THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM
THE WORKERS' COMPENSATION COMMISSION

SCWCC Case No. 0901585

Carolyn M. Nicholson, Claimant, ... Respondent,

vs.

S.C. Dep't of Social Services, Employer, and
State Accident Fund, Carrier, Defendants, ... Appellants.

BRIEF OF RESPONDENT

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III. Did the Commission correctly reject SCDSS's argument that the holding of Bagwell v. Ernest Burwell, Inc., 227 S.C. 444, 88 S.E.2d 611 (1955) has application under the facts of this case?

STATEMENT OF THE CASE

This is an appeal from the Workers' Compensation Commission. Carolyn Nicholson filed a claim under the Workers' Compensation Act alleging that she sustained a compensable injury by accident on or about February 26, 2009 when she fell while working for the South Carolina Department of Social Services. Nicholson contended that she sustained injuries to her neck, back, and left shoulder as a result of the fall and that she is entitled to payment of medical expenses and temporary total disability compensation. The Department of Social Services ("SCDSS") and its insurance carrier, State Accident Fund, admit Nicholson fell at work but deny that the fall constitutes a compensable injury by accident.

By Order dated April 26, 2011, the single Commissioner determined that Nicholson fell when her shoe scuffed the carpet while she was walking to a meeting with a stack of files in her hands; however, citing Bagwell v. Ernest Burwell, Inc., 227 S.C. 444, 88 S.E.2d 611 (1955), he found that the claim was not compensable. (R. pp. 17-26)

Nicholson appealed to the Full Commission Panel, and by Order dated December 29, 2011, an Appellate Panel of the Full Commission reversed the single Commissioner, found the claim compensable, and awarded benefits. (R. pp. 1-16)

SCDSS now appeals to this Court.

STATEMENT OF FACTS

At the hearing in Greenville on March 16, 2011, Nicholson testified that she is 50 years old and has a B.S. in business management. She was employed by SCDSS for about 20 years, though she was no longer working there at the time of the hearing for reasons unrelated to this claim. Nicholson stated that she worked in the child protective services area and was a supervisor of investigations. (R. p. 49, lines 4-23)

Nicholson testified that on February 26, 2009 she was preparing for an in-house audit of her files. She stated that she left her office carrying a stack of files for the meeting and was walking down the hall when "the friction from my foot caught me and I fell, files and all, [onto] my left side." (R. p. 51, line 4-p. 52, line 13) She stated that her leg did not give way, that she is in good health, and had not any previous problems with her legs giving way. (R. p. 52, lines 14-19) Nicholson was asked specifically what she thought caused her to fall, and she answered as follows:

> Q. 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)

Nicholson further testified that SCDSS sent her to Exigent–Wade Hampton for medical treatment for pain in her left side, left shoulder, neck, and leg. She eventually underwent an MRI examination of her neck, was evaluated by neurosurgeon Dr. Philip Hodge, and received a cervical epidural steroid injection from Dr. John Haasis. (R. p. 52, line 25-p. 53, line 17) Nicholson was out of work from February 26, 2009 until April 13, 2009, when she returned to her regular work duties. (R. p. 53, line 18-p. 54, line 2) She specifically asked the Commission for compensation for her time out of work and for payment of her medical treatment.

The medical records show that Nicholson reported to Exigent–Wade Hampton on February 26, 2009 complaining of pain in her left side, left shoulder, neck, and leg after "she tripped on the carpet, fell and landed on her left side." She was diagnosed with contusions and strains, treated with medications, and restricted to light duty work. (R. pp. 85-86) Nicholson continued to attend appointments at Exigent for treatment of problems with her left shoulder, left arm, and neck through March 24, 2009, though on March 16, 2009, the notes indicate that the workers' compensation insurance company had denied the claim and bills were being sent to Nicholson's health insurance provider. (R. pp. 87-101)

Nicholson reported to her primary care physician, Dr. Stanley Coleman, on March 25, 2009 for continued care, and Dr. Coleman noted on that date that she was complaining of left arm and shoulder pain after falling at work. After noting continued neck and arm pain on April 6, 2009 and reviewing an MRI scan, Dr. Coleman referred Nicholson for evaluation with neurosurgeon Dr. Philip Hodge. (R. pp. 102-103)

Dr. Hodge saw Nicholson on May 18, 2009 and noted that she was complaining of continued neck and left arm pain after she "[t]ripped and fell on floor" while at work on

February 26, 2009. (R. p. 104) After evaluation, Dr. Hodge diagnosed cervical radiculopathy and recommended an epidural steroid injection. (R. pp. 104-106) He later opined that Nicholson's problems "were caused and/or aggravated by her fall at work on February 23, 2009." (R. p. 107)

Pain management physician Dr. John Haasis saw Nicholson on May 28, 2009 for evaluation on referral from Dr. Hodge. Dr. Haasis noted Nicholson complained of neck, left shoulder, and left upper extremity pain after "she fell at work." (R. p. 108) He recommended a trial of physical therapy before attempting an injection. (R. pp. 108-112) On June 20, 2009, Dr. Haasis noted that Nicholson reported "minimal benefit" from the therapy, and he then provided the epidural steroid injection. (R. pp. 113-114)

Medical records from Dr. Coleman's office dated prior to the incident at work show that Nicholson was treated for low back pain in 2001, syncope in 2002, chest pain in 2002, a pulled muscle in her arm in 2006, and bilateral knee pain in 2006. (R. pp. 116-124)

ARGUMENTS

In Brown v. Greenwood Mills, Inc., this Court explained at length the standard of review in workers' compensation cases.

> The South Carolina Administrative Procedures Act ("APA") establishes the standard for judicial review of decisions of the workers' compensation commission. A reviewing court may reverse or modify a decision of an agency if the findings, inferences, conclusions, or decisions of that agency are "'clearly erroneous in view of the reliable, probative and substantial evidence on the whole record.'" Under the scope of review established in the APA, this Court may not substitute its judgment for that of the appellate panel as to the weight of the evidence on questions of fact, but may reverse where the decision is affected by an error of law.
>
> The substantial evidence rule of the APA governs the standard of review in a workers' compensation decision. Pursuant to the APA, this Court's review is limited to deciding whether the appellate panel's decision is unsupported by substantial evidence or is controlled by some error of law. Substantial evidence is not a mere scintilla of evidence, nor the evidence viewed blindly from one side of the case, but is evidence which, considering the record as a whole, would allow reasonable minds to reach the conclusion the administrative agency reached in order to justify its action.
>
> The appellate panel is the ultimate fact finder in workers' compensation cases and is not bound by the single commissioner's findings of fact. The final determination of witness credibility and the weight to be accorded evidence is reserved to the appellate panel. The possibility of drawing two inconsistent conclusions from the evidence does not prevent an administrative agency's findings from being supported by substantial evidence. Where there are conflicts in the evidence over a factual issue, the findings of the appellate panel are conclusive.

> The findings of an administrative agency are presumed correct and will be set aside only if unsupported by substantial evidence. It is not within our province to reverse findings of the appellate panel which are supported by substantial evidence.

Brown v. Greenwood Mills, Inc., 366 S.C. 379, 391-93, 622 S.E.2d 546, 553-54 (Ct. App. 2005)(citations omitted).

I. **The Commission committed no error in finding and ruling Nicholson suffered compensable injury by accident entitling her to medical and compensation benefits.**

The essential facts of this case are not in dispute. As the Commission found, Nicholson fell when her shoe scuffed the carpet while she was walking to a meeting with a stack of files in her hands. It is apparent from the medical records that the fall caused the injuries she suffered, and there is no dispute between the parties on that issue. At the hearing, Nicholson described the fall as follows:

> I stacked [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.
>
> Q. Okay. Did your leg give way or anything like that? Did anything happen?
>
> A. No. I'm in good health. No.
>
> Q. Okay. Have you ever had any problems with your legs before with giving way or anything like that?
>
> A. No.
>
> Q. 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 8-24) The question before the Commission was whether these admitted facts constitute compensable injury by accident, and the Commission ultimately determined that they did. The Commission's pertinent findings are as follows:

7. Claimant's accident occurred when her shoe fractioned [sic] the carpet causing her to trip and fall while walking to a scheduled audit meeting on February 26, 2009. . . .

10. The floor on which claimant fell was carpeted, level, and free from any apparent defect.

11. There was a specific, non-internal reason for claimant's fall in that she tripped when her foot scuffed or caught in the carpet due to the friction of the carpet against her shoe.

12. There is no evidence claimant suffered any internal breakdown which caused her fall, as the medical records do not suggest any personal medical reason for the fall and claimant testified she is in good health and her leg did not give way or anything of that nature. . . .

14. Claimant's fall was not an "idiopathic fall" as there is no evidence that a non-occupational heart attack, epileptic fit, fainting spell, or any other personal medical problem caused the fall.

15. Claimant's fall was not an "unexplained fall" as she identified a specific, non-internal reason for her fall, specifically that she tripped when her foot scuffed or caught in the carpet due to the friction of the carpet against her shoe.

16. Claimant has proven that a causal connection exists between her fall on February 26, 2009 and her employment with employer-defendant.

17. Claimant's fall on February 26, 2009 arose out of her employment in that it bore a special relation to her work and the conditions under which her work was performed, specifically that she was required to work in a carpeted area, while walking across the carpet her foot scuffed or caught in the carpet due to the friction of the carpet against her shoe, and this scuffing or catching in the carpet caused her to trip and fall.

18. Claimant's fall on February 26, 2009 occurred in the course of her employment with employer-defendant in that she was then at her place of employment and engaged in the performance of her regular work duties.

19. Claimant's employment with employer-defendant was a contributing cause to her fall and subsequent injuries.

20. It is irrelevant that this circumstance could have occurred and this fall could have happened on any other level, carpeted surface outside of employer-defendant's building as the fall did not happen in any other place but happened in employer-defendant's building as a result of a risk associated with the conditions under which claimant was required to work, specifically that she was required to work in a carpeted area, while walking across the carpet her foot scuffed or caught in the carpet due to the friction of the carpet against her shoe, and this scuffing or catching in the carpet caused her to trip and fall.

21. It is also irrelevant that claimant's fall would have carried the same consequences had she fallen on any other level, carpeted surface outside of employer-defendant's building, as the same can be said of a great many compensable workplace injuries such as a knee injury occurring when standing after bending to tighten a bolt on a machine or a back injury when bending over to pick up a filter rack.

22. Claimant has proven by a preponderance of the evidence that her injury arose out of her employment with employer-defendant.

(R. pp. 7-11) Because the Commission's determination is supported by substantial evidence on the record and is not affected by any error of law, it should he affirmed by this Court.

The Workers' Compensation Act provides that "[i]n order to be entitled to workers' compensation benefits, the employee must show he or she sustained 'injury by accident arising out of and in the course of employment.'" Owings v. Anderson Co. Sheriff's Dep't, 315 S.C. 297, 299, 433 S.E.2d 869, 871 (1993); S.C. Code Ann. § 42-1-160 (2009).

> The phrase 'arising out of' refers to the origin of the cause of the accident. 'An injury arises out of employment when there is apparent to the rational mind, upon consideration of all the circumstances, a causal relationship between the conditions under which the work is to be performed and the resulting injury."

Clade v. Champion Lab., 330 S.C. 8, __, 496 S.E.2d 856, 857 (1998). "An accident 'arises out of employment' when the employment is a contributing proximate cause." Beam v. State Workers' Comp. Fund, 261 S.C. 327, ___, 200 S.E.2d 83, 85 (1973). An injury "arises 'in the course of employment' . . . when it occurs within the period of employment at a place where the employee reasonably may be in the performance of his duties and while fulfilling those duties or engaged in something incidental thereto." Id.

In South Carolina, it has not mattered that the injury is the result of normal or routine performance of work activities. In Holley v. Owens Corning Fiberglass Corp., 301 S.C. 519, 392 S.E.2d 804 (Ct. App. 1990), the injured worker's heart attack was found to be a compensable injury by accident where normal working conditions exposed claimant to extreme heat. The Court succinctly stated that "(a)n accident . . . arises when there is apparent to the rational mind, upon consideration of all the circumstances, a causal connection between the conditions under which the work is required to be performed and the resulting injury." Holley, at p. 523. Further, in Creech v. Ducane Co., 320 S.C. 559, 467 S.E.2d 114 (Ct. App.

1995), the injured worker suffered a back injury when simply reaching down to lift a one-pound filter rack. The Commission determined the injury was not compensable, specifically finding that

> The claimant has failed to prove that he sustained an injury by "accident" to his back arising out of and in the course of his employment on July 12, 1993. The claimant describes picking up a filter rack weighing less than one pound *but describes no slip, trip, sudden effort, etc.* Further, the claimant does not describe a hazard to which he is not equally exposed apart from the work.

Creech, 467 S.E.2d at 115 (emphasis in original). This Court reversed, looking to the Supreme Court's language in Stokes v. First Nat'l Bank, 306 S.C. 46, 410 S.E.2d 248 (1991) and this Court's own holding in Sigmon v. Dayco Corp., 316 S.C. 260, 449 S.E.2d 497 (Ct. App. 1994) to re-affirm that *"injury by accident" includes an injury in which the means or cause is an accident, such as a slip, trip, or sudden exertion*, but also includes an injury which is itself an accident, such as an injury occurring unexpectedly from the operation of internal or subjective conditions, without any external, accidental event.

Therefore, there can be no question that a claimant sustains a compensable injury by accident arising out of and in the course of employment when she trips and falls while performing her work duties. See e.g. Sanders v. Litchfield Country Club, 297 S.C. 339, 377 S.E.2d 111 (Ct. App. 1989)(compensable injury where employee tripped and fell on bolt sticking out of a crosstie in the parking lot). The evidence here shows that while walking across the carpet, Nicholson's foot scuffed or caught in the carpet due to the friction of the carpet against her shoe and that this scuffing or catching in the carpet caused her to trip and fall. Such a trip and fall is clearly compensable under our Worker's Compensation Act, as

interpreted by the appellate courts. The Commission committed no error in so finding.

Of note, in a very similar case, the Appellate Court of Illinois affirmed a decision of that state's Industrial Commission awarding benefits to a claimant whose foot got caught or tangled in carpeting causing her to fall. The Commission found it "it reasonable that a rubber sole would stick to the texture of the carpeting" and specifically noted that

> claimant fell while working, carrying out a task that was quite foreseeable and necessary to her job. Accordingly, her injury necessarily arose out of and in the course of her employment. Additionally, the risk of injury to which claimant was exposed was connected to her employment.

Tinley Park Hotel & Conv. Ctr. v. Indus. Comm'n, 826 N.E.2d 1043, 1048 (Ill. App. 2005). The reasoning employed by the Illinois court in Tinley Park has similar application here and supports the Commission's determination.

SCDSS's argument that this injury could have happened anywhere. SCDSS argues that this claim cannot be compensable since this fall could have happened anywhere, on any carpeted floor at home or in some other place. However, the Supreme Court's decision in Pierre v. Seaside Farms, Inc., 386 S.C. 534, 689 S.E.2d 615 (2010) casts significant doubt on such argument.

In Pierre, the Commission determined that the injured worker's injuries were not compensable because, among other reasons, "the risk was not associated with [his] employment because the sidewalk [on which he fell] was no different in character from other sidewalks." However, the Court rejected that finding as not supported by substantial evidence since "the source of the injury was a risk associated with the conditions under which the employees were required to live." Pierre, 689 S.E.2d at 622-623. In doing so, the Court noted

that Pierre slipped and fell on a wet sidewalk outside the employer's housing facility, the sidewalk was wet because another employee was using the sink and water ran across the sidewalk, and the employer's placement of the sink and apparent lack of drainage created the conditions that caused him to fall.

In the present case, Nicholson testified that she fell because her foot caught in the carpet due to static electricity created by the carpeting. (R. p. 52, lines 7-24) Thus, as in Pierre, the source of the injury was a risk associated with the condition under which Nicholson was required to work. Nicholson was required to work, and to walk as she performed her work, on a carpeted floor and that carpeted floor was the source of the static electricity which caught her foot, tripped her, and caused her fall.

Furthermore, the injuries described in Creech and Sanders could obviously have happened if those workers had performed similar activities at home or at some other place. In fact, a great number of injuries that happen at work, such as a back injury with lifting, could have happened at home. However, the injuries in each of the cases discussed above happened at work because of actions the employees were involved with in order to perform their required work duties and because of the conditions under which they were required to work, i.e., bending down in Creech and walking across a parking lot in Sanders. The idea that the injury could have happened at some other place cannot be dispositive, and the Commission properly rejected that argument.

SCDSS's argument based on Bagwell v. Ernest Burwell, Inc. SCDSS argues that the holding of Bagwell v. Ernest Burwell, Inc., 227 S.C. 444, 88 S.E.2d 611 (1955) should be determinative in this case because Nicholson fell on a level floor. However, a review of the undisputed facts of the present case makes clear that this is not in any way an "idiopathic"

injury, and for that reason, the "level floor" jurisprudence is irrelevant to this case.

Contrary to the idea of an "idiopathic" injury, Nicholson here gave a specific reason for her fall. An "idiopathic/level floor" fall is defined by Larson as the situation where "an employee, solely because of a nonoccupational heart attack, epileptic fit, or fainting spell, falls and sustains a skull fracture or other injury." 1-9 Larson's Workers' Compensation Law § 9.01 (2011).

> When an employee, solely because of a nonoccupational heart attack, epileptic fit, or fainting spell, falls and sustains a skull fracture or other injury, the question arises whether the skull fracture (as distinguished from the internal effects of the heart attack or disease, which of course are not compensable) is an injury arising out of the employment.
>
> The basic rule, on which there is now general agreement, is that the effects of such a fall are compensable if the employment places the employee in a position increasing the dangerous effects of such a fall, such as on a height, near machinery or sharp corners, or in a moving vehicle. The long-standing controversial question is whether the effects of an idiopathic fall to the level ground or bare floor should be deemed to arise out of the employment.

Id. Of course, it is solely this "long-standing controversial question" of the compensability of a "idiopathic" fall onto a level floor which is answered in the negative by the Supreme Court in Bagwell. Cf. Turner v. Campbell Soup Co., 252 S.C. 446, 166 S.E.2d 817 (1969)(claim compensable where claimant's head struck a pipe during her fall); Holly v. Spartan Grain & Mill Co., 210 S.C. 183, 42 S.E.2d 59 (1947)(claim compensable where claimant fell from catwalk into open bin causing injury).

The deceased worker in Bagwell fell over for some unknown reason while standing completely still, though there was the suggestion of either a fainting spell or a subarachnoid

hemorrhage. Because the witnesses to the incident could not give a work-related reason for the fall and because of the suggestion that the cause of the fall was some personal health problem of the deceased, the deceased's family argued that the claim was compensable because the hard, concrete floor on which he fell added to the effects of the fall. The Supreme Court rejected that argument, stating

> We are not prepared to accept the contention that, in the absence of special condition or circumstances, 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 a hard floor existed.

Bagwell v. Ernest Burwell, Inc., 227 S.C. 444, 454, 88 S.E.2d 611, 615 (1955).

However, it is clear from both the holding in Bagwell and Professor Larson's treatise that there must first be an "idiopathic" fall before the question of whether the floor or some object struck on the way down contributed to the effects of the fall. In other words, if there is no evidence of "a nonoccupational heart attack, epileptic fit, or fainting spell" or some other personal medical problem causing the fall, or if there is evidence that something about the conditions of the work led to the fall, then there is no reason to either raise the argument or reach the question of whether the floor or some object struck on the way down contributed to the effects of the fall.

Here, there is absolutely no lay or medical evidence that any medical condition of any type caused the fall in question. Nicholson testified that she is in good health and that her leg did not give way or anything of that nature. A review of the medical records does not suggest any personal medical reason either. Therefore, because there is no suggestion of a personal

medical reason for the fall, this claim does not meet the definition of an "idiopathic" fall and there is no reason to consider whether the floor played any role in the injury. Furthermore, contrary to the facts in Bagwell, the facts in the present case show that the cause of the fall was related to the work or the working conditions. See Bagwell, 88 S.E.2d at 613 ("It must be shown that the cause of the fall . . . bore some special relation to the work *or to the conditions under which it was performed.*")(emphasis added). Nicholson clearly testified that there was a specific, non-personal reason for her fall in that her foot caught in the carpet due to static electricity, tripping her, and causing her to fall. (R. p. 52, lines 7-24) This was a risk akin to the wet sidewalk in Pierre. The Commission correctly rejected SCDSS's argument based on Bagwell.

Nicholson's injuries happened at work, while she was performing her work duties in walking to a meeting while carrying files in her hands. Her injury occurred as a result of a condition under which she was required to work, specifically that she was required to work in a carpeted area and her walking across that carpet caused static buildup which grabbed her foot, tripped her, and led to her fall. Therefore, as in the cases discussed above, this claim is compensable, and the Commission committed no factual or legal error in so finding.

CONCLUSION

It is, therefore, respectfully submitted that the Commission committed no factual or legal error in finding as fact and ruling as a matter of law that Nicholson sustained compensable injury by accident arising out of and in the course of her employment when while walking across the carpet at her place of employment to attend a meeting to discuss her files, her foot scuffed or caught in the carpet due to the friction of the carpet against her shoe causing her to trip, fall, and sustain injuries. Such a trip and fall is clearly compensable under our Worker's Compensation Act, as interpreted by the appellate courts. The Commission committed no error in so finding, and this Court should affirm that finding.

Respectfully submitted,

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CERTIFICATE OF COUNSEL

The undersigned certifies that this Final Brief complies with the Supreme Court's August 13, 2007 Order concerning personal date identifiers and other sensitive information.

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CERTIFICATE OF SERVICE

This is to certify that the undersigned did cause the **BRIEF OF RESPONDENT** to be served upon the Appellants by mailing a copy of same to their attorney of record at the address shown below by U.S. Mail, proper postage prepaid, on the 31st day of Aug, 2012.

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