conflict with the ruling of this Court, and therefore invalidated. Therefore, in this situation, the unappealed ruling would not support the Appellate Panel decision. Similarly, if the Court were to side with Appellant’s position that, on the morning of his death, Brian was so engaged in electronic communication – even while at his mother’s house – that he was acting in the course and scope of employment at the time of his death, then the Commission’s ruling on issue 2 would be in conflict. Of course, this latter example is no longer relevant as Appellant abandoned its second issue on appeal.

The “substantial deviation” cited by Respondents is in Brian traveling to his mother’s house. The trip which is the key to this appeal is Brian’s travel after leaving his mother’s house. Appellant could therefore even safely concede the issue of substantial deviation without harming her case.

Respondents unsuccessfully raised this same issue to the Appellate Panel. The Commission found no merit to this argument. Appellant respectfully requests that this Court also decline Respondents’ invitation to engage in “an over-zealous application of appellate preservation rules” or to “play a ‘gotcha’ game with attorneys” See Atlantic Coast Builders and Contractors, LLC v. Lewis, 398 S.C. 323, 333, 730 S.E.2d 282, 287 (2012), Toal dissenting.

II. Conclusion

For the reasons set forth above, Appellant respectfully submits that, at the time of his death, Brian Wofford was engaged in executing a work-related duty or task such that his conduct falls outside of the “going and coming” rule. For this reason, the decision of the Appellate Panel should be reversed.

Respectfully Submitted,

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ATTORNEYS FOR THE APPELLANT

October 1, 2014
Spartanburg, South Carolina

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM SPARTANBURG COUNTY
Workers' Compensation Commission

Case No. 2014-001269

Boisha Wofford, alleged surviving spouse,
and Kaelyn Wofford, surviving child, on behalf
of Brian Wofford, deceased employee,

Appellants,

v.

City of Spartanburg, through the South Carolina
Municipal Insurance Trust,

Respondents.

CERTIFICATE OF COUNSEL

The undersigned certifies that this Reply Brief of Appellants comply with Rule 210(b), SCACR.


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October 1, 2014

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

Boisha Wofford, alleged surviving spouse, and Kaelyn Wofford, surviving child, on behalf of Brian Wofford, deceased employee, Appellants,

v.

City of Spartanburg, through the South Carolina Municipal Insurance Trust, Respondents.

Appellate Case No. 2014-001269

Appeal From The Workers' Compensation Commission

Opinion No. 5369

Heard October 14, 2015 – Filed December 9, 2015

AFFIRMED

Kenneth C. Anthony, Jr., and Kenneth Jay Anthony, both of the The Anthony Law Firm, P.A., of Spartanburg, for Appellants.

Helen Faith Hiser, of McAngus Goudelock & Courie, LLC, of Mount Pleasant; and Stephanie Lamb Pugh, of Turner Padget Graham & Laney, P.A., of Greenville, for Respondents.

LOCKEMY, J.: Boisha Wofford and Kaelyn Wofford (Claimants) appeal the Appellate Panel of the South Carolina Workers' Compensation Commission's order finding Brian Wofford was not acting within the course and scope of his

employment at the time of his death under an exception to the "going and coming rule."¹ We affirm.

FACTS

Wofford, the former Superintendent of the Parks and Recreation Department for the City of Spartanburg (the City), died in a motorcycle accident in Moore, South Carolina. Wofford was on his way from his mother's home in Moore to one of the City's recreational centers. The accident occurred around 11:15 a.m.

At the hearing before the single commissioner, the City's aquatics director, Tracey Ballew, recalled calling Wofford on the morning of the accident to ask him to meet her at the City's swim center to sign some forms and retrieve a key from the Department's C.C. Woodson Recreational Center. Ballew stated Wofford told her he "was going directly to [C.C. Woodson Recreational Center] to get the key, and then coming to the Swim Center."

Scott Page, the City's Parks Manager, testified Wofford often worked out of other recreation centers, including the C.C. Woodson Recreational Center. Similarly, Deborah McClary, an administrative assistant, stated Wofford often worked at several different locations, including the Department's main office, the four recreational centers, the swim center, and the City's parks.

Mitchell Kennedy, the City's Director of Community Services and Wofford's supervisor, testified Wofford's job duties involved traveling between the various recreational centers and parks. Kennedy testified he often communicated with employees via phone, e-mail, and text, even when he or the employees were not at work. Kennedy explained, "I have communicated with employees, based upon certain circumstances, where I knew that they were not at work and I may have a task So I would not consider [them] on the job if I knew that . . . person was not at work." Kennedy stated it was not unusual for Wofford to fulfill requests like Ballew's to retrieve keys and sign forms. Additionally, Kennedy explained it was common for Wofford to travel among the various recreational centers, parks, and swim centers. According to Kennedy, Wofford had discretion in setting his work hours.

Janice Littlejohn, Wofford's mother, testified Wofford came to her house in Moore on the morning of the accident to pick up his motorcycle, which he stored at her

¹ Boisha is Wofford's surviving spouse and Kaelyn is Wofford's surviving child.

home. Littlejohn stated her home was in the opposite direction of Wofford's office. Littlejohn recalled Wofford had two business-related phone calls while he was visiting her. Wofford was at Littlejohn's home for approximately three hours. When Wofford left Littlejohn's home, he told her he was on his way to work.

The single commissioner concluded Wofford did not suffer a compensable injury because Claimants failed to show his accident arose out of and in the course of his employment as Wofford was not working at the time of his accident. Further, the commissioner found the remote communication that Wofford had with other City employees did not rise to the level such that his actions were within the course and scope of his employment. Even if his communication made his actions within the course and scope of his employment, the commissioner concluded Wofford's decision to drive to his mother's home to visit her for three hours and pick up his motorcycle resulted in a substantial deviation from his employment.

Finally, the commissioner found there were no applicable exceptions to the going and coming rule. The commissioner noted Wofford's accident occurred on the way to work, and Wofford did not have any work-related duties to perform on the way to work nor was he under the control of the City. The commissioner also found the special errand exception to the going and coming rule was inapplicable because Wofford was not charged with a task on his way to work. The commissioner further found Wofford was going to work to perform his typical job duties and it was common for Wofford to work at his office, the recreational centers, or at a City event.

The parties cross-appealed to the Appellate Panel of the Commission. On appeal, Claimants argued two points to reverse the single commissioner. First, Claimants asserted Wofford was working while he was visiting his mother because he was emailing and calling employees. Second, Claimants maintained Wofford's accident met an exception to the going and coming rule because he was on a special errand to retrieve keys for Ballew. The Appellate Panel affirmed the single commissioner's findings in full. This appeal followed.

STANDARD OF REVIEW

"The South Carolina Administrative Procedures Act establishes the substantial evidence standard for judicial review of decisions by the Commission." *Murphy v. Owens Corning*, 393 S.C. 77, 81, 710 S.E.2d 454, 456 (Ct. App. 2011) (citing S.C. Code Ann. § 1-23-380 (Supp. 2014)). "Under the substantial evidence standard of review, this court may not substitute its judgment for that of the Commission as to

the weight of the evidence on questions of fact, but may reverse where the decision is affected by an error of law." *Id.* at 81-82, 710 S.E.2d at 456.

LAW/ANALYSIS

I. Two Issue Rule

Initially, the City claims the two issue rule bars Claimants' appeal because the Appellate Panel denied their claim on multiple grounds, but the Claimants appealed only one of those grounds. The City asserts even if this court reverses the Appellate Panel's findings on the going and coming rule, Claimants could not succeed on appeal because the Appellate Panel found Wofford's trip to his mother's house was a substantial deviation from his employment. Second, the City maintains Wofford did not meet an exception to the going and coming rule. Initially, the City notes Claimants have not indicated which exception to the going and coming rule applies. Further, the City argues none of the exceptions apply because Wofford was on his way to work to perform his normal job duties and merely volunteered to pick up a key for Ballew.

Claimants assert the two issue rule does not apply here. Claimants argue that if Wofford was engaged in a special task for his employer and met an exception under the going and coming rule, then the Appellate Panel's other rulings would be "invalidated." We find the two issue rule does not apply here.

"Under the two issue rule, where a decision is based on more than one ground, the appellate court will affirm unless the appellant appeals all grounds because the unappealed ground will become the law of the case." *Jones v. Lott*, 387 S.C. 339, 346, 692 S.E.2d 900, 903 (2010). "It should be noted that although cases generally have discussed the 'two issue' rule in the context of the appellate treatment of general jury verdicts, the rule is applicable under other circumstances on appeal, including affirmance of orders of trial courts." *Anderson v. S.C. Dep't of Highways & Pub. Transp.*, 322 S.C. 417, 420 n.1, 472 S.E.2d 253, 255 n.1 (1996).

For example, if a court directs a verdict for a defendant on the basis of the defenses of statute of limitations and contributory negligence, the order would be affirmed under the "two issue" rule if the plaintiff failed to appeal both grounds or if one of the grounds required affirmance.

Id.

We find the two issue rule does not apply here because Claimants presented two reasons why their claim was compensable—(1) Wofford had worked all morning by communicating remotely with other City employees and (2) he met an exception to the going and coming rule once he left his mother's home. The Appellate Panel found Wofford's communications did not rise to the level that would bring his actions at his mother's home within the course and scope of his employment, and even if they did, he substantially deviated from his employment by visiting his mother in Moore. Further, the Appellate Panel found no applicable exceptions to the going and coming rule applied because retrieving the key and signing forms for Ballew was within Wofford's ordinary job duties. Although Claimants did not appeal the Appellate Panel's ruling that Wofford's phone calls and e-mails to other employees at his mother's home did not rise to the level such that his actions were within the scope of his employment, they did appeal the Appellate Panel's finding that Wofford did not meet an exception to the "going and coming rule" once he left his mother's home. We find the Appellate Panel's order addresses two different points in time—(1) Wofford's actions at his mother's home and (2) his actions when he was on his way to work.

II. Exception to Going and Coming Rule

Claimants argue the Appellate Panel erred in finding Wofford was acting outside the course and scope of his employment at the time of his death because his claim fell within an exception to the going and coming rule. Claimants assert that once Wofford left his mother's home, he was in the process of executing a specific task for the City—retrieving a spare key from a recreational center. Thus, Claimants maintain Wofford was performing an act in connection with his duties as the superintendent of the Department. We disagree.

Generally, an employee going to or coming from the place where he works is not engaged in performing a service growing out of and incidental to his employment, and thus, an injury from an accident at such time does not arise out of and in the course of his employment. *Medlin v. Upstate Plaster Serv.*, 329 S.C. 92, 95, 495 S.E.2d 447, 449 (1998). However, South Carolina has recognized five exceptions to this rule. Among these are where (1) "the means of transportation is provided by the employer, or the time that is consumed is paid for or included in the wages;" (2) "the employee, on his way to or from his work, is still charged with some duty or task in connection with his employment;" (3) the way to work is inherently dangerous and is either the exclusive way or is constructed and maintained by the

employer; (4) the injury occurred in close proximity to the workplace and there is an express or implied requirement that the employee use that approach in going to and coming from work; and (5) an employee is injured "while performing a special task, service, mission, or errand for his employer, even before or after customary working hours, or on a day on which he does not ordinarily work." *Id.* at 95-96, 495 S.E.2d at 449.

Under the duty or task exception, "an employee will not be precluded from receiving benefits where the employee, on his way to or from his work, is charged with some duty or task in connection with his employment." *Whitworth v. Window World, Inc.*, 377 S.C. 637, 641, 661 S.E.2d 333, 336 (2008). In *Whitworth*, a window installer loaded his equipment onto his truck and proceeded to the jobsite to install windows. *Id.* at 639, 661 S.E.2d at 335. After stopping for a drink, the window installer was involved in an automobile accident. *Id.* The supreme court held the window installer failed to show he was charged with a work-related duty or task under the duty or task exception of the going and coming rule because the primary purpose of his trip was a personal objective—to travel to the place where he would perform his work. *Id.* at 641, 661 S.E.2d at 336. Further, the court noted he did not have any work-related duties to perform on his way to work, he was not under the control of his employer, and he was free to conduct personal business. *Id.*

Additionally, the special task exception "allows compensation where an employee sustains an injury while performing a special task, service, mission, or errand for his employer, even before or after customary working hours, or on a day on which he does not ordinarily work." *Gray v. Club Grp., Ltd.*, 339 S.C. 173, 189, 528 S.E.2d 435, 443 (Ct. App. 2000). In *Bickley v. South Carolina Electric & Gas Co.*, the supreme court held an electrical lineman's death arose out of and in the scope of his employment because he was on a special errand or mission for his employer. 259 S.C. 463, 471, 192 S.E.2d 866, 870 (1972). There, a lineman was called to repair storm damage to electrical lines in Charleston. *Id.* at 467, 192 S.E.2d at 868. He left his home in Columbia at 3:30 a.m. *Id.* The lineman and his crew worked until 11:30 p.m. and decided to return to Columbia. *Id.* at 467-68, 192 S.E.2d at 868. After arriving in Columbia and leaving work at 3:30 a.m. the following morning, the lineman drove home and crashed into a truck. *Id.* at 468, 192 S.E.2d at 868. The collision killed the lineman. *Id.* The court explained the lineman was entitled to compensation from the time he left his home until his return because he was obligated to make emergency calls or perform services at times other than his regular working hours and he was on a special errand or mission for the employer. *Id.* at 470, 192 S.E.2d at 870.

In *McDaniel v. Bus Terminal Restaurant Management Corp.*, the supreme court held a cook who was injured in an automobile accident on the way home from an employee meeting did not suffer a compensable injury under the "special errand exception." 271 S.C. 299, 301-03, 247 S.E.2d 321, 322-23 (1978). The court concluded that unlike the lineman in *Bickley*, the cook was not called to perform an emergency service and the employee meetings were not unusual or "special." *Id.* The court found the cook's attendance at the employee meetings was a normal, customary aspect of her job and she did not perform a special errand by attending the meeting. *Id.* Further, the court noted she had not performed any service to her employer while enroute to or from her place of employment and the trip was not a substantial part of the service for which she was employed. *Id.*

We find substantial evidence supports the Appellate Panel's finding that Wofford's accident did not meet an exception to the going and coming rule. *See Lark v. Bi-Lo, Inc.*, 276 S.C. 130, 135-36, 276 S.E.2d 304, 306-07 (1981) (providing this court must affirm the findings of fact made by the Appellate Panel if they are supported by substantial evidence). Although we agree with the City that Claimants have not specifically indicated which exception was met, the Claimants generally argue Wofford's death arose out of and in the course of his employment because he met either the duty or task exception or the special errand exception. For example, Claimants argue Wofford was "in the process of executing a specific task given [to] him by Tracy Ballew" and the "task was one of value to the employer." Additionally, Claimants assert Wofford was "embarking on [an] errand" to retrieve the spare key for Ballew and he had "no discretion" to stop on his way to work. The Appellate Panel also ruled on these two exceptions. Accordingly, we analyze Claimants' arguments under these two exceptions.

First, we agree with the Appellate Panel's finding that the duty or task exception did not apply. Similar to *Whitworth*, the primary purpose of Wofford's trip was a personal objective to travel to the recreational center where he performed his work. *See* 377 S.C. at 641, 661 S.E.2d at 336 (holding a window installer did not meet an exception to the going and coming rule when he was involved in an accident transporting a piece of equipment to a job site). We note retrieving the key was Wofford's first task of the day and three employees, including Wofford's immediate supervisor, testified it was common for Wofford to work out of his office, the various recreational centers, and the swim center. Kennedy, Wofford's supervisor, also testified retrieving a key and signing forms for Ballew were within Wofford's typical job responsibilities. Thus, Kennedy and the other employees' testimonies support the Appellate Panel's finding Wofford was "merely on his way

to work to engage in his typical job responsibilities," which included retrieving a key and signing forms for Ballew, and he was not charged with any work-related duties at the time of the accident. *See Medlin*, 329 S.C. at 95, 495 S.E.2d at 449 (stating an employee going to or coming from the place where he works is not engaged in performing a service growing out of and incidental to his employment, and thus, an injury from an accident at such time does not arise out of and in the course of his employment).

Second, we agree with the Appellate Panel's finding the special errand exception did not apply. Similar to *McDaniel*, Wofford was on his way to work to perform his typical job duties like retrieving keys and signing forms, and thus, he did not perform a special errand by driving to the swim center. *Compare McDaniel*, 271 S.C. at 303, 247 S.E.2d at 323 (providing a cook did not suffer a compensable injury under the special errand exception when injured in an automobile accident on her way home from an employee meeting because the meeting was a normal, customary aspect of her job and she did not perform a special errand by attending the meeting), *with Bickley*, 259 S.C. at 470, 192 S.E.2d at 870 (holding a lineman was entitled to compensation because he was obligated to make emergency calls or perform services at times other than his regular working hours and he went on a special errand for the employer).

CONCLUSION

Based on the foregoing, we affirm the Appellate Panel's finding Wofford was not acting within the course and scope of his employment at the time of his death.

AFFIRMED.

FEW, C.J., and KONDUROS, J., concur.

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM SPARTANBURG COUNTY
Workers' Compensation Commission

Case No. 2014-001269

Brian Wofford, deceased
Employee, by and through Boisha
Wofford, surviving spouse,

Appellant,

v.

City of Spartanburg,

Employer and Self-Insurer,

and

South Carolina Municipal Insurance Trust Carrier,

Respondents.

PETITION FOR REHEARING

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Respondent Brian Wofford, deceased, by and through Boisha Wofford, his surviving spouse, hereby petitions this Court for rehearing of this case pursuant to Rule 221, SCACR. Respondent respectfully submits that the Court overlooked matters in the Record and misapprehended the law in this case for the reasons set forth in the attached Memorandum in Support of the Petition for Rehearing. As more fully set forth in the Memorandum, Respondents submit that the Court erred in (1) applying the incorrect standard of review; (2) the Court misapprehended the law regarding the going and coming rule; (3) the Court overlooked that there was no evidence in the record to suggest that Mr. Wofford would have traveled to the C.C. Woodson Center but for the duty, task, or errand; and (4) the Court erred in finding that Mr. Wofford was not on a duty, task, or errand at the time of his death such that he met an exception to the going and coming rule.

Respectfully Submitted,

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December 23, 2015
Spartanburg, South Carolina

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM SPARTANBURG COUNTY
Workers' Compensation Commission

Case No. 2014-001269

Brian Wofford, deceased
Employee, by and through Boisha
Wofford, surviving spouse,

Appellant,

v.

City of Spartanburg,

Employer and Self-Insurer,

and

South Carolina Municipal Insurance Trust Carrier,

Respondents.

MEMORANDUM IN SUPPORT OF PETITION FOR REHEARING

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TABLE OF AUTHORITIES

CASES

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Petitioner, Brian Wofford, deceased, by and through Boisha Wofford, the surviving spouse, pursuant to Rule 221, SCACR, respectfully submits this Memorandum in Support of the Petition for Rehearing. Petitioner submits that, in its opinion affirming the ruling of the Appellate Panel, the Court of Appeals applied the wrong standard of review and misapplied the Going and Coming Rule to the facts of the case.

A. The Court Utilized an Incorrect Standard of Review

In affirming the Appellate Panel, the Court held as follows: “We find substantial evidence supports the Appellate Panel’s finding that Wofford’s accident did not meet an exception to the going and coming rule. See Lark v. Bi-Lo, Inc., 276 S.C. 130, 135-36, 276 S.E.2d 304, 306-07 (1981) (providing this court must affirm the findings of fact made by the Appellate Panel if they are supported by substantial evidence).” Analysis of the applicability of the going and coming rule to the instant case under a “finding of fact” standard of review was error, as the issue was instead a question of law for the Court. Consequently, the Appellate Panel’s conclusion regarding the applicability of the going and coming rule should have been provided no deference.

As Petitioner noted in brief, and as Respondent conceded in oral arguments (and as the Record on Appeal makes clear), the parties are in agreement as to the facts of the matter. Respondents called no witnesses at the hearing and no witness testimony conflicted as to the underlying issues. For this reason, it is undisputed that, at the time of his death, Brian Wofford was traveling “directly” to the C.C. Woodson Center to retrieve keys and then to convey them to Tracy Ballew at the Swim Center. See Brief of Respondent, p. 18 (“It is also undisputed that he agreed/volunteered to pick up a key from one of his normal work locations (the C.C. Woodson Center), and deliver it to a subordinate at another location (the Swim Center).”).

In this circumstance, the question for the Court is one of law. In its opinion, the Court relied upon the case of Whitworth v. Window World, Inc., 377 S.C. 637, 661 S.E.2d 333 (2008). In addition to a discussion on the applicability of the going and coming rule, the opinion also includes discussion of the standard of review that would apply to this case. In Whitworth, the employer argued that the Court of Appeals had erred in its decision because it failed to apply the “substantial evidence” standard of review. The Supreme Court disagreed:

Window World first argues that substantial evidence in the record supports the full commission’s finding that Respondent was not charged with a duty or task in connection with his employment at the time of his accident, and therefore, the court of appeals exceeded its scope of review in reversing this finding. We disagree.

The relevant facts in this case were not disputed, and thus, whether Respondent’s injuries are compensable is a question of law. See Grant v Grant Textiles, 372 S.C. 196, 201, 641 S.E.2d 869, 872 (2007) (holding that where there are no disputed facts, the question of whether an accident is compensable is a question of law). For this reason, regardless of whether the court of appeals reached the correct conclusion, the court did not exceed its scope of review. See SC. Code Ann. § 1-23-380(A)(5)(d) (2006) (an appellate court may reverse the full commission’s decision if affected by an error of law).

Whitworth, 377 S.C. at 640, 661 S.E.2d at 335. As is common practice, Respondents drafted a proposed order for the Appellate Panel, which was submitted to the Appellate Panel for its approval, and included conclusions of law within the guise of Findings of Fact, presumably for the purpose of taking advantage of the heightened standard of review. However, the case law is clear that the proper standard of review for the Court on this ultimate issue was as a question of law. Consequently, Petitioner respectfully submits that the Court erred in applying the

“substantial evidence” standard of review and in giving deference to the Appellate Panel’s conclusion as to the application of the going and coming rule.¹

B. The Court Misapprehended the Law Regarding the Going and Coming Rule

Petitioner respectfully submits that, in affirming the Appellate Panel, the Court misapprehended the going and coming rule, as applied to the instant case. Petitioner therefore contends that the decision should be vacated.

In considering the “duty or task” exception to the going and coming rule, the Court held that “[s]imilar to Whitworth, the primary purpose of Wofford’s trip was a personal objective to travel to the recreational center where he performed his work. See 377 S.C. at 641, 661 S.E.2d at 336 (holding a window installer did not meet an exception to the going and coming rule when he was involved in an accident transporting a piece of equipment to a job site).” Yet, in relying on Whitworth, the Court missed a key point to the case.

In Whitworth, the Supreme Court noted: “Under the going and coming rule, an employee going to or coming from *the place where his work is to be performed* is not engaged in performing any service growing out of and incidental to his employment. Therefore, an injury sustained by accident at such time is not compensable under the Workers Compensation Act because it does not arise out of and in the course of his employment.” See Whitworth, 377 S.C. at 641, 661 S.E.2d at 336 (emphasis added). The key question, therefore, in analyzing a case under the going and coming rule is whether the employee was merely going to the place “where his work is to be performed” In the case of the window installer, the “work . . . to be performed” was the installation of the window on a residence, specifically, on that day, to install

¹ Assuming, *arguendo*, that the “substantial evidence” standard of review applies, Petitioner submits that the Appellate Panel’s finding regarding application of the going and coming rule is not supported by competent evidence.

a coil around the window. In contrast, on the day of his death, the “work . . . to be performed” by Brian Wofford was not the physical act of picking the keys up off of a desk or out of a drawer, but of traveling to the C.C. Woodson center to retrieve the keys, then taking them to Ms. Ballew at the Swim Center.² Consequently, unlike the window installer in Whitworth, Wofford was not traveling to the place where his work was to be performed at the time of his death, he was in the process of performing the work. In this case, the “duty or task” exception to the going and coming rule should have applied.

C. There Was No Evidence in the Record to Suggest that Brian Wofford Would Have Otherwise Traveled to C.C. Woodson Center

In affirming the Appellate Panel, the Court seemed to place great emphasis on the fact that Brian Wofford sometimes worked from the C.C. Woodson Center. However, there is no evidence in the Record to suggest that Wofford was planning to work out of an office at the C.C. Woodson Center that morning or that he would have otherwise been traveling to the Center. Instead, all of the evidence shows that Wofford’s only reason for traveling to the C.C. Woodson Center on the morning of his death was to take care of the task given him by Tracy Ballew. Had he not been given this task, he would have presumably traveled to his main office at 100 North Liberty Street in downtown Spartanburg, which is where Ms. Ballew testified she believed him to be when they spoke that morning.

Moreover, the fact that Wofford was traveling to a location where he sometimes worked does not change the underlying analysis of the going and coming rule. Had the keys been located at Ms. Ballew’s house, there would be no doubt that an exception to the going and coming rule applied. As Petitioner suggested at oral argument – if a circuit court judge’s law

² As the Court noted in its opinion, Mr. Wofford was tasked with “retrieving” the keys.

clerk was asked to stop by a courthouse on her way to the office to pick up copy paper, such an errand would plainly fall within an exception to the going and coming rule, even if the clerk and judge occasionally held court at the courthouse as part of the judge's circuit. Why is the instant case any different?

In the analysis of the various cases regarding the going and coming rule, our courts have looked at a variety of factors. The key question is whether the employee was merely going to the place where his work is to be performed, per his regular commute, or was engaged in performing any service growing out of his employment. In this case, Mr. Wofford was engaged in performing a service for his employer – the City of Spartanburg – at the time he was killed, and his death should be found compensable.

D. Wofford Met Exceptions to the Going and Coming Rule

Petitioner submits that the actions of Brian Wofford, at the time of his death, met the duty or task and/or special errand exceptions to the going and coming rule.

In affirming the Appellate Panel, the Court relied on Whitworth and McDaniel v. Bus Terminal Restaurant Management Corp., 271 S.C. 299, 247 S.E.2d 321 (1978). Petitioner respectfully submits that neither is on point with the facts of this case. As noted in section A, above, Whitworth involved an employee whose job it was to install windows at a residence. He was plainly traveling to “the place where his work is to be performed” unlike Mr. Wofford, who was performing the act of retrieving the keys at the time of his death. The McDaniel case, too, is inapplicable. In finding that the case did not meet an exception, the Court noted: “Mrs. McDaniel was notified of the November 5 meeting in advance. She was not called out by her employer to perform an emergency service. She performed no service to her employer while enroute to or from her place of employment and the trip itself was not a substantial part of the

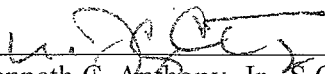
service for which she was employed.” See McDaniel, 271 S.C. at 302, 247 S.E.2d at 323. In contrast, Mr. Wofford was not notified of Ms. Ballew’s request in advance, but instead on the morning of, and he proceeded “directly” to accomplish it. His travel did provide a service to his employer – the City of Spartanburg – as he was in the act of retrieving the keys and, if he did not do so, another employee would have been required to travel to C.C. Woodson for this purpose. At the time of his death, Brian Wofford was not “exercising a personal privilege wholly apart from [his] employment or [his] employer’s interest, but [was] about the performance of an act, incidental to and recognized as of value by [his employer] in connection with [his] duties” See Beam v. State Workmen’s Compensation Fund, 261 S.C. 327, 332, 200 S.E.2d 83, 86 (1973). Petitioner respectfully submits that the Court misapprehended the law regarding the going and coming rule and that the claim meets exceptions.

CONCLUSION

For the reasons set forth above, Petitioner respectfully requests that the Court vacate its opinion affirming the Appellate Panel.

Respectfully Submitted,

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ATTORNEYS FOR THE APPELLANT/PETITIONER

December 23, 2015
Spartanburg, South Carolina

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM THE SOUTH CAROLINA
WORKERS' COMPENSATION COMMISSION

WCC File No. 1207113

Boisha Wofford, alleged surviving spouse, and
Kaelyn Wofford, surviving child, on behalf of
Brian Wofford, deceased employee,..... Appellants,

v.

City of Spartanburg, Employer and Self-Insurer,
through the South Carolina Municipal Insurance Trust,..... Respondents.

**RETURN IN OPPOSITION TO
PETITION FOR REHEARING**

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Pursuant to Rules 221 and 240, SCACR, Respondents the City of Spartanburg and the South Carolina Municipal Insurance Trust hereby oppose Petitioners, Decedent Brian Wofford's surviving spouse and child, Boisha and Kaelyn Wofford's Petition for Rehearing of this Court's Opinion No. 5369 in this matter. This Court did not overlook or misapprehend any points raised by Petitioners, nor did this Court apply an incorrect Standard of Review. Instead, this Court properly and correctly upheld the Commission's determination that Decedent "was not acting within the course and scope of employment at the time of his death." Wofford v. City of Spartanburg, Opinion No. 5369, 2015 S.C. App. LEXIS 250 (Dec. 9, 2015).

I. This Court applied the correct Standard of Review.

Petitioners incorrectly assert that this Court utilized an incorrect Standard of Review. First, this Court set forth the proper Standard of Review in its Opinion, which is that a reviewing court "may not substitute its judgment for that of the Commission as to the weight of the evidence on questions of fact, but may reverse where the decision is affected by an error of law." Murphy v. Owens Corning, 393 S.C. 77, 81-82, 710 S.E.2d 454, 456 (Ct. App. 2011).

Second, the substantial evidence standard applies, not only where there is a conflict between witnesses or evidence, but also where conflicting inferences arise from the facts. See Black v. Barnwell County, 243 S.C. 531, 535, 134 S.E.2d 753, 756 (1964) (where "conflicting inferences may be reached from the evidence, ... the findings of the Commission thereabout [are] binding on this Court ..."). In fact, "[i]t is only when the evidence gives rise to but one reasonable inference that the question becomes one of law for the court to decide." Id., 134 S.E.2d at 755. In this case, to the extent there is a

conflict in the reasonable inferences that can be drawn from the facts, as is suggested by Petitioners' reliance on a narrowly tailored set of facts and continued attempts to downplay the importance of other key facts, the Commission Decision must stand. To the extent there is only one reasonable inference that can be drawn from the facts of this case, again, the Commission Decision must be upheld, as it accounts for all of the facts, and not, as is the case with Petitioners' position, just a narrow subset of the facts that requires speculation¹ in order to prevail.

In Whitworth v. Window World, Inc., 377 S.C. 637, 661 S.E.2d 333 (2008), there is no indication that there was any conflict in the inferences drawn from the facts. Here, in contrast, there is. For example, both sides agree and there is absolutely no dispute that, at the time of Decedent's accident, he was on his way to the C.C. Woodson Center to pick up a key and take it to the Swim Center. (R. p. 40, line 19 – p. 41, line 19) (R. p. 43, lines 10-12) (R. p. 41, lines 8-18). However, Petitioners alternatively ignore or attempt to downplay the significance of the fact that undisputed testimony in the Record of at least three witnesses establishes that Decedent did not work solely out of his downtown office but, instead, often worked out of the various recreation facilities, including the C.C. Woodson Center. (R. p. 16, line 25 – p. 17, line 15 (Mr. Page)) (R. p. 63, lines 8-11 (Mr. Kennedy)) (R. p. 69, lines 5-24 (Mr. Kennedy)) (R. p. 56, lines 9-16 (Ms. McClary)). In fact, as Mr. Page testified, and Petitioners acknowledged at oral argument, Decedent had an office at the C.C. Woodson Center where he worked at times. (R. p. 17, lines 1-3). The inference this Court, the Commission and Respondents drew from these facts is that Decedent planned to start his work day at the C.C. Woodson Center and was on his way to work when the accident occurred. Whether reasonable or

¹ Discussed in more detail in Section II below.

not, the inference Petitioners draw is that Decedent was on some sort of duty or special errand as he was headed to the C.C. Woodson Center.² The Commission's resolution of the conflict between these inferences is supported by substantial evidence in the record and was properly upheld as such by this Court.

Petitioners' assertion that Respondents, who drafted a proposed order for the Commission, somehow disguised Conclusions of Law as Findings of Fact is both unsupported and incorrect. First, the Commission Decision provides that the "findings of Fact set forth above are construed to be conclusions of law, if applicable." (Commission Decision, R. p. 126). Second, the Commission's Finding of Fact No. 7 provides, in pertinent part, that "Decedent was not charged with any work related duties at the time of his accident but instead was on a purely personal mission to get to work He was merely on his way to work to engage in his typical job responsibilities." The Commission's Finding of Fact No. 8 provides "that Decedent was not performing a special task, service, mission, or errand for the City of Spartanburg at the time of his accident. Whether Decedent was headed to his office, the City's employee appreciation lunch, or to one of the recreation centers that he supervises, all of these activities were a customary part of his employment with the City of Spartanburg. The evidence establishes that Decedent was on his way to work to perform his typical job duties, duties that fell within his job description and duties that were expected of him on a regular basis." (*Id.*, R. p. 125). Not only are these factual findings by the Commission, they are supported by overwhelming evidence, as stated herein and in the Final Brief of Respondents.

² It is Respondents' position that this inference is unreasonable but discuss it here for the sake of argument.

Regardless of the Standard of Review applied, this Court reached the right conclusion, *i.e.*, Decedent's fatal accident is not compensable because it does not fall within any of the exceptions to the going and coming rule. See Mizell v. Raybestos-Manhattan, Inc., 281 S.C. 430, 434, 315 S.E.2d 123, 125 (1984) (upholding intermediate appellate decision even though the wrong standard of review was applied because the court reached the correct decision); Gray v. The Club Group, Ltd., 339 S.C. 173, 183, 528 S.E.2d 435, 441-442 (Ct. App. 2000) (harmless error where intermediate appellate court applied the wrong standard of review but reached the right conclusion).

II. This Court properly held that this claim does not fall within the duty or task exception to the going and coming rule.

Petitioners argue that this Court "misapprehended the going and coming rule." Inexplicably, Petitioners take the position that, at the time of his accident, Decedent was not "going to the place 'where his work is to be performed'" Petitioners argue that Decedent's actual job was "traveling to the C.C. Woodson center to retrieve the keys, then taking them to Ms. Ballew at the Swim Center" as opposed to "the physical act of picking the keys up off of a desk or out of a drawer." Illogically, they assert that Decedent "was not traveling to the place where his work was to be performed at the time of his death, he was in the process of performing the work." Riding his motorcycle to work, where his first task was to retrieve some keys, does not magically convert his work commute into the work itself. Such sophistry belies the difficulty even Petitioners have of describing Decedent's activity at the time of the accident as something other than simply going to work.

Like the claimant in Whitworth, here Decedent was tasked with job duties once he arrived at work but was injured during his commute to work. The fact that Decedent

chose to start his day by picking up keys at one of his regular places of work and taking it to another of his regular places of work does not somehow transform his normal commute into an exception to the going and coming rule. Decedent was not tasked with any duty until he arrived at work at the C.C. Woodson Center. Driving or riding his motorcycle to work in the morning was not part of any of his work duties. (R. p. 71, lines 13-21). There is no evidence that suggests otherwise.

Petitioners speculate that Decedent “would have presumably traveled to his main office at 100 North Liberty Street in downtown Spartanburg,” the morning of his accident. (Pet. p. 7). First, that conclusion is nothing more than pure speculation and it is well-established that a workers’ compensation award may not be based on speculation. *E.g., Tiller v. National Health Care Ctr. of Sumter*, 334 S.C. 333, 339, 513 S.E.2d 843, 845 (1999) (explaining that “[w]orkers’ compensation awards must not be based on surmise, conjecture or speculation”). Second, there is no evidence whatsoever that Decedent planned to start his day on May 18, 2012 at the North Liberty Street office. Instead, the evidence overwhelmingly establishes that he worked at the various recreation facilities and sometimes started his day at a location other than the downtown office, and in particular the C.C. Woodson Center office. (R. p. 16, line 25 – p. 17, line 15) (R. p. 56, lines 9-16) (R. p. 63, lines 8-11) (R. p. 69, lines 5-24).

Even if, for the sake of argument, he had planned to start his day at the downtown office on May 18, 2012 but changed his mind after speaking with Ms. Ballew,³ both the C.C. Woodson Center and the Swim Center are regular workplaces for Decedent and the

³ Petitioners continue to imply that Ms. Ballew was in a position to “give” Decedent tasks to perform, with the further implication that he had no option but to comply. However, Decedent was Ms. Ballew’s supervisor, not the other way around. (R. p. 42, lines 20-22). As a result, he was not obligated to follow her “orders.” Instead, she asked and he agreed to do what are normal parts of his job once he arrived at work. (R. p. 42, line 23 – p. 43, line 9).

tasks he was going to perform once he arrived at work were part of his normal job duties. (R. p. 16, line 25 – p. 17, line 15) (R. p. 63, lines 8-11) (R. p. 69, lines 5-24) (R. p. 56, lines 9-16) (R. p. 42, line 16 – p. 43, line 18) (R. p. 67, line 15 – p. 68, line 12). Thus, even if Respondents' speculation was correct, which Respondents do not concede, all that would have changed was what Decedent was going to do once he got to work, and at which of his normal workplaces he would start his day. Under Petitioners' theory, an employee who normally supervised three different offices would fall within the duty or task exception if he planned to start his day at Location #1 but was asked to pick up something at Location #2 and take it to Location #3, all of which were a normal part of his job duties, and was injured on his way to work. Under the example, the hypothetical claimant's claim is clearly barred by the going and coming rule, as is Petitioners' claim here.

As Petitioners suggest, had Decedent been traveling to some other location, such as a personal residence, to retrieve the needed keys, this case might (or might not) have had a different outcome.⁴ However, those are not the facts of this case and the fact that he was going to one of his normal places of work to do a routine task once he arrived at work does control the analysis here. This Court correctly upheld the Commission's

⁴ Respondents' recollection of the hypothetical suggested by Petitioners at oral argument was where a law clerk stopped by a Staples (or similar office supply store) for paper on her way to the office, not where a clerk stopped at the courthouse itself to pick up supplies. Despite the fact that a party cannot raise a new argument on rehearing, McClurg v. Deaton, 395 S.C. 85, 87 n.2, 716 S.E.2d 887, 888 n.2 (2011) ("[i]t is axiomatic that an issue cannot be raised for the first time on rehearing"), Petitioners' hypothetical still fails. Here, Decedent supervised all of the City's recreation facilities, had an office at the C.C. Woodson Center where he routinely worked, and the tasks he planned to perform once he got to work were a normal part of his job. In Petitioners' hypothetical, if the courthouse was one of the clerk's normal (even if occasional) workplaces, it is not by any means a given that an injury that occurred after she picked up paper there would "plainly fall within an exception to the going and coming rule ..." (Pet. p. 8).

finding that Decedent's accident does not come within the duty or task exception to the going and coming rule.

III. This Court properly held that this claim does not fall within the special errand exception to the going and coming rule.

Petitioners appear to continue to argue that Decedent's accident falls within the special errand exception to the going and coming rule. They are incorrect on this point as well. Addressing only one of the two "special errand" cases cited by this Court, Petitioners attempt to distinguish McDaniel v. Bus Terminal Rest. Mgmt. Corp., 271 S.C. 299, 247 S.E.2d 321 (1978) on the basis that Decedent was asked that morning to pick up the keys at C.C. Woodson Center as opposed to having been notified in advance of this request. This is a distinction without any substantive impact. In McDaniel, the employee meeting was "a normal, customary aspect of [the claimant's] job ..." 271 S.C. at 303, 247 S.E.2d at 323. Here, picking up items at the C.C. Woodson Center to take to other recreation department facilities was a routine and normal part of Decedent's job. (R. p. 43, lines 7-9) (R. p. 69, lines 19-21). In McDaniel, the claimant was performing no service or task for her employer while on the trip to her workplace or on the return trip. 271 S.C. at 303, 247 S.E.2d at 323. In the case at hand, Decedent was not tasked to perform any work-related responsibilities until he arrived at work at the C.C. Woodson Center.

Tellingly, Petitioners do not even attempt to distinguish this case from Bickley v. South Carolina Elec. & Gas Co., 259 S.C. 463, 192 S.E.2d 866 (1972), wherein the Supreme Court adopted the "special errand" exception to the going and coming rule. In Bickely, the Supreme Court described the rule as:

When an employee, having identifiable time and space limits on his employment, makes an off premises journey which would normally not be covered under the usual going and coming rule, the journey may be brought within the course of employment by the fact that the trouble and time of making the journey, or the special inconvenience, hazard, or urgency of making it in the particular circumstances, is itself sufficiently substantial to be viewed as an integral part of the service itself.

259 S.C. at 469, 192 S.E.2d at 869. To begin with, Decedent did not have “identifiable time and space limits on his employment.” Instead, he set his own hours and worked out of multiple facilities. (R. p. 17, line 7 – p. 18, line 25) (R. p. 26, line 22 – p. 27, line 13) (R. p. 63, line 14 – p. 74, line 3) (R. p. 67, lines 3-10) (R. p. 68, lines 19-24). In addition, Decedent was not making an “off premises journey” but simply was going to work. (R. p. 50, line 14 – p. 51, line 16). Further, Decedent was not injured while making “emergency calls or to perform[ing] service at times other than during his regular working hours ...” 259 S.C. at 470, 192 S.E.2d at 870. Instead, it was well established that Decedent’s accident occurred during his normal working hours on a normal working day and, in fact, a number of people thought he was or should have already been at work. (R. p. 29, lines 13-18 (Mr. Rice)) (R. p. 44, lines 19-21 (Ms. Ballew)) (R. p. 65, line 20 – p. 66, line 2 (Mr. Kennedy)) (R. p. 68, lines 13-16 (Mr. Kennedy)) (R. p. 70, line 17 – 71, line 5 (Mr. Kennedy)). Thus, there is no element of the special errand exception that would apply in the instant case.

Finally, Petitioners again confuse and attempt to merge case law dealing with whether injuries incurred by traveling employees are within the course of employment, with the going and coming rule. However, the analysis used to determine whether a traveling employee is within the course of employment is not an additional exception to

the going and coming rule.⁵ As a result, Petitioners' reliance on Beam v. State Workmen's Compensation Fund, 261 S.C. 327. 200 S.E.2d 83 (1973) is misplaced. In Beam, the claimant was not traveling to or from work; instead, she was injured while traveling out of town to attend a conference that her supervisor not only encouraged but expected that she attend. 261 S.C. at 332-333. 200 S.E.2d at 86. It is undisputed that Decedent's trip to Moore, SC on the morning of May 18, 2012 was purely for personal reasons. His commute to work was simply that, his commute to work.

⁵ For example, the fact that retrieving and delivering the key to the Swim Center once he arrived at work provided a service or benefit to the City does not make this claim compensable. Presumably, every task Decedent intended to accomplish once he arrived at work was intended to benefit his employer.

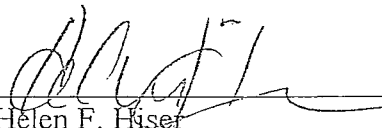
CONCLUSION

This Court did not apply the wrong Standard of Review, or misapprehend or misapply the law concerning the going and coming rule and its exceptions. On the contrary, both this Court and the Commission correctly held that, under the facts of this case, Petitioners' claims are barred by the going and coming rule and no exceptions apply. As a result, this Court should deny Petitioners' Petition for Rehearing.

Respectfully submitted,

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In the Court of Appeals

APPEAL FROM SPARTANBURG COUNTY
Workers' Compensation Commission

Case No. 2014-001269

Brian Wofford, deceased
Employee, by and through Boisha
Wofford, surviving spouse,

Appellant,

v.

City of Spartanburg,

Employer and Self-Insurer,

and

South Carolina Municipal Insurance Trust Carrier,

Respondents.

PETITIONER'S REPLY AS TO PETITION FOR REHEARING

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TABLE OF AUTHORITIES

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As Respondent's Return makes clear, the dispute in this matter is reduced to this question: At the time that Brian Wofford died, was he simply going to work, where he would then execute his first task of the day by picking up the keys and delivering them to Tracy Ballew at the Swim Center, or was he in the process of executing the task? The answer to this question rests on undisputed facts: Petitioner submits that this is a question of law and should have been decided, without deference to the Full Commission, in favor of Petitioner.

I. Standard of Review

Respondents claim that the Court of Appeals properly considered this case under the substantial evidence standard of review. First, Respondents seem to reverse the position they took in their brief and at oral argument that the case centers on undisputed facts. Now, Respondents claim that, while the facts may be undisputed, difference inferences may be drawn from the facts, such as whether Mr. Wofford intended to start his day at the C.C. Woodson Center, or elsewhere.¹

This misses the point. The question of whether the facts of this case, as applied to the law, meet an exception to the going and coming rule is not a finding of fact. It is the ultimate question of the case and is therefore a conclusion of law. Consequently, the Court's statement that it found that "substantial evidence supports the Appellate Panel's *finding* that Wofford's accident did not meet an exception to the going and coming rule" is in error. (emphasis added). It is clear from this statement, as well as the following citation to Lark v. Bi-Lo, Inc., which references affirming findings of fact, that the Court treated the ultimate question as one of fact rather than law. 276 S.C. 130, 276 S.E.2d 304 (1981). This was error.

¹ Incidentally, this "inference" played no role in the Court's opinion.

The case cited by Respondents, Black v. Barnwell County, provides a clear example of the distinction. The Black case concerned whether a Sheriff who suffered a heart attack on the job sustained a compensable injury. Consequently, the key question was whether the heart attack “was caused by unusual strain and over-exertion in the performance of the duties of his employment and, therefore, was a compensable accident.” Black, 243 S.C. 531, 134 S.E.2d 753 (S.C. 1964). The lower court made a finding that the heart attack was unrelated. This is not the same as the situation in the instant case where the Full Commission made a “finding” that the going and coming rule did not apply.

Where the relevant facts are undisputed, the question is one of law. See Whitworth v. Window World, Inc., 377 S.C. 637, 640, 661 S.E.2d 333, 335 (2008). At oral arguments, Respondents conceded that the relevant facts are, indeed, undisputed. Even in its Return, Respondents fail to cite a single disputed fact, instead contending only that Petitioner “ignore or attempt to downplay” certain facts. This is, of course, the essence of being a lawyer.

Petitioner respectfully submits that Whitworth is directly on point on this issue and the Court of Appeals erred in analyzing the question as a finding of fact, and therefore giving deference to the Full Commission’s ruling on the matter.

II. Exceptions to the Going and Coming Rule Apply

Petitioner will not rehash all arguments set forth in the Petition for Rehearing, but wishes to address various points raised in Respondents’ Return.

First, Respondents continue to make reference to the fact that Mr. Wofford was not a subordinate of Tracy Ballew. As Petitioner noted at oral arguments, nothing in case law indicates that this is of any importance, and Respondents have cited no authority for such. The key question remains – at the time of his death, was Mr. Wofford “engaged in performing any

service growing out of and incidental to his employment” or was he simply commuting to work? See Matute v. Palmetto Health Baptist, 391 S.C. 291, 296, 294, 705 S.E.2d 472, 475 (Ct. App. 2011).

Second, Petitioner takes issue with Respondents’ assertion in footnote 4 of the Return that the example cited therein was not raised at oral arguments. Respondents did raise the example at oral arguments immediately following the supply store example, and would be glad to make reference to the video of the arguments.

Third, Petitioner disagrees with Respondents’ assertion that there is “no evidence whatsoever” that Mr. Wofford had planned to start his day at the North Liberty Street office. Evidence in the record established that, while he sometimes worked from the C.C. Woodson Center, he had a physical office at North Liberty Street. (R. p.16, lines 12-18). While there was testimony that it was “normal” for Mr. Wofford to go to the recreational centers as part of his job, his physical office was at North Liberty Street. (R. p.67, lines 11-14).

Fourth, Respondents make much of testimony that the act of picking up keys might fall within Mr. Wofford’s job duties. This point actually cuts against Respondents’ arguments. Consider the “electrical lineman” in Bickley v. South Carolina Electric & Gas Co., 259 S.C. 463, 192 S.E.2d 866 (1972), who was injured while on an outing to repair electrical lines. Would his duties on that day be considered within his job duties?² Certainly. His claim is compensable for that very reason. In the same way, Mr. Wofford was, at the time of his accident, “engaged in performing [a] service growing out of and incidental to his employment” and his claim should be similarly compensable. See Matute, 391 S.C. at 296, 705 S.E.2d at 475.

² A similar situation is posed in Gray v. Club Group, Ltd., 339 S.C. 174, 528 S.E.2d 437 (2000), cited in Petitioner’s initial brief to this Court, in which an employee transported documents every day.

CONCLUSION

At the time of his death, Mr. Wofford was not merely commuting to work, but was about the completion of a task. For the reasons set forth above, Petitioner respectfully requests that the Court vacate its opinion affirming the Appellate Panel.

Respectfully Submitted,

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January 8, 2016

Spartanburg, South Carolina

The South Carolina Court of Appeals

Boisha Wofford, alleged surviving spouse, and Kaelyn
Wofford, surviving child, on behalf of Brian Wofford,
deceased employee, Appellants,

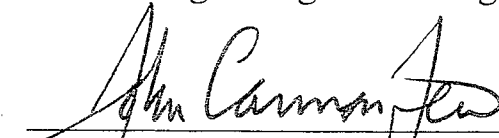
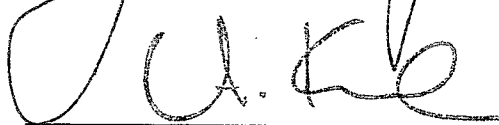
v.

City of Spartanburg, through the South Carolina
Municipal Insurance Trust, Respondents.

Appellate Case No. 2014-001269

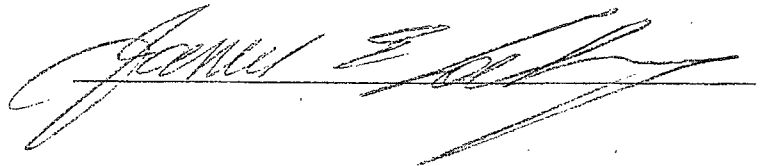
ORDER

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

C.J.

J.



J.

Columbia, South Carolina

cc:

Kenneth C. Anthony, Jr., Esquire
Stephanie Lamb Pugh, Esquire

FILED

January 21, 2016