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

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.

FINAL BRIEF OF APPELLANT

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STATEMENT OF THE CASE

Appellant Pamela Grady (hereinafter "Grady") was leaving her job at Magnolia Manor of Inman on September 23, 2015, when she stumbled and fell, breaking her right shoulder. Grady went on to have a total right shoulder replacement on October 16, 2015. She missed work from September 24, 2015 through December 21, 2015, following her injury and the resulting right shoulder surgery. Thereafter, she returned to her regular job.

Respondents Magnolia Manor of Inman and Zurich American Insurance Company c/o Gallagher Bassett Services, Inc. (hereinafter "Respondents") denied Grady's claim. Grady filed a Form 50 Request For Hearing. (R. p. 21) Respondents filed a Form 51, generally denying Grady's claim. (R. p. 22)

At the initial hearing before Commissioner Aisha Taylor on March 17, 2016, Grady maintained that she was still on company property when she fell. Grady testified that she was leaving work for the day, carrying her purse and some other materials, walking on a concrete sidewalk, when she stumbled and fell forward, landing on her right side, and injuring her right shoulder. (R. pp. 35-38) Grady acknowledged that she did not stumble and fall over any particular object; rather, she stumbled as she was walking and fell forward, ultimately breaking her right shoulder. She asserted that her claim was

compensable pursuant to Nicholson v. SC Dept. of Social Services, 411 SC 381 (2015), and Barnes v. Charter Realty, 411 SC 391 (2015), as well as Williams v. South Carolina State Hospital, 245 SC 377 (1965). She also denied that she sustained an "unexplained" fall. (R. pp. 41-43)

Respondents contended that Grady was off the clock, walking to her car, when she fell on a flat surface and could not say why she fell. Specifically, Respondents contended that Grady did not slip, trip, or fall over anything and could not explain why she stumbled and fell. Essentially, Respondents argued that Grady sustained a non-compensable, level floor fall, unconnected to her job. Respondents also asserted that Grady sustained a non-compensable "unexplained" fall. (R. p. 30, lines 8-25-p. 31, lines 1-14)

The initial hearing consisted of Grady testifying as to the circumstances of her fall. She explained the circumstances of her fall, including how she was walking on the sidewalk and stumbled, causing her to fall forward, landing on her right side, and breaking her right shoulder. She confirmed that she required a right shoulder replacement surgery due to her injury and that she had, as of the time of the initial hearing, returned to work at Magnolia Manor of Inman after her medical leave of absence. (R. p. 44) The parties stipulated that Grady's average weekly wage was $1192.35, for a corresponding compensation rate of $766.05. (R. p. 2)

By Decision and Order dated September 12, 2016, The Hearing Commissioner found in Grady's favor. Commissioner Taylor found the claim compensable pursuant to Nicholson v. SC Dept. of Social Services, 411 SC 381 (2015), Barnes v. Charter Realty, 411 SC 391 (2015), and Williams v. South Carolina State Hospital, 245 SC 377 (1965). The Hearing Commissioner found that Grady was still within the ambit of her employment,

on company premises, and that her fall was not "idiopathic." As such, the claim was compensable and benefits were awarded, including past due temporary total disability benefits, along with payment for and provision of medical treatment for Grady's injured shoulder. (R. pp. 5-6)

On September 26, 2016, Respondents appealed by way of a timely filed Form 30, Request for Commission Review. The Appellate Panel hearing was held on December 12, 2016. By Decision and Order dated April 7, 2017, the Appellate Panel reversed the Hearing Commissioner. The Appellate Panel found that Grady could not explain why she fell, nor did she slip, trip, or fall over anything. The Appellate Panel found the Williams case inapplicable and that Nicholson and Barnes were distinguishable. Further, the Appellate Panel found that Turner v. SAIIA Construction, 419 S.C. 98, 796 S.E.2d 150 (Ct. App. 2016), a decision issued by the Court of Appeals five (5) days prior to the Appellate Panel hearing, supported Respondents' argument that Grady had suffered an "unexplained" fall and thus her claim was not compensable. The Appellate Panel's ultimate finding was that Grady suffered an "unexplained" fall and her case was not compensable. (R. p. 20) This appeal follows.

STATEMENT OF THE FACTS

Grady was working as a full time office staff employee of Magnolia Manor of Inman. She finished her work duties on the afternoon of September 23, 2015 and began walking to her car with a co-worker, carrying her purse and some work-related files. While still on the sidewalk immediately adjacent to the building, leading to the employer's parking lot, Grady stumbled, causing her to fall forward, landing on her right side, and injuring her right shoulder. (R. p. 206, lines 17-21; R. p. 208, lines 7-8)

Grady did not slip on or trip over anything in particular. She testified first at her deposition, and later at the initial hearing before Commissioner Taylor, that she stumbled as she was walking and this caused her to fall forward, landing on her right side, and breaking her right shoulder. (R. p. 206, lines 14-21; p. 208, lines 7-8) She was able to drive herself home but later that evening went to the Spartanburg Regional emergency room where she was diagnosed with a broken shoulder. (R. pp. 83-99) She ultimately came under the care of Dr. Alan Posta at Carolina Orthopedic Center. She underwent a total right shoulder arthroplasty on October 16, 2015. (R. pp. 100-125) She was out of work from September 24, 2015 through December 21, 2015 before returning to her regular job duties. (R. p. 44)

ARGUMENT

I. GRADY SUSTAINED A COMPENSABLE RIGHT SHOULDER INJURY WHEN SHE STUMBLED AND FELL ON SEPTEMBER 23, 2015 BECAUSE HER ACCIDENT AND INJURY OCCURRED IN THE COURSE OF AND AROSE OUT OF HER EMPLOYMENT.

The Hearing Commissioner correctly analyzed this claim and found it compensable. The Hearing Commissioner's Decision and Order should have been affirmed in full because it was legally correct and supported by substantial evidence. It was legal error for the Appellate Panel to reverse the Hearing Commissioner by finding that Grady sustained a non-compensable, "unexplained" fall. Grady largely relies on two recent cases issued by the South Carolina Supreme Court, Nicholson v. SC Dept. of Social Services, 411 SC 381 (2015), and Barnes v. Charter Realty, 411 SC 391 (2015), as well as Williams v. South Carolina State Hospital, 245 SC 377 (1965), as persuasive authority to reverse the Decision and Order of the Appellate Panel.

"[W]orkers' compensation [statutes are] to be liberally construed in favor of coverage in order to serve the beneficent purpose of the [Workers' Compensation] Act; only exceptions and restrictions on coverage are to be strictly construed." James v. Anne's Inc., 390 S.C. 188, 198, 701 S.E.2d 730, 735 (2010). "An appellate court can reverse or modify the [Appellate Panel]'s decision if it is affected by an error of law or is clearly erroneous in view of the reliable, probative, and substantial evidence in the whole record." Pierre v. Seaside Farms, Inc., 386 S.C. 534, 540, 689 S.E.2d 615, 618 (2010). "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 that [the commission] reached or must have reached' to support its orders." Lewis v. L.B. Dynasty, Inc., Op. No. 27711 (S.C. Sup. Ct. filed Apr. 19, 2017) (Shearouse Adv. Sh. No. 16 at 27, 29) (quoting Lark v. Bi-Lo, Inc., 276 S.C. 130, 135, 276 S.E.2d 304, 306 (1981)).

For an accidental injury to be compensable, it must "aris[e] out of and in the course of the employment." S.C.Code Ann. § 42-1-160(A) (Supp.2013). Arising out of refers to the injury's origin and cause, whereas in the course of refers to the injury's time, place, and circumstances. Osteen v. Greenville Cnty. Sch. Dist., 333 S.C. 43, 50, 508 S.E.2d 21, 24 (1998). An injury arises out of employment if it is proximately caused by the employment. Douglas v. Spartan Mills, Startex Div., 245 S.C. 265, 269, 140 S.E.2d 173, 175 (1965). For an injury to arise out of employment, there must be a causal connection between the conditions under which the work is required to be performed and the resulting injury. Grant Textiles, 372 S.C. at 201, 641 S.E.2d at 871.

I. In The Course Of Employment

Although the Respondents did not concede the issue, during the course of this claim they made no great effort to dispute that Grady's injury occurred in the course of her employment. Grady was on company property, heading toward her car, on a company-maintained sidewalk, having just exited the building to leave her job for the day. The Hearing Commissioner correctly determined that this incident falls within the scope of Williams v. South Carolina State Hospital, 245 SC 377 (1965) with regard to the requirement that the injury occur "within the course of employment." The Williams case extends workers' compensation coverage to incidents exactly like the instant claim, wherein the incident took place on the employer's premises on employer controlled property.

In Williams, the claimant was exiting her employer's building for the day after completing her work as a nurse's aide. As she was walking to the employer's parking lot, on the employer's premises, she slipped off a curb and fell, causing injury to her back. Although Williams was off duty when she fell, the Supreme Court held that "[a] reasonable length of time must be given an employee to separate himself or herself from the place of work. The employment contemplated her entry upon and departure from the place of work as much as it contemplated her working there, and must include a reasonable interval of time for that purpose. It is true that an accidental injury is not rendered compensable by the mere fact that it occurred on the employer's premises; but the fact that the claimant was rightfully upon the premises controlled by the employer, as a result of her employment, and was leaving over the employer's premises as contemplated at the close of the day's work, made the act of leaving "in the course of" her employment. Williams, at p. 381-382.

Like Williams, Grady was exiting the building, as she did after each workday, and walking to her car on employer controlled property. The fact that she had concluded her work for the day is not determinative. As stated in Williams, "employment includes not only the actual doing of the work, but a reasonable margin of time and space necessary to be used in passing to and from the place where the work is to be done." Williams at p. 381 As such, Grady submits that her injury by accident occurred in the course of her employment with Respondents.

II. Arising Out Of The Employment

The ultimate question that must be addressed is the same question that was addressed in both the Nicholson and Barnes cases; whether Grady's injury "arose out of" her employment. The Hearing Commissioner correctly determined that Grady's injury in the instant case met the "arising out of" requirement and was thus compensable.

In Nicholson, the claimant sustained a non-idiopathic fall at her place of employment when she walking to a meeting, scuffed her foot on the hallway carpet, and fell. The Court of Appeals held that Nicholson's fall was not unexplained or idiopathic; however, it was still not compensable because the carpet that Nicholson was walking on was not a special hazard or condition of her employment that contributed to her fall and resulting injuries. The Supreme Court reversed, holding that the "court of appeals erred in requiring a claimant to prove the existence of a hazard or danger because it erroneously injected fault into the workers' compensation law." Nicholson at p. 389. The Supreme Court held that the proper framework for the analysis was "[f]or an accidental injury to be compensable under the workers' compensation scheme there must be a causal connection between the employment and injury; that is the test and the claimant need prove nothing

more." Nicholson at p. 390. As such, the Supreme Court found that Nicholson's fall was compensable, as the "circumstances of her employment required her to walk down the hallway to perform her responsibilities and in the course of those duties she sustained an injury." Nicholson at p. 390. Nothing more was required for Nicholson to prove a compensable injury.

In Barnes, the claimant worked as an administrative assistant to a realtor. She stumbled and fell as she was walking toward a realtor's office to check the realtor's email, suffering several injuries. The Single Commissioner held that Barnes's claim was not compensable because there was no evidence that her fall was caused by some hazard at work. Barnes's fall was held to be idiopathic and that no competent evidence was presented that her employment contributed to her fall. The Appellate Panel and Court of Appeals both affirmed the Decision and Order of the Hearing Commissioner. The Supreme Court reversed, finding that Barnes's fall was not idiopathic because there was no evidence that it was caused by some internal breakdown or purely personal condition unrelated to the employment. The Supreme Court held that Barnes was performing a work task when she tripped, fell, and was injured. Citing Nicholson, the Court held that "Barnes clearly established that she was performing her job when she sustained an accidental injury; we therefore hold her injuries arose out of her employment as a matter of law." Barnes, p. 399.

In the instant case, Grady had just exited the building where she worked after concluding her duties for the day. She was on the sidewalk headed to the employer's parking lot, where her car was parked. She repeatedly testified that, as she was walking, she stumbled and fell forward, landing on her right side, and fracturing her right shoulder.

Grady submits that her injuries are compensable, as they fall within the ambit of the Nicholson and Barnes cases.

As an initial matter, it must be noted that there is no evidence that Grady's fall was "idiopathic," or caused by a condition particular to her that could have manifested itself anywhere, or caused by an internal breakdown personal to Grady. That is not the case here. There is no evidence that Grady's fall was caused by some internal breakdown or personal health defect. She did not testify as such and there is no witness testimony or medical evidence that would support her fall being idiopathic. In fact, Respondents conceded that Grady's fall was not idiopathic. (R. p. 53, line 7) The Appellate Panel also found that Grady's fall was not idiopathic. (R. p. 12)

Given that Grady's fall was not idiopathic, Grady submits that the examination to be made revolves around the framework for compensability as set forth in Nicholson, Barnes, and Williams.

In Barnes, the Supreme Court's ultimate decision was that Barnes was performing a work task when she tripped and fell. Those facts showed a connection between her employment and her injury. The Barnes Court held that Barnes was doing her job when she sustained an accidental injury. As such, her claim was compensable. The Barnes Court rejected the contention that Barnes was required to prove that she slipped on, or tripped over some object, or that her fall was caused by a hazard of her work.

Likewise, in Nicholson, the Supreme Court rejected the contention that a claimant is required to prove that her fall happened due to some type of hazard of her work. The Court reasoned that requiring proof of such a hazard or danger erroneously injects fault into the equation, and workers' compensation is designed to be a no-fault system. *See*

Nicholson at p. 389. Grady submits that she, likewise, is not required to prove that she slipped on, tripped over, or stumbled and fell due to some type of hazard peculiar to her employment. What Grady is required to prove is that there is a connection between her job and the circumstances of her injury.

The Nicholson case is instructive. In that case, Nicholson was at work on the way to a meeting when she tripped and fell. The circumstances of her employment required her to walk down that hallway and in the process, Nicholson suffered an accidental injury. The Court stated, "[b]ecause Nicholson's fall happened at work and was not caused by a condition peculiar to her, it was causally connected to her employment." Nicholson at p. 390.

Grady's fall also happened at work. The circumstances of Grady's work required her to walk down from her employment location, out of the employer's door, across the employer's sidewalk, and into the employer's parking lot so that she could get into her car and leave her job. She was rightfully on the premises as a result of her employment. This is part of her employment and incident to the requirements of her job. She is not required to prove that she slipped or tripped on anything hazardous. Requiring her to do so would erroneously inject fault into the equation. Put another way, Grady is not required to prove that her fall was the result (fault) of her tripping or slipping on some hazardous object on her employer's premises, as if this were a premises liability tort case. Grady must prove that she was within the purview of her employment when she was injured. She submits that she has proven this by testifying multiple times about the circumstances of her fall and resulting injury. The fact that she was exiting the building for the day when she stumbled and fell did not take her fall out of the purview of her employment with Magnolia Manor

of Inman, especially given that her fall was not idiopathic. Grady's employment contemplated her exiting the building just as much as it contemplated her entering the building; or, walking through the building; or, sitting at her desk and performing her job duties. Grady was sstill on the job when she fell and her fall was not caused by a condition peculiar to her. This causally connects the facts of Grady's accident and injury to her employment.

Although this case is not a "personal comfort doctrine" case, the Supreme Court's decision in Osteen v. Greenville County School District, 333 S.C. 43 (1998), 508 S.E.2d 21 (1998), is instructive. In Osteen, the claimant brought an ice chest with her to work. During her work day, she and her son retrieved the ice chest from her car and filled it with ice from the employer's ice maker. While lifting the loaded ice-chest back into her car, Osteen injured her back. Osteen acknowledged that she was filling the ice chest so that the ice could be used at a weekend family picnic. The Supreme Court reversed the Court of Appeals, finding that the claim was not compensable within the scope of the "personal comfort doctrine," because Osteen's filling of the cooler with ice for a family picnic was not necessary to her life, comfort, or convenience while she was at work. The Supreme Court reasoned that Osteen's "employment in no way required her to be placing a chest full of ice, for use over the weekend, into the trunk of her vehicle." Osteen, at p. 50.

It is helpful to contrast the circumstances of Osteen's injury with that of Grady's. Osteen was admittedly engaging in a physical activity that was not related to her job – carrying a chest of ice to be used at a family picnic. Grady's actions were very different. Grady was walking to her car after work, to the employer's parking lot, as was routine and customary for her employment. Osteen's actions were not related to an imperative act

necessary to her employment. Grady, on the other hand, needed to get to her car so she could leave work, requiring her to walk from the building and on the sidewalk where she stumbled and fell. Osteen was running a personal errand when she was injured. Grady was not. Grady's situation is different because she was injured during the reasonable margin of time and space necessary to be used in passing to and from the place where the work is to be done. *See* Williams v. SC State Hospital, at p. 381.

Grady does not contend that she was injured while seeking a personal comfort. But the logic behind the Osteen decision is instructive. It is the same logic employed in Nicholson and Barnes. The connection between employment and injury must remain intact and not be severed, as it was in Osteen. Grady's case is different than Osteen, and far more akin to Nicholson and Barnes.

Osteen's actions were not related to her employment. She had clearly deviated from her job duties. Grady submits that her action in leaving for the day and walking across the employer's premises to her car were absolutely related to her employment. They were a predictable, foreseeable action that was unquestionably contemplated as part of her employment. There was no deviation from the norm. Plus, the fact that Grady (or any other employee) might stumble and fall while walking is extremely foreseeable, with injury resulting from a fall being a foreseeable result. This is different than Osteen, as it is far less foreseeable that Osteen would hurt her back doing a purely personal errand while in the midst of a significant deviation from her work duties. Osteen's employer likely never contemplated Osteen's actions or results as part of Osteen's employment. Grady is different, as it is completely predictable that she (or any other employee) might suffer a fall while walking at work and become injured.

Like both employees in Nicholson and Barnes, Grady was within the ambit of her employment at the time she stumbled, causing her to fall and become injured. As in Williams, Grady's employment included not only the doing of the work, but a reasonable margin of time and space necessary to be used in passing to and from the place where the work is to be done. *See* Williams, at p. 381. Because her employment included this, and because her fall was not idiopathic, her injury arose out of her employment.

II. GRADY DID NOT SUSTAIN AN UNEXPLAINED FALL AND THE APPELLATE PANEL SHOULD BE REVERSED.

Unexplained fall cases may be classified into two main categories: (1) those in which the fall was unwitnessed or was purely unexplained; and (2) those in which the evidence established that the fall, while unexplained, had an apparent lack of work connection, the implication arising that the fall resulted from some pre-existing physical condition. Crosby v. Wal-Mart Store, Inc., 330 SC 489, 499 S.E.2d 253 (1989). Where the fall is unwitnessed or purely unexplained, as in situations where the employee dies before he has an opportunity to relate the occurrence, and there are no eyewitnesses to the occurrence itself, our courts have tended to affirm an award of compensation, deferring to the fact finding discretion of the commission. Steed v. Mount Pleasant Seafood Co., 236 S.C. 253, 113 S.E.2d 827 (1960).

Based on the foregoing, it appears that two types of unexplained fall cases exist. Both types of cases involve a claimant who is unable to relate the facts of the incident. According to the Crosby case, an unexplained fall case is one where no one knows what happened whatsoever, or no one knows what happened but evidence shows the fall may

have been idiopathic in nature. *See* Crosby at p. 496. Neither of those categories fits this case. Here, Claimant did not suffer an idiopathic fall and her fall was not "purely" unexplained, as she was able to testify about the circumstances surrounding her fall.

Grady disputes that her fall was "unexplained" and submits that the Appellate Panel should be reversed. Grady was not dead or incapacitated. Grady related the circumstances of her fall at all times, including at her deposition and again at the initial hearing. She testified repeatedly that she stumbled and this caused her to fall forward, landing on her right side and injuring her right shoulder, while walking on the employer-maintained sidewalk toward her car. Although Grady (like the claimant in Barnes) could not point to anything specific that caused her to stumble, such as slipping on water or tripping over a foreign object, she certainly gave no testimony that her fall was the result of an internal breakdown or weakness. As stated above, her fall was not idiopathic and there is no evidence to suggest it was. Neither the Single Commissioner nor the Appellate Panel found that Grady's fall was idiopathic. However, simply because she was unable to identify a hazardous reason that she stumbled does not make Grady's incident an "unexplained" fall. In fact, the claimant in Barnes also stumbled and fell without relating a cause, such as slipping or tripping over some type of hazard.[1]

The Appellate Panel found that Grady's testimony lacked any explanation for her fall, such as tripping on the concrete or slipping on water, and thus it was an "unexplained" fall. Grady rejects this as legal error and also submits that there is no substantial evidence

[1] During the course of this case, Respondents attacked the Barnes decision by arguing that, while the Court did address whether Barnes's fall was idiopathic, it did not address whether Barnes's fall was "unexplained" and, if the Court had done so, it likely would have reached a different result. Grady rejects this contention. The Court in Barnes did not need to address whether her fall was unexplained because the claimant in Barnes did in fact explain the circumstances of her fall — Barnes was at work when she stumbled and fell. And, like Grady, there was no evidence that Barnes's fall was idiopathic or due to some personal, internal breakdown.

to support this finding. The only evidence in the record is that Grady most certainly did explain her fall. She testified repeatedly that she stumbled, and this caused her to fall forward onto the concrete sidewalk. The fact that she may not know exactly what if anything caused her to stumble does not make her fall an unexplained occurrence. Grady's stumble caused her to fall. This is undisputed. To characterize it otherwise would be a misinterpretation of "unexplained fall" jurisprudence.

The Appellate Panel erred when it resurrected the misinterpretation of "unexplained fall" cases that has once again injected fault into the equation; something that the Supreme Court rejected in Nicholson and Barnes. The Appellate Panel relied on the dissents in the Barnes and Nicholson cases and also on Bagwell v. Ernest Burwell, Inc., 227 SC 444 (1955) and Crosby v. Wal-Mart Store, Inc., 330 SC 489, 499 S.E.2d 253 (1989) for the proposition that where a claimant presents no evidence as to what caused the fall, it is wholly conjectural to say that employment was a contributing cause of the injury. Additionally, the Appellate Panel relied on Turner v. SAIIA Construction, 419 S.C. 98, 796 S.E.2d 150 (Ct. App. 2016).

In Bagwell, the claimant was working when he suddenly fell backward on a concrete floor and two days later died without ever having regained consciousness. Physicians determined that Bagwell died from a subdural hematoma. The Court relied on this medical evidence, plus eye-witness testimony, to determine that Bagwell's claim was not compensable because the surrounding circumstances indicated that Bagwell's fall was idiopathic, or due to some personal internal breakdown or failure, unconnected to his employment. *See* Bagwell, at p. 447-451.

In Crosby, the claimant was at work, walking to a meeting, when she fell and was injured. She could not point to any reason for her fall, such as slipping on water or tripping over something. She alleged that her feet just went out from under her. There was evidence that Crosby said "my leg just gave out." The Court of Appeals found that Crosby's case was not compensable because Crosby did not know why she fell and there was evidence that her fall was idiopathic, or based in some internal, personal breakdown that was unrelated to her employment. The Court applied the same reasoning as used in Bagwell. There was an apparent lack of work connection and the implication of some pre-existing physical condition arose. *See* Crosby, at p. 490-496.

In Turner, the claimant was a dump truck driver. On the date of his injury, Turner's co-workers found him lying unconscious on his back next to his dump truck. Turner testified that he had no memory of the accident or how it happened. There was evidence that Turner's fall may have been idiopathic in nature due to pre-existing, non-work-related spine issues. However, Turner argued that he was entitled to a presumption that his injuries were work related because he was found injured in a place where his job duties required him to be, even though he could offer no explanation of the circumstances of the injury. The Court of Appeals held that Turner was not entitled such a presumption and that, because it was impossible to determine what Turner was doing at the time of the accident, Turner did not meet his burden of proving that his injury was connected to his employment. *See* Turner at p. 106-110.

Grady's case is very different. First, the claimant in Bagwell was *dead* and could not explain the circumstances of his fall. Instead, the Court in Bagwell relied on witness testimony as well as medical evidence to determine that Bagwell's fall was the result of

some idiopathic internal breakdown and thus not work related. The facts of Bagwell are completely different than the facts of the instant case because Grady is not dead and was absolutely able to describe the circumstances of her fall. And, as stated above, it was not an idiopathic fall. Additionally, although the Crosby case does help define "unexplained fall," Grady's case is again different because Crosby's fall was idiopathic whereas Grady's fall was not. Grady's fall does not fit into either of the definitions of "unexplained fall" set forth in Crosby. Furthermore, Grady's case is different than the Turner case because the claimant in Turner was unconscious and incapacitated and did not remember how his fall occurred. Grady was able to describe exactly what she was doing at the time of the accident, whereas Turner had no memory and was completely unable to describe what happened to him.

The majority opinions of Nicholson and Barnes support Grady's contention that her injury is compensable. As in Nicholson, Grady did not have an idiopathic fall and her fall was not "unexplained" because Grady gave a very specific, non-personal reason for her fall - she stumbled forward and fell while walking towards her car. Additionally, as in Barnes, Grady was within the ambit of her employment when she had a non-idiopathic fall and was injured. Grady need not present evidence that she slipped or tripped over any specific object, or be able to pinpoint the exact reason that she stumbled and fell, breaking her right shoulder, on September 23, 2015. Even so, Grady presented such evidence by testifying multiple times under oath that the reason she fell was because she stumbled. Grady must prove that her injury arose out of and was in the course of her employment. She has met both of those requirements, and the idiopathic fall exception does not apply. Her claim was rightfully found compensable by the Hearing Commissioner because her

fall was neither unexplained nor idiopathic and it occurred incidental to her employment duties at a time and place incidental to her employment.

CONCLUSION

The Barnes, Nicholson, and Williams cases are the controlling law and the instant case is governed by those cases. Grady's fall was not unexplained, nor was it idiopathic. 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. 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,

November 1, 2017

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CERTIFICATE OF COUNSEL

The undersigned certifies that the Final Brief of Appellant complies with Rule 211(b), SCACR

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