ORIGINAL

THE STATE OF SOUTH CAROLINA
In The Court Of Appeals

APPEAL FROM THE SOUTH CAROLINA
WORKERS' COMPENSATION COMMISSION

SCWCC No. 0901585

Carolyn M. Nicholson, Employee, Respondent,

v.

SC Dept. of Social Services, Employer, and
State Accident Fund, Carrier, Appellants.

BRIEF OF APPELLANTS

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STATEMENT OF THE CASE

On January 3, 2011, Respondent Carolyn Nicholson ("Nicholson") filed a Form 50, Request for Hearing, alleging that she sustained an injury to her neck, left shoulder, and back by accident arising out of and in the course of her employment with the South Carolina Department of Social Services ("SCDSS") on February 26, 2009. (R. p. 27). Appellants, SCDSS and the State Accident Fund, filed a Form 51 on January 31, 2011 denying that Nicholson sustained a compensable injury by accident arising out of and in the course of her employment. (R. p. 29). A hearing was scheduled before Commissioner Derrick L. Williams on March 16, 2011 in Greenville, South Carolina. (R. p. 17).

At the hearing, Nicholson maintained that she sustained a compensable injury by accident arising out of and in the course of her employment on February 26, 2009 when she fell while walking down a hallway. (R. p. 19). Nicholson sought payment of past causally related medical treatment, as well as additional medical treatment to her neck, left shoulder, and back. Id. Nicholson also sought temporary total disability benefits for her time out of work. Id. SCDSS continued to deny that Nicholson sustained a compensable injury by accident arising out of and in the course of her employment. Id.

On April 26, 2011, Commissioner Derrick L. Williams issued a Decision and Order finding that Nicholson failed to prove by a preponderance of the evidence that her alleged injury arose out of her employment with SCDSS. (R. p. 25). Commissioner Williams specifically found that Nicholson failed to prove a causal connection between her fall on February 26, 2009 and her employment with SCDSS. (R. p. 24). Additionally, Commissioner Williams found that Nicholson's fall was "wholly unrelated to her employment," that Nicholson's employment with SCDSS was not a contributing cause of

her alleged injury, and that Nicholson's employment with SCDSS did not contribute to the effect of her fall. (R. pp. 24-25).

Nicholson filed a Form 30, Request for Commission Review, on May 11, 2011. (R. pp. 30-32). Oral arguments were held before the Appellate Panel of the South Carolina Workers' Compensation Commission ("Commission") on September 20, 2011. (*See* R. p. 1).

On December 29, 2011, the Commission filed a Decision and Order reversing the April 26, 2011 Order of Commissioner Williams. Id. The Commission found that Nicholson sustained a compensable injury to her neck, back, and left shoulder by accident arising out of and in the course of her employment with SCDSS when her shoe frictioned the carpet causing her to trip and fall while walking to a scheduled audit meeting on February 26, 2009. (R. pp. 9-11). The Commission further found that there was a causal connection between Nicholson's fall on February 26, 2009 and her employment with SCDSS and that her employment with SCDSS was a contributing cause to her fall and subsequent injuries. (R. pp. 9-10). In support of its decision, the Commission relied on the holdings in Sigmon v. Dayco Corp., 316 S.C. 260, 449 S.E.2d 497 (Ct. App. 1994); Creech v. Ducane Co., 320 S.C. 559, 467 S.E.2d 114 (Ct. App. 1995); and Pierre v. Seaside Farms, Inc., 386 S.C. 534, 689 S.E.2d 615 (2010). (*See* R. pp. 13-15).

On January 13, 2012, SCDSS filed a Notice of Appeal with the South Carolina Court of Appeals. (R. pp. 33-44). This appeal follows.

STATEMENT OF THE FACTS

The facts of this case are undisputed. Nicholson worked as a supervisor in the investigations department at SCDSS. (R. p. 49, lines 21-23). As a part of her job with SCDSS, Nicholson attended internal audit meetings every Thursday to review and update the case files. (R. p. 51, lines 4-9). On Thursday, February 26, 2009, Nicholson was scheduled for a regular, internal audit meeting, which was held on the lower floor of SCDSS's building. (R. p. 51, lines 4-16). That day, Nicholson grabbed her files, left her office, signed out on the sign out board, and began walking down the hallway to the audit meeting. (R. p. 55, line 15–p. 56, line 1). While walking down the hallway, Nicholson's shoe "frictioned" the carpet, causing her to fall. (R. p. 52, lines 7-13). As a result of her fall, Nicholson alleged that she sustained injuries to her neck, left shoulder, and back. (R. p. 47, lines 19-21).

Nicholson testified that there was nothing peculiar about the hallway or floor in SCDSS's building that caused her to fall on February 26, 2009. (R. p. 57, lines 7-13). The floor in the hallway was a normal, level, carpeted floor. (R. p. 56, lines 2-12). The carpet on the floor in the hallway was free from defect, and there was no debris on the floor. (R. p. 56, lines 13-22). Nicholson testified that the sole reason for her fall on February 26, 2009 was that her shoe "frictioned" the carpet. (R. p. 57, lines 17-21). While Nicholson was carrying case files in her hands at the time of her fall, the files she was carrying had nothing to do with her fall. (R. p. 64, lines 2-7; p. 65, lines 18-21). Finally, Nicholson specifically testified that her fall could have happened on any level, carpeted surface outside of SCDSS's building and that the only thing connecting her fall

to her employment was that she happened to be at work when her fall occurred. (R. p. 60, lines 1-7; p. 61, lines 2-8).

STANDARD OF REVIEW

In workers' compensation cases, the South Carolina Workers' Compensation Commission is the trier of fact. Hunter v. Patrick Construction Co., 289 S.C. 46, 344 S.E.2d 613 (1986). The appellate court's review of these findings of fact is limited to determining whether the findings are clearly unsupported by substantial evidence in the record. Lark v. Bi-Lo, Inc., 276 S.C. 130, 276 S.E.2d 304 (1981); Howell v. Pacific Columbia Mills, 291 S.C. 469, 354 S.E.2d 384 (1987). The appellate court is not permitted to re-weigh the evidence and to substitute its own findings of fact for those of the Commission. Brown v. Jordan Oil Co., 291 S.C. 272, 353 S.E.2d 280 (1987). However, an award from the Commission cannot be based upon mere possibilities, probabilities, surmise or conjectures. Broughton v. South Carolina Game & Fish Dept., 219 S.C. 50, 64 S.E.2d 152 (1951).

Section 1-23-380(A)(5) of the South Carolina Code also provides:

> **The Court may reverse or modify the decision if substantial rights of the Appellant have been prejudiced because the administrative findings, inferences, conclusions or decisions are . . . (d) affected by other error of law; (e) clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record. . . .**

S.C. Code Ann., § 1-23-380(A)(5) (2007)(Emphasis added).

The issue of whether a particular event constitutes a compensable accident is for the court. Sturkie v. Ballenger Corp., 268 S.C. 536, 235 S.E.2d 120 (1977). The question of whether an injury arose out of or in the course of the employment is one of law where the facts are admitted. Williams v. City of Columbia, 218 S.C. 287, 62 S.E.2d 469 (1950). Additionally, if the findings of the Commission are based on surmise, speculation or conjecture, then the issue becomes one of law for the court and not of fact

for the Commission. Herndon v. Morgan Mills, Inc., 246 S.C. 201, 143 S.E.2d 376 (1965).

Thus, "review is limited to deciding whether the Commission's decision is unsupported by substantial evidence or is controlled by some error of law." Rodriguez v. Romero, 363 S.C. 80, 84, 610 S.E.2d 488, 490 (2005)[citing Hendricks v. Pickens County, 335 S.C. 405, 411, 517 S.E.2d 698, 701 (Ct. App. 1999)].

ARGUMENTS

I.

THE COMMISSION ERRED IN FINDING THAT NICHOLSON SUSTAINED A COMPENSABLE INJURY "ARISING OUT OF" HER EMPLOYMENT WITH SCDSS ON FEBRUARY 26, 2009.

In order to be entitled to workers' compensation benefits, the employee must show that he or she sustained an injury by accident arising out of and in the course of the employment. Owings v. Anderson County Sheriff's Dept., 315 S.C. 297, 433 S.E.2d 869 (1993). The mere fact that an injury occurred in the course of employment is **not** a basis for an award. Lorick v. South Carolina Elec. & Gas, 245 S.C. 513, 141 S.E.2d 662 (1965); Evans v. Jones-Wilson, Inc., 235 S.C. 219, 110 S.E.2d 851 (1959); Bagwell v. Ernest Burwell, Inc., 227 S.C. 444, 88 S.E.2d 611 (1955)(Emphasis added). To sustain an award under the Workmen's Compensation Act, it must appear that the injury resulted from an accident which both "arose out of" **and** "in the course of" employment. Williams v. South Carolina State Hospital, 245 S.C. 377, 140 S.E.2d 601 (1965) (Emphasis added). Although the "arising out of" and "in the course of" employment requirements are somewhat overlapping, they are not synonymous and both must exist simultaneously to allow the claimant to recover. Hall v. Desert Aire, Inc., 376 S.C. 338, 656 S.E.2d 753 (Ct. App. 2007).

The words "arising out of" refer to the origin of the cause of the accident. Douglas v. Spartan Mills, 245 S.C. 265, 140 S.E.2d 173 (1965). 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 equally been exposed apart from the employment, does not arise out of the employment. Id. Under the "increased risk

doctrine" for workers' compensation purposes, an injury arises out of the employment if some risk inherent to the employment was a contributing cause of the injury; however, the risk must be one to which the general public would **not** be equally exposed. Simmons v. City of Charleston, 349 S.C. 64, 562 S.E. 2d 476 (S.C. App. 2002)(Emphasis added). Thus, in order for an injury to arise out of the employment, the causative danger must be peculiar to the work and not common to the neighborhood. *See* Hicks v. Piedmont Cold Storage, Inc., 324 S.C. 628, 479 S.E.2d 831 (S.C. App. 1996); Cyrus v. Miller Tire Service, 208 S.C. 545, 38 S.E.2d 761 (1946).

In the present case, substantial evidence in the records does **not** support the Commission's finding that Nicholson sustained a compensable injury by accident arising out of and in the course of her employment with SCDSS. While it is undisputed that Nicholson's incident occurred at work during working hours, Nicholson's injury did not "arise out of" her employment as required by the Act. There was no causal connection between Nicholson's alleged injury on February 26, 2009 and her employment with SCDSS. Further, Nicholson's employment with SCDSS did not increase the risk of her fall.

First, Nicholson's own testimony explicitly establishes that there was no causal connection between her fall on February 26, 2009 and her employment and that her fall was wholly unrelated to her employment. Nicholson testified that her fall occurred while she was walking down the hall to her weekly, in-house case file audit. (R. p. 51, line 4 – p. 52, line 13). Upon questioning by her attorney, Nicholson described exactly how her February 26, 2009 fall occurred:

Q: [Ms. Williams] Okay. And then what did you do?

A: I stacked them (her case files) from my desk and went around to go out the door. I was speaking to a worker on my way there that stopped me. And by the time I got midway from my office to going down the hall, the friction from my foot caught me and I fell, files and all, my left side. That was the gist of the story.

(R. p. 52, lines 7-13). When asked what she believed caused her fall on February 26, 2009, Nicholson specifically testified that the "friction from the carpet" caused her fall:

Q: [Ms. Williams] So, what is it that you think caused you to fall?

A: Friction from the carpet.

Q: Did your foot get stuck?

A: Yes, from the friction. As I went to walk, the friction from the carpet just grabbed me and I fell.

(R. p. 52, lines 20-24).

Additionally, while it is undisputed that Nicholson was carrying case files at the time of her fall, Nicholson confirmed upon examination by the Hearing Commissioner that the case files in her hands had nothing to do with the cause of her fall:

Q: [Hearing Commissioner] And the files you were carrying, the files didn't make you fall? I think you testified to it and I just want to be clear.

A: No, the files did not make me fall.

(R. p. 65, lines 18-21).

Nicholson's testimony clearly establishes that her fall was wholly unrelated to her employment. Based upon her description of the fall, it is clear that Nicholson's alleged injury occurred as the result of her simply failing to lift her foot a sufficient distance from the floor as she was walking, which caused her foot to "friction" the carpet and fall. In

fact, Nicholson specifically testified that the only thing connecting her fall to her employment was the fact that she happened to be at her job at the time of her fall:

> Q: [Mr. Watson] The only thing connecting this fall to your employment was that you happened to be at your job at the time; is that right?
>
> A: Yes.

(R. p. 61, lines 5-8). Based on her own testimony, it is obvious that there was absolutely nothing about her employment with SCDSS that caused her fall.

Further, Nicolson's testimony clearly establishes the alleged causative danger (i.e. the floor in SCDSS's building) was "common to the neighborhood" and not peculiar to her employment. Her testimony further establishes that the floor in SCDSS's building was a type of flooring that she would have been equally exposed to outside of her employment. Therefore, Nicholson's accident did not "arise out of" her employment as required by the Act. *See* Hicks, 324 S.C. 628, 479 S.E.2d 831; Cyrus, 208 S.C. 545, 38 S.E.2d 761.

Nicholson testified that the floor at Employer's building was a normal, level, carpeted floor that was free from any defect:

> Q: [Mr. Watson] Now, you told me at your deposition, and I just want to make sure this right, this is a pretty normal hallway, right?
>
> A: It is.
>
> Q: That you would see here or anywhere really, right?
>
> A: Same carpet that we have here.
>
> Q: Fair enough. And the floor was carpeted; is that right?
>
> A: Correct.
>
> Q: And it was a level floor; is that right?
>
> A: Yes, sir.

Q: And I think you told me at your deposition that the carpet was free from defect?

A: As far as I know.

Q: You don't recall seeing anything –

A: No, sir.

Q: – even after your accident that would have caused you to think, "Hey, I might have tripped over that."?

A: No, sir. No debris.

Q: It was just simply level floor, carpeted level floor?

A: Yes, sir.

(R. p. 56, lines 2-22). Additionally, when questioned by the Hearing Commissioner, Nicholson confirmed that the carpet did not buckle or move and that the cause of her fall was solely the friction between her shoe and the carpet that caused her fall:

Q: [Commissioner Williams] In terms of – now, when you say your foot frictioned, did the carpet kind of buckle up or did the carpet move at all when you frictioned?

A: Not that the carpet, it's just that the friction from it caught my shoe. It wasn't that it moved or anything.

(R. p. 65, lines 12-17). Based on Nicholson's own testimony, it is clear that there was nothing peculiar about the flooring in SCDSS's building that caused her to fall. In fact, it is undisputed that the floor was a level, carpeted floor, which was free from any defect or debris.

Importantly, Nicholson also testified that her fall could have occurred on any level, carpeted floor free from defect and that her fall could have happened anywhere, including the hearing room, *which had the same type of carpet*:

Q: [Mr. Watson] ... Would you agree with me that since you were walking down a normal hallway on a level floor on carpet free of

defect, that this event, your foot frictioning against the carpet thus causing you to fall, could have happened anywhere? It could happen here in this room.

A: That's possible.

(R. p. 60, lines 1-7).

Q: [Mr. Watson] . . . So it could have happened anywhere?

A: It could have happened anywhere.

(R. p. 61, lines 2-4). Nicholson's testimony that her fall "could have happened anywhere" clearly illustrates that her accident did not "arise out of" her employment as required by the Act.

In determining that Nicholson sustained a compensable injury by accident arising out of her employment, the Commission specifically found that the risk associated with her employment that caused her fall was "that she was required to work in a carpeted area." (R. p.10). However, there is no evidence that Nicholson's employment with SCDSS increased her risk of falling.

The Commission's decision that working on a carpeted area was a sufficient risk of employment to render Nicholson's fall and subsequent injuries compensable clearly ignores the South Carolina Supreme Court's decision in Bagwell v. Ernest Burwell, Inc., 227 S.C. 444, 88 S.E.2d 611 (1955). In Bagwell, the claimant, while in the performance of his duties on the premises of his employer, suddenly fell backward on a concrete floor, lost consciousness, and later died as a result of a subdural hemorrhage. Id. at 447, 88 S.E.2d at 612. The Supreme Court affirmed the Circuit Court's denial of compensability on the basis that the claimant's accident did not arise out of his employment with his employer. Id. at 457, 88 S.E.2d at 617. The Supreme Court held that there was no causal

connection between the claimant's fall and the claimant's employment. Id. at 452, 88 S.E.2d at 614. Furthermore, the Supreme Court held that the claimant's employment was not a contributing cause of the claimant's alleged injury. Id. at 454, 88 S.E.2d at 615. In fact, the Supreme Court addressed the issue of whether a level, concrete floor was a hazard of employment. The Supreme Court specifically stated that:

> **We are not prepared to accept the contention that, in the absence of special condition or circumstance, a level floor in a place of employment is a hazard.** Cement floors or other hard floors are as common outside industry as within it. The floor in the instant case did not create a hazard which would not be encountered on a sidewalk or street or in a home where a hard surface of the ground or hard floor existed.

Id. (Emphasis added). Furthermore, citing Cinmino's case, 251 Mass. 158, 146 N.E. 245, the Supreme Court stated:

> To hold a concrete floor in a place of employment is a danger which effects the risks which an employee encounters and is a hazard which arises out of an employment, would require a further holding, when the occasion arose, that any flooring of any material is a hazard of employment agaist which the statute gives compensation whenever there is a causal relation between the hazard and the injury. **The causal relation in such a case is too remote and speculative for practical application.**

Id. at 455, 88 S.E.2d 616. (Emphasis added).

Much like the level, concrete floor in Bagwell, the level, carpeted floor in SCDSS's building, which was free from any defect or debris, is as common outside of industry as within it, and the floor in SCDSS's building did not create a hazard or increase a risk that would not be encountered on any other level, carpeted floor outside of SCDSS's building. Walking on carpet is an activity that is common to general public, and the risk of "frictioning" a shoe and falling while walking on carpet is a risk that the

general public is constantly and equally exposed to. As such, the Commission erred in finding that walking on a carpeted area was a sufficient risk of employment to render Nicholson's fall and subsequent injuries compensable.

Finally, the Commission concluded that the Supreme Court's decision in Pierre v. Seaside Farms, Inc., 386 S.C. 534, 689 S.E.2d 615 (2010), forecloses SCDSS's argument that Nicholson's fall is not compensable because it could have happened on any carpeted floor at home or in some other place. (*See* R. p. 14). However, the Commission's interpretation of Pierre is clearly erroneous.

In Pierre, the Court held that the claimant sustained a compensable injury arising out of and in the course of his employment and reversed "the Commission's finding that the risk was not associated with Pierre's employment because the sidewalk was no different in character from other sidewalks." Id. at 548, 689 S.E.2d at 622. The Court specifically held that "Pierre's accident occurred as a result of a hazard that existed on the employer's premises, **i.e., Pierre slipped and fell on a wet sidewalk just outside the employees' housing facility.**" Id. (Emphasis added). The Court specifically noted that "the sidewalk was wet because another person was using the outside sink and the water ran down the sidewalk." Id. The Court held that "the employer's placement of the sink and the apparent lack of drainage created **the wet conditions that caused Pierre to fall.**" Id. (Emphasis added).

The claimant's accident in Pierre, unlike Nicholson's accident in the present case and unlike the claimant's accident in Bagwell, was caused by *a special condition and circumstance* – the wet conditions on the sidewalk from the employer's outside sink. *See* Pierre, 386 S.C. at 548, 689 S.E.2d 622. Despite the Commission's conclusion to the

contrary, the Pierre decision clearly does not cast any doubt on SCDSS's argument. Instead, the Pierre decision actually reinforces the Supreme Court's previous decision in Bagwell and further supports SCDSS's contention that Nicholson's alleged injury did not "arise out of" her employment.

As noted above, the Supreme Court in Bagwell, 227 S.C. at 454, 88 S.E.2d at 615, stated: "We are not prepared to accept the contention that, **in the absence of special condition or circumstance**, a level floor in a place of employment is a hazard." (Emphasis added). Because the claimant in Pierre fell on a level sidewalk, which he would have encountered outside of his employment, the Supreme Court had to find a "special condition or circumstance" (i.e., the wet conditions) in order to hold that the claimant in Pierre sustained a compensable injury by accident arising out of his employment. While there was a special condition in Pierre that was sufficient to justify a finding of a hazard to which the claimant would not have been exposed to outside of his employment (the water on the sidewalk from the employer's outside sink), **there is absolutely no evidence in the present case of any such "special condition or circumstance."** As noted above, Nicholson's fall simply occurred as the result of her shoe "frictioning" a normal, level, carpeted floor that she would be equally exposed to outside of her employment with SCDSS.

As the Supreme Court of South Carolina has previously held, the mere fact that an injury occurred at work does not necessarily make an alleged accident compensable. *See* Bagwell, 227 S.C. 444, 88 S.E.2d 611; Lorick, 245 S.C. 513, 141 S.E.2d 662. Thus, the mere fact that Nicholson's fall occurred at work does not necessarily make her alleged accident compensable. Nicholson also has the burden to establish that there was a causal

relationship between her employment with SCDSS and her fall. *See* Jennings v. Chambers Development Co., 335 S.C. 249, 516 S.E.2d 453 (Ct. App. 1999). However, substantial evidence in the record clearly establishes that there was no causal connection between Nicholson's employment with SCDSS and her fall on February 26, 2009. In fact, Nicholson's own testimony shows that there was nothing about the floor in SCDSS's building that increased the risk of her fall or caused her fall. Instead, it is clear that Nicholson's alleged injury occurred as the result of her simply failing to lift her foot a sufficient distance from the floor as she was walking, which caused her foot to "friction" the carpet and fall. There is no evidence of any defect in the carpeting which created a particular or increased risk of employment. Additionally, there is no evidence that the type of carpet in SCDSS's building presented any specific risk greater than that to which the general public is exposed. In fact, Nicholson specifically testified that her fall "could have happened anywhere," including the hearing room, which had the same type of carpet.

Therefore, based on the foregoing, Appellants SCDSS and State Accident Fund respectfully request that the Court reverse the Commission's decision that Nicholson sustained a compensable injury by accident arising out of and in the course of her employment on February 26, 2009.

II.

THE COMMISSION ERRED AS A MATTER OF LAW IN ITS INTERPRETATION AND RELIANCE ON *SIGMON V. DAYCO CORP.* AND *CREECH V. DUCANE CO.*

In reversing the Hearing Commissioner's decision that Nicholson did not sustain a compensable injury by accident arising out of and in the course of his employment, the Commission concluded that the facts in the present case are analogous to the facts in Sigmon v. Dayco Corp., 316 S.C. 260, 449 S.E.2d 497 (Ct. App. 1994), and Creech v. Ducane Co., 320 S.C. 559, 467 S.E.2d 114 (Ct. App. 1995). (*See* R. pp. 13-14). However, the Commission's reliance on Sigmon and Creech is obviously misplaced. The Commission specifically noted that:

> In Sigmon, it was determined that the injured worker sustained a compensable injury when his knee locked when he stood after bending to tighten a bolt on a machine, and in Creech, it was determined that the injured worker sustained a compensable injury by accident where he injured [his] back when bending over to pick up a one pound filter rack. Both of these injuries could have happened if the workers had performed similar activities at home or at some other place, but the injuries were compensable because they happened at work due to actions the employees undertook to perform their required work duties and because of the conditions under which they were required to work.

(R. pp. 13-14).

In Sigmon, the claimant alleged that he sustained a compensable injury by accident arising out of and in the course of his employment when he attempted to stand up after kneeling to tighten bolts on a machine that his employer assigned him to rebuild. Id. at 261, 449 S.E.2d at 498. The Single Commissioner held that the claimant did not sustain "an injury by accident" because "there was no causative event which produced

the onset of disability in [the claimant's] knee." Id. at 262, 449 S.E. 2d at 498. The Full Commission affirmed; however, the Circuit Court reversed finding that the claimant had sustained an injury by accident. Id. The Court of Appeals held that the Circuit Court correctly concluded that the Commission's denial was based on an error of law because the phrase "injury by accident" does not necessarily require a "causative event." Id. The Court cited Stokes v. First Nat'l Bank, 306 S.C. 46, 410 S.E.2d 248 (1991), and held that the "unexpected result or industrial injury is itself considered the compensable accident." Sigmon, 316 S.C. at 262, 449 S.E.2d at 498. However, the Court did not address whether the claimant's alleged accident arose out of his employment with. Id. Instead, the Court remanded the case to the Commission "for it to determine anew, based on the present record, Sigmon's claim for workers' compensation benefits." Id. at 263, 449 S.E. 2d at 499.

Similarly, in Creech, the Court also cited Stokes, and once again determined that the lower courts erred as a matter of law in finding that the claimant did not suffer an "injury by accident" within the meaning of the Act because the claimant failed to establish a causative event. Creech, 320 S.C. at 563, 467 S.E.2d at 116. In Creech, like in Sigmon, the Court remanded the case the Commission to determine if the claimant sustained a compensable injury by accident pursuant to the Supreme Court's decision in Stokes. *See* Creech, 320 S.C. at 563, 467 S.E.2d at 116.

The Commission's decision is based on a belief that this Court determined in Sigmon and Creech that the claimants sustained compensable injuries by accident arising out of their employment. (*See* R. pp. 13-14). However, as noted above, this is clearly not the case. This Court, in both Sigmon and Creech only determined that the phrase "injury

by accident" does not require a "causative event." In both cases, this Court did **not** address whether the claimants alleged injuries arose out of their employment. Instead, this Court remanded both cases to the Commission to determine whether the claimants sustained compensable injuries by accident pursuant to Stokes.

While it is true, pursuant to the decisions in Sigmon, Creech, and Stokes, that a claimant need not establish a specific event causing the injury, he or she still must establish a causal connection or relationship between the injury and the employment. *See* Crosby v. Wal-Mart, 330 S.C. 489, 499 S.E.2d 253 (Ct. App. 1998). In the present case, as argued above, Nicholson clearly failed to establish a causal connection between her alleged injuries and her employment. Therefore, the Commission erred as a matter of law in determining that Nicholson sustained a compensable injury by accident arising out of and in the course of her employment with SCDSS.

CONCLUSION

Based on the foregoing, Appellants SCDSS and State Accident Fund respectfully request that the South Carolina Court of Appeals reverse the Decision and Order of the South Carolina Workers' Compensation Commission finding that Nicholson sustained a compensable injury by accident arising out of and in the course of her employment on February 26, 2009.

Respectfully submitted,

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CERTIFICATE OF COUNSEL

The undersigned certifies that the Final Briefs comply with Rule 211(b), SCACR.

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PROOF OF SERVICE

I certify that I have served the Final Brief of Appellants and Final Reply Brief Appellants on Carolyn M. Nicholson by depositing a copy of it in the United State Mail, postage prepaid, on August 2, 2012, addressed to her attorney of record, Kathryn Williams, 619 N. Main Street, P.O. Box 10693, Greenville, South Carolina 29603.

August 17, 2012

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