STATE OF SOUTH CAROLINA
In the Court of Appeals

67408

APPEAL FROM THE SOUTH CAROLINA
WORKERS' COMPENSATION COMMISSION

Derrick L. Williams, Commissioner
Gene McCaskill, Commissioner
Avery B. Wilkerson, Jr., Commissioner

WCC File No. 1109131

Katrina Beckham ..... **Appellant.**

v.

Wal-Mart Stores, Inc. and American Home Assurance Company ..... **Respondents.**

NOTICE OF APPEAL

Katrina Beckham hereby appeals the Decision and Order of the South Carolina Workers' Compensation Commission's Appellate Panel (Majority) dated January 31, 2013, which affirms the decision of the Commission's Appellate Panel Majority dated July 19, 2012. Pursuant to S.C. Code Ann. Section 42-17-60 (Supp. 2008), Ms. Beckham states the following grounds for the appeal, as well as the alleged errors of law:

1) The Appellate Panel Majority erred in finding/concluding the compensability of Ms. Katrina L. Beckham's injury hinged upon the establishment of an exception to the "going and coming" rule because: (a) the evidence of record unequivocally establishes her injury occurred on her Employer's premises; and (b) our Appellate Courts have consistently held this rule is inapplicable to injuries sustained on premises controlled by the Employer.

2) The Appellate Panel Majority erred in failing to find/conclude it is axiomatic that an Employee must be afforded a reasonable length of time to separate herself from the workplace, to the extent injuries occurring on the Employer's premises following cessation of work activities fall within the course of employment, because our Appellate Courts have uniformly recognized this rule of law.

3) The Appellate Panel Majority erred in failing to find/conclude Ms. Beckham sustained a compensable accident on June 28, 2011 because the only reasonable inference which may be gleaned from the evidence contained in the hearing record verifies this accident occurred: (a) on her Employer's premises; (b) within a relatively brief period after she had "clocked-out" for her mandatory break; (c) as she was in the process of leaving the "common" store area to spend this mandatory break time in an area designated by her Employer; and (d) within the course of her employment per the relevant case law.

4) The Appellate Panel Majority erred in failing to find Ms. Beckham's June 28, 2011 accident occurred as she was effectively leaving her Employer's premises because the only reasonable inference which may be gleaned from the evidence contained in the hearing record unquestionably confirms this fact.

5) The Appellate Panel Majority erred in failing to find/conclude the activity in which Ms. Beckham was engaged at the time of her June 28, 2011 fall was equivalent/tantamount to leaving her Employer's premises because the only reasonable inference which may be gleaned from the evidence contained in the hearing record absolutely verifies this fact.

6) The Appellate Panel Majority erred in finding the "personal comfort doctrine" was not applicable to the current circumstances because: (a) our Appellate Courts have

consistently recognized this concept includes activities (eating) of the nature in which Ms. Beckham was engaged at the time she sustained the June 28, 2011 accident; and (b) review of the relevant legal authorities clearly establishes the "personal comfort doctrine" envisions that activities of the nature Ms. Beckham was performing on the date in question arise in the course of employment, to the extent they are compensable as a matter of law.

7) The Appellate Panel Majority erred in failing to conclude as a matter of law that the activity in which Ms. Beckham was engaged at the time of her June 28, 2011 compensable accident fell within the parameters of "personal comfort" established by our Appellate Courts because the only reasonable inference which may be gleaned from the evidence contained in the hearing record certainly establishes: (a) her accidental fall occurred on the Employer's premises; (b) she was undeniably in route to the designated "break room" at the time of this fall; (c) Ms. Beckham intended to utilize this mandatory break period to eat; and (d) bodily functions of this nature are clearly included within the "personal comfort doctrine" recognized by our Appellate Courts.

8) The Appellate Panel Majority erred in failing to find Ms. Beckham's stop at "Employer's deli" was sufficiently brief to fall within the reasonable time period afforded to an Employee who was engaged in leaving an Employer's premises because the only reasonable inference which may be gleaned from the evidence contained in the hearing record obviously verifies this fact.

9) The Appellate Panel Majority erred in finding/concluding certain facts ("Employer did not provide Claimant's lunch food/drink"; "Employer did not require Claimant to eat lunch on her break"; "Claimant was free to leave Employer's premises and use her one-hour break as she desired"; "Claimant was not on call during her one-hour break") were

dispositive of the compensability issue because: (a) the only reasonable inference which may be gleaned from the evidence contained in the hearing record unequivocally indicates Ms. Beckham's June 28, 2011 accidental injury occurred on her Employer's premises; (b) this accidental injury took place as she was actually removing herself from the workplace; (c) the relevant legal authorities absolutely establish injuries occurring in this context arise from/in the course of employment; and (d) the factors upon which the Appellate Panel Majority focused are essentially irrelevant under the present circumstances.

10) The Appellate Panel Majority erred in finding/concluding the "personal comfort doctrine" does not apply to the present circumstances because: (a) the factual distinctions attributed to certain reported cases are inconsequential in the current context; and (b) these Appellate Court decisions were cited simply to establish the general parameters of this legal concept.

11) The Appellate Panel Majority erred in finding/concluded certain facts ("was not 'on the clock' when the accident occurred"; "was not performing work when the accident occurred"; "was not available for work during the one-hour break when the accident occurred"; "accident did not occur in a portion of the store only available to Employees") prohibited Ms. Beckham's accident from arising out of and in the course and scope of her employment because: (a) neither the "personal comfort doctrine" nor the concept governing injuries occurring while an Employee is leaving the workplace are dependent upon any of these factors; and (b) requiring that the compensability of Ms. Beckham's accident hinge upon the presence of any of these factors constituted an error of law.

12) The Appellate Panel Majority erred in finding/concluding an "Employer would have to banish from its premises all employees who clocked out in order to avoid workers'

compensation liability" because this finding/conclusion: (a) constitutes a basic misconstruction of applicable law, including the impact/effect of our Appellate Courts' consistent holdings relative to injuries occurring while leaving the work premises; and (b) completely ignores the legal significance of the activities in which Ms. Beckham was engaged, as well as the location of her accident site, at the time of her June 28, 2011 compensable fall.

13) The Appellate Panel Majority erred in making findings/conclusion as to a legislative intent to exclude injuries of the nature sustained by Ms. Beckham because: (a) the legal authorities governing the "personal comfort doctrine", as well as compensability of injuries occurring due to injuries sustained while an employee is leaving the Employer's premises, have been present for decades; and (b) the Legislature's subsequent inaction (i.e., revising the South Carolina Workers' Compensation Act to specifically exclude injuries occurring under these circumstances) verifies (per applicable rules of statutory construction) its approval of these Appellate Court rulings.

14) The Appellate Panel Majority erred in finding/concluding "public policy would . . .[not] be served by expansion of the law to include such circumstances" because: (a) public policy actually compels a determination of compensability in this instance; (b) injuries of the nature sustained by Ms. Beckham have long been deemed to arise out of and in the course/scope of employment, to the extent a determination of compensability in this instance hardly constitutes an "expansion of the law"; and (c) this finding/conclusion is premised upon a fundamental misconstruction of not only the relevant public policy, but also applicable law.

15) The Appellate Panel Majority erred in apparently finding/concluding that "the timing of the break" was somehow dispositive as to the issue of compensability because this focus: (a) fails to recognize the crucial facts in this instance, including the site of Ms. Beckham's

accident and attendant circumstances (i.e., leaving the work premises); and (b) is reflective of a basis misunderstanding and/or misconstruction of the applicable legal authorities.

16) The Appellate Panel Majority erred in failing to find Ms. Beckham sustained a compensable injury by accident within the meaning of S.C. Code Ann. Section 42-1-160 (2007) because the only reasonable inference which may be gleaned from the evidence contained in the hearing record, in light of the relevant legal authorities, clearly confirms she experienced a compensable accident, as a matter of law, on June 28, 2011.

17) The Appellate Panel Majority erred in failing to award Ms. Beckham all appropriate disability compensation and medical benefits afforded by the South Carolina Workers' Compensation Act because the only reasonable inference which may be gleaned from the evidence contained in the hearing record, in light of the relevant legal authorities, firmly establishes her entitlement to both disability compensation and medical benefits per the South Carolina Workers' Compensation Act.

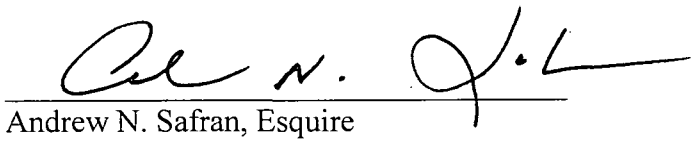
18) The Appellate Panel Majority erred as a matter of law in failing to explain its rationale for rejecting the various/repeated rulings of our Appellate Courts relative to the inapplicability of the "going and coming" rule to injuries occurring on premises controlled by the Employer because our Courts have consistently required an administrative agency to explain the rationale underlying its rulings.

19) The Appellate Panel Majority erred as a matter of law in failing to explain its rationale for rejecting the decisions in Williams v. South Carolina State Hospital, 245 S.C. 377, 140 S.E. 2d 601, 603 (1965), Holston v. Allied Corporation, 300 S.C. 174, 386 S.E. 2d 793, 795 (Ct. App. 1989), Eargle v. South Carolina Electric & Gas Co., 205 S.C. 423, 32 S.E. 2d 240, 243 (1944) and Bright v. Orr-Lyons Mill, 285 S.C. 58, 328 S.E. 2d 68, 70 (1985), which govern

injuries occurring while passing over the Employer's premises in while going to and from work, because our Courts have consistently required an administrative agency to explain the rationale underlying its rulings.

20) The Appellate Panel Majority erred as a matter of law in failing to explain its rationale for rejecting the decisions in Osteen v. Greenville County School District, 333 S.C. 43, 508 S.E. 2d 21, 24 (1998) and Dukes v. Rural Metro Corporation, 356 S.C. 107, 587 S.E. 2d 687, 689 (2003), which outline the rather broad parameters of the personal comfort doctrine, because our Courts have consistently required an administrative agency to explain the rationale underlying its rulings.

Respectfully submitted,



Andrew N. Safran, Esquire
Post Office Box 12089
Columbia, South Carolina 29211
Attorney for Appellant

and

Francis G. Delleney, Jr., Esquire
Hamilton, Delleney & Grier, P.A.
128 Center Street
Post Office Box 808
Chester, South Carolina 29706
Attorneys for Employee/Appellant

February 27, 2013

OTHER COUNSEL OF RECORD:

W. Strat Stavrou, Jr., Esquire
Willson, Jones, Carter & Baxley, P.A.
4500 Fort Jackson Boulevard
Columbia, South Carolina 29209

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CERTIFICATE OF SERVICE

I, Roxanne R. Moorer, legal assistant for Andrew N. Safran, Esquire, Attorney for Appellant, do hereby certify that on the 27th day of February, 2013, I caused to be filed, via hand delivery, the original and three (3) copies of the Appellant's Notice of Appeal with the Clerk of the South Carolina Court of Appeals. One (1) copy of the Appellant's Notice of Appeal was furnished to counsel for Respondents via first class mail at the following addresses:

W. Strat Stavrou, Jr., Esquire
Willson, Jones, Carter & Baxley, P.A.
4500 Fort Jackson Boulevard
Columbia, South Carolina 29209

Roxanne R. Moorer
Roxanne R. Moorer
Post Office Box 12089
Columbia, South Carolina 29211
(803) 256-6689

February 27, 2013

ANDREW N. SAFRAN, LLC
ATTORNEY AT LAW
1400 PICKENS STREET, SUITE 104
COLUMBIA, SOUTH CAROLINA 29201

TELEPHONE 803 256 6689
FACSIMILE 803 799 1003

MAILING ADDRESS:
POST OFFICE BOX 12089
COLUMBIA, SOUTH CAROLINA 29211

February 27, 2013

HAND DELIVERED
The Honorable Jenny Abbott Kitchings
Clerk
South Carolina Court of Appeals
1015 Sumter Street
Columbia, South Carolina 29201

RE: Katrina Beckham v. Wal-Mart Stores, Inc. and
American Home Assurance Company
WCC File No.: 1109131

Dear Ms. Kitchings:

Enclosed please find an original and three copies of a Notice of Appeal, which Greg Delleney and I are filing on behalf of Ms. Katrina Beckham relative to the above-captioned matter. Additionally, we have: (a) attached copies of the Order from which this appeal arises; and (b) enclosed my firm's check in the amount of $100.00 in satisfaction of your filing fee. At this time, I would greatly appreciate your filing these documents and returning three clocked copies to my courier.

By copy of this letter, I am serving a copy of this Notice, with attachments, on Strat Stavrou, attorney for Respondent, and the Honorable Virginia L. Crocker, Judicial Director for the South Carolina Workers' Compensation Commission. As always, in the event they have any questions or comments concerning this matter, I invite them to contact me.

Thank you for your cooperation.

With kindest regards, I am

Very truly yours,

Andrew N. Safran

ANS/rrm

Enclosures

cc: W. Strat Stavrou, Esquire
The Honorable Virginia L. Crocker
Francis G. Delleney, Jr., Esquire