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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM THE WORKERS' COMPENSATION COMMISSION
Appellate Panel

W.C.C. File No.: 1118193
Appellate Case No.: 2012-213494

Patricia Johnson, Employee ..... Appellant,

v.

Staffmark, Employer, and New Hampshire Insurance Company, Carrier, ... Respondent.

SUPPLEMENTAL RECORD ON APPEAL

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January 15, 2014

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WCC File #: 1118193
Carrier File #: 2011-156939
Carrier Code #: 143
Employer FEIN #: 71-0842216

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Employer's Name: CBS Personnel Holdings/ Staffmark
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Carrier: State Accident Fund
Preparer's Phone #: (803) 929-1920

REQUEST FOR COMMISSION REVIEW

Request for Commission Review by ☒ claimant ☐ employer (check one) Date of injury: 12/21/2011 (m/d/yyyy)

The undersigned makes application for review of the findings of the Commissioner in the above-captioned case. The request for review is based on the following grounds: (State the grounds of your appeal in the form of questions presented. Each question presented must contain a concise statement of one proposition of law or fact. Refer to evidence by title and exhibit number. Use additional pages if necessary).

1. Did the Commissioner err in finding the Claimant is not entitled to any compensation or medical care under the Act?
2. Did the Commissioner err in finding the Claimant's fall was the result of an idiopathic failure of the left ankle?
3. Did the Commissioner err in finding a lack of any evidence that this fall arose out of the Claimant's employment?
4. Did the Commissioner err in finding that a June 2010 medical visit by Claimant with complaints about the left ankle are related to and the cause of the December 2011 fall at work?
5. Did the Commissioner err in not finding the Claimant suffered a compensable injury?
6. Did the Commissioner err in not finding the nature of the injury itself is inconsistent with an idiopathic fall?
7. Did the Commissioner err in not finding the record established that the floor was wet or slick, where the employer representative acknowledged seeing a footprint on the floor near where the Claimant fell and the Claimant otherwise testified that it was raining outside and she slipped as a result when she entered the building and stepped on the cement floor?
8. Did the Commissioner err in finding the Claimant's testimony was inconsistent with the history given to medical providers?
9. Did the Commissioner err in finding there was nothing in the record to support that the Claimant fell on a wet cement floor?
10. Did the Commissioner err in finding the Claimant's past medical history supported she suffered an idiopathic fall?
11. Did the Commissioner err in not reviewing the evidence, and in not stating the facts and reasonable inferences therefrom, in a light most favorable to Claimant?
12. Did the Commissioner err in not awarding the Claimant benefits under the Act?

(Check one) Oral argument ☒ is ☐ is not requested. Appellant's request for oral argument is waived if not indicated on this form.

I certify that I have served this document pursuant to R.67-211 by delivering a copy to Mr. Grady Beard, Esq.
at Sowell Gray Stepp & Laffitte, L.L.C., P.O. Box 11449, Columbia, SC 29211
on the 18th day of May, 2012 by ☒ first class mail ☐ personal service ☐ certified mail.

Preparer's Signature (Paula Howker Amick) | Attorney for the Claimant (Title) | May 18, 2012 (Date)

Check this box if you are not represented by an attorney. ☐

If the claimant appeals and is representing himself or herself, the Judicial Department will prepare the additional copies of this form and serve this form on the opposing party. R.67-701B. Otherwise, file the original and four copies of this form with the Judicial Department. The appeal must be postmarked no later than 14 days from the date of service of the Hearing Commissioner's decision. R.67-701 and R.67-205. Attach the filing fee to this form. Attach a Form 32 if you are unable to pay the filing fee. Refer to R.67-701 through R.67-711 for additional information.

SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION
WCC FILE NUMBER 1118193

Patricia Johnson, Claimant, v. Staffmark, Employer, And New Hampshire Insurance Co., Carrier.	CLAIMANT/APPELLANT'S MEMORANDUM

STATEMENT OF THE CASE

The Claimant, Patricia Johnson, is forty-nine years old, with a high school diploma. Her prior work experience consists primarily of manufacturing and machine operations and assembly-line work.

On or about December 21, 2011, the Claimant was working through her employer Staffmark at the Lang Mekra plant, and was returning from the parking lot and slid and fell while stepping over a raised threshold in the doorway. (Hrg. Tr. 12, lines 2-3). Co-workers came to her aid and an ambulance was called. (Hrg Tr. 14, lines19-25). She was subsequently determined to have a trimalleolar fracture (Claimant's APA #18) for which she underwent surgery on January 3, 2012. (Claimant's APA #35).

When efforts to have the carrier to pay for her medical treatment and provide other ongoing benefits were unsuccessful, the Claimant filed a Form 50 on January 19, 2012, requesting a hearing, and requesting benefits. The Defendants filed a Form 51, dated February 2, 2012, denying all aspects of the claim.

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A hearing was held March 27, 2012, before Commissioner Gene McCaskill. At the hearing, the Claimant maintained she suffered a compensable injury to her leg. The Defendants maintained the claim was not compensable as it did not arise out of her employment pursuant to S.C. Code Ann. § 42-1-160, and that her injuries were idiopathic in nature. (The Defendants also argued benefits should be denied based on an intoxication defense and on the basis the claimant did not provide her employer with a list of prescription medications she was taking, and on the basis she failed to acknowledge a pre-existing disability. No evidence was offered to support those arguments, however, and the Commissioner's findings of fact and conclusions of law, from which the Defendants did not appeal, were all based on issues related to the idiopathic defense.)

Commissioner McCaskill issued an Order on May 16, 2012, finding the Claimant suffered a fall on December 21, 2011, while working for Staffmark at Lang Mekra, but that there was a "lack of any evidence to a work-related fall" and that her fall was idiopathic in nature, and not compensable.

The Claimant timely filed a WCC Form No. 30 (Request for Review) on May 18, 2012. The issues presented by the Claimant's filing a WCC Form No. 30 were as follows:

1. Did the Commissioner err in finding the Claimant is not entitled to any compensation or medical care under the Act?
2. Did the Commissioner err in finding the Claimant's fall was the result of an idiopathic failure of the left ankle?
3. Did the Commissioner err in finding a lack of any evidence that this fall arose out of the Claimant's employment?

4. Did the Commissioner err in finding that a June 2010 medical visit by Claimant with complaints about the left ankle are related to and the cause of the December 2011 fall at work?

5. Did the Commissioner err in not finding the Claimant suffered a compensable injury?

6. Did the Commissioner err in not finding the nature of the injury itself is inconsistent with an idiopathic fall?

7. Did the Commissioner err in not finding the record established that the floor was wet or slick, where the employer representative acknowledged seeing a footprint on the floor near where the Claimant fell and the Claimant otherwise testified that it [had been] raining outside and she slipped as a result when she entered the building and stepped on the cement floor?

8. Did the Commissioner err in finding the Claimant's testimony was inconsistent with the history given to medical providers?

9. Did the Commissioner err in finding there was nothing in the record to support that the Claimant fell on a wet cement floor?

10. Did the Commissioner err in finding the Claimant's past medical history supported she suffered an idiopathic fall?

11. Did the Commissioner err in not reviewing the evidence, and in not stating the facts and reasonable inferences therefrom, in a light most favorable to Claimant?

12. Did the Commissioner err in not awarding the Claimant benefits under the Act?

QUESTIONS AND ARGUMENTS

1. **Did the Single Commissioner Err in Finding the Claimant's Fall Was Not an Injury By Accident Arising out of the Scope of Her Employment? (Exceptions: 1, 3, 5, 7, 8, 9, 11 & 12)**

The Commissioner held the Claimant failed to meet her burden of proving she sustained a compensable injury by accident. The Commissioner found "There is nothing in the record that supports the Claimant's assertion that she fell on a wet concrete floor." Finally, the Commissioner concluded her injuries were the result of an

idiopathic fall. Not only are these findings not supported by the evidence, they are entirely inconsistent with the evidence submitted by the Claimant.

A Claimant is entitled to workers' compensation benefits if she sustains an "'injury by accident arising out of and in the course of employment. . . .'" S.C. Code Ann. § 42-1-160(A) (Supp. 2009)). "An injury arises out of employment if a causal relationship between the conditions under which the work is to be performed and the resulting injury is apparent to the rational mind, upon consideration of all the circumstances." *Rodney v. Michelin Tire Corp.*, 320 S.C. 515, 518, 466 S.E.2d 357, 358 (1996). Finally, "compensation laws should be given a liberal construction in furtherance of the beneficent purposes for which they were enacted. . . ." *Stokes v. First National Bank*, 298 S.C. 13, 22, 377 S.E.2d 922, 927 (Ct. App. 1988).

Under the circumstances of this case it is apparent there was a causal connection between the conditions of the Claimant's workplace, and her twisting her ankle and falling on December 21, 2011, as she entered the doorway of the employer's building. The Claimant offered direct, uncontradicted testimony she stepped over and down as she crossed over a raised threshold in the doorway (Hrg Tr. 12, lines 2-3) which was approximately two to three inches high and two inches wide. (Hrg Tr. 68, lines 4-5 & 23-24). She went on to testify that while doing so she "slid and . . . fell" and fractured her lower leg. (Hrg Tr. 12, line 3). She also testified there were wet footprints on the floor where she fell. (Hrg Tr. 13, line 6). Furthermore, the Claimant testified it had been raining earlier in the day. (Hrg Tr. 11, line 24). In her deposition testimony of February 22, 2012, she similarly testified she slipped because her shoes were wet from the outside (Deposition 18-21), that she stepped over the threshold at the doorway after

being outside, and that she "just slipped and went down[.]")(Deposition 18, line 24) The Defendants' own witness, Mr. Terrence Green, also testified it had been raining earlier that day. (Hrg Tr. 61, line 19). Mr. Green went on to also confirm the area outside the doorway was wet (Hrg Tr. 62, lines 1-2), and that there was a raised threshold. (Hrg Tr. 67, lines 2-14). Finally, Mr. Green confirmed he saw a visible footprint after one of the employees went out to get the ambulance and returned back in the doorway. (Hrg Tr. 65, lines 11-13).

The initial medical reports do not in any way contradict the Claimant's testimony, and in fact support the Claimant's testimony she slid and twisted her ankle, causing her to fall. The initial Providence Hospital report of December 21, 2011 refers to the Claimant describing a "twisting sensation" (Claimant's APA #2) and subsequently characterizes her injury as being from a "mechanical fall." (Claimant's APA #4). Finally, the x-ray reports from that same initial visit refer to the malleolus fracture for which she required surgery, but it also refers to a "left fibula spiral fracture" (Claimant's APA #5), the nature of which is a fracture line spiraling around the bone occurring from a traumatic twisting motion.

The evidence, including the nature of the injuries themselves, points **not** to an idiopathic fall but rather to a fall caused when the Claimant's foot slipped as she stepped over a raised threshold after walking on wet ground, resulting in a twisting motion, which led to her fractures.

The Claimant has the burden of proving facts that will bring the injury within the workers' compensation law. *Sola v. Sunny Slope Farms*, 244 S.C. 6, ___, 135 S.E.2d

321, 324 (1964). The Claimant has most certainly met that burden. She has established an injury by accident arising out of her employment.

2. **Did the Single Commissioner Err in Finding the Claimant's Fall Was Idiopathic in Nature? (Exceptions: 2 & 6)**

The facts of this case are entirely distinguishable from the facts in the idiopathic injury line of cases. In *Crosby v. Wal-Mart Store, Inc.*, 330 S.C. 489, 499 S.E.2d 253 (Ct. App. 1998), the Claimant fell while walking across a clear, clean, level floor. The Claimant herself testified in that case there was nothing on the floor which caused her to fall, and that her leg simply "gave out." Again, Crosby was simply walking on a level floor clear of debris. In *Bagwell v. Ernest Burwell, Inc.*, 227 S.C. 444, 88 S.E.2d 611 (1955), the Claimant fell to the concrete floor from a standing position, causing him to suffer a cerebral hematoma which resulted in his death. According to witnesses, there was nothing present that in any way contributed to his fall. In finding the Claimant's death was the result of injuries from an idiopathic fall, the *Bagwell* Court stated, "[t]here is no evidence that deceased while standing at the desk slipped or lost his balance, nor is there any showing that his fall was caused by any hazards of his employment. An examination of the floor shortly after the occurrence disclosed no evidence of grease or other foreign substance. The floor was dry. The body of the deceased was rigid as he fell and the testimony indicates that he made no effort to catch himself or otherwise break the fall." *Id.* S.C. at 450, 88 S.E.2d at 613. In *Miller v. Springs Cotton Mills*, 225 S.C. 326, 82 S.E.2d 485 (1954), the Claimant suffered an injury to her knee when she stood up from a sitting position. Miller testified in that case, however, that her feet were flat on the floor, and as she started to stand up her knee twisted. *Id.* at 329, 82 S.E.2d

458-59. Miller went on to testify she understood "it was a ligament that got fastened under my knee cap." *Id.* at 329, 82 S.E.2d at 459. Miller offered no testimony of a peculiar hazard or any other causal connection with her work environment. The facts of these idiopathic fall and idiopathic injury cases are entirely dissimilar to the facts of this present case.

In this case, the floor was **not** level. The Claimant had to step over a raised threshold. The peculiar hazard of the raised threshold combined with the fact she had just come from the outside where her shoes were in contact with the wet ground, caused her to slip as she stepped over the threshold. There may have been no witnesses to the fall itself, but there were numerous witnesses who came to her aid and thereby saw her on the floor, just inside the doorway and just past the raised threshold. Again, the employer's witness confirmed the ground outside was wet, and confirmed there was a raised threshold.

It is also important to note the direct employer subsequently put up a sign prohibiting employees from coming in that doorway, requiring them to instead go in and out of the main entrance so "it won't happen again." (Hrg Tr. 66, lines 4-5). The fact Lang Mekra implemented remedial measures establishes the company itself considered the nature of the doorway as presenting a hazard causing the Claimant's fall. Remedial measures would not be necessary and certainly would not be taken in a situation such as in *Crosby* or *Bagwell* or *Miller* where there was no condition of employment contributing to those respective true idiopathic injuries.

The circumstances of the present case are more closely allgned with *Pierre v. Seaside Farms, Inc.*, 386 S.C. 534, 689 S.E.2d 615 (2010). In that case, the

Defendants argued in part the claimant's accident did not arise out of his employment because the wet sidewalk where the Claimant fell was no different in character or design from any other sidewalk. The Court rejected that argument, finding "the injury arose from a hazard existing on the employer's premises" of which the Claimant was making reasonable use. *Id.* at 549, 689 S.E.2d 623.

In the present case, the Claimant's injuries were certainly not the result of an idiopathic fall. They were the result of an injury by accident arising out of her employment, and it was error for the Commissioner to find otherwise.

3. **Did the Commissioner Err In Finding That a June 2010 Emergency Room Visit Was Relevant or Otherwise Supported a Finding of an Idiopathic Fall? (Exceptions 4 & 10)**

The Commissioner found in part "given the past medical history of the left ankle" the fall was "the result of an idiopathic failure of the left ankle." (Order p. 9). The only evidence regarding an alleged "prior injury" was an emergency room visit a year and a half earlier for complaints of pain and swelling where the Claimant was ultimately diagnosed with a "[sprained] foot." (Defendants' APA #23). There was absolutely no evidence of any fracture at that time. (Defendants' APA #24). The Claimant testified she had no ongoing problems with her ankle, and the Defendants offered absolutely no testimony or medical evidence to contradict her testimony.

The Defendants offered no medical evidence which would support a finding the Claimant suffered an "idiopathic failure" of the left ankle pursuant to the June 2010 sprain. That finding by the Commissioner should not be allowed to stand with such a complete absence of supporting evidence. All of the medical records for her injury refer to an acute malleolus facture and spiral fracture caused by the fall on December 21,

2011. There is absolutely no connection between that acute injury and a resolved ankle sprain a year and a half prior.

The Full Commission is the ultimate fact-finder. *See Shealy v. Aiken County*, 341 S.C. 448, ___, 535 S.E.2d 438, 442 (2000); *see also Hunter v. Patrick Constr. Co.*, 289 S.C. 46, ___, 344 S.E.2d 613 (1986) and *Creech v. Ducane Co.*, 320 S.C. 559, 467 S.E.2d 114 (Ct. App. 1995) *citing Havird v. Columbia YMCA*, 308 S.C. 397, 418 S.E.2d 329 (Ct. App.1992), *cert. denied* (question of whether a claimant sustained an "injury by accident" is a question of law). Upon review of the evidence in this case, the Full Commission should make findings of fact and conclusions of law consistent with the facts and circumstances of this case, and hold that the Claimant suffered a compensable injury.

CONCLUSION

The circumstances of this case, as established by the evidence submitted, including the testimony of the Claimant and that of Terrance Green, and the subsequent medical records, establish that the Claimant suffered a compensable injury, and not injuries pursuant to an idiopathic fall.

It is accordingly respectfully submitted the Hearing Commissioner's Order of May 16, 2012 should be reversed, and that this Commission review the evidence in this case and make conclusions consistent with that evidence, and find the Claimant suffered a compensable injury for which she is entitled to benefits.

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Columbia, SC
August 15, 2012

STATE OF SOUTH CAROLINA
BEFORE THE
SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION
W.C.C. FILE NO.: 1118193

Patricia Johnson,	)	
	)	
Claimant/Appellant,	)	
	)	
v.	)	
	)	
Staffmark,	)	
	)	**DEFENDANTS/RESPONDENTS' FULL COMMISSION BRIEF**
Employer,	)	
	)	
and	)	
	)	
New Hampshire Insurance Company,	)	
	)	
Carrier,	)	
	)	
Defendants/Respondents.	)	

STATEMENT OF THE CASE

The claimant appeals the Decision and Order of Commissioner Gene McCaskill, finding she was not entitled to benefits under the Act, as the accident in question did not constitute a compensable injury by accident. The defendants, Staffmark and New Hampshire Insurance Company, maintain the Hearing Commissioner properly denied the claimant benefits pursuant to the Act.

By way of background, the claim is before the South Carolina Workers Compensation Commission pursuant Form 50 filed on January 19, 2012. It is the position of the claimant that she sustained a compensable injury to her left foot and left leg on December 21, 2011. Accordingly, the claimant sought payment for all causally-related medical care; additional medical treatment; temporary total disability benefits from December 21, 2011 and continuing; and a finding of compensability pursuant to the "Personal Comfort Doctrine."

Pursuant to the Form 51 filed on February 2, 2012, the defendants denied the claimant in its entirety. It is the position of the defendants that the claim is not compensable under Section 42-1-160 as the claimant has not met her burden of proving she was injured within the course and scope of her employment. Furthermore, the defendants maintain the claimant's alleged injuries are idiopathic in nature as the claimant's ankle gave out due to personal reasons and therefore, all benefits requested under the Act with regard to the alleged accident must be denied as a matter of law. The defendants also maintain the claim should be barred based upon the intoxication defense, Section 42-9-60, as the claimant failed to provide a complete list of her medication, including prescribed opiates. Finally, the defendants assert the claimant failed to acknowledge her pre-existing injury to her left foot/ankle, and request a determination as to the extent of pre-existing disability if the claim is found compensable.

A Hearing on the matter was held on March 27, 2012 before Commissioner Gene McCaskill ("Single Commissioner"). By way of the Decision and Order dated May 16, 2012, the Single Commissioner determined the claimant failed to meet her burden of proving she sustained a compensable injury by accident arising out of and in the course of her employment and, in fact, her alleged injury was the result of an idiopathic failure of her left ankle. The Single Commissioner further determined the claimant was not entitled to compensation for temporary total disability and permanent partial disability. Finally, the Single Commissioner held the defendants were not responsible for any past, ongoing or future medical care.

By way of Form 30 filed with the Commission on May 16, 2012, the claimant appealed the Order of the Single Commissioner to the Full Commission Appellate Panel based upon the following grounds:

1. Did the Commissioner err in finding the Claimant is not entitled to any compensation or medical care under the Act?

2. Did the Commissioner err in finding the Claimant's fall was the result of an idiopathic failure of the left ankle?

3. Did the Commissioner err in finding a lack of any evidence that this fall arose out of the Claimant's employment?

4. Did the Commissioner err in finding that a June 2010 medical visit by Claimant with complaints about the left ankle are related to and the cause of the December 2011 fall at work?

5. Did the Commissioner err in not finding the Claimant suffered a compensable injury?

6. Did the Commissioner err in not finding the nature of the injury itself is inconsistent with an idiopathic fall?

7. Did the Commissioner err in not finding the record established that the floor was wet or slick, where the employer representative acknowledged seeing a footprint on the floor near where the Claimant fell and the Claimant otherwise testified that it [had been] raining outside and she slipped as a result when she entered the building and stepped on the cement floor?

8. Did the Commissioner err in finding the Claimant's testimony was inconsistent with the history given to medical providers?

9. Did the Commissioner err in finding there was nothing in the record to support that the Claimant fell on a wet cement floor?

10. Did the Commissioner err in finding the Claimant's past medical history supported she suffered an idiopathic fall?

11. Did the Commissioner err in not reviewing the evidence, and in not stating the facts and reasonable inferences therefrom, in a light most favorable to Claimant?

12. Did the Commissioner err in not awarding the Claimant benefits under the Act?

The defendants respectfully request the Appellate Panel to affirm the Decision and Order of the Single Commissioner in its entirety, based upon the following grounds:

1. The Single Commissioner properly found the claimant's fall was not an injury by accident arising out of and in the course of her employment.

2. The Single Commissioner properly found the claimant's fall was idiopathic in nature.

3. The Single Commissioner properly determined the claimant's past medical history regarding her left ankle contributed to the idiopathic failure of her left ankle.

ARGUMENT

I. THE SINGLE COMMISSIONER PROPERLY FOUND THE CLAIMANT'S FALL WAS NOT AN INJURY BY ACCIDENT ARISING OUT OF AND IN THE COURSE OF HER EMPLOYMENT.

In order to establish a claim for benefits under the Act, the claimant must prove she sustained an injury by accident that "arose out of" and "in the course of" her employment with an employer. *See* S.C. Code Ann. § 42-1-160 (Supp. 2007). 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." *Owings v. Anderson County Sheriff's Department*, 315 S.C. 297, 433 S.E. 2d 869 (1993). In addition, "[a]n injury occurs 'in the course of' employment if it happens 'within a reasonable period of employment at a place where the employee reasonably may be in the performance of his duties and while fulfilling those duties.'" *Jennings v. Chambers Development Co.*, 335 S.C. 249, 254, 516 S.E.2d 453, 456 (Ct. App. 1999)(quoting *Baggott v. Southern Music, Inc.*, 330 S.C. 1, 5, 496, S.E.2d 852, 854 (1998)). Although the "arising out of" and "in the course of" employment requirements for compensability under the Act are somewhat overlapping, they are not synonymous; both must exist simultaneously to allow the claimant to recover. *See Gray v. Club Group, Ltd.*, 339 S.C. 173, 528 S.E.2d 435 (Ct. App. 2000).

Under well-established South Carolina jurisprudence, however, unexplained falls are deemed not to arise out of employment and, therefore, are not compensable under the Act. *See Crosby v. Wal-Mart Inc.*, 330 S.C. 489, 495, 499 S.E.2d 253, 257 (Ct. App. 1998). By definition, an unexplained injury and/or fall "may be classified into two main categories: (1) those in which the fall was

unwitnessed or was purely unexplained; and (2) those in which the evidence established that the fall, while unexplained, had an apparent lack of work connection, the implication arising that the fall resulted from some pre-existing physical condition." *Id.* at 257. Importantly, "the burden is on the claimant to prove such facts as will render the injury compensable and such an award must not be based on surmise, conjecture, or speculation." *Id.* In *Crosby*, the claimant "slipped and fell" while walking through the store to a meeting. *Id.* at 254. The claimant testified she was just walking and her feet went out from under her. *Id.* The store manager, who did not witness the fall, testified there was no liquid substance, debris or merchandise or paper on the floor upon his inspection immediately following the claimant's fall. *Id.* The court held the claimant failed to show a causal connection between her fall and her employment and, therefore, failed to show an injury by accident arising out of her employment. *Id.* at 257.

As in *Crosby*, the claimant in the case at bar has failed to show a causal connection between her fall and her employment with the defendants. First, the evidence in the record clearly establishes there were no witnesses to the claimant's fall. See H.T., pp. 37, 63. The claimant testified during her deposition she returned to the building and "just slipped and went down." See Claimant's Deposition, p. 18. Throughout the Hearing, the claimant consistently testified she slipped and fell when she returned to the building. See H.T., p. 43. Furthermore, the medical evidence supports the defendants' contention that claimant's fall was unexplained. The medical narrative of Fairfield County EMS indicated the claimant "had fallen while entering the door of the facility where she works and had twisted her left ankle." See Claimant's APA #1, p. 1. The claimant then presented to Providence Hospital Northeast on the day of the alleged accident where she reported "she was walking through a doorway when she felt a twisting sensation and had a sharp pain in her left ankle." See Claimant's APA #2, p. 2. Not surprisingly, during the Hearing, the claimant testified she did not recall what she

told her medical providers following her alleged accident. See. H.T., pp. 40-43. Accordingly, the defendants maintain the claimant has failed, through her own testimony or that of an alleged witness, to provide an explanation for her slip and fall accident. In fact, the claimant's testimony is wholly inconsistent with the medical reports of her initial treating physicians. Therefore, the denial of benefits based upon her failure to prove a causal relationship between her alleged injury and her employment is supported by the greater weight of the evidence in the record.

II. THE SINGLE COMMISSIONER PROPERLY CONCLUDED THE CLAIMANT'S FALL WAS IDIOAPTHIC IN NATURE.

The claimant argues her injuries were not the result of an idiopathic failure. In support of her assertion, the claimant attempts to distinguish the instant case from other idiopathic injury cases and rely upon the holding of *Pierre v. Seaside Farms, Inc.* 386 S.C. 534, 689 S.E 2d 615 (2010). The defendants maintain such a distinction is a misapplication of well settled cases regarding this matter.

A. CLAIMANT'S APPLICATION OF IDIOPATIC INJURY CASES IS MISPLACED.

The claimant contends idiopathic injury cases, including *Bagwell*, *Crosby* and *Miller* are distinguishable from the facts in the instant case. In *Bagwell*, *supra*, the claimant died as a result of striking his head against his employer's concrete floor during the course of his employment after suddenly and for no explained reason, falling backwards. Id. at 447. An examination following the incident revealed the floor was dry and there was no evidence of grease or other foreign substance. Id. at 450. The court held the claimant failed to show a causal connection between the claimant's fall and his employment as the claimant's fall was witnessed and revealed his employment did not contribute to his fall. Id. at 453. As applied to the present case, it is uncontested that the claimant's fall was not witnessed. See H.T., pp. 63. However, regarding the events surrounding the alleged accident, the claimant seems to rely solely upon her own testimony when there is testimony to the

contrary. Mr. Terrance Green, the claimant's supervisor, testified he and others completed an investigation of the incident involving the claimant's fall. See H.T., p. 61. He further testified the investigation concluded the area from the concrete inside the building was ***completely dry***, as in *Bagwell,* on the date of the alleged accident. *Id.* Therefore, in applying the rationale of *Bagwell*, the claim for benefits should be denied.

The defendants maintain the determination of the Hearing Commissioner finding the claimant sustained an unexplained injury is supported by the greater weight of the evidence in the record and, therefore, is not compensable under *Crosby*. As the primary support for its reliance upon *Crosby*, the defendants direct the Full Commission to the medical evidence and Hearing testimony of the claimant, wherein the claimant provides wholly inconsistent statements as to the cause of her accident. When the claimant presented to Providence Northeast, she reported "she was walking through a doorway when she felt a twisting sensation and had a sharp pain in her left ankle." See Claimant's APA #2, p. 2. During the Hearing, the claimant's testimony was that she slipped and fell. See H.T., p.12. The Single Commissioner properly found the claimant's testimony and statement to her medical providers were inconsistent and properly determined the new explanation of injury was inconsistent compared to her original history of accident. See Decision and Order, Finding of Fact #3, p. 8. Accordingly, the injury by accident did not arise out of the claimant's employment. Therefore, as applied to *Crosby* and pursuant to §42-1-160 of the Act, the compensability of this claim should be denied as supported by the greater weight of the evidence in the record and as a matter of law.

B. CLAIMANT'S RELIANCE ON *PIERRE* IS MISPLACED.

The claimant argues her injuries were not the result of an idiopathic fall. In support of her assertion, the claimant also relies upon *Pierre v. Seaside Farms, Inc., supra*. In *Pierre*, the claimant sought benefits for an injury he sustained to his right ankle while employed as a migrant worker. *Id.*

at 616. Unlike the present case, the claimant in *Pierre* was provided housing through his employment. *Id.* at 617. The claimant was exiting the building when he fell on a wet sidewalk as he walked out the door. *Id.* The claimant noticed water overflowing from a nearby sink being used by another worker. *Id.* The court held the claimant's accidental injury arose out of and in the course of his employment and thus was compensable. *Id.* at 623.

The present case is clearly distinguishable from *Pierre*. In *Pierre*, there was no conflict in the testimony regarding the wet sidewalk. However, in the case at bar, there was conflicting testimony regarding whether the floor was wet. The Single Commissioner correctly found there was nothing in the record to support the claimant's assertion that she fell on a wet concrete floor. See Decision and Order, Finding of Fact #7, p. 9. The Single Commissioner relied upon the Hearing testimony of Mr. Terrance Green and the medical evidence in the record in making this determination. As such, the defendants maintain the Single Commissioner correctly found the claimant's fall was idiopathic in nature.

III. THE SINGLE COMMISSIONER PROPERLY DETERMINED THE CLAIMANT'S PAST MEDICAL HISTORY REGARDING HER LEFT ANKLE CONTRIBUTED TO THE IDIOPATHIC FAILURE OF HER LEFT ANKLE.

The claimant asserts there was "no medical evidence which would support a finding the claimant suffered an idiopathic failure of the left ankle pursuant to the June 2010 sprain." The defendants however maintain a critical review of the entire record supports the finding that given the claimant's past medical history of her left ankle, she suffered an idiopathic failure of same. The defendants direct the Full Commission to *Miller v. Springs Cotton Mills*, 225 S.C. 326, 82 S.E. 2d 458 (1954). The claimant in *Miller* alleged she sustained an injury by accident at work when she rose from the lunch table, felt her knee twist and a sharp pain in her knee. *Id.* There was no medical testimony regarding causation of the twisting in claimant's knee. *Id.* at 459. Furthermore, the Court

held given the testimony, the "failure of the claimant's knee to function normally was the cause of her near-fall and not the near-fall the cause of the injury to the knee." *Id.* The Court further determined it would be "wholly conjecture" based upon the evidence before them to find that claimant's employment was the contributing cause of her injury. *Id.*

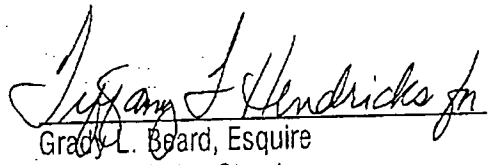
In the case at bar, the claimant consistently testified she slipped and fell. *See* H.T., p. 43. There was nothing to cause her to fall as the floor was completely dry. *See* H.T., p. 61. The medical records of Providence Hospital, dated December 21, 2011, indicate the claimant simply walked into the building and felt a twisting sensation and sharp pain in her left ankle. *See* Claimant's APA #2, p. 2. However, this incident was not isolated. On June 28, 2010, the claimant presented to The Regional Medical Center with complaints of left foot/ankle pain and swelling and no indication of a recent injury. *See* Defendants' APA#1, p. 1. The claimant was diagnosed with a foot sprain. *See* Defendants' APA#1, p. 6. An x-ray of the claimant's complete left foot revealed degenerative changes with a small plantar calcaneal bone spur and small enthesophyte at the Achilles tendon. *See* Defendants' APA#1, p. 24. There was also soft tissue prominence, edema versus obesity. *Id.* As such, the defendants submit the claimant's significant pre-existing left ankle condition, including arthritis, attributed to the claimant's internal breakdown or failure of the claimant's ankle. Therefore, the defendants respectfully request the Full Commission to affirm the Single Commissioner's determination that the claimant is not entitled to any benefits under the Act.

CONCLUSION

Based upon the foregoing arguments, case law, and statutes cited herein, the defendants respectfully request the Full Commission to affirm the Decision and Order of the Single Commissioner, filed on May 16, 2012, in its entirety.

Respectfully submitted,

SOWELL GRAY STEPP & LAFFITTE, LLC

By: 

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THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM THE WORKERS' COMPENSATION COMMISSION
Appellate Panel

W.C.C. File No.: 1118193
Appellate Case No.: 2012-213494

Patricia Johnson ..... Claimant, Appellant,

v.

Staffmark and New Hampshire Insurance Company..... Respondents.

CERTIFICATE OF COUNSEL

The undersigned hereby certifies that the Supplemental Record on Appeal contains all material proposed to be included by any of the parties and not any other material.

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