THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM THE
SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION

Appellate Panel
Avery Wilkerson, Susan Barden, Mike Campbell

SCWCC File No. 1518978
Appellate Case No. 2017-001096

RECEIVED
SEP 18 2017
SC Court of Appeals

Pamela Grady, Employee, Claimant, Appellant,
v.
Magnolia Manor of Inman, Employer, and Zurich American Insurance Company of Illinois c/o Gallagher Bassett Services, Inc., Carrier, Respondents.

INITIAL REPLY BRIEF OF APPELLANT

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419 S.C. 98, 796 S.E.2d 150 (Ct. App. 2016) 2

APPELLANT'S REPLY TO BRIEF OF RESPONDENTS

Respondents make a single argument in favor of their case – that Grady's fall was "unexplained" and thus not compensable. Grady again submits that this is a misinterpretation of "unexplained fall" jurisprudence and that Grady repeatedly explained the circumstances of her fall throughout the course of her claim.

The crux of an "unexplained fall" is whether the origin of the fall can be explained by either the injured worker or by witnesses (or some other method). In the instant case, Grady has explained her fall from the very beginning. She was walking to her car after just having exited the building upon concluding her work for the day. As she was walking, she stumbled, and this caused her to fall.

Just as in Nicholson v. SC Department of Social Services, 411 S.C. 381, 769 S.E.2d 1 (2015), Grady' fall was neither idiopathic nor unexplained. It was not idiopathic because it did not result from any internal breakdown in Grady's body. There is no evidence whatsoever to this effect, and the Respondents admit that this is not an idiopathic injury case. (Brief of Respondent p. 9) Furthermore, and more importantly, Grady explained her fall. The origin of Grady's fall was the stumble. Asking Grady to relate back her fall to anything more than the stumble is doing nothing more than asking Grady to point to a "fault" that caused her fall. Respondents argue that Grady must show that her fall was the fault of something more than her stumble, but that is exactly the kind of misinterpretation that the Nicholson case warns against. "The court of appeals erred in requiring a claimant to prove the existence of a hazard or danger because it erroneously injected fault into workers' compensation law." Nicholson, at p. 389. Grady need not show that she tripped or slipped on any particular hazard. In fact, there was no hazard or danger present in

Grady's case. And, even if there was, she is not required to prove as much. What she is required to do is give a factual explanation of the circumstances of her fall.[1] She did just that, repeatedly, during the course of this claim. She was not unconscious; she was not in a coma. She was not struck without memory due to some external or internal force. She stumbled while working and broke her shoulder and her claim should be found compensable. There is no substantial evidence to support the Commission's conclusion that Grady's fall was unexplained, because the only evidence is that she did explain that she stumbled, fell, and was injured. Plus, it was legal error to conclude that Grady's fall was "unexplained."

For all of the reasons set for in Grady's Brief of Appellant, Grady demonstrated that she was within the course of her employment when she suffered an accidental, non-idiopathic fall that resulted in an injury that was incidental to and arose out of her employment. Furthermore, her fall was not unexplained. The Decision and Order of the Appellate Panel should be reversed, and this Court should find as a matter of law that Grady's claim is compensable.

Respectfully Submitted,

September 15, 2017

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[1] This key factor is what differentiates Grady's case from other unexplained fall cases. For example, in the Turner v. SAIIA Construction, 419 S.C. 98, 796 S.E.2d 150 (Ct. App. 2016) case, the claimant was unconscious when he was found on the ground next to his truck. He had no memory of his fall and was unable to give any factual explanation for what happened. In this case, Grady has always been able to give a factual explanation for how she became injured.

Attorney for Respondent

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PROOF OF SERVICE

I certify that I have served the Initial Reply of Appellant on Magnolia Manor of Inman, Employer, and Zurich American Insurance Company of Illinois, c/o Gallagher Bassett Services, Inc., by depositing copies in the United States Mail, postage prepaid, on September 15, 2017, addressed to their attorney of record Landon L. Hughey, Esq., McAngus Goudelock & Courie, LLC, PO Box 12519, Columbia SC 29211.

[signature on following page]
September 15, 2017

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September 15, 2017

The Honorable Jenny Abbott Kitchings
Clerk, South Carolina Court of Appeals
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RE: **Pamela Grady, Employee, Claimant, Appellant v. Magnolia Manor of Inman, Employer, and Zurich American Insurance Company of Illinois c/o Gallagher Bassett Services, Inc., Carrier, Respondents**
WCC File No: 1518978
Appellate Case No: 2017-001096

Dear Ms. Kitchings:

Please find enclosed for filing the original and two (2) copies of the Initial Reply Brief of Appellant, along with our Proof of Service of same, in the above-referenced case. We would sincerely appreciate you filing the original and returning a stamped copy in the enclosed, self-addressed, stamped envelope.

As always, we greatly appreciate your assistance in this matter.

Sincerely,

THE CAROLINA LAW GROUP, LLC

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MKB,Jr./aro
Enclosures

cc: Landon Hughey, Esquire (w/encl.)

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