

APPELLATE PANEL
DECISION AND ORDER
OF THE
SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION
W.C.C. FILE NO.: 1715897

Matthew Green,
Claimant/Respondent,

-vs-

Bishop Forest Products, Inc, Employer,

-and-

Forestry Mutual Insurance Company, Carrier,
Defendants/Appellants.

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SC Court of Appeals

Appellate Panel Review held in Columbia, South Carolina
on September 18, 2018, per notices timely and properly served
upon all parties of interest.

Appellate Panel Decision and Order filed on

December 18, 2018

APPEARANCES: Claimant/ Respondent represented by John R. Hetrick, Esquire,
of Hetrick, Harvin & Bonds, of Walterboro, South Carolina.

Defendants/Appellants represented by Matthew A. Schonfeld,
Esquire of Holder, Padgett, Littlejohn + Prickett, LLC, of
Mount Pleasant, South Carolina.

STATEMENT OF THE CASE

This is a denied claim on the basis that the alleged injuries did not arise out of and in the course of employment. By way of Form 50 requesting a hearing dated October 24, 2017, Matthew Green, the Claimant, alleges that on September 13, 2017, he injured his back, neck, head, ribs both ankles, both knees, and both legs as a result of a motor vehicle accident while on his way home following delivery of paperwork to his employer. Claimant seeks medical treatment and temporary total disability benefits (TTD) from the date of accident and continuing. Defendants Bishop Forest Products, Inc. (Bishop Forest Products) and Forestry Mutual Insurance Company timely filed their general denial by Form 51 dated November 9, 2017.

A hearing on compensability was held before the Hon. Gene McCaskill, (hereinafter single Commissioner) on February 15, 2018. It is Claimant's position, as stipulated, that he sustained compensable injuries to both ankles, the right patella, right femur, and two broken ribs on the left side, on September 13, 2017, that he is not at maximum medical improvement and is entitled to causally related medical treatment and TTD from the date of accident and continuing.

Claimant asserts the accident and injuries sustained therein arose out of and in the course and scope of his employment with Bishop Forest Products. When the accident occurred, Claimant was returning directly home after having delivered certain paperwork to the business office of his employer. The paperwork was required to be delivered by 8:00 AM every Wednesday as part of his job duties. Timely receipt of the paperwork was important to the employer's business; it benefitted the employer. Accordingly, Claimant asserts the trip was for the benefit of the employer, and claimant contends that since the trip to the employer's place of business was work-related and compensable, then the return trip to his home was ancillary and also compensable.

It is Defendants' position that Claimant was in the process of traveling home in his personal

car, not on the clock, and with no remaining work-related obligations or responsibilities when the car accident took place on September 13, 2017, therefore Claimant's injuries sustained as a result are not compensable. Furthermore, the facts of this scenario do not fall under any of the judicially recognized exceptions to the going and coming rule. Finally, Defendants assert Claimant has not met his burden of proving entitlement to TTD from the date of accident and continuing.

In a Decision and Order dated May 29, 2018, the single Commissioner found and concluded that Claimant's stipulated injuries sustained on September 13, 2017, are compensable as the accident is an exception to the coming and going rule, and that he is entitled to causally related medical treatment and TTD from September 13, 2017 and continuing (see in *italics* below). It is from these findings and conclusions of law that Defendants timely appealed.

FINDINGS OF FACT

- 1. The question at bar is whether the motor vehicle accident on 09/13/17 is compensable under the Act? (Tr. 9:10-16; 12:14-24).*
- 2. Claimant asserts that the claim arises out of and in the course and scope of his employment at the time of the MVA on 09/13/2017. (Tr. 9:12-16). He further asserts that it is given that he was acting in a manner which directly benefits the Employer and is in furtherance of the Employer's business. (Tr. 13:3-14; 39:17-23).*
- 3. The Defendants assert that since Claimant was on his way home, having previously delivered his paperwork to the Employer's place of business, this accident does not fall under any of the exceptions to the going and coming rule. As such, the claim must be denied. (Tr. 12:17-24).*
- 4. The facts as to the accident are not in dispute. The Claimant drove a truck for his Employer (Tr. 22:18-25) and hauled wood chips from logging sites in Colleton County to the paper mill in North Charleston. (Tr. 23:2-15). He had, as part of his job duties, responsibility to maintain*

paperwork related to his work. That paperwork included load tickets for each delivery the driver made, daily trip logs and pre-trip inspection forms. (Tr. 23:16-24). All drivers, including the Claimant, had to turn those tickets in either on Tuesday night or by 8:00 AM on the following Wednesday morning. (Tr. 61:18-62:4). This was an important requirement of the job. The Claimant and the Employer so testified. (Tr. 54:19-25; 57:17-24).

5. *While the Claimant could have driven the truck home each night as was allowed by the Employer, he had nowhere to park the truck so he drove his personal vehicle to and from work each day. Claimant so testified. (Tr. 29:15-30:12).*

6. *On the day of the accident which was a Wednesday, Claimant was involved in a major motor vehicle accident that was not his fault. Claimant had gotten up that morning at 3:30 AM. He had left his home and driven directly to the office of the Employer to leave his paperwork which was due in the office before 8:00 AM. Claimant delivered the paperwork and was returning home when the accident occurred. Claimant so testified. (Tr. 34:16-35:25).*

7. *The question is whether the accident is an exception to the going and coming rule? I find that it is.*

8. *It is an undisputed fact that on the early morning of the accident Claimant traveled in his personal vehicle to the business office of his Employer, Bishop Forest Products, Inc. (Tr. 33:24-34:5). It is an undisputed fact that the purpose of his trip was to deliver paperwork to his Employer which his Employer required by 8:00 AM that Wednesday morning. (Tr. 34:6-14). It is an undisputed fact that timely delivery of the load tickets was an important, if not the most important, aspect of the Employer's business since this was required for payment to the business. (Tr. 53:25-54:25). It is an undisputed fact that the Employer acknowledged receipt of the paperwork the following morning which confirmed the early morning delivery. (Tr. 34:6-14; 59:4-7). It is an*

*undisputed fact that the Claimant went directly to his Employer's office and was returning directly to his home when the accident occurred. (Tr. 33:18-34:1; 34:15-20; 48:3-10). Based on these undisputed facts, it is clear that Claimant was "charged with some duty or task in connection with his employment" on his way to or from work, and the task was for the benefit of his employer. As such Claimant's actions constitute an exception to the 'coming and going' rule as determined by the Court of Appeals in *Stough v. Westinghouse Savannah River Company*, 311 S.C. 129, 427 S.E.2d 716 at 717 (Ct.App.1993). See, also, *Sola v. Sunny Slope Farms*, 244 S.C. 6, 135 S.E.2d 321 (1964).*

9. *The Claimant was returning directly home from delivering paperwork he was required to complete and turn into the Employer's business office before 8:00 AM that Wednesday morning. (Tr. 48:3-10). This is congruent with the directive he received from his Employer. (Tr. 53:20-54:3). Both Claimant and Employer so testified. While there was a window from Tuesday evening until 8:00 AM on Wednesday, the Claimant had the latitude as allowed by the Employer to complete the task at his own pace as long as it was completed by Wednesday at 8:00 AM. (Tr. 58:16-20). The Claimant completed the task in the prescribed time frame. (Tr. 58:21-59:13). This task is clearly a requirement of his employment and for the benefit of the Employer. This task must be completed outside normal working hours.*

10. *Claimant chose to do this task early Wednesday morning which, again, he had the latitude to do. (Tr. 58:16-20; 59:4-13).*

11. *The accident occurs as he is returning home from the completion of that task. (34:10-23). He did not deviate on his return trip and would not have been when and where the accident occurred had it not been for this work-related errand. (Tr. 47:19-48:10).*

12. To conclude that because Claimant had dropped off the paperwork and completed his delivery, he is not covered by the exception that exists to provide coverage for such an errand is a strained interpretation. Furthermore, it is illogical. If Claimant's employment required him to make the trip, then by implication he had a right to return. Stated differently, if he was covered coming, then he was covered going. The case law is clear that coverage should be liberally construed in favor of the Claimant. Had Claimant gone on to another task or errand, the Defendants' position might prevail, but that is not the case here. The Claimant is on the concluding leg of the trip to deliver the work-required paperwork which was the sole purpose of the trip. That trip and its timing is consistent with the guidelines set forth by the Employer.

13. When the evidence— both lay and medical— is viewed as a whole, I find that this claim is compensable.

14. The Claimant is entitled to payment for past causally-related medical treatment and associated mileage.

15. The Claimant is not at MMI. (Tr. 21:8-13).

16. The Claimant is entitled to continuing medical care and treatment with a physician(s) of the Defendants' choosing. His causally-related injuries as stated in the Trident Medical Center ICU admission record are as follows: 1) Fracture of eight or more ribs of left side; 2) Multiple fractures of ribs of both sides; 3) Open dislocation of right knee; 4) Open right ankle fracture; 5) Open dislocation of right ankle; 6) Fracture of right knee region; 7) Pulmonary contusion; 8) Closed left ankle fracture; 9) Pneumothorax; 10) Hemothorax. (Cl. APA 1:14-15).

17. While there is not an out-of-work note in the record, the Claimant was involved in a major head-on motor vehicle accident. (Tr. 34:24-36:3). He suffered serious injuries and spent from 09/13/17 to 09/22/17 at Trident Medical Center. (Tr. 36:4-13). He was then transferred to

Colleton Medical Center for continued care and physical therapy. (Tr. 36:14-37:1). Once he was discharged from there, Claimant testified that he could not put any weight on his leg until December (Tr.37:15-25) and used a walker until mid-January. (Tr. 38:8-19). Claimant testified that he has used a cane since that time. (Tr. 38:20-39:3). He had the cane with him at the hearing. Claimant testified that he wants to return to work for the Employer. (Tr. 39:4-7). Mr. Bishop, who owns the business, testified that he wished the Claimant could return to work immediately. (Tr. 53:6-10). Based on the testimony of the Claimant and my observations of him entering and leaving the hearing, it is clear he cannot work at this time. Claimant is entitled to TTD from the date of the accident and continuing.

18. While the depositions of both the Claimant and Employer were entered into evidence, both testified live at the hearing. As such, I neither read nor considered their deposition testimony in determining the outcome of this case.

19. All other issues not specifically addressed herein are held in abeyance for consideration at a future time.

CONCLUSIONS OF LAW

1. Jurisdiction and venue are proper as governed by the South Carolina Workers' Compensation Act and as agreed to by the parties.
2. The Claimant's average weekly wage is \$989.32 with a corresponding compensation rate of \$659.58 pursuant to SC Code Ann. Sec. 42-1-40.
3. Claimant sustained an injury by accident arising out of and in the course of his employment pursuant to SC Code Ann. Sec. 42-1-160.
4. Proper notice of the injury was given pursuant to SC Code Ann. Sec. 42-15-20.
5. The claim was filed in a timely manner pursuant to SC Code Ann. Sec. 42-15-40.

6. *Claimant has received and is continuing to receive medical care for his causally-related injuries which is designed to lessen the period of disability pursuant to SC Code Ann. Sec. 42-15-60.*
7. *Claimant has not reached maximum medical improvement.*
8. *Claimant is entitled to payment of temporary total compensation from the date of accident and continuing until further order of the Commission pursuant to Workers' Compensation Commission Reg. 67-502, et.seq.*

ORDER

IT IS NOW ORDERED:

1. *The Defendants shall pay all causally-related, past and future medical expenses for Claimant resulting from his work-related motor vehicle accident in Colleton County on 09/13/17, and/or shall promptly reimburse to Claimant or any providers or entities any of Claimant's medical expenses paid by him or them on his behalf. The Defendants shall pay all associated mileage to Claimant at the statutory rate.*
2. *The Defendants shall pay contested TTD benefits to Claimant and his attorney from 09/13/17 until the date of this Decision and Order. Thereafter, the Defendants shall continue to pay weekly TTD benefits to Claimant until terminated by law or further Order of the Commission.*
3. *The Defendants are entitled to choose which physician(s) will provide continuing medical care and treatment for Claimant.*
4. *All other issues are held in abeyance for determination at a future time.*

AND IT IS SO ORDERED.

At the time of the accident, which took place while on his way home in his personal vehicle and not on the clock, Claimant was not charged with a duty or task in connection with his

employment and was not in the process of performing a special errand for his employer. Accordingly, the single Commissioner's Decision and Order, as discussed below, is reversed.

EVIDENCE OF THE CASE

At all relevant times, Claimant was a truck driver for Bishop Forest Products who transported chipped wood to a paper mill multiple times a day. (Hr. Tr. p. 23). Bishop Forest Product wood chip truck drivers would normally begin their shift around 7:00 am, with an occasional day starting at 6:00 am if there was work left over from the day before. (Dep. of Bishop p. 21).

In addition to physically transporting wood chips, Claimant's employment with Bishop Forest Products required him to keep up with paperwork throughout the week and return/deposit the paperwork to the company's office on a weekly basis. *Id.* Specifically, it was Claimant's responsibility to *retain*, and in some cases personally complete, specific paperwork and receipts associated with his daily truck driving activities. *Id.* Each week he was responsible for returning to Bishop Forest Products his mill tickets, pre-inspection checklists, time sheets, and trip log sheets. (Hr. Tr. p. 26). He kept all of these documents in a file folder provided to him by his employer. *Id.* The Bishop Forest Products office had a mail slot on its front door, as well as a mailbox so employees can deposit paperwork if the office is closed. (Hr. Tr. p. 31).

Claimant was responsible for ensuring the office received his weekly mill/load tickets either on Tuesday night or 8:00 AM the following Wednesday. (Hr. Tr. p.54). As for the remaining paperwork (pre-inspection checklists, timesheets, and trip logs), there was no deadline set in stone for when it had to be delivered to the office. (Dep. of Bishop, p. 34). Not all of the paperwork for which Claimant was responsible required any action on his part other than retaining it and turning it in at the proper time. Specifically, the information recorded on the truck pre-inspection checklist,

timesheets, and travel logs were placed there by claimant, and the majority of truck drivers did this in their trucks following each shift. (Hr. Tr. p. 42). The pre-inspection required Claimant to fill out the truck's safety checklist before starting work each morning. The load sheets required Claimant to record things like the times he arrived/left the logging site, and the timesheets required him to enter his starting and stopping times each day. (Hr. Tr. p. 24).

In contrast to the other documents that required manual recording of information on the part of the drivers, the mill tickets required no action on Claimant's part to be considered complete, as they were merely receipts generated by a computerized scale recording the weight of each load he delivered. (Hr. Tr. p. 43). Claimant would receive tickets printed from the mill computer which he would retain and later deposit at the Bishop Forest Products office, in order to comply with his duties. *Id.* This was further confirmed when Claimant was presented with page 226 of Defendants' APA, which was a photocopy of typical mill tickets. (Hr. Tr. p. 42).

Bishop Forest Products has been in business long enough to experience a situation where, for some reason or another, an employee was unable to deposit his/her tickets by the deadline. (Hr. Tr. p. 58). When this would happen, the employee usually notified a supervisor, and if asked by the employee, the supervisor would go and retrieve the paperwork for them. *Id.*

It was Claimant's normal Tuesday routine to return from a day of hauling and park his work truck at the Bishop Forest Products property where the office was located. (Hr. Tr. p. 41). He would then gather all of his paperwork for that week, depart with it in his personal vehicle from the Bishop Forest Products premises, and take it home ensure that all his paperwork and mill tickets were in order. (Hr. Tr. p. 26). Claimant admits that he could very well have completed and ensured the accuracy of his papers every Tuesday evening before leaving Bishop Forest Products property instead of taking it home if he had wanted to. (Hr. Tr. p. 44).

Claimant had planned to go into work late on Wednesday morning, September 13, 2017, the date of the accident, because he had an appointment scheduled with his lawyer and planned to report to work about 11:00 AM. Claimant had discussed his delayed arrival with his supervisor who had agreed to let him off work. (Tr. 31:23-32:21).

On the morning of Wednesday, September 13, 2017, the day of the accident, claimant woke up earlier than usual at 3:30 am because he “couldn’t sleep.” (Hr. Tr. p. 33). At about 4:00 am, Claimant left his home in his personal car to deposit his paperwork. (Hr. Tr. p. 33). He arrived at the office at approximately 4:15 am and completed the task by depositing his paperwork in the mail slot in the office door. He did nothing else incidental to his employment while on the Bishop Forest Products property, he was not on the clock driving to and from the office, was not paid for his mileage, and was not paid for his time while on the Bishop Forest Property. (Hr. Tr. p. 49).

After depositing the paperwork, Claimant got back into his personal car and left for home. *Id.* He drove in his car towards home for approximately 10 minutes, when he was struck head on by another vehicle, causing the accident and subsequent injuries. (Hr. Tr. p. 35). Claimant was transported to a local hospital and treated for his injuries. (Hr. Tr. p. 36).

No individual at Bishop Forest Products, including his supervisor, directed or instructed Claimant to take his paperwork home any night, much less on Tuesday, September 12, 2017, the night before his accident. *Id.* Claimant admitted that his employment with Bishop Forest Products did *not require* him to take his documents home, and nobody at Bishop Forest Products knew he routinely took the documents home with him. (Hr. Tr. p. 44-46). This was further reinforced by the presentation of a portion of his deposition testimony taken prior to the hearing, wherein Claimant was asked “did anybody know that you had brought the paperwork home with you that night [prior to the accident],” his response was “No.” (Hr. Tr. p. 46). When claimant was presented

at the hearing with Defendants' question "So at least on the night of September 12, 20 17, would you agree it's your response that nobody even knew that you brought it home that night? Correct?," to which he responded, "Yeah." *Id.*

DISCUSSION/REASONING

The Full Commission's scope of review is not limited, and it may reach its own findings of fact and conclusions of law based on all of the evidence. *See Lowe v. Am-Can Transport Serv.*, 283 S.C. 534, 324 S.E.2d 87 (S.C. Ct. App. 1984). The Full Commission does not have to uphold the findings of the single Commissioner if, in its opinion, the preponderance of the evidence leads to a different finding. *Id.*

In order to be compensable, an injury must arise out of and in the course of employment. As a general rule, any injuries sustained by an employee while going to or coming from the place where his/her work is to be performed are not compensable as they do not arise out of and in the course of employment.

South Carolina case law has carved out certain exceptions to this general rule, thereby creating a framework to determine if benefits are due for injuries sustained while an employee is traveling to or from his/her employment. These five recognized exceptions allow employees the possibility of compensation for injuries sustained while going to or coming from work if: (1) the means of transportation is provided by the employer, or the time that is consumed is paid for or included in the wages; (2) the employee, on his way to or from his work, is still charged with some duty or task in connection with his employment; (3) the way to work is inherently dangerous and is either the exclusive way or is constructed and maintained by the employer; (4) the injury occurred in close proximity to the workplace and there is an express or implied requirement that the employee use that approach in going to and coming from work; and (5) an employee is injured

while performing a special task, service, mission, or errand for his employer, even before or after customary working hours, or on a day which he does not ordinarily work. *See Medlin v. Upstate Plaster Serv.*, 329 S.C. 92, 495 S.E.2d 447 (1998).

As an initial matter, the facts of this claim eliminate exceptions (1), (3), and (4) as referenced above. Claimant's transportation was not provided or paid for by the employer, he was not paid for his travel to deposit the documents, his way to work was not inherently dangerous, and Claimant was not injured in close proximity to his workplace nor was he required to use a certain approach. Therefore, the only exceptions that potentially apply are the "continuing duty" exception and the "special errand" exception.

1. The "Continuing Duty" Exception

The general coming and going rule does not apply if, among other things, the employee, on his way to or from his work, *is still charged* with some duty or task in connection with his employment. *Stough v. Westinghouse Savannah River Co.*, 311 S.C. 129, 130, 427 S.E.2d 716, 717 (S.C. Ct. App. 1993) (emphasis added). Moreover, an injury incurred during a trip which serves both a business and a personal purpose is within the scope of employment if the trip involves the performance of a service for the employer *which would have caused the trip to be taken* by someone even if it had not coincided with the personal journey. *Id.* (citing *Corley v. South Carolina Tax Commission*, 237 S.C. 439, 117 S.E.2d 577 (1960)) (emphasis added).

In *Stough*, the court held that when an employee's primary business responsibility is to deliver documents to an office, he is considered to still be charged with a duty or task connected to his employment *while on his way home*, if he has yet to deliver the documents, and his trip home

is located along the route necessary to complete his delivery. *Stough*, at 131, 427 S.E.2d at 717-18.

In *Stough*, the employee lived in Columbia and commuted in his personal car to his main office in North Augusta. *Id.* at 130, 427 S.E.2d at 717. He received no compensation for driving to and from his home and his office in North Augusta. *Id.* One of his primary business responsibilities was to transport business documents from his North Augusta office on a regular basis of once a week to an auxiliary office in Charlotte, NC. *Id.* His travel expenses for these document transport trips were paid for by his employer. *Id.*

The employee's accident occurred during one of these required document transport trips from North Augusta to the Charlotte office. *Id.* at 131, 427 S.E.2d at 717. On the date of the accident, he left his office in North Augusta with the documents and was hit and killed while on his way to stop at home before continuing on to Charlotte the next day. *Id.* at 131, 427 S.E.2d at 717. The court noted that he would have traveled the same route to Charlotte regardless of whether he stopped in Columbia along the way. *Id.* The court determined that the purpose of his trip from North Augusta to Charlotte was *necessitated* by his work at Westinghouse, and even had he not stopped at home that evening, he would have made the same trip to Charlotte to perform his duties on behalf of Westinghouse. *Id.* at 131, 427 S.E.2d at 718. Because he had yet to complete his delivery of the documents, his employment duty had yet to cease during his trip home from work, and his resulting death arose out of and during the course of employment. *Id.* at 131, 427 S.E.2d at 718.

Critical to the analysis was the fact that the employee in *Stough* was in the process of transporting the documents to another office when he was killed. In other words, the employee was in the *performance of and fulfilling* a duty incidental to his employment when he was killed.

In the facts of the present case, Claimant had *already completed* whatever duty he may have been charged with (depositing his documents) when his accident occurred. Thus, because Claimant's continued duty was completed when he deposited his paperwork, the duty ceased to exist, and he is not protected by the "continuing duty" exception.

In Finding of Fact #12, the single Commissioner reasons that Claimant's employment *required* him to make the trip, then by implication he had a right to return; therefore, "[i]f Claimant was covered coming, then he was covered going." This reasoning is factually incorrect because Claimant was not required to make the trip in the first place, as the facts clearly establish that Claimant was not instructed or required to take the paperwork home, eliminating the need for the fateful trip in the first place. Conversely, the evidence supports the inference that but for his appointment with his attorney on the morning of Wednesday, September 13, 2017, claimant would not have taken the trip that morning. Furthermore, the reasoning does not apply to this exception, because the apparent corollary to the "continuing duty" rule is that it only applies while the duty or task has yet to be completed, and in this case the work-related task or duty at issue was already completed at the time of the accident. Therefore, the "continuing duty" exception as described in *Stough* does not apply to the facts of this claim.

2. The "Special Errand" Exception

There is no dispute that Claimant was going home when he got into the car accident, and he had no work-related duties yet to be performed on his way home, so Claimant's primary argument is that his facts fall under the "special errand" exception to the coming and going rule. Claimant's reasoning and rationale that the "special errand" rule applies to this claim fully exposes why Claimant's injuries should not be covered under the Act.

The “special errand” exception overrides the general coming and going rule and brings an injury within the scope of employment if it can be shown that an employee: (1) although not at his regular place of employment; (2) is doing, or is on the way from his home to perform, or on his way home after performing; (3) some special or unusual service, errand, or discharge of some duty incidental to the nature of his employment; (4) the service or incidental duty is not a *habit* or for the convenience of the employee; and (5) is in the interest of, or under the direction of, his employer. See *Moore v. Family Service of Charleston Cnty.*, 269 S.C. 275, 237 S.E.2d 84 (1977); see, also *Bickley v. South Carolina Electric & Gas Co.*, 259 S.C. 463, 192 S.E.2d 866 (1972). Notably, these elements are conjunctive, and all must be met for the exception to apply. This rule, when applicable, protects an employee during both the trip to complete the errand, as well as the return trip after the errand is complete.

In *Bickley*, due to hurricane damage, the powerline worker in that case was requested by his employer to work in Charleston over the weekend, which was outside his normal working area in Columbia and outside his normal working hours. *Id.* at 470, 870. Given these circumstances, the SC Supreme Court found that Bickley was covered under the Act when he was in an accident while on his way home after completing the work in Charleston. *Id.* Notably, there was no personal latitude or personal convenience component to Bickley’s decision to perform work related duties that weekend – he was required to do so as a condition of his employment.

In *Moore*, the Court held that because the employee was performing an unusual service at the behest of her employer, her injuries arose out of and in the course of employment, and thus compensable. Specifically, the employee was *directed* by her supervisor to take home and study four large text books in preparation for a type of family abuse case for which she had no experience. 269 S.C. at 278, 237 S.E.2d at 85-86. On her way to work the following morning, the employee

fell down some stairs while carrying the books and sustained an injury. *Id.* at 277, 237 S.E.2d at 85. It was undisputed that the *books* were the cause of her fall. *Id.* The court noted the *most important* evidence was the testimony of the employer that it was “not a habit for [employees] to take books and files home and that this was an unusual case and [the employer] requested the Claimant to take home the books.” *Id.* at 278, 237 S.E.2d at 86.

In arriving at its decision, the Court in *Moore* distinguished the employee’s compensable injury and factual scenario from the non-compensable injury and factual scenario in *Sylvan v. Sylvan Bros.*, 225 S.C. 429, 82 S.E.2d 794 (1954). *Id.* at 279, 237 S.E.2d at 86. In doing so, the Court clarified further that if an employee is “in the *habit* of doing ‘paperwork’” outside of regular work hours, or is doing it for “[the employee’s] own *convenience*,” the employee’s actions do not qualify for the protections afforded by the “special errand” rule. *Id.*

In *Sylvan*, the Court held that if a journey would be made to work, irrespective of homework from the night before, the journey is not in the course of employment. *Sylvan*, 225 S.C. 429, 82 S.E.2d 794 (1954). In *Sylvan*, the claimant was injured when he slipped on ice while on his walk from home to work. *Id.* at 433, 82 S.E.2d at 795. He was in the *habit* of doing paperwork at night, and at the time of his injury, he had business papers in his pocket which he had been working on at home the night before. *Id.* He testified that he was unable to do certain paperwork during regular business hours because of interruptions from customers, “but no reason is suggested why he could not have remained in the privacy of the store after closing hour.” *Id.* at 433-34, 82 S.E.2d at 795-96. The court reasoned that therefore the taking of the paperwork home was for his own *convenience*, and the fact that he had paperwork on him when he was injured does not convert his trip to work to within the course of employment. *Id.*

Similar to the employee in *Sylvan*, Claimant admitted under oath, on multiple occasions, that he was in the *habit* of doing paperwork outside of his normal business hours, as opposed to being told to do so. Additionally, like the employee in *Sylvan*, Claimant took his paperwork home the night before the deadline for his own *convenience* so that instead of having to sit in his truck and do the paperwork before departing the company's premises, Claimant would review his timesheets, load sheets, and pre-inspection checklists in the comfort of his own home.

The record makes clear that Claimant was not performing a "special errand" for Bishop Forest Products when he delivered his paperwork to the company office on the morning of September 13, 2017. Unlike the employers in *Bickley* and *Moore*, neither the owner nor any supervisor for Bishop Forest Products directed Claimant to take his paperwork home the night before his accident, or any night for that matter. The evidence furthermore reinforces this fact when Claimant testified at the hearing that none of the management of Bishop Forest Products were even aware he took his paperwork home the night before the accident, much less that he took his paperwork home every night. Additionally, even the single Commissioner acknowledged that Claimant was not directed or instructed to make the trip in question, as Finding of Fact #9 observes "...the Claimant had the *latitude* as allowed by the Employer to complete the task at his own pace as long as it was completed by Wednesday at 8:00 AM (emphasis added)."

Although Bishop Forest Products did not prohibit Claimant from taking his paperwork home, having the latitude to do something is not the equivalent of being directed to do something as demonstrated in *Sylvan*. The owner of Bishop Forest Products did not know Claimant took the paperwork home with him. Unlike the circumstances in *Bickley* and *Moore*, Claimant here made the choice to take the paperwork home, and he was not directed to do so. Claimant had identifiable space and time limits on his employment, but he was not directed to perform work at a time and

place other than at the Bishop Forest Products premises or while operating a Bishop Forest Products truck.

Contrary to the single Commissioner's finding that turning in the paperwork "must be completed outside normal working hours" (see Finding of Fact #9), the evidence clearly established that Claimant would normally arrive at Bishop Forest Products between 6:00 am -7:00 am, and he normally would return from his last haul between 5:00 pm - 6:00 pm. These normal working hours fall within the timeframe allotted to turn in the paperwork.

Claimant, in his brief and in oral argument, mistakenly characterizes the right to do something as synonymous with being compensable when addressing the "special errand" exception. The fundamental fact that existed in the "special errand" exception cases of *Bickley* and *Moore*, which does not exist within the facts of this claim, is that the employees in those cases were *required by their employers* to go outside their normal routine and engage in work-related activity that was "unusual" or "special," thereby covering them under the Act despite the fact they were in the process of going to or coming from work at the time they were injured.

Here, the timing of Claimant's trip to and from work the morning of the accident was entirely personal to him and done for his own convenience. Relevant portions of the hearing transcript are as follows:

Q: All right. And on your return trip back, you didn't have that paperwork with you anymore, correct?

A: Correct.

Q: 'Cause it was already at Bishop Forest Products. And your plans at that point were to go back home, correct?

A: Correct.

Q: And then the next event you had that day was an appointment with your attorney, correct?

A: Yes.

Q: Now your normal routine, had you not had the appointment, would have been to drive to work, park your own personal vehicle, put the paperwork in the slot and get in the truck and clock in, correct?

A: Correct.

Q: That was your normal routine. But you didn't follow your normal routine that morning, did you?

A: No.

Q: Because you had an appointment with your attorney, correct?

A: Correct.

Q: Which was a personal appointment, correct?

A: Correct.

(Hr. Tr. pgs. 48-9).

Additionally, in his brief Claimant concedes that he was “authorized” and “allowed” by his employer to go into work later that morning because of his personal appointment with his lawyer. Under *Bickley* and *Moore*, being authorized or allowed by your employer to change your schedule for a personal reason is not what creates a “special” or “unusual” condition that amounts to a “special errand” – the origin of the “special” or “unusual” condition needs to originate with the employer in order for the “special errand” exception to apply. Put another way, the employee’s needs do not create a “special errand.” As the examples in the case law reveal, it is the instructions of the employer or obligations of employment that creates the exception to the general rule.

In this case, the trip taken the morning of the accident could not have been a “special errand” as the timing of the trip was chosen by Claimant at a time convenient for him because he had an appointment with his lawyer later that morning. Claimant conceded during the hearing that he could have completed the paperwork the night before the accident and turned it in before leaving his employer’s premises, which would have completely eliminated the need for the fateful trip in the first place. (Hr. Tr. pg. 47). This fact, in and of itself, eliminates the possibility that Claimant’s

trip to and from his home was covered under the “special errand” exception, because unlike the employees in *Bickley* and *Moore*, Claimant was not told or required by his employer to take the paperwork home or take trip when he took it.

For these reasons, the “special errand” exception does not apply, and Claimant’s injuries did not arise out of and in the course of employment as they were sustained while going home.

FINDINGS OF FACT

Based upon the testimony and documentary evidence submitted by the respective parties, pursuant to the Administrative Procedures Act and the Commission’s file relative to this claim, WE, THE APPELLATE PANEL, FIND THE FOLLOWING AS FACT:

1. At all relevant times, Claimant was a truck driver for Bishop Forest Products whose primary responsibility was to transport chipped wood to a paper mill multiple times a day in a company owned truck.
2. Claimant would normally begin his shift around 7:00 am, with an occasional day starting at 6:00 am if there was work left over from the day before.
3. In addition to physically transporting wood chips in a company truck, Claimant’s employment required him to retain and complete specific paperwork and receipts associated with his daily truck driving activities. Specifically, mill tickets, pre-inspection checklists, time sheets, and trip log sheets.
4. Claimant was responsible for ensuring the company’s office received his weekly mill tickets between Tuesday evening and 8:00 am the following Wednesday.
5. It was Claimant’s normal Tuesday routine to return from a day of hauling and park his work truck at the Bishop Forest Products property where the office was located. He would then gather all of his paperwork for that week, including the mill tickets, depart

with it in his personal vehicle from Bishop Forest Products' premises, and take it home to ensure that all his paperwork and mill tickets were in order.

6. Per Claimant's and Mr. Bishop's testimony, there was no prohibition with respect to taking home the paperwork and mill tickets, but there was nothing preventing Claimant from preparing all his paperwork and turning it in, including the mill tickets, every Tuesday evening *before* leaving Bishop Forest Products property.
7. Claimant was never told by anyone at Bishop Forest Products that he had to take his paperwork and mill tickets home with him.
8. Other than Claimant, no one with Bishop Forest Products even knew Claimant took all his paperwork home every night.
9. Claimant's decision to take his paperwork and mill tickets home with him every night, including Tuesday night, and then turn everything in on Wednesday morning by 8:00 am, was made for his convenience.
10. Claimant had an appointment with his attorney on Wednesday morning, September 13, 2017, so he arranged with his supervisor to arrive to work at 11:00 am that morning.
11. On the evening of Tuesday, September 12, 2017, which was the day before the accident, nothing prevented Claimant, in contemplation of his appointment the next day, from turning in his paperwork and mill tickets to the company office before leaving company property. Nonetheless, as was his normal routine, that evening Claimant left company property in his personal vehicle with all his paperwork, including the mill tickets, and went home.
12. On the morning of Wednesday, September 13, 2017, at about 4:00 am, Claimant left his home in his personal car to deposit his paperwork at the company's office. He

arrived at the office approximately 4:15 am and completed the task by depositing his paperwork in the mail slot in the office door.

13. While on Bishop Forest Products property the morning of September 13, 2017, Claimant did nothing else incidental to his employment, he was not on the clock driving to and from the office, was not paid for his mileage, and was not paid for his time while on the Bishop Forest Products property.
14. After depositing the paperwork, Claimant got back into his personal car, left the company property and drove towards home for approximately 10 minutes when he was struck head on by another vehicle, causing the accident and subsequent injuries.
15. The primary issue for resolution is whether Claimant's injuries arose out of and in the course of employment. We find they do not.
16. Specifically, we find that Claimant's scenario does not amount to an exception to the general rule that injuries sustained while in the process of going to or coming from work are not compensable.
17. The facts of *Stough v. Westinghouse Savannah River Co.*, 311 S.C. 129, 427 S.E.2d 716 (S.C. Ct. App. 1993) are distinguishable from the facts of this case as the employee in *Stough* had yet to complete an employment related obligation while traveling home from work when he was injured. Here, Claimant did not have any remaining work-related obligations to fulfill at the time of his accident. Furthermore, we find that Claimant was not even required to take the paperwork in question home; therefore, no separate trip to and from work was even required in the first place.
18. The cases of *Bickley v. South Carolina Electric & Gas Co.*, 259 S.C. 463, 192 S.E.2d 866 (1972) and *Moore v. Family Service of Charleston Cnty.*, 269 S.C. 275, 237 S.E.2d

84 (1977) also militate against a finding of compensability for this claim, as the employees in those cases where *instructed* by their respective employers to engage in work activities that either fell outside of regular working hours or were qualitatively distinct from their normally assigned duties. Unlike the facts of those cases, Claimant's decision to take his paperwork home and then make the trip on the morning in question was for personal convenience and because of an appointment with his attorney, and not because of any work-related requirement to take the paperwork home and then return it early in the morning.

19. We find the principles laid out in *Sylvan v. Sylvan Bros.*, 225 S.C. 429, 82 S.E.2d 794 (1954) are more applicable to this claim, as the employee in that case, like Claimant, took paperwork home for his own convenience and not because of any employment related requirement.

20. Because we find Claimant's injuries did not arise out of and in the course of employment, we hereby **REVERSE** the Decision and Order of the single Commissioner dated May 29, 2018.

21. Claimant is not entitled to any benefits under the South Carolina Workers' Compensation Act for the injuries he sustained on September 13, 2017.

CONCLUSIONS OF LAW

In view of those Findings of Fact, as provided in the South Carolina Code of Laws, WE, THE APPELLATE PANEL, CONCLUDE THE FOLLOWING AS MATTERS OF LAW:

1. Jurisdiction and venue are proper as governed by the South Carolina Workers' Compensation Act and as agreed to by the parties.
2. Proper notice of the injury was given pursuant to SC Code Ann. Sec. 42-15-20.

3. The claim was filed in a timely manner pursuant to SC Code Ann. Sec. 42-15-40.
4. The injuries sustained by Claimant on September 13, 2017, although accidental, did not arise out of and in the course of his employment pursuant to SC Code Ann. Sec. 42-1-160 and related case law as discussed above.
5. Claimant is not entitled to any benefits under the South Carolina Workers' Compensation Act for the injuries he sustained on September 13, 2017.

ORDER

By majority vote, based upon the foregoing Findings of Fact and Conclusions of Law, **IT IS, THEREFORE, ORDERED** that the Decision and Order of the single Commissioner dated May 29, 2018, is hereby **REVERSED**;

IT IS FURTHER ORDERED that Claimant is not entitled to any benefits under the South Carolina Workers' Compensation Act with respect to injuries he sustained on September 13, 2017.

AND IT IS SO ORDERED!

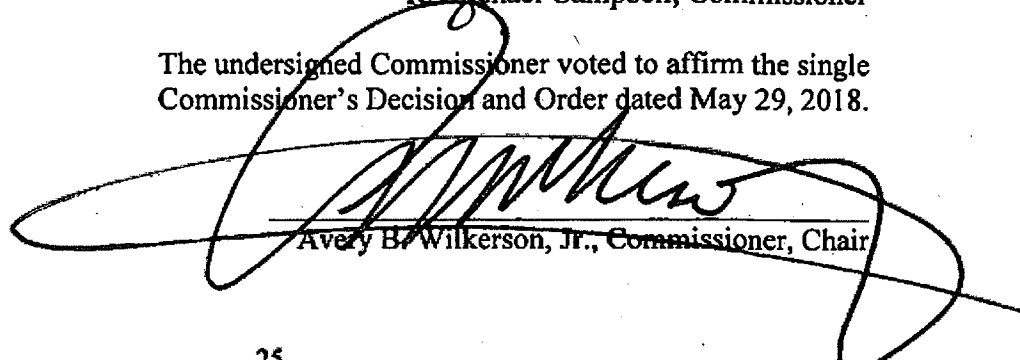


T. Scott Beck, Commissioner



R. Michael Campbell, Commissioner

The undersigned Commissioner voted to affirm the single Commissioner's Decision and Order dated May 29, 2018.



Avery B. Wilkerson, Jr., Commissioner, Chair

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 Eugenia Hollmon on December 18, 2018