THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM THE SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION APPELLATE PANEL

Avery B. Wilkerson, Jr., Commissioner
T. Scott Beck, Commissioner
Aisha Taylor, Commissioner

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SC Court of Appeals

W.C.C. File No. 1503413
Appellate Case No. 2017-001408

James Thorpe, Employee ..... Respondent,

v.

Town of Bowman, Employer, and State Accident Fund, Carrier ..... Appellants

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INITIAL BRIEF OF RESPONDENT

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STATEMENT OF ISSUE ON APPEAL

WHETHER SUBSTANTIAL EVIDENCE EXISTS TO AFFIRM THE FULL COMMISSION IN FINDING THAT THE CLAIMANT SUSTAINED INJURY BY ACCIDENT, ARISING OUT OF AND IN THE COURSE OF HIS EMPLOYMENT.

STATEMENT OF THE CASE

On October 14, 2015, the Claimant filed a Form 50, Request for a Hearing, requesting that the single Commissioner find that the Claimant had (1) sustained injury by accident, arising out of and in the course of his employment on February 27, 2015; (2) an injury to his left hand; and (3) medical care for his left hand. The Defendants filed a Form 51 on November 17, 2015, denying the Claimant sustained injury by accident arising out of his employment and denying that the Claimant was entitled to medical care. A Hearing was held before Commissioner Melody L. James on February 3, 2016 in St. Matthews, South Carolina with an Order being issued on November 21, 2016.

The Order found that the Claimant did not sustain injury by accident, arising out of and in the course of his employment, and was not entitled to medical care for the dog bite he received on his left hand. The Claimant filed a Form 30, Request for Commission Review on December 5, 2016. By Order dated May 23, 2017, the Full Commission reversed the single Commissioner and found that the Claimant sustained injury by accident, arising out of and in the course of his employment, and was entitled to medical care. The Defendant filed an appeal to this Court in a timely manner.

STANDARD OF REVIEW

"The South Carolina Administrative Procedures Act establishes the standard for judicial review of decisions of the Commission." Forrest v. A.S. Price Mech., 373 S.C. 303, 306, 644 S.E.2d 784, 785 (Ct. App. 2007)(citing Lark v. Bi-Lo, Inc., 276 S.C. 130, 134-35, 276 S.E.2d

304, 306 (1981)). "In workers' compensation cases, the Full Commission is the ultimate fact finder." Shealy v. Aiken County, 341 S.C. 448, 455, 535 S.E.2d 438, 442 (2000). "This court reviews facts based on the substantial evidence standard." Thompson v. S.C. Steel Erectors, 369 S.C. 606, 612, 632 S.E.2d 874, 877 (Ct. App. 2006). "Under the substantial evidence standard, the appellate court may not substitute its judgment for that of the Commission as to the weight of the evidence on questions of fact." Forrest, 373 S.C. at 306, 644 S.E.2d at 785 (citing S.C. Code Ann. §1-23-380(A)(5)). "The Appellate Panel's decision must be affirmed if supported by substantial evidence in the record." Shuler v. Gregory Elec., 366 S.C. 435, 440, 622 S.E.2d 569, 571 (Ct. App. 2005)(citing Sharpe v. Case Produce, Inc., 336 S.C. 154, 160, 519 S.E.2d 102, 105 (1999). It is not within the reviewing court's province to reverse findings of the Appellate Panel which are supported by substantial evidence. Frame v. Resort Servs., Inc., 357 S.C. 520, 528, 593 S.E.2d 491, 495 (Ct. App. 2004).

Regardless of conflict in the evidence, either of different witnesses or of the same witness, a finding of fact by the Commission is conclusive. Glover v. Columbia Hosp. of Richland County, 236 S.C. 410, 418, 114 S.E.2d 565, 569 (1960). The findings of an administrative agency are presumed correct and will be set aside only if unsupported by substantial evidence. Frame, 357 S.C. at 528, 593 S.E.2d at 495.

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 conclusion the administrative agency reached in order to justify its action. Hall v. Desert Aire, Inc., 376 S.C. 338, 347-48, 656 S.E.2d 753, 758 (Ct. App. 2007)(citing Pratt v. Morris Roofing, Inc., 357 S.C. 619, 594 S.E.2d 272 (2004). The possibility of drawing two inconsistent conclusions from the evidence does not prevent an administrative

agency's findings from being supported by substantial evidence. Hall, 376 S.C. at 348, 656 S.E.2d at 758.

STATEMENT OF THE FACTS

At the Hearing the Claimant testified that he is 38 years old and grew up in Orangeburg, South Carolina. (R. at p. 7, ll. 7-14). The Claimant attended Orangeburg-Wilkerson High School and received his GED in 1995. (R. at p. 7, ll. 17-21). The Claimant began working in law enforcement in 2005 for the Orangeburg Sheriff's Office as a road deputy. (R. at p. 7, ll. 22-25).

At the time of the accident the Claimant had been working for the Town of Bowman as a police officer since September or October of 2014. (R. at p. 9, ll. 9-20). The Claimant testified that from the moment he started with the Town of Bowman, he and Chief Pendarvis talked about the Claimant getting a K-9 unit. (R. at p. 8, ll. 24-25; p. 9, ll. 1-7). The Claimant and the Chief were the only two employees and, typically, the Chief would work the day shift and the Claimant would work the night shift. (R. at p. 9, ll. 21-25; p. 10, ll. 1-7).

The Town of Bowman owned three K-9 units at the time of the accident, all under the care of Chief Pendarvis. (R. at p. 10, ll. 15-24). The Claimant testified that the Chief told him he owns the dogs, but he did not know whether the Chief owned them or the Town. (R. at p. 11, ll. 2-6). The Claimant testified that he and Chief Pendarvis had a conversation in which the Chief offered him a puppy, and said they could train the puppy for K-9 use. (R. at p. 12, ll. 1-5).

Before the Claimant could train the puppy, he received a call from a former co-employee at the Orangeburg Sheriff's Office, Sergeant Steven Thompson. The Claimant and Sergeant Thompson kept in touch and the Claimant shared with the Sergeant that he was looking for a K-9 unit. (R. at p. 11, ll. 17-25). Sergeant Thompson offered the Claimant a fully trained K-9 unit,

Racks, for free. (R. at p. 12, ll. 6-15). Sergeant Thompson told the Claimant that Racks was certified in narcotics, tracking, article location, and attack. (R. at p. 13, ll. 4-7). The Claimant testified that he told Chief Pendarvis on Wednesday, February 25th that he had a K-9 and wanted to start using it for the Town of Bowman. (R. at p. 13, ll. 11-17). The Claimant stated that he called the Chief and informed him the Sergeant Thompson had a dog trained in these areas and asked him, "would it be something we could – that I could use in Bowman." (R. at p. 13, ll. 20-24). Chief Pendarvis replied, "Yeah" and that he would meet the Claimant at the police department. (R. at p. 13, ll. 24-25; p. 14, ll. 1).

That evening, Chief Pendarvis gave the Claimant a crate for Racks to sit in when in his vehicle. (R. at p. 14, ll. 8-17). The Claimant then left work and went to pick up Racks from Sergeant Thomspon. (R. at p. 14, ll. 22-24). On Thursday, February 26th the Claimant brought Racks to work with him at 11:42 am per his time sheet. (R. at p. 16, ll. 4-7; Defendants' Exhibit 1). The Chief arrived several hours later and informed the Chief that Racks was trained in "attack, the drugs, narcotics, and all that." (R. at p. 17, ll. 13-14). The Chief then placed drugs in various areas of the department and tested Racks ability to find them. (R. at p. 17, ll. 14-25). At the end of the testing/training the Claimant testified that the Chief said that the Town could use Racks and gave the Claimant a list of commands to use with Racks. (R. at p. 18; 22-25; p. 19, ll. 1-3).

At that time the Chief told the Claimant he could not use the command for "attack" in the Town of Bowman and the Claimant agreed. (R. at p. 19, ll. 10-14). The Claimant testified the Chief told him, "Well, since you're going to have a K-9 now, go ahead and get into the old charger, take the backseat out, put the kennel in the backseat of the old charger 'cause that's the K-9 car." (R. at p. 30, ll. 23-215; p. 31, ll.1). Prior to that instruction by the Chief, the Claimant

was using a "new charger" and switched vehicles in order to remove the backseat. (R. at p. 31, ll. 2-7). The Claimant removed the back seat from the K-9 vehicle and placed the back seat in the storage room of the police department. (R. at p. 10, ll. 25; p. 20, ll. 1-6). Racks remained at the police station for the remainder of the day until the Claimant left work at 10:01 pm that evening and took Racks with him. (R. at p. 20, ll. 15-19; p. 21, ll. 20-25; Defendants' Exhibit 1).

It was the Claimant's understanding that his responsibility was to take care of Racks – "that is like a child to you basically." (R. at p. 20, ll. 25). The Claimant was responsible to feed, bathe and train Racks, and care for him 24/7. (R. at p. 21, ll. 1-2; p. 26, ll. 1-2). Chief Pendarvis gave the Claimant dog food for Racks from the K-9 room at the police department. (R. at p. 21, ll. 3-8). That food had been donated to the town to help feed the departments K-9s. (R. at p. 21, ll. 4-5). Based on conversations with the Chief about having a K-9, the Claimant's understanding was that the Town of Bowman would pay for veterinarian bills and shots but that he was responsible for "anything else as far as feeding and bathing and stuff like that." (R. at p. 22, ll. 3-11).

After leaving work the Claimant took Racks home, let him out to use the bathroom in his backyard, interacted, with him and then put him in a kennel for the night inside his home. (R. at p. 22, ll. 21-25; p. 23, ll. 1-4). The following morning the Claimant took Racks outside and began training – commands and rewards. (R. at p. 23, ll. 10-22). The Claimant testified he believed it was part of his job to work and train Racks as "much as possible" at a minimum of four hours per week. (R. at p. 60, ll. 1-6). If Racks performed the task given, the Claimant would award him by throwing a piece of rubber hose and Racks would retrieve it. (R. at p. 23, ll. 17-22). While Racks was in the back corner of the Claimant's yard retrieving the rubber hose,

the Claimant went out of the backyard to his vehicle to retrieve the bag of food that he had been given by the Chief. (R. at p. 23, ll. 23-24; p. 24, ll. 1-7).

The Claimant believes the gate to the fence did not latch properly allowing Racks to exit the backyard and run onto his elderly bedridden neighbor's screened-in front porch. (R. at p. 23, ll. 24-25; p. 24, ll. 12-14; p. 47, ll. 22-24). As the door to the porch swings inward and Racks was on the porch he was trapped within his neighbor's porch and was "running into the screen on both sides trying to get out." (R. at p. 24, ll. 15-17; p. 25, ll. 4-5). The Claimant opened the screen door and commanded Racks to "come" however the Claimant believes the dog was "disoriented" from the screen door slamming and would not respond. (R. at p. 25, ll. 6-13). The Claimant described Racks as "in a chaos" and as he approached the door the Claimant commanded him to stop. (R. at p. 25, ll. 16-19). When Racks did not stop, the Claimant grabbed his collar to keep him from getting away. (R. at p. 25, ll. 18-19). When the Claimant did this, Racks bit his left hand. (R. at p. 25, ll. 20-21).

Once Racks bit the Claimant he did not let go of his left hand, locking down on his hand and beginning to shake his head. (R. at p. 26, ll. 17-20). At that point the Claimant grabbed the dog with his right hand and "choked him out 'till he just passed out." (R. at p. 26, ll. 20-25). Once Racks regained consciousness he obeyed all the Claimant's commands and walked with the Claimant to the squad car where the Claimant placed Racks in the kennel in the back seat. (R. at p. 27, ll. 6-16). The Claimant went inside, called his wife to take him to the hospital, wrapped his hand in a towel, and called Chief Pendarvis to let him know that he would not be able to work. (R. at p. 28, ll. 6-16).

On cross-examination, the Claimant testified that he is on call 24 hours a day and the only time he would not be on call is if he requests a day off. (R. at p. 37, ll. 18-20; p. 38, ll. 1-5).

The Claimant agreed with defense counsel that he was obligated to report an illness or injury to the K-9 to the Chief and that the Town would pay for an annual medical evaluation. (R. at p. 39, ll. 7-10, 17-22). The Claimant reiterated that he was allowed to use Racks as a K-9, however he was not to use him for apprehension. (R. at p. 43, ll. 1-5). The Claimant testified that after the accident Chief Pendarvis came to his house and removed the dog. (R. at p. 57, ll. 7-10).

The next witness was Kevin Lee Pendarvis, the Chief of Police for the Town of Bowman. The Chief admitted that he performed drills with the Claimant and Racks on Thursday and Racks passed the tests. (R. at p. 66, ll. 21-25; p. 67, ll. 1-5). The Chief also admitted the Claimant informed him that Racks could be used for narcotics and apprehension. (R. at p. 67, ll. 9-13). At this point the Claimant and the Chief's stories diverge, with the Chief testifying that he informed the Claimant that they could not use Racks due to the Town policy that no K-9 will be "ordered" to apprehend. (R. at p. 67, ll. 12-15; p. 68, ll. 2-4)(emphasis added). However, when pressed on this issue the Chief admitted that no town policy exists stating that a dog cannot be trained in apprehension, simply that an Officer cannot command the K-9 to apprehend. (R. at p. 68, ll. 22-25; p. 69, ll. 1-4).

Chief Pendarvis denied telling the Claimant he could use Racks as a K-9, that he could remove the backseat from the old charger and testified that Racks was never to be used. (R. at p. 70, ll. 1-14). Claimant's counsel asked the Chief if he had reprimanded the Claimant for violating his orders,

Q. All right. Did you ever write him up for that?

A. No, sir.

Q. Did you ever put anything in his employee file about that?

A. No, sir.

Q. Did you ever - - did you give him a verbal warning, a written warning, any type of thing?

A. No, sir, just told him not to use the dog.

Q. All right. So he – so it's your testimony he directly disobeyed you, yet there is nothing that you ever did about him directly disobeying you? You didn't fire him?

A. No, sir.

Q. You didn't write him up? You didn't do anything; am I correct?

A. Yes, sir.

(R. at p. 71, ll. 6-21).

During questioning from Claimant's Counsel, the Chief also testified that he specifically told the Claimant he could not use Racks as a K-9 and that he told him to "take the dog home." (R. at p. 77, ll. 6-9, 19-20). The Chief agreed that Racks was present at the police station for at least four and a half (4½) hours and based on the Claimant's testimony, the training only took 45 minutes. (R. at p. 78, ll. 6-8; p. 18, ll. 12-14). When questioned why he wasn't "sure that he [the Claimant] took that dog home" the Chief replied, "I can't answer that." (R. at p. 79, ll. 10-13).

ARGUMENT

"The Workers' Compensation Act is to be liberally construed toward the end of providing coverage rather than denying coverage in order to further the beneficial purposes for which it was designed." Bentley v. Spartanburg Cty, 398 S.C. 418, 730 S.E. 296 (2012). "Any reasonable doubt as to the construction of the Workers' Compensation Act will be resolved in favor of coverage." Mauldin v. Dyna–Color/Jack Rabbit, 308 S.C. 18, 22, 416 S.E.2d 639, 641 (1992).

All the provisions of the Workers' Compensation Act are broadly construed in favor of coverage because "...the Workmen's Compensation Act is a form of social legislation wherein and whereby the employer and employee surrender benefits previously enjoyed under the common law in exchange for other benefits provided under the Act." Bagwell v. Ernest Burwell, Inc., 227 S.C. 168, 171, 87 S.E.2d 583, 584 (1955). "The employee receives the right to swift and sure compensation; the employer receives immunity from tort actions by the employee. This quid pro quo approach has worked to the advantage of society as well as the employee and the employer." Parker v. Williams & Madjanik, Inc., 275 S.C. 65, 69-70, 267 S.E.2d 524, 526 (1980).

The Supreme Court has observed the broad construction referenced above applies to the "arising out of and in the course of the employment" coverage issue. "It is the general policy in South Carolina to construe all provisions of the Workers' Compensation Act, including § 42-1-160, in favor of coverage, and any reasonable doubts are resolved in favor of the coverage." Davis v. S.C. Dep't of Corr., 289 S.C. 123, 125, 345 S.E.2d 245, 246 (1986). "Where employer and employee are subject to the compensation act, ... an injured employee should not be excluded from the benefits of the law upon the ground that the accident did not arise out of and in the course of his employment when there is substantial doubt (arising from the proven facts) of the propriety of such conclusion. These words are construed broadly and should continue to be so construed." Pelfrey v. Oconee Cty, 207 S.C. 433, 439, 36 S.E.2d 297, 299 (1945).

1. The Claimant Sustained Injury by Accident Arising Out of and in the Course of his Employment.

The question before this Court is straightforward, did the Claimant have a reasonable expectation that he was to use Racks as a K-9 unit and, if so, was his retrieval of Racks from an elderly neighbor's porch within the scope of his employment. The Claimant argues yes to both.

In this case the Claimant had a reasonable expectation that Racks would be his K-9 unit and that he should train, care, and supervise the dog. To that end, the Claimant removed the backseat of his squad car to accommodate the dog carrier – which was given to him by the Chief the day before. The Claimant and the Chief also put Racks through a series of drills at the station and the Chief gave the Claimant dog food from the Town's supply to feed Racks.

The Full Commission concluded that as "it was the Claimant's understanding that the Town would be using the dog, the Claimant proceeded, at the Chief's suggestion, to take out the back seat of another police vehicle – a K-9 unit patrol car – so that it could accommodate the kennel that had been given to him earlier by Chief Pendarvis." (Full Commission Order, Finding of Fact 18).

South Carolina caselaw has clearly shown that unless the Employer gives clear and explicit instructions, which was not the finding of the Commission, that an act in violation of an employer's policy was still within the scope of their employment. See, e.g., Grant v. Grant Textiles, 372 S.C. 196, 641 S.E.2d 869 (2007)(injury incurred removing debris from road compensable even though it was not part of employee's job duties); Howell v. Kash & Karry, 264 S.C. 298, 214 S.E.2d 821 (1975)(fall while chasing purse snatcher off the premises not specifically prohibited by employer even though outside regular job duties); Compton v. Town of Iva, 256 S.C. 35, 180 S.E.2d 645 (1971)(employer allowed employees to act outside scope of their duties); Portee v. South Carolina State Hosp., 234 S.C. 50, 106 S.E.2d 670 (1959)(employee died of anaphylactic shock administered by nurse who knew of prohibition against giving shots without doctor's orders); Johnson v. Merchants Fertilizer Co., 198 S.C. 373, 17 S.E.2d 695 (1941)(compensation awarded where employee was found dead in an allegedly

prohibited area because conflicting evidence on whether employer had given "clear and explicit" orders on not going into this area).

Despite conflicts in the testimony between the Claimant and the Chief, the Commission made findings of fact that the Claimant was correct in believing he was to use Racks as a K-9 and care for and supervise him. "The Claimant's recollection of the conversations with the Chief is that he could keep Racks, but was not allowed to use the command Racks had learned to prompt him to attack or apprehend someone." (Full Commission Order, Finding of Fact 14). The Full Commission also found that "Chief Pendarvis did not give clear and explicit instructions for the Claimant not to use Racks." (Full Commission Order, Finding of Fact 23).

The substantial evidence in the record reflects that at the time of the accident the Claimant had an expectation that Racks would be used as a K-9 by the Town of Bowman and was not his personal dog. The substantial evidence in this case supports all of the Commission's Findings of Fact as they relate to the Claimant having an expectation that Racks was to be used as a K-9 unit. The only question then, is the subsequent bite injury the Claimant received an accident as defined under the Act?

In "determining whether something constitutes an injury by accident the focus is not on some specific event, but rather on the injury itself." Stokes v. First Nat'l Bank, 306 S.C. 46, 50, 410 S.E.2d 248, 250 (1991). Further, an injury is unexpected, bringing it within the category of accident, if the worker did not intend it or expect it would result from what he was doing. Colvin v. E.I. DuPont DeNemours Co., 227 S.C. 465, 468-69, 88 S.E.2d 581, 582 (1955)(emphasis added). Therefore, if an injury is unexpected from the worker's point of view, it qualifies as injury by accident.

The term "arising out of" refers to the origin of the cause of the accident. The term "in the course of" refers to the time, place, and circumstances under which the accident occurred. Bickley v. South Caorlina Elec. & Gas Co., 259 S.C. 463, 467, 192 S.E.2d 866, 868 (1972). The two parts of the phrase are not synonymous and both parts must exist simultaneously before a recovery may be made. Osteen v. Greenville Cty School Dist., 333 S.C. 43, 48, 508 S.E.2d 21, 28 (1998).

In this matter the Commission specifically found that "both witnesses testified in a credible manner. It appears that there was a mis-communication or a misinterpretation of the conversation between the Claimant and Chief Pendarvis as to the use of Racks." (Full Commission Order, Finding of Fact 6).

If one assumes that the Claimant had a reasonable expectation that Racks was to be used as a K-9, then the focus is on whether his retrieval of the K-9 from his neighbor's porch, and the ultimate bite that ensued, is within his scope of employment. The clear answer is yes. Defendants submitted a Police K-9 Use Policy which states in part that the "handler will be responsible for the health and welfare of the assigned canine, both on and off duty" and the "canine will be fed regularly by the handler at a time that will allow maximum time between feedings and going on duty." (Defendants' APA at p. 2). The uncontroverted testimony is that on the morning of the accident the Claimant spent time training Racks in his backyard. This training consisted of verbal commands followed by a reward - the throwing and retrieving of a rubber hose.

Racks escaped while the Claimant was going to his patrol car to retrieve the dog food provided by Chief Pendarvis. The Chief testified that K-9's don't always listen to commands and do exactly what the officer instructs them to. (R. at p. 74, ll. 9-17). Per the Town's own

policy, the Claimant is "responsible for the health and welfare of the assigned canine, both on and off duty." (Defendants' APA at p. 2)(emphasis added). Thus, the Claimant was obligated to retrieve Racks and bring him back to the Claimant's home. The Claimant could not board him for the night nor could he let him roam the streets. (R. at p. 26, ll. 4-10). The Claimant, under the belief that Racks was his K-9, went to retrieve the dog from the porch. During that event, he was bitten by the confused and agitated dog. No evidence was presented at the Hearing to the contrary and the Claimant's testimony was the only evidence of how the accident occurred. The retrieval of a K-9 unit entrusted to a law enforcement officer's care, clearly arises out of his employment.

An injury arises out of employment when there is apparent to the rational mind, upon consideration of all the circumstances, a causal relationship between the conditions under which the work is to be performed and the resulting injury. Owings v. Anderson Cty Sheriff's Dep't, 315 S.C. 297, 299, 433 S.E.2d 869, 871 (1993). This often-cited quote from Owings is actually a part of a much longer quote from the Supreme Court in the case of Eargle v. S.C. Electric & Gas, 205 S.C. 243, 32 S.E.2d 240, 242 (1944):

> [An accidental injury] arises 'out of the employment,' when there is apparent to the rational mind upon consideration of all the circumstances, a causal connection between the conditions under which the work is required to be performed and the resulting injury. Under this test, if the injury can be seen to have followed as a natural incident of the work and to have been contemplated by a reasonable person familiar with the whole situation as a result of the exposure occasioned by the nature of the employment, then it arises 'out of' the employment. But it excludes an injury which cannot fairly be traced to the employment as a contributing proximate cause and which comes from a hazard to which the workmen would have been equally exposed apart from the employment. The causative danger must be peculiar to the work and not common to the neighborhood. It must be incidental to the character of the business and not independent of the relation of master and servant. It need not have been foreseen or expected, but after the event it must appear to have had its origin in a risk connected with the employment, and to have flowed from that source as a rational consequence.

The focus then is whether there is a relationship between the injured worker's injury and his or her work. In this case the answer is, again, yes. The Claimant was training and preparing to feed Racks per the Town's policy and his understanding of caring for a K-9 Unit entrusted to his care. When Racks escaped the backyard, the Claimant had to retrieve the dog as he simply couldn't allow him to roam the neighborhood. By policy, and understanding with the Chief, the Claimant was responsible for the health and welfare of Racks. This act of retrieval is what rationally connects the dog bite to his employment.

In their brief, the Defendants argue that retrieving Racks, and being bitten by him during the retrieval, is not within the scope of his regular duties because he was not actively training him at the time of the bite. However, our Courts have stated that an "act outside an employee's regular duties which is undertaken in good faith to advance the employer's interest, whether or not the employee's own assigned work is thereby furthered, is within the course of employment." Howell v. Kash & Karry, 264 S.C. 298, 301, 214 S.E.2d 821, 822 (1975).

Our Supreme Court stated in Osteen v. Greenville County Sch. Dist, 333 S.C. 43, 508 S.E.2d 21 (1998), that there are "circumstances when injuries arising out of acts outside the scope of employee's regular duties may be compensable." Osteen v. Greenville County Sch. Dist, 333 S.C. 43, 508 S.E.2d 21 (1998). These circumstances have been applied to: (1) acts benefiting co-employees; (2) acts benefiting customers or strangers; (3) acts benefiting the claimant; and (4) acts benefiting the employer privately. Osteen, 333 S.C. at 48, 508 S.E.2d at 21 (1998). Here, the Claimant was told to care for and train the dog. The Claimant had paused training long enough to recover dog food – supplied by the Town – to feed Racks. While getting the dog food out of his car, Racks escaped and became trapped on an elderly neighbor's porch. When the Claimant retrieved Racks from that porch, he was acting to protect a neighbor's

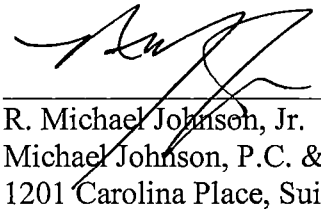
property and making sure Racks did not injure himself or others. This is clearly within the scope of his work activity.

The Claimant was acting within the scope and course of his employment by retrieving Racks, and the bite was an unintended consequence of the retrieval. The Court of Appeals should affirm the Full Commission and find that the Claimant's injury arose out of and in the course of his employment.

CONCLUSION

The substantial evidence in this case supports that this Court affirm the Full Commission's Decision and Award and find that the Claimant sustained a physical injury under S.C. Code Ann. § 42-1-160(A) and is entitled to medical care for his left hand.

Respectfully Submitted,



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September 20, 2017

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PROOF OF SERVICE

This is to certify that a copy of the foregoing Initial Brief of Respondent and Certificate of Counsel has been served upon the following parties by placing the same in the United States mail, first class postage pre-paid, addressed as shown below on the 20th day of September, 2017.

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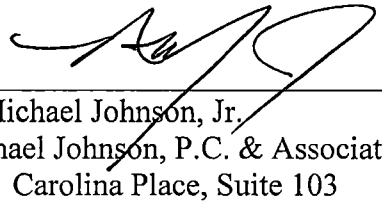

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MICHAEL & JOHNSON PC ASSOCIATES

September 20, 2017

The Honorable Jenny Abbott Kitchings
Clerk of Court
South Carolina Court of Appeals
Post Office Box 11629
Columbia, SC 29211

RE: James Thorpe v. Town of Bowman
Appellate Case No. 2017-001408

Dear Ms. Kitchings:

Enclosed herewith for filing are the Respondent's Initial Brief and Designation of Matter to be included in the Record on Appeal in the above-referenced matter and my proof of service upon opposing counsel in this matter.

I hope this is sufficient filing with the Court. Should you require anything further, kindly advise.

With warmest regards.

Sincerely,

R. Michael Johnson, Jr.

RMJ,Jr./ac

Enclosure

cc: Clyde C. Dean, Jr., Esquire
Clarke W. McCants, III, Esquire
Amy Bracy, Judicial Director of the SCWCC

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