STATE OF SOUTH CAROLINA	)	BEFORE THE SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION
	)	
COUNTY OF SALUDA	)	WCC File No. 1107981
Daniel Harris,	)	
Employee,	)	
Claimant,	)	
vs.	)	**ORDER OF THE FULL COMMISSION**
OSI Industries, LLC,	)	
Employer,	)	
and	)	
Liberty Insurance Corporation,	)	
Carrier,	)	
Defendants.	)	

Date of Hearing: Held in Columbia, South Carolina on February 20, 2013, per notices timely and properly served on all parties of interest.

Appearances: Claimant was represented by Robert M. Cook, II. Defendants were represented by Suzanne Boulware Cole of Collins & Lacy, P.C.

Purpose of Hearing: To determine issues as set forth in the Form 30.

Commissioners: Susan S. Barden, Melody I. James, and Avery B. Wilkerson, Jr.

Filed: 4-18-13

Having reviewed the record and heard arguments from counsel, the Appellate Panel hereby affirms, in full, the decision of the Single Commissioner. Pursuant to S. C. Code Ann. § 42-17-50, the Appellate Panel hereby issues its Order as follows.

STATEMENT OF THE CASE

This claim involves a motor vehicle accident while Claimant was traveling away from the employer's premises in his personal vehicle to purchase items at a nearby store. Claimant contended the claim was compensable because he was on the clock; under the paid travel exception to the Going and Coming Rule; and under the personal comfort doctrine. Defendants asserted the claim was not compensable because Claimant was on a personal errand that did not qualify as a special errand of the employer or under the dual purpose rule. Defendants also asserted the personal comfort doctrine was inapplicable because Claimant was not involved in the "personal comfort" activities at the time of the accident. Defendants argued clocking out is not outcome-determinative.

Commissioner Gene McCaskill heard the case on August 16, 2012, in Newberry, South Carolina. On October 17, 2012, he issued an Order denying the claim. From that Order, Claimant appealed. A hearing before the Full Commission Appellate Panel was held on February 20, 2013.

STIPULATIONS

Counsel for all parties stipulated at the initial hearing to the following:

1. The purpose of the hearing is to determine the issues set forth in the hearing notice and issues pled in Forms 50 and 51.
2. Notice of the hearing was timely and properly served upon all parties of interest.
3. The venue as set in Newberry County is proper, and was agreed upon by all parties.

4. Without objection, the Commission's file is made a part of the record, excluding any unstipulated medical reports and/or self-serving declarations.

5. Claimant's average weekly wage and compensation rate are $559.99 and $373.35, respectively.

6. Claimant missed no compensable time from work.

APA SUBMISSIONS

Pursuant to provisions of the South Carolina Workers' Compensation Act and the South Carolina Code, the following medical reports were submitted as direct evidence without objection:

Claimant's Submissions:

MEDICAL REPORTS/RECORDS

NO.	PHYSICIAN/PROVIDER	DATE	PAGES
1.	University Specialty Clinics Department of Neurology – Dr. Theodore T. Faber	08/12/11- 6/6/12	1-17
2	Oaktree Medical Centre, P.C.	10/14/11	18-24
3	University Specialty Clinics Department of Ophthalmology	09/02/11	25
4	Lexington Medical Center	07/30/11 & 08/08/11	26-54
5	Consultants in Gastroenterolgy	08/04/11	55-58
6	Riley Family Practice Associates, PA	06/01/11	59-61
7	Palmetto Health Richalnd	05/23/11 – 5/25/11	62-78
8	Saluda County EMS	05/23/11	79-80
9	Palmetto Health Richland Orthopaedic & Surgery Center	06/22/11 & 06/18/12	81-83

EXHIBITS

NO.	DESCRIPTION	DATE(S)	PAGE(S)
1.	Wreck Report		
2.	Craig Riley Statement		
3.	Claimant's Time Sheet		
4.	Gary Colwell's Time Sheet		
5.	Henry Mosley's Time Sheet		
6.	Jackie Jones' Time Sheet		
7.	Craig Riley's Time Sheet		
8.	Aaron Martin's Time Sheet		
9.	Deposition of Gary Colwell		
10.	Deposition of Charles Browder		
11.	WCC File		
12.	Any Exhibits of the Defendants		

Defendants relied upon Claimant's APA Submissions.

EVIDENCE OF THE CASE

Testimony of Clamant: Claimant works in maintenance at the Amick Farms feed mill. If a machine breaks down, it is his job to "get it back up and running." (Tr. p. 12, lines 13.) Claimant testified feed mill workers routinely left the work premises to purchase drinks and food and to cash their paychecks. (Tr. p. 14, lines 18-23; p. 15, lines 6-10; p. 17, lines 21-25.) Claimant's supervisor told him he did not have to clock out to go to the store. (Tr. p. 13, lines 1-2.)

On May 23, 2011, Claimant texted his supervisor to ask for permission to leave the feed mill to go to a store to purchase "smokes." (Tr. p. 26, lines 19-22.) However, he admitted he already had cigarettes. (Tr. p. 27, lines 1-5.) After his supervisor granted permission, he asked some co-workers if they wanted anything from the store. He left the feed mill in his personal

vehicle to drive to the store. Nobody at Amick Farms told him how to get to the store or about safety rules for driving his personal truck like wearing his seatbelt. (Tr. p. 27, lines 13.) On the way to the store, he was rear-ended by another vehicle. He hit his head on the windshield. He was also hit head-on and thrown out of his truck. (Tr. P. 24, lines 1-4.) Claimant believes he needs more medical treatment for his lower back and head injury. (Tr. P. 24, line 22 p.25, line 16.)

Claimant is working his regular pre-accident job at the feed mill. (Tr. p. 27, lines 14-24.)

Testimony of Charles Browder: Browder is the safety and environmental control manager at Amick Farms. He testified feed mill workers are supposed to clock out if they leave the grounds, which should have been explained during orientation. (Browder Depo. p. 16, lines 5-18.) He confirmed Claimant sent a text to his supervisor, Craig Riley, asking for permission to "go get smokes." (Browder Depo. p. 17, line 19-p. 18, line 1.) A feed mill employee must obtain permission from a supervisor to leave the feed mill grounds. (Browder Depo. p. 16, line 21-p. 17, line 8.) Claimant should have clocked out to go to the store. (Browder Depo. p. 18, lines 15-20.) The store where Claimant was headed is a couple of miles from the feed mill. (Browder Depo. P. 22; lines 2-5.)

Drink and snack machines are available at the nearby hatchery and also in the feed mill break room. (Browder Depo. p. 22, line 23- p. 23, line 1; p. 30, lines 3-7.) Feed mill workers have two paid fifteen-minute breaks and one paid thirty-minute lunch break each day. (Browder Depo. p. 28, lines 1-9.) The workers must stay at the feed mill for these three paid breaks. (Browder Depo. p. 28, lines 10-12). Claimant was not on one of his three paid breaks at the time

of the accident. (Browder Depo. p. 28, line 13- p. 29, line 19.)

Testmony of Gary Cowell: Colwell was a co-worker at the feed mill. The feed mill workers usually brought food from home and ate together at the feed mill when the work slowed. (Colwell Depo p. 13, lines 2-5.) Feed mill workers routinely left the premises to cash their paychecks and purchase refreshments from the nearby store. They had to let a supervisor know if they wanted to leave the premises but did not clock out. (Colwell Depo. pp. 17- 22.)

Based on the record, we make the following Findings of Fact and Conclusions of Law, each to be construed as the other to the extent necessary:

FINDINGS OF FACT

1. At the time of his accident, Claimant was operating a motor vehicle on a public highway while on a trip to purchase food and cigarettes for himself and his co-workers from a store. Claimant had a list of the items he was to purchase for his co-workers. This was a regular practice by the Claimant and other employees of the Defendant and occurred on a daily basis. Claimant made this trip with the permission of his direct supervisor. Claimant did not "clock out" before he left on this errand. This was the general practice by all the employees at this location.

2. Claimant was not charged with a specific business purpose by his employer when he left his place of employment and drove on public roads with the intention of purchasing food and cigarettes for himself and his co-employees. On the contrary, Claimant asked his supervisor for permission to run a personal errand. Thus, the trip served no business purpose.

3. Only after Claimant obtained permission to go to the store did he ask his co-workers if they wanted anything from the store.

4. Claimant was not acting under the direction of his employer at the time of the accident. This is uncontroverted.

5. Claimant was not on one of his three paid breaks at the time of his accident.

6. Claimant's actions at the time of the accident did not provide a direct benefit to the employer. Any benefit conferred on the employer is indirect at best. The employee's purchasing beverages for co-employees benefited the employer indirectly by providing its employees with the goods necessary to engage in acts necessary to life, comfort, and convenience, namely drinking and smoking.

7. Claimant is not entitled to benefits under a theory based on the special errand rule or dual purpose doctrine.

8. At the time of his accident, Claimant was traveling to purchase beverages and cigarettes that he personally was going to drink and smoke at a later time. Claimant already had cigarettes when he went to the store.

9. At the time of Claimant's accident, he was not actually engaged in the imperative acts of drinking or smoking. Rather, he was traveling to a store to purchase goods for drinking and smoking at a later time. Because Claimant was neither drinking nor smoking at the time of his accident, his injuries did not fall under the personal comfort doctrine to make his accident arise out of his employment with the Defendant.

10. The fact Claimant was permitted to take the personal trip is insufficient to supply the

requisite causal connection.

11. Claimant's claim for benefits under the Act must be denied.

CONCLUSIONS OF LAW

1. When an injury occurs while an employee is on a trip away from the work premises, the injury is only compensable if the trip: 1) has a specific business purpose; and 2) the employee was tasked with some special errand which has a special business purpose. Strough v. Westinghouse Savannah River Co., 311 S.C. 129, 427 S.E.2d 716 (1993). Further, the employee must be engaged in an actual work duty for the primary benefit of the employer at the time the injury occurs. Hicks v. Piedmont Cole Storage, 335 S.C. 46, 515 S.E.2d 532 (1999). If the employer receives only an indirect benefit, an injury is not compensable unless the employee was tasked with a specific duty. Id. The benefit to the employer must be more than minimal or tenuous to bring the employee's actions within the scope of his employment duties. Broughton v. South of the Border, 336 S.C. 488, 520 S.E.2d 34 (Ct. App. 1999).

2. The dual purpose doctrine provides that, "When a trip serves both business and personal purposes, it is a personal trip if the trip would have been made in spite of the failure or absence of the business purpose and would have been dropped in the event of failure of the private purpose, though the business errand remained undone; it is a business trip if a trip of this kind would have been made in spite of the failure or absence of the private purpose, because the service to be performed for the employer would have caused the journey to be made by someone even if it had not coincided with the employee's personal journey." Gibson at 520, S.E.2d at 730.

3. A key factor in determining entitlement to compensation is whether the work benefited the employer. Hicks v. Piedmont Cold Storage, 335 S.C. 46, 49, 515 S.E.2d 532, 533 (1999). The dissent in Hicks argued that compensation should be awarded "where the employee was acting outside his normal duties and the benefit to the employer was only slight or indirect". Id. at 50, 515 S.E.2d at 536 (A.J. Toal, dissenting). However, the majority in Hicks declined to adopt that view.

4. "[E]ntirely personal activities engaged in by an employee at work may be considered incidental to employment". Osteen v. Greenville County Sch.. Dist. 333 S.C. 43, 46, 508 S.E.2d 21, 23 (1998). "The [personal comfort] doctrine provides such acts as are necessary to the life, comfort and convenience of the servant while at work, though strictly personal to himself, and not acts of service, are incidental to the service, and injury sustained in the performance thereof is deemed to have arisen out of the employment." Gibson v. Spartanburg School Dist. No. 3, 338 S.C. 510, 520, 526 S.E. 2d 725, 730 (Ct. App. 2000) (internal citations omitted). "In Osteen, the Court significantly narrowed the application of the personal comfort doctrine, finding it has consistently been limited to imperative acts such as eating, drinking, smoking, seeking relief from discomfort, preparing to begin or quit work, or resting or sleeping". Id. (See also Osteen at 46, 508 S.E.2d at 23; and Gibson at 520, 526 S.E.2d at 730 (acknowledging the Court "explicitly" limited the personal doctrine to the above-described functions).

5. Whether an employee falls within the protection of the personal comfort doctrine while traveling to purchase the goods whose subsequent consumption would be protected by the personal comfort doctrine appears to be a novel question of law in South Carolina. Without a

binding South Carolina authority on point, I am unable to expand the scope of the personal comfort doctrine to include employees who are travelling to purchase goods for smoking and drinking at a later time.

6. In Osteen, the Court found the employer's acquiescence in allowing employees to obtain ice for their personal use was insufficient to supply the requisite causal connection. Osteen at 50 n.7, 508 S.E.2d at 50 n.7. The Court disagreed with the dissent's position that by acquiescing in Osteen's conduct, the school was benefited with "improved employer/employee relations." Id. The Court went on to note that even an activity which is "encouraged" by an employer is insufficient to render an ensuing injury compensable. Id. (citing Beam v. State Workmen's Compensation Fund, 261 S.C. 327, 200 S.E.2d 83 (1973)).

ORDER

Upon review of the evidence and the applicable statutory sections and case law, **IT IS HEREBY ORDERED** the claim for benefits is denied.

IT IS SO ORDERED.

FULL AFFIRMATION

The Honorable Susan S. Barden, Commissioner

The Honorable Melody L. James, Commissioner

The Honorable Avery B. Wilkerson, Jr., Commissioner

CERTIFICATE OF SERVICE

This is to certify the undersigned has this date served this order in the above entitled action upon all parties to this cause by sending an electronic copy hereof by electronic mail addressed to the attorney or attorneys for said parties or by depositing a copy hereof, postage paid, in the United States mail addressed to any unrepresented party.

By Valerie Deller on April 18, 2013