THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM THE SOUTH CAROLINA
WORKERS' COMPENSATION COMMISSION

WCC FILE NO.: 1206355

Frances Baron, Employee, ... Appellant,

v.

Sanctuary Hospice, Employer, and
Guarantee Insurance Company c/o
Patriot National Insurance Group, Carrier, ... Respondents.

RESPONDENTS' BRIEF

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I. WHETHER THE COMMISSION PROPERLY HELD THAT CLAIMANT FAILED TO MEET HER BURDEN OF PROVING THAT HER INJURIES WERE COMPENSABLE UNDER S.C. CODE ANN. § 42-1-160?

STATEMENT OF THE CASE

Appellant Frances Baron ("Claimant" herein), a Registered Nurse, testified that she was injured in a single car automobile accident on May 21, 2012 on her way back to the office and to visit her last patient of the day. (R. 41, lines 10-16). Claimant testified that, prior to the accident, she was alert, felt fine, "[a]nd it was just like a light switch just went off and I can't remember a thing. I don't even remember going off the road onto the grass." (R. 148, line 20 – 149, line 1) (R. 150, lines 11-15) (R. 157, lines 11-13). Claimant testified that she does not remember anything about the accident and the first thing that she remembers is opening her eyes after she hit a tree. She was able to get out of the car and walk several steps before her legs got shaky and she sat down. (R. 42, lines 5-18) (R. 50, line 15 – 51, line 5).

Dr. Mark Wagner of the MUSC Department of Neurology examined Claimant on August 23, 2012 and also reviewed her medical records. (R. 511-518). Dr. Wagner opined that, "[u]ltimately, this is an unexplained syncopal event. It does not appear that the syncopal event was caused by any condition related to [Claimant's] employment, although, the event did occur during her employment when she was traveling from one location to another." (R. 518). Claimant has stipulated that her idiopathic syncopal episode was the cause of her accident. (R. 87, lines 17-21).

Claimant filed a workers' compensation claim, alleging she sustained a compensable accident by injury arising out of and in the scope and course of her employment. She alleged injuries to her head/brain, eyes, face, both legs, both ankles and both feet. She requested payment of all causally related medical bills and alleged she

was entitled to temporary total disability benefits from the date of accident to the present and continuing.

Her employer, Sanctuary Hospice, and its workers' compensation carrier, Guarantee Insurance Company c/o Patriot National Insurance Group ("Respondents" herein), denied the claim, arguing that Claimant did not sustain a compensable injury by accident under S.C. Code Ann. § 42-1-160. (R. 28-29). Although Respondents stipulated that Claimant was in the course of her employment at the time of the accident, they denied the accident arose out of her employment, as the accident was caused by Claimant's syncopal episode and was unrelated to her employment. Respondents also argued that, if the claim was found to be compensable, Claimant's compensation rate and entitlement to temporary total disability benefits should be limited, as Claimant previously had made plans to cease working full-time as of a week following the accident.

A hearing was held before Single Commissioner Gene McCaskill on February 27, 2013 in Yemassee, South Carolina. In a Decision and Order dated June 14, 2013, the Single Commissioner made the following findings of fact, among others: that Claimant was in an automobile accident on May 21, 2012; that Claimant lost consciousness, ran off of the road and hit a tree; that Dr. Scott Condie, the attending physician at Coastal Carolina Medical Center, opined that Claimant suffered a syncopal event which resulted in the accident; that neither Dr. Condie nor Dr. Jonathan MacCabe, to whom Claimant was referred for a consultation, opined as to a cause for Claimant's syncopal event; that, although the Respondents stipulated that the Claimant was in the scope and course of her employment when the accident occurred, Claimant failed to meet her burden of proving

under S.C. Code Ann. § 42-1-160 that her injuries arose out of her employment; that the fact the syncopal event occurred while Claimant was working is not sufficient to meet the burden of proof required under S.C. Code Ann. § 42-1-160; that Dr. Wagner evaluated Claimant and concluded that, "ultimately, this is an unexplained syncopal event. It does not appear that the syncopal event was caused by any condition related to her employment. Although, the event did occur during her employment when she was traveling from one location to another"; that, relying on Edge v Dunean Mills, 202 S.C. 189, 24 S.E.2d 268 (1943), the fact that Mrs. Baron suffered the syncopal event while driving to see patients is not sufficient to meet her burden as to "arising out of" under S.C. Code Ann. § 42-1-160; and that, because the claim is not compensable under S.C. Code Ann. § 42-1-160, the Claimant is not entitled to benefits under the Act. (Single Commissioner Decision and Order, dated June 14, 2013, R. 2-12) ("Single Commissioner Decision").

Claimant timely appealed to the Full Commission. (R. 25). An Appellate Panel of the Full Commission ("Full Commission") heard oral argument on October 15, 2013 and issued its Decision and Order on December 12, 2013, fully affirming the Single Commissioner Decision. (Decision and Order of the Full Commission, dated December 12, 2013, R. 13-24).

Claimant timely appealed to this Court.

STANDARD OF REVIEW

Judicial review of a Commission decision is governed by Section 380(A) of the Administrative Procedures Act. S.C. Code Ann. § 1-23-380(5) (Supp. 2012). Lark v. Bi-Lo, Inc., 276 S.C. 130, 276 S.E.2d 304 (1981). A reviewing court should affirm the

decision of the Full Commission unless it is clearly erroneous in view of the substantial evidence of the whole record, or is affected by an error of law. S.C. Code Ann. § 1-23-380(5). The findings of the Full Commission are presumed correct and can be set aside only if unsupported by substantial evidence or based on an error of law. McGuffin v. Schlumberger-Sangamo, 307 S.C. 184, 186, 414 S.E.2d 162, 163 (1992). It is not within the appellate court's purview to reverse findings of the Full Commission which are supported by substantial evidence. Broughton v. South of the Border, 336 S.C. 488, 496, 520 S.E.2d 634, 637 (Ct. App. 1999).

ARGUMENT

I. The Commission properly held that Claimant failed to meet her burden of proving that her injuries were compensable under S.C. Code Ann. § 42-1-160.

A claimant seeking workers' compensation benefits bears "the burden of proving facts that will bring the injury within the workers' compensation law, and such award must not be based on surmise, conjecture or speculation." Clade v. Champion Labs., 330 S.C. 8, 10, 496 S.E.2d 856, 858 (1998). Under Section 42-1-160(A) of the South Carolina Workers' Compensation Act ("Act"), a compensable injury is defined to "mean **only** injury by **accident arising out of** and in the course of employment." S.C. Code Ann. § 42-1-160(A) (emphasis added).

"The two parts of the phrase 'arising out of and in the course of employment' are not synonymous. [citation omitted] Rather, both parts must exist simultaneously before recovery is allowed." Nicholson v. S.C. Dept. of Social Servs., 405 S.C. 537, 543, 748 S.E.2d 256, 260 (2013). "The phrase 'in the course of the employment,' refers to the time, place, and circumstances under which the accident occurred." Broughton, 336 S.C.

at 498, 520 S.E.2d at 639. An injury occurs in the course of employment if it happens within the period of employment and if it happens at a place where the employee reasonably may be in the performance of his duties and while fulfilling those duties. Jennings v. Chambers Dev. Co., 335 S.C. 249, 255, 516 S.E.2d 453, 456 (Ct. App. 1999). Both parties agree that Claimant was driving in her own automobile in the course of her employment when the accident occurred. However, this does not end the inquiry into whether the accident is compensable. In addition to showing the accident was in the course of her employment, Claimant must further show that the accident arose out of her employment.

The issue in this case turns on whether Claimant's accident arose out of her employment. The term "arising out of" in the Act "refers to the origin or cause of the accident." Crosby v. Wal-Mart Store, Inc., 330 S.C. 489, 493, 499 S.E.2d 253, 255 (Ct. App. 1998). An injury "arises out of" employment,

> 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. Under this test, if the injury can be seen to have followed as a natural incident of the work and to have been contemplated by a reasonable person familiar with the whole situation as a result of the exposure occasioned by the nature of the employment, then it arises "out of" the employment. But it excludes an injury which cannot fairly be traced to the employment as a contributing proximate cause **and which comes from a hazard to which the workmen would have been equally exposed apart from the employment. The causative danger must be peculiar to the work and not common to the neighborhood.** It must be incidental to the character of the business and not independent of the relation of master and servant. It need not have been foreseen or expected, but after the event it must appear to have had its origin in a risk connected with the employment, and to have flowed from that source as a rational consequence.

Broughton, 336 S.C. at 496, 520 S.E.2d at 638 (emphasis added). Patently, "[a]n employee who becomes ill or dies of natural causes while at work does not suffer an

accident arising out of employment because the condition is a natural result or consequence that might be termed normal and to be expected." Jennings, 335 S.C. at 255, 516 S.E.2d at 456. Instead, a claimant bears the burden of showing that the injury or injuries were caused by an accident that arose out of employment. Bagwell v. Ernest Burwell, Inc., 227 S.C. 444, 450, 88 S.E.2d 611, 613 (1955).

"To say that an injury arises out of the employment in every case where an employee was required to be at the place where the injury occurred would effectively eliminate an essential requirement of the statute." Bagwell, 227 S.C. at 454, 88 S.E.2d at 615 (denying benefits where the conditions under which the work was performed "did not create a hazard which would not be encountered on a sidewalk or street or in a home ..."). Just because an injury was incurred in the course of employment does not render it compensable. "To so hold, would be to abandon the requirement that an accident bear some logical causal relation to the employment." Bright v. Orr-Lyons Mill, 285 S.C. 58, 60, 328 S.E.2d 68, 70 (1985). As the Court explained in Crosby, the Act excludes an injury, "which cannot fairly be traced to the employment as a contributing proximate cause **and which comes from a hazard to which the workmen would have been equally exposed apart from the employment.**" 330 S.C. at 493, 499 S.E.2d at 255 (emphasis added).

As such, in this case the Commission properly relied on Edge v. Dunean Mills, 202 S.C. 189, 24 S.E.2d 268 (1943). In Edge, the claimant was subject to epileptic seizures. While at work, the claimant felt one of his seizures "coming on him," and was "going to a back alley to sit down." When "he got to the doorway leading to the stairs," and "opened the door to go down steps that is the last thing [he] remembered." 202 S.C.

at 196, 24 S.E.2d at 271. The Supreme Court held, "[t]he only reasonable inference which can be drawn from this testimony and other testimony in the record is that as respondent opened the door to go down steps he was besieged with a spell of epilepsy which rendered him unconscious and as a result he fell down a part of a flight of steps to the first landing." 202 S.C. at 196-197, 24 S.E.2d at 272. In denying benefits, the Court held that there was, "a total absence of testimony that [the claimant's] injury was caused by an accident arising out of and in the course of his employment, and on the other hand the only inference to be drawn from all of the testimony is that respondent's injury was caused by an attack of epilepsy." 202 S.C. at 197, 24 S.E.2d at 272. Clearly and logically, having an epileptic seizure on a set of stairs creates an increased danger over having such a spell on a level or padded surface.

The facts of the present case are similar to those in Edge in key respects. Claimant admittedly does not know what caused her accident. In her deposition, she testified, "I do not remember a thing. I was driving. I was alert. I had nothing particularly on my mind. . . And it was just like a light switch went off and I can't remember a thing. I don't even remember going off the road into the grass." (R. 148, line 20 – 149, line 1) (R 150, lines 11-15) (R. 157, lines 11-13). Further, at the hearing she testified that she was driving down the road and the next thing she knew, she was looking at the sky. (R. 42, lines 5-18) (R. 50, line 15 – 51, line 5).

Upon admittance into the hospital, Claimant was diagnosed with a syncopal episode. "Apparently, the patient had a syncopal episode while driving. She lost consciousness. She does not remember going off the road, but she does have some recollection of the airbag going off." (R. 197). She was admitted with the diagnosis of

syncope. (R. 199).

Dr. Wagner reviewed her medical records, evaluated Claimant, and opined that it "seems very clear from the records, and Ms. Baron, that she experienced an episode of syncope that caused a motor vehicle accident. It seems quite clear that the syncopal event preceded the accident. Specifically, there was significant retrograde amnesia, but no anterograde amnesia. Clinically this demonstrates that there was unconsciousness before and not after the accident." (R. 517-518). Dr. Wagner further opined that "[i]t does not appear that the syncopal event was caused by any condition related to her employment." (R. 518).

A syncopal episode is defined as "a transient loss of consciousness caused by diminished blood flow to the brain." Linnen v. Beaufort Cnty Sheriff's Dept., 305 S.C. 341, 345, 408 S.E.2d 248, 251 (Ct. App. 1991). As stated above, Claimant experienced a syncopal episode that caused her automobile accident. There is no explanation for the syncopal episode. Therefore, there is no evidence that the syncopal episode arose out of her employment. Applying the logic from Edge, without evidence that the syncopal episode arose out of the employment, there cannot be a finding of a compensable accident arising out of employment under S.C. Code Ann. § 42-1-160.

Furthermore, the South Carolina Supreme Court did not overrule or dispute the resolution of Edge. Instead, in Bagwell, the Court merely explained that "if the fall originates in a cause unrelated to the employment, compensation must be denied even though a particular hazard inherent in the working conditions contributes to the fall **and** consequent injury." 227 S.C. at 457, 88 S.E.2d at 617 (emphasis added). Respondents note the Court's use of the conjunctive "and."

Furthermore, although Claimant argues that "the issue of whether the conditions of employment served to enhance, or exacerbate the injury, was never argued," in Edge, (App. Br. p. 6), without reviewing the pleadings and/or the transcript of oral argument, we do not know what issues or arguments were raised to the Court. All we know is that the Court did not specifically address that argument and, in doing so, implicitly rejected any such arguments that might have been made. The Supreme Court did not and has not overruled Edge, which remains good law.

Furthermore, other states follow the reasoning in Edge. For example, although Claimant relies on Youngblud v. Fallston Supply Co., Inc., 180 Md. App. 389, 951 A.2d 118 (Md. Ct. Spec. App. 2008), in support of her position, the facts and outcome in Youngblud are nearly parallel to those in Edge. In Youngblud, the Maryland court upheld a denial of benefits where the claimant, a diabetic, became dizzy (due to a low sugar level) at the top of the stairs in his office and fell down the stairs, injuring himself. The court rejected the claimant's argument that, by placing him in a second floor office with knowledge of his diabetic condition, the employer had subjected the claimant to a hazard of employment (the stairs) that made his fall more severe. The court explained that "employees having to use stairs is not unusual," and the stairs themselves had no defect that contributed to the claimant's fall. In denying compensation, the court distinguished between normal, everyday conditions, such as stairs at work, from special hazards, such as an employer allowing employees to ride on the running board of a garbage truck, citing Watson v. Grimm, 200 Md. 461, 90 A.2d 180 (Md. 1952). The latter was deemed "a special risk," whereas the former was not. Youngblud, 180 Md. App. at 397, 951 A.2d at 128-29. Although the court recognized that the claimant's

injuries "from fainting and falling due to a hypoglycemic episode may not have been as severe if he had fallen in his office, in the kitchen, or in some area of the workplace other than the staircase. That does not make using the staircase an incident or hazard of his employment." Id., 951 A.2d at 129.

In Nottoway Correct. Ctr. v. Thompson, 1995 Va. App. LEXIS 341 (Va. Ct. App. 1995), compensation was denied where the claimant was on a short series of steps at work, and twisted his ankle when he heard a noise that caused him to step down to investigate. The court concluded that there was nothing unusual about the steps and the claimant "produced no evidence to show that his injury resulted from a hazard connected to his work and not common to the neighborhood." 1995 Va. App. LEXIS 341 *5. In explaining its reasoning, the court noted that "Virginia is not a 'positional risk' jurisdiction in which an accident is compensable solely because it arises in the course of employment. Virginia is an 'actual risk' jurisdiction in which an accident, to be compensable, must also arise out of the employment." Id.

In Elliot v. Industrial Comm'n, 153 Ill. App. 3d 238, 505 N.E.2d 1062 (Ill. App. Ct. 1987), the claimant's leg "gave out," causing him to fall while walking down a flight of stairs in the prison where he worked. Both the claimant's testimony and the medical evidence demonstrated that the cause of the fall was personal to the claimant, and not work-related. 153 Ill. App. 3d at 242-243, 505 N.E.2d at 1065-1066. The claimant argued that "the fact that he was on a stairway at work" proved his employment contributed to his injury. The court rejected this argument, explaining that, "[m]ore is required than the fact that an injury occurred at the employee's place of work .... The act of walking down the stairs itself does not establish a risk greater than those faced outside

of work. [citation omitted] Claimant could have been walking downstairs in his home or anywhere, and the same injury might have occurred .... The need to walk down the stairs is not unique to claimant's work" 153 Ill. App. 3d at 244, 505 N.E.2d at 1067. The same result should be reached here, as the need to drive her own automobile over regularly-traveled streets and roads is not unique to Claimant's employment.

Claimant's heavy reliance on Bagwell, and the cases cited in Bagwell, Rozek's Case, 294 Mass. 205, 200 N.E. 903 (Mass 1936) and Connelly v. Samaritan Hosp., 249 N.Y. 137, 181 N.E. 76 (N.Y. 1932), is misplaced, primarily because all those cases are factually distinguishable from the case at hand. Rozek's Case and Bagwell involved an idiopathic level floor fall at the employer's workplace. In both Rozek's Case and Bagwell, the courts found that the surface onto which the claimant fell was not "a hazard of the employment." Rozek's Case, 294 Mass. at 208, 200 N.E. at 905; Bagwell, 227 S.C. at 454, 88 S.E.2d at 615 (same). In other words, the increased risk or danger was not peculiar to the workplace and could have been encountered in the claimant's home or on the street.

By way of contrast, in Connelly, the claimant fell against a table that was part of the equipment of the laundry where she worked. The New York Court explained that, "[a]ll hazards, arising from conditions attached to the pace or work, must be a source of special danger to the employees, for only those who resort to that place are subject to those hazards." 249 N.Y. at 142, 181 N.E. at 78. The same is true of Turner v. Campbell Soup Co., Inc., 252 S.C. 446, 166 S.E.2d 817 (1969), where the claimant fell on the employer's premises and struck a "pipe like thing that was holding up another table behind," where she was working. Exposed pipe and commercial laundry equipment are

not hazards to which the general public is exposed. In the instant case, Claimant's accident was not caused by any condition of her workplace.

Here, the accident was admittedly caused by an idiopathic syncopal event. At the time of the accident, Claimant was driving her own vehicle, and was traveling down a road she agreed she normally traveled to her home. (R. 145, line 14 – 146, line 13).[1] Thus, her employment did not place her at any greater risk than she otherwise would have incurred.

Claimant asserts that the "special circumstances" contemplated in Crosby are fulfilled in this case. (App. Br. p. 7). Not so. In Crosby, the claimant fell while walking to a meeting. There was no explanation of what caused her to fall, except for the claimant's statement that her leg "just gave out." Crosby, 330 S.C. at 494, 499 S.E.2d at 256. This Court upheld the Commission's denial of benefits, noting that South Carolina falls within the minority of states that deny benefits in "unexplained fall" cases, and finding that substantial evidence supported the commission's finding that the claimant failed to show a causal connection between her fall and her employment." 330 S.C. at 495-496, 499 S.E.2d at 257. This Court's reference to "special conditions or circumstances" was in the context of idiopathic floor falls and was summarizing the Supreme Court's ruling in Bagwell. Crosby, 330 S.C. at 493, 499 S.E.2d at 256. Although this Court did not explain or define what it meant by "special conditions or circumstances," it ruled that the Act excludes injuries "which cannot fairly be traced to the employment as a contributing proximate cause and which comes from a hazard to which the workmen would have been equally exposed apart from the employment." 330

[1] Claimant testified that she was not driving at a high rate of speed but at the posted speed limit. (R. 49, line 18 – 50, line 10).

S.C. at 493, 499 S.E.2d at 255. Driving her own personal automobile is a hazard to which Claimant was exposed apart from her employment. It is only happenstance that the syncopal event occurred when she was in the course of her employment. The fact of her employment did not add to the risk or danger of having a syncopal event occur when she was driving her own automobile on normal streets and roads.

In analyzing whether a special danger was present in Bagwell, the Supreme Court noted that cement floors are as common outside industry as within it: "[c]ement floor 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, 227 S.C. at 454, 88 S.E.2d at 615. Accordingly, the Court affirmed the denial of benefits holding that there was no special danger present. "To say that an injury arises out of the employment in every case where an employee was required to be at the place where the injury occurred would effectively eliminate an essential requirement of the statute." Id., 88 S.E.2d at 615.

When the holdings from Bagwell, Edge and Crosby are applied to the facts of the present claim, this Court should affirm the Full Commission's denial of benefits because Claimant did not meet her burden of proving her accident "arose out" of her employment. She failed to show a special danger was present. Similar to the concrete floor in Bagwell or the stairs in Edge, Claimant could have been driving her own car on that very road at any time unrelated to her employment and suffered a syncopal episode resulting in exactly the same injuries. She was driving her own personal automobile on the same road she would have been on had she been driving to her house. (R. 145, line 14 – 146,

line 13).

While Claimant alleges that driving a vehicle is an "increased danger," she acknowledges that South Carolina has not adopted that doctrine. Her broad statements that the doctrine has been adopted by "all jurisdictions" that have considered the issue must be examined more closely. First, although Claimant cites Professor Larson on the definition and the applicability of the "increased danger rule," along with cases from other jurisdictions, Larson's treatise is only a secondary source and foreign jurisprudence is not controlling authority in South Carolina.

Other cases cited by Claimant do not support her position as strongly as she suggests. Some cases were decided under workers' compensation schemes that are substantively different from the South Carolina Act. For example, in Kennecott Corp. v. Industrial Comm'n of Utah, 675 P.2d 1187, 1983 Utah LEXIS 1238 (Utah 1983), the court upheld an award of benefits under Utah's compensation statute, which provides compensation for an employee injured "by accident arising out of *or* in the course of his employment." The Utah court recognized that this provision "is more liberal that similar statutes in other states" in that it is "worded in the disjunctive." 675 P.2d at 1190, 1983 Utah LEXIS 1238 *4-5.

Immer and Co. v. Brosnahan, 207 Va. 720, 152 S.E.2d 254 (Va. 1967), cited by Claimant, applied an "actual risk" test to affirm an Industrial Commission award. However, later Virginia cases call the ruling in Immer into question. In Virginia Dept. of Transp. v. Mosebrook, 13 Va. App. 536, 413 S.E.2d 350 (Va. Ct. App. 1992), the claimant was "operating a VDOT dump truck when he 'blacked out' and crashed into a tree." The Industrial Commission awarded benefits but the court reversed, holding "there

was no credible evidence of any factors peculiar to his work environment that may have caused or contributed to [the claimant's] injuries sustained as a result of the idiopathic condition." 13 Va. App. at 538, 413 S.E.2d at 352. In Hill v. Southern Tank Transp., Inc., 44 Va. App. 725, 607 S.E.2d 730 (Va. Ct. App. 2005), the claimant was injured when the truck he was driving for his employer ran off the road and overturned. He did not remember what happened immediately prior to the accident. The court affirmed the Industrial Commission's denial of benefits because the claimant could not explain "how the hazards of the street caused his injuries, thereby eliminating the possibility of causes totally unrelated to the street risks of employment." 44 Va. App. at 733, 607 S.E.2d at 734.

A number of the cases relied on by Claimant are factually distinguishable because they involve particular hazards or structures located on the employer's premises or at the jobsite. *See* Irby v. Public Creosoting Co., 228 F.2d 195 (5th Cir. 1955) (fall from three-foot platform during epileptic seizure); Koehler Elec. v. Wills, 608 N.W.2d 1, 2000 Iowa Sup. LEXIS 42 (Iowa 2000) (fall from 5-foot ladder while repairing air conditioning unit); Flanner v. Tulsa Pub. Sch., 2002 OK 8, 41 P.3d 972 (Okla. 2002) (fall at work against large, hot coffee pot); Kennecott Corp., 675 P.2d 1187, 1983 Utah LEXIS 1238 (idiopathic fall during lunch period in area where claimant was at increased risk of falling into settling tank); Ware v. State Workmen's Comp. Comm'nr, 160 W. Va. 382, 234 S.E.2d 778 (W. Va. 1977) (fall from raised platform, across metal table and onto concrete floor); *but c.f.,* Burdette v. Perlman-Rocque Co., 954 N.E.2d 925, 2011 Ind. App. LEXIS 1984 (Ind. Ct. App. 2011) (upholding denial of benefits in idiopathic fall case where claimant fell onto concrete floor and may have hit head on door jamb or possibly a steel

post near the door). As such, they are factually distinguishable from the instant case, where Claimant encountered conditions she encountered in her everyday normal life. It was only happenstance that her syncope occurred during work hours.

Other cases relied on by Claimant denied benefits because the cause of the accident was not work-related. *See* Workman v. Wesley Manor Methodist Home, 462 S.W.2d 898, 1971 Ky. LEXIS 555 (Ky. Ct. App. 1971) (compensation denied where claimant turned and fell; Kentucky's "presumption" in favor of compensation in unexplained fall cases was rebutted by evidence that the claimant's fall was precipitated by injuries incurred in a prior non-compensable automobile accident); Svehla v. Beverly Enter., 5 Neb. App. 765, 567 N.W.2d 582 (Neb. Ct. App. 1997) (compensation denied where the cause of the plaintiff's fall in employer's parking lot was unknown, although it could have been caused by an idiopathic gait imbalance).

Claimant argues that decisions by the North Carolina Supreme Court "are always helpful and persuasive ..." (App. Br. p. 9). However, South Carolina courts are not bound by and do not always follow North Carolina jurisprudence. *See* Bagwell, 227 S.C. at 456, 88 S.E.2d at 616 (noting that South Carolina courts decline to follow North Carolina precedent where it is "contrary to our own view as to the proper interpretation of the Act."); *see also* Wigfall v. Tideland Utils., Inc., 354 S.C. 100, 114-115, 580 S.E.2d 100, 107 (2003) (noting that the South Carolina Supreme Court's view of our Act is, in some respects, "materially different from the North Carolina Supreme Court's view of its own statute").

In fact, this Court recently addressed the increased risk concept in Nicholson, first noting that the increased risk doctrine has not been adopted in South Carolina and then

emphasizing that the "causative danger must be peculiar to the work and not common to the neighborhood." In other words, the relevant inquiry is whether, "the purported causative danger ... [is] a risk that [is] common to the neighborhood and not peculiar to the employment." 405 S.C. at 549-550, 748 S.E.2d at 263. In Nicholson, the claimant was on her employer's premises and fell when she "scuffed" her shoe on the carpet. This Court upheld the Commission's finding that no condition of the claimant's employment caused or "contributed to her fall or subsequent injuries." 405 S.C. at 550, 748 S.E.2d at 264.

Claimant's reliance on Thomas v. 5 Star Transp., WCC File No. 0725187, 2012 SC Wrk. Comp. LEXIS 54 (March 15, 2012) is equally misplaced. First, the Commission's purported adoption of a legal doctrine is not binding on this Court. Second, the 5 Star Commission Decision is on appeal to this Court and very well may be overturned. Third, the case is factually distinguishable on several key points. The claimant in that case was a tour bus driver who, at the time of his accident, was driving a full-sized tour bus "on Interstate 26 in the course and scope of his employment with 5 Star when he suddenly became unresponsive, lost control of the bus, ran off the roadway, and struck a tree." The Commission found as a factual matter that the claimant's "employment as a bus driver with 5 Star placed him in a position of increased danger while operating the tour bus on the interstate highway at a high speed." 2012 SC Wrk. Comp. LEXIS 54 at **3-4. The claimant suffered multiple, fatal injuries from the collision impact. The claimant also suffered a ruptured aneurism, but it was unclear whether the aneurism occurred prior to or subsequent to the wreck, although one physician opined that it was possible (but not certain) that the aneurism caused the

claimant to lose consciousness while driving. The Commission concluded that "driving at a high speed on an interstate highway ... exposed [the claimant] to an increased risk of injury in the event he suffered a physical condition causing him to lose consciousness." Id. at 5-6.[2]

Here, in contrast, Claimant was not driving an over-sized bus or truck, but her own personal automobile. A number of cases cited by Claimant involve vehicles that are inherently more dangerous than the family car, either due to their size, 5 Star (bus), Marshall v. Bob Kimmel Trucking, 109 Ore. App. 101, 817 P.2d 1346 (Ore. Ct. App. 1991) (logging truck), or lack of stability/protection, Williams v. City of Gallup, 77 N.M. 286, 421 P.2d 804 (N.M. 1966) (three-wheeled motor scooter); *see also* Watson v. Grimm, 200 Md. 461, 90 A.2d 180 (Md. 1952), cited in Youngblud, (riding on the outside of a garbage truck). None of these are common, every day occurrences, such as is the case here – where the Claimant was driving her own personal automobile.

Nor was Claimant driving along the interstate, as was the case in 5 Star. Instead, she was on a street she normally used to return to her own home. Not one of the cases cited by Claimant involved an accident where the claimant was driving their own personal automobile, on the road he or she normally drove to his or her home, and just happened to have a syncopal event during work hours.

Had Claimant suffered the syncopal event while driving from the grocery store to her home, this clearly would not be a compensable accident. The injuries resulting from the accident, however, would be exactly the same as those she suffered on May 21, 2012.

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[2] Respondents note that Commissioner Wilkerson issued the Single Commissioner Decision awarding benefits in 5 Star, (2012 SC Wrk. Comp. LEXIS 54 at *17), and joined in the unanimous opinion of the Full Commission denying benefits in this case, (Full Commission Decision, R. 24), apparently finding no contradiction in the results of the two cases.

It is only happenstance that the syncope occurred when she was in the course of her employment. As the Supreme Court emphasized in Bagwell, that is only half of the analysis and awarding benefits in this case would amount to eliminating an essential requirement of the statute. 227 S.C. at 454, 88 S.E.2d at 615; *see also* Bright, 285 S.C. at 60, 328 S.E.2d at 70 (a compensable accident must be causally linked to the employment). The fact that some injuries suffered by a claimant following a syncopal or idiopathic event that occurs while the claimant is driving in the course of employment may be sufficiently causally inked to employment, that does not mean that such a causal connection exists in the case presently before the Court.

Although Youngblud, as do many other cases, cites Larson's language that the effects of 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," *Larson's Workers' Compensation Law* § 9.01[1], Professor Larson's treatise does not distinguish between driving one's own car on a street that one drives down regularly to come and go from one's own home, and driving a bus or a dump truck – not vehicles a person normally drives.

In the present claim, Claimant is unable to meet her burden of showing that the accident had any consequence that would not have occurred except for the employment as there is no evidence the accident bore with it any special consequence as a result of her employment. Therefore, the Full Commission's finding that Claimant failed to meet her burden of proof under S.C. Code Ann. § 42-1-160 should be affirmed in full as she failed to show that her employment bore a special connection to the accident or resulting injury.

CONCLUSION

For the reasons set forth above, Respondents respectfully request this Court affirm the Commission's denial of benefits in this claim.

Respectfully submitted,

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April 14, 2014

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THE STATE OF SOUTH CAROLINA
In The Court of Appeals

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SC Court of Appeals

APPEAL FROM THE SOUTH CAROLINA
WORKERS' COMPENSATION COMMISSION

WCC FILE NO.: 1206355

Frances Baron, Employee, ... Appellant,

v.

Sanctuary Hospice, Employer, and
Guarantee Insurance Company c/o
Patriot National Insurance Group, Carrier, ... Respondents.

CERTIFICATE OF COUNSEL

The undersigned certified that this Respondents' Brief complies with Rule 211(b), SCACR. The undersigned also certifies that this Respondents' Brief complies with the South Carolina Supreme Court's August 13, 2007 Order re: Interim Guidance Regarding Personal Data Identifiers and Other Sensitive Information in Appellate Court Filings.

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