THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM THE SOUTH CAROLINA
WORKERS' COMPENSTAION COMMISSION
APPELLATE PANEL

Appellate Case No.:2019-000060
W.C.C. Case No.: 1715897

Matthew Green,

Appellant,

v.

Bishop Forest Products, Inc., Employer, and
Forestry Mutual Insurance Companies, Carrier,

Respondents.

INITIAL BRIEF OF APPELLANT

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STATEMENT OF ISSUE ON APPEAL

Whether the South Carolina Workers' Compensation Commission erred in finding the Claimant's accident did not arise out of and in the course and scope of his employment where the Claimant was injured during a trip taken solely for the purpose of delivering paperwork that was of utmost importance to the employer by an employer mandated deadline.

STATEMENT OF THE CASE

Matthew Green ("the Claimant") filed a claim on October 24, 2017 asserting an injury by accident arising out of and in the course and scope of his employment as a result of a motor vehicle accident on September 13, 2017. The Claimant was returning home after traveling to his place of employment for the sole purpose of delivering paperwork to meet an employer mandated deadline when the accident occurred.

Bishop Forest Products, Inc., ("the Employer"), and Forestry Mutual Insurance Company, the carrier (collectively "the Defendants") denied the claim. A single commissioner heard the claim on February 15, 2018. By order dated May 29, 2018, the single commissioner found the Claimant sustained an injury by accident during the course and scope of his employment and awarded benefits. The Defendants appealed to the full commission.

By order dated December 18, 2018, the full commission, in a 2-1 decision, reversed the finding of the single commissioner and found the actions of the Claimant did not satisfy any exception to the general rule that injuries sustained while in the process of going to or coming from work are not compensable. On January 16, 2019, the Claimant filed a Notice of Appeal with this court.

FACTS

The facts are largely undisputed. The Claimant worked as a truck driver for the Employer. (Transcript of hearing before the single commissioner, p. 19, 23) He drove loads of chipped wood from logging locations to the paper mill. (Tr. p. 23) The paper mill would weigh his truck and give him a ticket verifying the load. (Tr. p. 24, 43) The Claimant was responsible for collecting these tickets and completing other paperwork related to his employment during the week. (Tr. 23, 25) The paperwork was due in the employer's office by 8:00 am every Wednesday morning. (Tr. p. 54, 61-62) The Claimant's usual habit was to take the paperwork home on Tuesday night, get it in order, and bring it to the office when he reported to work on Wednesday morning. (Tr. p. 26, 31) The Employer's witness testified the claimant had full latitude to handle his paperwork in this way. (Tr. p. 62)

On the day of the accident, the claimant was scheduled to come in late to work, at 11:00 am, due to a personal appointment. (Tr. p. 32) This late start was approved by the employer. (Tr. p. 32) Because his expected time to arrive at work was after the 8:00 am deadline, the claimant traveled in the early morning hours to the employer's office and dropped off the paperwork. (Tr. p. 33) He was returning home when he was struck by another car and injured. (Tr. p. 34)

The paperwork, particularly the tickets, was of utmost importance to the Employer's business. Craig Bishop, the owner of the Employer, testified the timely submission of the tickets was a "most important" part of the Employer's business. (Tr. p. 54) He testified it was a requirement for the drivers to have the tickets turned in by Wednesday morning. (Tr. p. 54, 61-62) Mr. Bishop also testified that the paperwork was so important, if one of his truck drivers was unable to bring it by 8:00 am because of illness or any other reason, he would send someone on a special trip to pick up the paperwork. (Tr. p. 57-58)

The Employer allowed truck drivers to drive their trucks home at night. (Tr. p. 29) The Claimant did not have a place at his house to park a truck, so he used his own car to travel to the employer's office where he would pick up his truck and start the work day. (Tr. p.29-30) The Claimant testified he could have remained in his truck after business hours on Tuesday night and completed his paperwork and turned it in Tuesday night. (Tr. p. 44)

STANDARD OF REVIEW

"The Administrative Procedures Act ("APA") provides the standard for judicial review of decisions by the Commission." Burnette v. City of Greenville, 401 S.C. 417, 426, 737 S.E.2d 200, 205 (Ct. App. 2012). This Court can "reverse or modify the decision only if the claimant's substantial rights have been prejudiced because the decision is affected by an error of law or is clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record." Hutson v. South Carolina State Ports Authority, 399 S.C. 381, 387, 732 S.E.2d 500, 503 (2012).

Because the relevant facts in this case are not disputed, whether the Claimant's injuries are compensable is a question of law. E.g. Grant v. Grant Textiles, 372 S.C. 196, 201, 641 S.E.2d 869, 872 (2007) (holding that where there are no disputed facts, the question of whether an accident is compensable is a question of law).

The South Carolina Worker's Compensation Act is to be liberally construed to include injured workers rather than exclude them from the Act. Moore v. Family Serv. of Charleston Cty., 269 S.C. 275, 281, 237 S.E.2d 84, 87 (1977) (citations omitted).

ARGUMENT

THE SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION ERRED IN FINDING THE CLAIMANT'S ACCIDENT DID NOT ARISE OUT OF AND IN THE COURSE AND SCOPE OF HIS EMPLOYMENT WHERE THE CLAIMANT WAS INJURED DURING A TRIP SOLELY FOR THE PURPOSE OF DELIVERING PAPERWORK THAT WAS OF UTMOST IMPORTANCE TO THE EMPLOYER BY AN EMPLOYER MANDATED DEADLINE.

Because the Claimant's employment was the proximate cause of his accident and resulting injuries, the Claimant is entitled to benefits under the South Carolina Workers' Compensation Act ("the Act"). Generally, injuries that occur either coming from or going to work are not compensable under the Act. The courts have reasoned that "an employee going to or coming from the place where his work is to be performed, is not engaged in performing any service growing out of and incidental to his employment; and therefore an injury suffered by accident at such time does not arise out of and in the course of his employment." Eargle v. S.C. Elec. & Gas Co., 205 S.C. 423, 32 S.E.2d 240, 243 (1944).

There are exceptions to the general rule, however, and this court has recognized "that no exact formula can be laid down which will automatically solve every case" and that a determination is "built on a common framework designed to compensate employees when their employment proximately causes their injuries." Stough v. Westinghouse Savannah River Co., 311 S.C. 129, 131, 427 S.E.2d 716, 717 (Ct. App. 1993)(citations omitted). Exceptions to the general going and coming rule include the special errand rule, the duty or task exception, and the dual-purpose doctrine. Id., see also Whitworth v. Window World, Inc., 377 S.C. 637, 661 S.E.2d 333 (2008).

In Bickley v. South Carolina Electric & Gas Co., 259 S.C. 463, 192 S.E.2d 866 (1972), the court, quoting North Carolina courts, defined the special errand rule:

> [a]n exception to the aforesaid general rule is found in cases where it is shown that the employee, although not at his regular place of employment, even before or after customary working hours, is doing, is on his way home after performing, or on the way from his home to perform, some special service or errand or the discharge of some duty incidental to the nature of his employment in the interest of, or under direction of, his employer. In such cases, an injury arising en route from the home to the place where the work is performed, or from the place of performance of the work to the home, is considered as arising out of and in the course of the employment.

Id. at 470, 192 S.E.2d at 870.

The duty or task exception applies if "the employee, on his way to or from his work, is still charged with some duty or task in connection with his employment." Stough, 311 S.C. at 130, 427 S.E.2d at 717; see also Whitworth v. Window World, Inc., 377 S.C. 637, 661 S.E.2d 333 (2008). Furthermore, in Stough, this court discussed the dual-purpose doctrine:

> 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. Stated another way, if the work of the employee necessitates his travel, he is in the course of employment, even though he is serving at the same time some purpose of his own.

Id. at 130–31, 427 S.E.2d 717 (citations omitted).

The Claimant's trip to deliver his paperwork before the 8:00 am deadline squarely falls under the special errand exception. The Claimant was outside his normal working hours on his way home from delivering required paperwork that was "incidental to the nature of his employment" and "in the interest of . . . his employer." It is undisputed that the only reason the Claimant made the trip was to deliver the paperwork to his employer before the deadline. Furthermore, if the Claimant had been unable to deliver the paperwork for some reason, the Employer would have arranged for someone to make a special trip to retrieve it. See Stough v. Westinghouse Savannah River Co., 311 S.C. 129, 427 S.E.2d 716 (Ct. App. 1993) (finding a

special errand because "[the employer] would have had to arrange to send the documents via some other person or method had [the claimant] not planned to take them.")

In denying the claim, the commission relied heavily on Sylvan v. Sylvan Bros., 225 S.C. 429, 434, 82 S.E.2d 794, 796 (1954). Sylvan, however, is distinguishable from the case at bar. In Sylvan, the claimant was in the habit of taking paperwork home with him in the evenings. He would normally perform work at home and bring the paperwork back the next day. He was on his way to work—to start the work day—when he was injured with the paperwork in his pocket. The court held the claimant was "simply on his way to work and not on an errand for his employer, either to transport the papers or otherwise," and that "he would have attempted to go to [work] that morning as he always did, papers or no papers." Id. at 434, 82 S.E.2d at 796.

The Claimant, unlike the claimant in Sylvan, was not on his way to start the work day. He was on an errand for his employer to transport the paperwork and would not have gone to his place of employment had he not had a deadline to meet. If the Claimant had been injured while traveling to work to start the work day on a typical Wednesday with his paperwork in his car, the case would clearly mirror the facts in Sylvan. If Mr. Sylvan, on a day or at an hour he was not scheduled to work, ran documents to the store because they were needed at a certain time, his trip would surely fall under the special errand exception, even if he originally took the paperwork home with him for his convenience.

The commission found that because it was for the claimant's convenience that he carried his paperwork home, he was excluded from the Act. The proper focus is on the trip itself and not why the paperwork was with the Claimant. It was the trip itself that was special. The trip was not a habit and was not convenient for the Claimant. He had to make a special trip at a time he was not scheduled to work to make sure the paperwork was in the office on time. The trip was not

made for the Claimant's convenience. If it were not for the deadline, the Claimant could have brought the documents with him when he came to work at 11:00 am that day. That would have been for the "convenience" of the Claimant.

Even if the trip had somehow been for the claimant's benefit, it also served a business purpose. Therefore, the dual-purpose doctrine would apply. As testified to by the Employer, had the Claimant not been able to bring in his paperwork, the Employer would have sent someone to get it. Therefore, the Claimant's "trip involve[d] the performance of a service of the employer which would have caused the trip to be taken by someone even if it had not coincided with the personal journey." Stough v. Westinghouse Savannah River Co., 311 S.C. 129, 131, 427 S.E.2d 716, 717 (Ct. App. 1993).

It stands to reason the Defendants would agree that if the Employer had called the Claimant at home early Wednesday morning and instructed him to bring his paperwork in before 8:00 am, all of the elements of the special errand exception would be met. While direction by the employer can help establish a special errand, it is not a requirement, and the commission erred in holding so. The special errand exception, as defined by our courts, requires the special errand be either "under the direction of," ***or*** "in the interest of" the employer. Bickley v. South Carolina Electric & Gas Co. 259 S.C. 463, 192 S.E.2d 866 (1972). The sole purpose of the Claimant's trip was to turn in his "most important" paperwork by the deadline imposed by the Employer and was "in the interest of" the employer.

By the commission's reasoning, if the Claimant had a family emergency that required him to be somewhere at 11 am on Wednesday, and therefore he made a special trip to bring his paperwork in before the 8:00 am deadline and was injured, the claim would fall outside the scope of the Act. This would be solely because his employer allowed him to take his paperwork home.

Furthermore, if the Claimant had on Tuesday failed to remember his appointment the following day, and, upon realizing it the next morning, made a special trip to deliver the paperwork to his Employer before the deadline, any injury resulting in the journey would not be covered. This reasoning flies in the face of a liberal construction of the Act to include injured workers rather than exclude them from the Act.

The commission erred by finding that because the Claimant could have turned the paperwork in the night before, that fact "eliminate[d] the possibility that Claimant's trip to and from his home was covered under the 'special errand' exception." By denying the claimant benefits based on what he *should* have done improperly injected fault into a no-fault system. The only requirement from the Employer was that the documents be at the office by 8:00 am Wednesday, and the Claimant made a special trip to deliver them. The commission's holding is essentially that had the claimant planned better, and did things differently than usual, then he would not have been hurt thus excluding him from the Act. The proper focus is on whether the employment was the proximate cause of the trip, not whether the Claimant should have done things differently.

In sum, the Claimant's activities on the day in question satisfy the requirements of the special errand doctrine. The Claimant was "on his way home after performing" an "errand . . . incidental to the nature of his employment in the interest of . . . his employer." Bickley v. South Carolina Electric & Gas Co., 259 S.C. 463, 192 S.E.2d 866 (1972).

Furthermore, the trip made by the claimant satisfies the duty or task exception. During his trip, the Claimant was performing a task in connection with his employment. The commission found the continuing duty rule did not apply because the Claimant had completed his duty and was

already on his way home when the accident occurred. Nothing in the case law supports this interpretation of the continuing duty or task exception.

Finally, the ultimate question is whether the Claimant's employment was the proximate cause of the Claimant's injuries. Had it not been for his employment, the Claimant would not have made the trip and would not have been injured. The Claimant's employment was the proximate cause of his injuries, and the Claimant is entitled to benefits under the Act.

CONCLUSION

For the foregoing reasons, this Court should reverse the decision and order of the South Carolina Workers' Compensation Commission.

Respectfully submitted,

March 25, 2019

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PROOF OF SERVICE

The undersigned hereby certifies that the above-named Respondents have been served the Initial Brief of Appellant and Designation of Matter by depositing a copy in the United States Mail, first class postage prepaid, on March 25, 2019, addressed to the attorneys of record, as follows:

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March 25, 2019

Reply to: Columbia Office

The Honorable Jenny Abbott Kitchings
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RE: Matthew Green, Appellant v. Bishop Forest Products, Inc., Respondents
Appellate Case No. 2019-000060

Dear Ms. Kitchings:

Enclosed for filing please find the original and one (1) copy of the Initial Brief of Appellant and Designation of Matter in the above case.

If you have questions, please do not hesitate to contact me.

With kind regards, I am,

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