

RECEIVED

OCT 16 2017

SC Court of Appeals

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

SCWCC FILE NO. 1501382

Edmund Dillon, Employee,

Claimant/Appellant,

v.

FleetPride, Employer,

and

Gallagher Bassett as TPA for
American Zurich Insurance Company

Defendants/Respondents.

Appellate Panel Review held in Columbia,
South Carolina on May 15, 2017 per
notices timely and properly served on all
parties of interest.

Appellate Panel Decision and Order filed
9-18, 2017

ARGUMENTS BRIEFED BY:

Preston F. McDaniel, Esquire, of Columbia, South Carolina
for Claimant/Appellant

Cynthia C. Dooley, Esquire, of Columbia, South Carolina
for Defendants/Respondents

STATEMENT OF THE CASE

The parties were heard by Commissioner Gene McCaskill, Hearing Commissioner, in Columbia, South Carolina on August 30, 2016. On September 20, 2016, Commissioner McCaskill issued the following Stipulations, APA Submissions, Statement of the Case, Evidence of the Case, Findings of Fact, Conclusions of Law, and Order:

STIPULATIONS

Counsel for all parties stipulated at the hearing to the following issues:

1. The purpose of the hearing was to determine the issues as set forth in Forms 52 and 53 and any other issues which may have timely come before the Commission.
2. Notice of the hearing was timely and properly served upon all parties of interest.
3. Venue set in Richland County, South Carolina is proper and was agreed upon by all parties.
4. Claimant's average weekly wage and compensation rate are \$1,263.35 and \$766.05, respectively.
5. Claimant seeks benefits under the South Carolina Workers' Compensation Act based upon an alleged injury which occurred on February 23, 2015, while employed by the Employer and, therefore, the South Carolina Workers' Compensation Commission has jurisdiction of this case.

APA SUBMISSIONS

The following records were submitted into evidence under the Administrative Procedures Act:

Claimant's APA Submissions

NAME OF PROVIDER/OTHER	DATE(S) OF RECORD(S)	PAGES
------------------------	----------------------	-------

Kershaw County Memorial Hospital	02/04/1994	1-9
Richland County EMS	2/23/15	10-12
Palmetto Health Richland	2/23/15 – 2/27/15	13-47
Michael G. Sribnick, MD, JD, LLC	5/23/16	58-63

Claimants Exhibits:

NAME OF PROVIDER/OTHER	PAGES
Death Certificate	1
Amended Death Certificate	2
Richland County Coroner's Investigative Report	3-18
Weather Report	19-21
Affidavit of Josiah Fludd	22-23
Deposition of Josiah Fludd	24-53
OSHA Citation	54-59
Medical Bills	60-86
Funeral Expenses	87
Form 20	88
WC Leave then Termination	89-91
Photo of Fleetpride	92
EDI First Report	93
US DOL SCOSHA data	94-99

Defendants' APA Submissions

NAME OF PROVIDER/OTHER	DATE(S) OF RECORD(S)	PAGES
Medical Summary		
Kershaw County Medical Center	2/4/1994	D0001 – D0012
Columbia Skin Clinic	3/30/01 – 2/18/15	D0013 – D0053
Providence NE Family Care	2/3/14 – 2/19/14	D0054 – D0062
Richland County ESD	2/23/15	D0063 – D0065
Palmetto Health Richland	2/23/15 – 2/28/15	D0066 – D0781
Richland County Coroner	2/28/15 – 7/08/15	D0782 – D0795
Report & CV of JJ Vandersteenhoven, MD, PhD	5/21/16	D0796 – D0808

Defendants' Exhibits

NAME OF PROVIDER/OTHER	PAGES
Amended Death Certificate	DEF 0809
Medical Research on Anemia, Thrombocytopenia (low platelet count), Low potassium (hypokalemia), Hyponatremia, Liver disease	DEF 0810 – DEF 0834

STATEMENT OF THE CASE

This claim arose when the Claimant fell to the ground, hit his head, and suffered injuries that ultimately caused the Claimant to pass away on February 27, 2015. The Claimant is seeking benefits for a compensable death claim.

Claimant contends that this was a work related accident resulting from a slip and fall accident that resulted in a death that is fully compensable. The Claimant contends that the medical records and the statements made by the Claimant after falling and hitting his head should be given great weight and that the resulting death should be found to be fully

compensable. Claimant contends that their medical expert report from Dr. Michael Sribnick shows that the Claimant was not suffering from any medical issues personal to him that would cause him to collapse.

Claimant contends that this case is comparable to and covered under Nicholson v. SCDSS, 411 S.C. 391, 769 S.E.2d 1 (2015), Barnes v. Chapter 1 Realty, 411 S.C. 391, 768 S.E.2d 651 (2015), and Thomas v. Five Star Transportation, 412 S.E. 1, 770 S.E.2d 183 (Ct. App. 2015).

Defendants deny that this is a compensable death claim. Defendants contend that the medical records show that the Claimant was a very sick individual, who suffered from Anemia, Thrombocytopenia (low platelet count), Low potassium (hypokalemia), Hyponatremia, and liver disease among other issues. Defendants contend that the Claimant was an alcoholic who was suffering from diarrhea, vomiting and fatigue prior to the alleged accident date. Defendants contend that their expert report from Dr. Vandersteenhoven shows that the Claimant passed out as a result of conditions peculiar to the Claimant, and, therefore, this is a non-compensable idiopathic fall.

Defendants contend that the Claimant merely collapsed while at work and that the collapse was not causally related to the Claimant's employment. In addition, Defendants argue that the one eye-witness to the claim, Mr. Josiah Fludd, witnessed the event from start to finish. Mr. Fludd testified in his deposition that the Claimant was outside when the fall occurred. He testified that the Claimant was standing still when he fell to the ground without attempting to catch himself or break his fall. Mr. Fludd testified and signed an affidavit that the Claimant collapsed.

Defendants contend, and submitted a medical expert report, that the Claimant collapsed at work but that the fall was idiopathic. Defendants cite *Bagwell v. Ernest Burnwell, Inc.*, 227 S.C. 444, 88 S.E.2d 611 (1955) as authority that an idiopathic fall is not compensable under the Act. Defendants argue that this claim is on point with *Bagwell*, and, therefore, the Claimant's death is not compensable under the act.

EVIDENCE OF THE CASE

The Claimant's widow testified that she was married to Edmund Dillon for nine or ten years. Hr'g Tr. 17. She denied that the Claimant had any other individuals dependent upon him other than herself. Hr'g Tr. 18. She testified that in the months leading up to the accident that she had not noticed any changes in his behavior or appearance Hr'g Tr. 19. She testified that she was never able to speak with the Claimant after the accident because he was unconscious when she got to the hospital. Hr'g Tr. 20. She testified that she is asking the Commission to find the death compensable under the workers' compensation act. Hr'g Tr. 21.

Upon cross-examination, the Claimant's widow testified that she and her husband did not see much of each other due to their work schedules. Hr'g Tr. 24-25. She testified that she had not noticed his jaundice color until she saw him in the hospital. Hr'g Tr. 24. Further, she admitted that the Claimant drank alcohol but that she was not aware of the quantity of alcohol. Hr'g Tr. 24.

Frederick Allen Mogridge appeared and testified for the defense. Mr. Mogridge testified to being a fellow employee at FleetPride with the Claimant. Hr'g Tr. 27. In addition to working at FleetPride for twenty-three years, the witness testified to having worked for a volunteer rescue squad in the past. Hr'g Tr. 27-28.

Mr. Mogridge testified that he had known the Claimant for about twenty-five years and that they were friends Hr'g Tr. 28. He testified that while they had a working relationship that they also had a personal relationship. Hr'g Tr. 29. He stated that they worked together on a daily basis at FleetPride. Hr'g Tr. 29. He testified that he had noticed the health of the Claimant leading up to the date of injury. He testified that the Claimant had some health issues in the months prior to the fall. Hr'g Tr. 29. Mr. Mogridge testified that he noticed the Claimant's color had changed and that he was losing weight. Hr'g Tr. 29. In addition, he testified that the Claimant was slow moving and had some problems with his body control, particularly his bowel control. Hr'g Tr. 30.

Mr. Mogridge testified that on the day of the fall that he had been inside and, therefore, did not witness the fall but was notified by Josiah Fludd that the Claimant had fallen. Hr'g Tr. 31-34. He testified that when he came outside that he found the Claimant on the ground bleeding from his head. Hr'g Tr. 31-34. He further testified that the Claimant was unconscious when he found him. Hr'g Tr. 34. Mr. Mogridge called an ambulance and forced the Claimant to go to the hospital, against the wishes of the Claimant. Hr'g Tr. 31-34.

On cross-examination, Mr. Mogridge Mr. Mogridge did admit that it had been raining earlier that morning, but denied that it was raining hard at the time of the accident. Hr'g Tr. 34-37. Mr. Mogridge also admitted on cross-examination that neither he nor any supervisor told the Claimant that he could not come into work or sent him to see someone due to his health. Hr'g Tr. 38-39. He asked Claimant to seek medical help, but the Claimant told him to mind his own business. Hr'g Tr. 38-39.

Employer representative Eugene Lane also appeared and testified. On direct examination, he testified that he was out of town on the date of the accident. Hr'g Tr. 44. However, he testified

that he had known the Claimant for twenty-five to thirty years and had been in his wedding. Hr'g Tr. 41. Mr. Lane testified that he had noticed the Claimant's health deteriorating over the months leading up to the accident. Hr'g Tr. 41-42. Specifically, he noted that the Claimant had lost a lot of weight and had become slow moving. Hr'g Tr. 42. However, he testified that the Claimant was a private individual and did not discuss his health with his friends. Hr'g Tr. 42.

FINDINGS OF FACT

After reviewing the evidentiary submissions and listening to the Claimant's testimony and the witness testimony, the following Findings of Fact are rendered:

1. The Claimant's death subsequent to a collapse at work did not arise out of his employment and therefore his injury is not compensable?
2. The Claimant was at work on the morning of February 23, 2015. While at work, he was injured when he fell. The Claimant was transported by Richland County EMS to Palmetto Health Richland where he was hospitalized.
3. There is no dispute that the Claimant's death on February 27, 2015 resulted from injuries he received when he hit his head in the fall on February 23, 2015.
4. It is the Defendant's position that the Claimant suffered from many conditions, including Anemia, Thrombocytopenia (low platelet count), Hypokalemia (low potassium), Hyponatremia, Liver Disease, and severe dehydration.
5. The medical records indicate the Claimant had a problem with alcohol.
6. As to the Claimant's medical history, a medical record from Kershaw County Medical Center dated February 4, 1994 reports that the Claimant got up to go to the bathroom, had a coughing spell, felt dizzy and passed out hitting his head.
7. The medical note of Dr. Mark Jones/Dr. David T. Ford on February 23, 2015 (date of injury) reports that the Claimant reported that he slipped and fell hitting the back of his

head. Claimant also reported that he had not felt well for the last several days, had not been eating well and that he did notice that his skin had changed color (medical records from that day report that he was jaundice). He also reported that he had been vomiting and had diarrhea; and had not felt well that day.

8. On the day of his fall, the Claimant reported that he slipped and fell. He also reported that he did not lose consciousness.

9. The EDS report of the transport indicates that the Claimant was alert when they arrived, but that during transport his condition declined.

10. Sadly, the Claimant's physical condition deteriorated over the next four days; and on February 27, 2015, the Claimant succumbed.

11. The Amended Death certificate, which is part of the record, lists the cause of death as "cardiopulmonary failure, subdural hematoma with mass effect, subarachnoid hemorrhage."

12. The question at bar -- as to a determination of compensability - is whether the Claimant slipped and fell which is what he indicated to medical professionals on the day of his injury; or did he simply collapse and hit his head?

13. In either instance, that fall and the resulting head injury is the cause of death. That fact is not in dispute.

14. The Claimant was outside on break when he fell/collapsed.

15. While there was initially some confusion as to whether the Claimant was on a ladder and fell from that ladder, both parties agree that he was not on a ladder and his fall/collapse occurred while he was standing on the ground.

16. Josiah Fludd was a witness to the fall/collapse. The parties took Mr. Fludd's deposition on 10/15/15.

17. Mr. Fludd testified that, on that day, the Claimant was standing on the sidewalk beside Mr. Fludd's truck.

18. Mr. Fludd testified that he saw the Claimant collapse. He also testified that the Claimant did not try to break his fall nor did he attempt to brace himself in anyway.

19. Mr. Fludd testified that the Claimant fell backwards.

20. He further testified that the Claimant was not walking at the time; and he did not see the Claimant slip.

21. On cross-examination Mr. Fludd testified that he could not see all of the Claimant's legs; but he could see his thighs.

22. While Mr. Fludd could not testify as to whether the Claimant slipped, he did testify that the Claimant's thighs were stationary.

23. I have read Mr. Fludd's deposition in its entirety. Mr. Fludd is simply a witness to the event. He does not stand to gain or lose based on his testimony in this case. I give his testimony great weight.

24. When I consider the record as a whole, I am not persuaded that the Claimant slipped or tripped.

25. I find that the Claimant simply collapsed. A review of the Claimant's medical history gives us insight as to why this could occur. There is medical evidence that the Claimant suffered from numerous conditions peculiar to him that could result in such an event.

26. This is a denied claim. The burden to prove there was a compensable injury rests with the Claimant. He must prove by a preponderance of the evidence that he indeed did slip and fall.

27. Here the Defendants have presented a persuasive case as to idiopathic injury which has no nexus to his work.

28. At the time of this event, the Claimant was on break outside. The Defendants presented a witness that observed the event. While his line of sight is somewhat obstructed, he can see the Claimant from the head down to his thighs. This witness describes the event – he sees the Claimant falling backwards without any flailing or any attempt to break his fall. The witness describes an event that took place from a stationary position. He testified that the Claimant was unconscious. The Claimant stated to medical personnel that he did not lose consciousness. Candidly, whether he was conscious or unconscious is not dispositive of whether he slipped or just collapsed.

29. In this case, I am persuaded by the greater weight of the evidence that the Claimant suffered an idiopathic fall. The description of the event which the Claimant provides is given after he suffers an event so significant that it will lead to his death. It is also clear from the medical evidence that the Claimant is – prior to the fall – suffering from compromising medical conditions. The Claimant's statements at the time of his injury must be viewed through the lens of the events that day and his general physical condition on that day as well.

30. The Claimant's statement as to mechanism of injury must be viewed juxtaposed to the testimony of Mr. Fludd with consideration for the Claimant's general physical health at the time.

31. This case is distinguishable from *Nicholson* and *Barnes*. Here *Bagwell v. Ernest Burnwell, Inc.* is on point. The fact pattern in that case and this case are very similar. In *Bagwell*, there was an eyewitness who saw the employee fall backward rigidly without attempting to brace the fall. The Court stated in *Bagwell* that being at work was not enough to justify an award, but it must be shown "either that the cause of the fall or the resulting injury bore some special relation to his work or to the conditions under which it was performed." The Court further noted that "while the cause of [the employee's] fall may be unexplained, the circumstances of his fall are fully covered by the testimony of eyewitnesses." *Nicholson* and *Barnes* are different in that in *Nicholson*, the employee's foot caught on the carpet. The Court held that the employee did not fall due to a condition peculiar to her but fell as a result of tripping on the carpet. In *Barnes*, the injured employee was hurrying to check her email and fell. There was no evidence that there was an internal breakdown causing the fall, so the Court found the injury compensable regardless of whether she tripped over herself or the carpet. This case here is directly on point with *Bagwell* in that there is evidence of an internal breakdown and there is an uninterested witness attesting to the facts of the Claimant passing out.

32. Given the totality of the evidence, the Claimant has failed to meet his burden. As such, the claim is dismissed with prejudice.

CONCLUSIONS OF LAW

Accordingly, as provided in S.C. Code Ann. § 42-17-40 of the S.C. Code Ann., it is the determination of this Commissioner that:

1. The burden of proof applicable to a claim for workers' compensation benefits is the preponderance of the evidence. The Claimant must establish by preponderance of the evidence the facts that will entitle him to an award under the workers' compensation Act. *Walsh v. U.S. Rubber Co.*, 120 S.E.2d 685 (1961);

2. Under S.C. Code Ann. § 42-1-130, the Claimant was a covered Employee at the time of his accident dated February 23, 2015;
3. Under S.C. Code Ann. § 42-1-140, the Defendant/Employer was a covered Employer under the Act on February 23, 2015;
4. Under S.C. Code Ann. § 42-1-160, the Claimant must show the he sustained an injury by accident arising out of and in the course and scope of employment in order to be entitled to benefits;
5. Pursuant to S.C. Code Ann. § 42-1-160, the Claimant has failed to show by a preponderance of the evidence a compensable death by accident. This conclusion is based on Finding of Fact Nos. 16 – 31.
6. The Claimant merely suffered an idiopathic fall due to pre-existing unrelated medical issues as described in the medical records and through witness testimony. This conclusion of law is based upon Finding of Fact Nos. 28 – 30.
7. Therefore, since the Claimant has failed to meet the burden, this claim is dismissed with prejudice. This conclusion of law is based upon Finding of Fact No. 32.

AWARD

Based upon the foregoing Findings of Fact and Conclusions of Law, it is **HEREBY ORDERED:**

1. The Claimant's claim for benefits is denied.
2. This claim is dismissed with prejudice.
3. No hearing costs are assessed.

IT IS SO ORDERED.

Within the statutory period, the Claimant filed an Application for Review in this case, setting forth the reasons for an appeal. A copy of this Application was furnished to all interested parties prior to Appellate Review.

All proper testimony has been taken. Together with all documentary evidence and a transcript of the hearing, appellate briefs were delivered to the individual members of the South Carolina Workers' Compensation Appellate Panel. Oral Argument has been provided to the individual members of the Full Commission and the case has since been under study and consideration.

By appeal, Claimant/Appellant submits the following:

1. That pursuant to S.C. Code of Law §42-17-40, the Claimant requests a review of all of the Findings of Fact, the Conclusions of Law, the Order and Award and of all rulings and decisions made by the Commissioner at the hearing, as contained in the Record or as made at any unrecorded pre-hearing conference, and in any communications concerning the claim, Order, Award and Decision rendered by the Hearing Commissioner in this matter.
2. That the Hearing Commissioner erred as a matter of law by trying to distinguish this case from the cases of *Nicholson v. SCDSS*, 411 S.C. 391, 769 S.E.2d 1 (2015); *Barnes v. Chapter 1 Realty*, 411 S.C. 391, 768 S.E.2d 651 (2015); and *Thomas v. Five Star Transportation*, 412 S.C. 1, 770 S.E.2d 183 (S.C. App. 2015) and by applying an idiopathic fall case which this is not, that being the case of *Bagwell v. Ernest Burwell, Inc.*, 227 S.C. 444, 88 S.E.2d 611 (1955).
3. That the Hearing Commissioner erred as a matter of law by making Conclusion of Law #1 wherein the substantial evidence in the Record clearly establishes by a preponderance of the evidence that the Claimant sustained a compensable injury by accident as defined under SC Law.

4. That the Hearing Commissioner erred as a matter of law in making Conclusion of Law #4 by finding that the Claimant did not establish as a matter of law that the Claimant had sustained a compensable injury under §42-1-160 as defined by our Appellate Courts.
5. That the Hearing Commissioner erred as a matter of law by making Conclusion of Law #5 wherein the evidence established by a preponderance of the evidence that he sustained a compensable injury by accident resulting in his death and by basing that conclusion on Findings of Fact #16-21.
6. That the Hearing Commissioner erred as a matter of law in making Conclusion of Law #6 by finding that the Claimant sustained an idiopathic fall due to a pre-existing unrelated medical issue as described in the medical records and through witness testimony and basing that Conclusion of Law on and as set forth in his Findings of Fact #28-30.
7. That the Hearing Commissioner erred as a matter of law in making Conclusion of Law #7 wherein he found that the Claimant failed to meet his burden of proof and dismissed the claim with prejudice and basing that Conclusion of Law on Finding of Fact #32.
8. That the Hearing Commissioner erred as a matter of law in the Award portion by denying the Claimant benefits and dismissing the Claimant's case with prejudice.
9. That the Hearing Commissioner erred as a matter of fact and law in making of Findings of Fact #17-23 wherein all of these Findings of Fact concerned are based on the testimony of Josiah Fludd and further and specifically in that these Findings of Fact make the testimony of Josiah Fludd's testimony conclusive one way or another as to the, "cause" of the fall. Further, the Commissioner's Findings are based on surmise, speculation and innuendo based on the actual testimony from Mr. Fludd.

10. That the Hearing Commissioner erred as a matter of fact and law by making contradictory Findings of Fact. He made on the one hand a Finding that Mr. Fludd could not testify as to whether or not the Claimant slipped, and on the other hand made the Finding under Finding of Fact #8 that on the day of his fall the Claimant reported that he slipped and fell. He then made Finding of Fact #24 that he was not persuaded that the Claimant slipped or tripped and by Finding of Fact #25 that the Claimant simply collapsed.

11. That the Hearing Commissioner erred as a matter of law by failing to apply the concepts of present sense impression, excited utterance, then existing physical condition, and statement made for medical treatment in reference to the statements that were made by the Claimant (deceased) immediately following the accident and as part of medical treatment following the accident. All of those concepts require the fact-finder to give great weight to those statements wherein the law gives those statements great credibility due to their immediacy and relationship to the event and the condition of the Claimant at the time that they were made.

12. That the Hearing Commissioner erred as a matter of law in making Finding of Fact #23 where this Finding specifically establishes that this Finding by the Commissioner is the subject of being arbitrary, capricious and an abuse of discretion. The Finding that the testimony of Mr. Fludd as a witness under oath is entitled to greater weight because, "he does not stand to gain or lose based on his testimony in this case," does not constitute a lawful basis for assigning greater weight to his testimony especially as compared to the EMS workers and doctors in reference to their findings and the statements they recorded as having been made to them by the deceased worker in this matter within thirty (30) minutes of his slip and fall.

13. That the hearing Commissioner erred as a matter of fact and law by basing his entire factual decision as to whether or not the Claimant sustained injury by accident upon the

factual testimony and evidence of Mr. Josiah Fludd given in his discovery deposition wherein that testimony and evidence does not support the conclusions made from a factual standpoint by the Commissioner.

14. That the hearing Commissioner erred as a matter of fact and law by making Finding of Fact #25 wherein the Hearing Commissioner gave undue weight to possible reasons for a collapse or fall as related by the medical evidence of the employer's expert witness and giving little or no weight to the evidence from the Claimant himself and the Claimant's expert medical witness who opined that preexisting conditions did not contribute to or cause the fall.

15. That the Hearing Commissioner erred as a matter of law in making Finding of fact #28 wherein the Commissioner erred in placing an improper burden of proof on the Claimant in that the undisputed testimony of the Claimant to his medical providers at the time of the injury was that he slipped and fell. The evidence of Mr. Fludd and, in particular, his deposition, reveals that Mr. Fludd was loading a truck at the time, protecting his paperwork from the rain, his view was obscured, his primary focus was not on the Claimant until the Claimant began to fall, and all he really knows is that the Claimant fell, not why or how. The Hearing Commissioner placed too great of a weight on what Mr. Fludd did not see as opposed to what he did see.

On the other hand, Defendants contended that the Hearing Commissioner properly weighed all of the evidence, including, but not limited to, the medical records, witness testimony, and expert opinions in determining that the Claimant merely collapsed from conditions personal to the Claimant.

Defendants further contended that an award is not based on surmise and speculation. Defendants contended that this claim was similar to *Bagwell v. Ernest Burwell, Inc.* Therefore, the hearing Commissioner properly weighed the evidence and determined that the Claimant

could not meet the burden to support a compensable injury by accident under S.C. Code of Laws §42-1-160.

Based upon a review of the whole Record and Briefs, the panel, by **UNANIMOUS** vote, **AFFIRMS WITH AMENDMENTS** to correct scrivener's errors, as agreed upon by the parties, including the proper APA submissions to the Single Commissioner, the decision and order of the Single Commissioner. Accordingly, the Stipulations, APA Submissions, Statement of the Case, Evidence of the Case, Findings of Fact, Conclusions of Law, and Order set forth below shall become and hereby are the law of the case:

STIPULATIONS

Counsel for all parties stipulated at the hearing to the following issues:

1. The purpose of the hearing was to determine the issues as set forth in Forms 52 and 53 and any other issues which may have timely come before the Commission.
2. Notice of the hearing was timely and properly served upon all parties of interest.
3. Venue set in Richland County, South Carolina is proper and was agreed upon by all parties.
4. Claimant's average weekly wage and compensation rate are \$1,263.35 and \$766.05, respectively.
5. Claimant seeks benefits under the South Carolina Workers' Compensation Act based upon an alleged injury which occurred on February 23, 2015, while employed by the Employer and, therefore, the South Carolina Workers' Compensation Commission has jurisdiction of this case.

APA SUBMISSIONS

The following records were submitted into evidence under the Administrative Procedures Act:

Claimant's APA Submissions

NAME OF PROVIDER/OTHER	DATE(S) OF RECORD(S)	PAGES
Kershaw County Memorial Hospital	02/04/1994	1-9
Richland County EMS	2/23/15	10-12
Palmetto Health Richland	2/23/15 - 2/27/15	13-47
Michael G. Sribnick, MD, JD, LLC	5/23/16	58-63

Claimants Exhibits:

NAME OF PROVIDER/OTHER	PAGES
Death Certificate	1
Amended Death Certificate	2
Richland County Coroner's Investigative Report	3-18
Weather Report	19-21
Affidavit of Josiah Fludd	22-23
Deposition of Josiah Fludd	24-53
OSHA Citation	54-59
Medical Bills	60-86
Funeral Expenses	87
Form 20	88
WC Leave then Termination	89-91
Photo of Fleetpride	92

EDI First Report	93
US DOL SCOSHA data	94-99

Defendants' APA Submissions

NAME OF PROVIDER/OTHER	DATE(S) OF RECORD(S)	PAGES
Medical Summary		
Kershaw County Medical Center	2/4/1994	D0001 – D0012
Columbia Skin Clinic	3/30/01 – 2/18/15	D0013 – D0053
Providence NE Family Care	2/3/14 – 2/19/14	D0054 – D0062
Richland County ESD	2/23/15	D0063 – D0065
Palmetto Health Richland	2/23/15 – 2/28/15	D0066 – D0781
Richland County Coroner	2/28/15 – 7/08/15	D0782 – D0795
Report & CV of JJ Vandersteenhoven, MD, PhD	5/21/16	D0796 – D0808

Defendants' Exhibits

NAME OF PROVIDER/OTHER	PAGES
Amended Death Certificate	D0799
Affidavit of Josiah Fludd	D0810 – D0811
Deposition of Josiah Fludd	D0812 – D0840
Medical Research on Anemia, Thrombocytopenia (low platelet count), Low potassium (hypokalemia), Hyponatremia, Liver disease	D0841 – D0865
Medical Research on Mechanical Fall	D0866 – D0869
Photos	D0870 – D0873

Deposition Transcript of Michael
Sribnick, MD, JD

D0874 – D0962

Letter from Legal Nurse Consultant,
Donna Crider, RN

D0963

Deposition Transcript of JJ Vandersteenhoven,
MD, PhD

D0964 – D1011

STATEMENT OF THE CASE

This claim arose when the Claimant fell to the ground, hit his head, and suffered injuries that ultimately caused the Claimant to pass away on February 27, 2015. The Claimant is seeking benefits for a compensable death claim.

Claimant contends that this was a work related accident resulting from a slip and fall accident that resulted in a death that is fully compensable. The Claimant contends that the medical records and the statements made by the Claimant after falling and hitting his head should be given great weight and that the resulting death should be found to be fully compensable. Claimant contends that their medical expert report from Dr. Michael Sribnick shows that the Claimant was not suffering from any medical issues personal to him that would cause him to collapse.

Claimant contends that this case is comparable to and covered under *Nicholson v. SCDSS*, 411 S.C. 391, 769 S.E.2d 1 (2015), *Barnes v. Chapter 1 Realty*, 411 S.C. 391, 768 S.E.2d 651 (2015), and *Thomas v. Five Star Transportation*, 412 S.E. 1, 770 S.E.2d 183 (Ct. App. 2015).

Defendants deny that this is a compensable death claim. Defendants contend that the medical records show that the Claimant was a very sick individual, who suffered from Anemia, Thrombocytopenia (low platelet count), Low potassium (hypokalemia), Hyponatremia, and liver

disease among other issues. Defendants contend that the Claimant was an alcoholic who was suffering from diarrhea, vomiting and fatigue prior to the alleged accident date. Defendants contend that their expert report from Dr. Vandersteenhoven shows that the Claimant passed out as a result of conditions peculiar to the Claimant, and, therefore, this is a non-compensable idiopathic fall.

Defendants contend that the Claimant merely collapsed while at work and that the collapse was not causally related to the Claimant's employment. In addition, Defendants argue that the one eye-witness to the claim, Mr. Josiah Fludd, witnessed the event from start to finish. Mr. Fludd testified in his deposition that the Claimant was outside when the fall occurred. He testified that the Claimant was standing still when he fell to the ground without attempting to catch himself or break his fall. Mr. Fludd testified and signed an affidavit that the Claimant collapsed.

Defendants contend, and submitted a medical expert report, that the Claimant collapsed at work but that the fall was idiopathic. Defendants cite *Bagwell v. Ernest Burnwell, Inc.*, 227 S.C. 444, 88 S.E.2d 611 (1955) as authority that an idiopathic fall is not compensable under the Act. Defendants argue that this claim is on point with *Bagwell*, and, therefore, the Claimant's death is not compensable under the act.

EVIDENCE OF THE CASE

The Claimant's widow testified that she was married to Edmund Dillon for nine or ten years. Hr'g Tr. 17. She denied that the Claimant had any other individuals dependent upon him other than herself. Hr'g Tr. 18. She testified that in the months leading up to the accident that she had not noticed any changes in his behavior or appearance Hr'g Tr. 19. She testified that she was never able to speak with the Claimant after the accident because he was unconscious when she

got to the hospital. Hr'g Tr. 20. She testified that she is asking the Commission to find the death compensable under the workers' compensation act. Hr'g Tr. 21.

Upon cross-examination, the Claimant's widow testified that she and her husband did not see much of each other due to their work schedules. Hr'g Tr. 24-25. She testified that she had not noticed his jaundiced color until she saw him in the hospital. Hr'g Tr. 24. Further, she admitted that the Claimant drank alcohol but that she was not aware of the quantity of alcohol. Hr'g Tr. 24.

Frederick Allen Mogridge appeared and testified for the defense. Mr. Mogridge testified to being a fellow employee at FleetPride with the Claimant. Hr'g Tr. 27. In addition to working at FleetPride for twenty-three years, the witness testified to having worked for a volunteer rescue squad in the past. Hr'g Tr. 27-28.

Mr. Mogridge testified that he had known the Claimant for about twenty-five years and that they were friends Hr'g Tr. 28. He testified that while they had a working relationship that they also had a personal relationship. Hr'g Tr. 29. He stated that they worked together on a daily basis at FleetPride. Hr'g Tr. 29. He testified that he had noticed the health of the Claimant leading up to the date of injury. He testified that the Claimant had some health issues in the months prior to the fall. Hr'g Tr. 29. Mr. Mogridge testified that he noticed the Claimant's color had changed and that he was losing weight. Hr'g Tr. 29. In addition, he testified that the Claimant was slow moving and had some problems with his body control, particularly his bowel control. Hr'g Tr. 30.

Mr. Mogridge testified that on the day of the fall that he had been inside and, therefore, did not witness the fall but was notified by Josiah Fludd that the Claimant had fallen. Hr'g Tr. 31-34. He testified that when he came outside that he found the Claimant on the ground bleeding

from his head. Hr'g Tr. 31-34. He further testified that the Claimant was unconscious when he found him. Hr'g Tr. 34. Mr. Mogride called an ambulance and forced the Claimant to go to the hospital, against the wishes of the Claimant. Hr'g Tr. 31-34.

On cross-examination, Mr. Mogride did admit that it had been raining earlier that morning, but denied that it was raining hard at the time of the accident. Hr'g Tr. 34-37. Mr. Mogride also admitted on cross-examination that neither he nor any supervisor told the Claimant that he could not come into work or sent him to see someone due to his health. Hr'g Tr. 38-39. He asked Claimant to seek medical help, but the Claimant told him to mind his own business. Hr'g Tr. 38-39.

Employer representative Eugene Lane also appeared and testified. On direct examination, he testified that he was out of town on the date of the accident. Hr'g Tr. 44. However, he testified that he had known the Claimant for twenty-five to thirty years and had been in his wedding. Hr'g Tr. 41. Mr. Lane testified that he had noticed the Claimant's health deteriorating over the months leading up to the accident. Hr'g Tr. 41-42. Specifically, he noted that the Claimant had lost a lot of weight and had become slow moving. Hr'g Tr. 42. However, he testified that the Claimant was a private individual and did not discuss his health with his friends. Hr'g Tr. 42.

FINDINGS OF FACT

After reviewing the evidentiary submissions and listening to the Claimant's testimony and the witness testimony, the following Findings of Fact are rendered:

1. The Claimant's death subsequent to a collapse at work did not arise out of his employment and therefore his injury is not compensable.
2. The Claimant was at work on the morning of February 23, 2015. While at work, he was injured when he fell. The Claimant was transported by Richland County EMS to Palmetto Health Richland where he was hospitalized.

3. There is no dispute that the Claimant's death on February 27, 2015 resulted from injuries he received when he hit his head in the fall on February 23, 2015.
4. It is the Defendants' position that the Claimant suffered from many conditions, including Anemia, Thrombocytopenia (low platelet count), Hypokalemia (low potassium), Hyponatremia, Liver Disease, and severe dehydration.
5. The medical records indicate the Claimant had a problem with alcohol.
6. As to the Claimant's medical history, a medical record from Kershaw County Medical Center dated February 4, 1994, reports that the Claimant got up to go to the bathroom, had a coughing spell, felt dizzy and passed out hitting his head.
7. The medical note of Dr. Mark Jones/Dr. David T. Ford on February 23, 2015 (date of injury) reports that the Claimant reported that he slipped and fell hitting the back of his head. Claimant also reported that he had not felt well for the last several days, had not been eating well and that he did notice that his skin had changed color (medical records from that day report that he was jaundiced). He also reported that he had been vomiting and had diarrhea; and had not felt well that day.
8. On the day of his fall, the Claimant reported that he slipped and fell. He also reported that he did not lose consciousness.
9. The EDS report of the transport indicates that the Claimant was alert when they arrived, but that during transport his condition declined.
10. Sadly, the Claimant's physical condition deteriorated over the next four days; and on February 27, 2015, the Claimant succumbed.

11. The Amended Death Certificate, which is part of the record, lists the cause of death as "cardiopulmonary failure, subdural hematoma with mass effect, subarachnoid hemorrhage."

12. The question at bar – as to a determination of compensability - is whether the Claimant slipped and fell which is what he indicated to medical professionals on the day of his injury; or did he simply collapse and hit his head?

13. In either instance, that fall and the resulting head injury is the cause of death. That fact is not in dispute.

14. The Claimant was outside on break when he fell/collapsed.

15. While there was initially some confusion as to whether the Claimant was on a ladder and fell from that ladder, both parties agree that he was not on a ladder and his fall/collapse occurred while he was standing on the ground.

16. Josiah Fludd was a witness to the fall/collapse. The parties took Mr. Fludd's deposition on 10/15/15.

17. Mr. Fludd testified that, on that day, the Claimant was standing on the sidewalk beside Mr. Fludd's truck.

18. Mr. Fludd testified that he saw the Claimant collapse. He also testified that the Claimant did not try to break his fall nor did he attempt to brace himself in anyway.

19. Mr. Fludd testified that the Claimant fell backwards.

20. He further testified that the Claimant was not walking at the time; and he did not see the Claimant slip.

21. On cross-examination Mr. Fludd testified that he could not see all of the Claimant's legs, but he could see his thighs.

22. While Mr. Fludd could not testify as to whether the Claimant slipped, he did testify that the Claimant's thighs were stationary.

23. We have read Mr. Fludd's deposition in its entirety. Mr. Fludd is simply a witness to the event. He does not stand to gain or lose based on his testimony in this case. We give his testimony great weight.

24. When considering the record as a whole, we are not persuaded that the Claimant slipped or tripped.

25. We find that the Claimant simply collapsed. A review of the Claimant's medical history gives us insight as to why this could occur. There is medical evidence that the Claimant suffered from numerous conditions peculiar to him that could result in such an event.

26. This is a denied claim. The burden to prove there was a compensable injury rests with the Claimant. He must prove by a preponderance of the evidence that he indeed did slip and fall.

27. Here the Defendants have presented a persuasive case as to idiopathic injury which has no nexus to his work.

28. At the time of this event, the Claimant was on break outside. The Defendants presented a witness that observed the event. While his line of sight was somewhat obstructed, he could see the Claimant from the head down to his thighs. This witness describes the event - he sees the Claimant falling backwards without any flailing or any attempt to break his fall. The witness describes an event that took place from a stationary position. He testified that the Claimant was unconscious. The Claimant stated to medical personnel that he did not lose consciousness. Candidly, whether he was conscious or unconscious is not dispositive of whether he slipped or just collapsed.

29. In this case, we are persuaded by the greater weight of the evidence that the Claimant suffered an idiopathic fall. The description of the event which the Claimant provided was given after he suffered an event so significant that it will lead to his death. It is also clear from the medical evidence that the Claimant was – prior to the fall – suffering from compromising medical conditions. The Claimant's statements at the time of his injury must be viewed through the lens of the events that day and his general physical condition on that day as well.

30. The Claimant's statement as to mechanism of injury must be viewed juxtaposed to the testimony of Mr. Fludd with consideration for the Claimant's general physical health at the time.

31. This case is distinguishable from *Nicholson and Barnes*. Here *Bagwell v. Ernest Burnwell, Inc.* is on point. The fact pattern in that case and this case are very similar. In *Bagwell*, there was an eyewitness who saw the employee fall backward rigidly without attempting to brace the fall. The Court stated in *Bagwell* that being at work was not enough to justify an award, but it must be shown "either that the cause of the fall or the resulting injury bore some special relation to his work or to the conditions under which it was performed." The Court further noted that "while the cause of [the employee's] fall may be unexplained, the circumstances of his fall are fully covered by the testimony of eyewitnesses." *Nicholson and Barnes* are different in that in *Nicholson*, the employee's foot caught on the carpet. The Court held that the employee did not fall due to a condition peculiar to her but fell as a result of tripping on the carpet. In *Barnes*, the injured employee was hurrying to check her email and fell. There was no evidence that there was an internal breakdown causing the fall, so the Court found the injury compensable regardless of whether she tripped over herself or the carpet. This case

here is directly on point with *Bagwell* in that there is evidence of an internal breakdown and there is an uninterested witness attesting to the facts of the Claimant passing out.

32. Given the totality of the evidence, the Claimant has failed to meet his burden. As such, the claim is dismissed with prejudice. The parties stipulated by consent at the appellate hearing that the amended and revised order will be the language reviewed by the Panel.

CONCLUSIONS OF LAW

Accordingly, as provided in S.C. Code Ann. § 42-17-40 of the S.C. Code Ann., it is the determination of this Commission that:

1. The burden of proof applicable to a claim for workers' compensation benefits is the preponderance of the evidence. The Claimant must establish by preponderance of the evidence the facts that will entitle him to an award under the workers' compensation Act. *Walsh v. U.S. Rubber Co.*, 120 S.E.2d 685 (1961);
2. Under S.C. Code Ann. § 42-1-130, the Claimant was a covered Employee at the time of his accident dated February 23, 2015;
3. Under S.C. Code Ann. § 42-1-140, the Defendant/Employer was a covered Employer under the Act on February 23, 2015;
4. Under S.C. Code Ann. § 42-1-160, the Claimant must show the he sustained an injury by accident arising out of and in the course and scope of employment in order to be entitled to benefits;
5. Pursuant to S.C. Code Ann. § 42-1-160, the Claimant has failed to show by a preponderance of the evidence a compensable death by accident. This conclusion is based on Finding of Fact Nos. 16 – 31.

6. The Claimant merely suffered an idiopathic fall due to pre-existing unrelated medical issues as described in the medical records and through witness testimony. This conclusion of law is based upon Finding of Fact Nos. 28 – 30.

7. Therefore, since the Claimant has failed to meet the burden, this claim is dismissed with prejudice. This conclusion of law is based upon Finding of Fact No. 32.

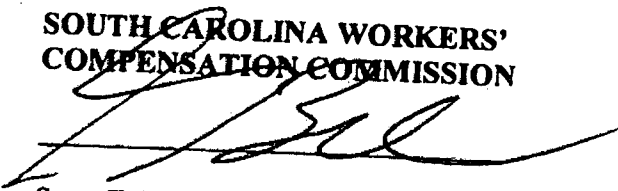
ORDER

Based on the foregoing Findings of Fact and Conclusions of Law:

IT IS HEREBY ORDERED that the Order of the Hearing Commissioner filed in the above-captioned matter on February 2, 2017, is hereby Affirmed with Amendments to correct scrivener's errors, including the proper APA submissions to the Single Commissioner, by the Full Commission Appellate Panel. The Claimant for a compensable injury by accident is denied in its entirety.

AND IT IS SO ORDERED.

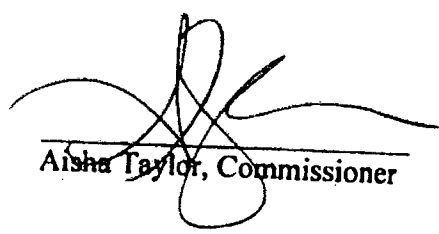
**SOUTH CAROLINA WORKERS'
COMPENSATION COMMISSION**


Scott T. Beck, Commissioner
On Behalf of the Appellate Panel

FULL AFFIRMATION

Concur:


Susan S. Barden, Commissioner


Aisha Taylor, 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 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 Valerie Deller on September 18, 2017

Kim Hinkle

From: appeals@wcc.sc.gov
Sent: Monday, September 18, 2017 2:42 PM
To: AHAM@PFMCDLAW.COM; BRIAN@BRIANDUMASATTORNEY.COM;
CDOOLEY@TURNERPADGET.COM; CINDYDOOLEY-GROUP@TURNERPADGET.COM;
CRYSTAL@PFMCDLAW.COM; KIM@PFMCDLAW.COM; PRESTON@PFMCDLAW.COM;
ROSE@PFMCDLAW.COM; SABRINA@PFMCDLAW.COM; APPEALS@WCC.SC.GOV
Subject: Full Commission Order - WCC#:1501382 -
Attachments: OBD712.pdf

Attached is the Full Commission Order for WCC#: 1501382

R08 ORD - Full Commission Order - 9/18/2017 - ORDER#: 67416 - WCC #: 1501382