

Summaries

S.C. Workers' Compensation Appellate Decisions

3/8/99 to 3/8/00

By Sam Painter

NOTE: The following are brief summaries of twenty-four decisions which involved workers' compensation issues that were reported from March 8, 1999 to March 8, 2000 by the South Carolina Supreme Court or the South Carolina Court of Appeals. (They are listed in reverse chronological order, with the most recently reported cases listed first.) These summaries, as well as the summaries of all such decisions reported from January 1, 1978, may be found in the **South Carolina Workers' Compensation Casebook [6th Edition. 2000]**, which is published by the **South Carolina Self-Insurers Association.**

Hamilton v. Bob Bennett Ford, ___ S.C. ___, ___ S.E.2d ___ (Ct. App. 2000). Supreme Court Opinion No. 25071; filed February 22, 2000; Shearouse Advance Sheet No. 7, p.16. HEARSAY TESTIMONY ADMISSIBLE IF CORROBORATED BY FACTS, CIRCUMSTANCES, OR OTHER EVIDENCE.

Powell, an employee of Bob Bennett Ford's carrier, was allowed, over the objection of the claimant's attorney, to testify regarding what she had been told by Keith, a Bob Bennett manager. The Court of Appeals had held this testimony was inadmissible hearsay. The Supreme Court granted certiorari to review that portion of the Court of Appeals' decision.

HELD: The Supreme Court noted that under the Administrative Procedures Act, the Rules of Evidence do not apply in proceedings before the Workers' Compensation Commission. See, S.C. Code Ann. Section 1-23-330(1). Hearsay testimony may be admissible in workers' compensation matters if corroborated by facts, circumstances, or other evidence. Ham v. Mullins Lumber Company, 193 S.C. 66, 7 S.E.2d 712 (1941). The Supreme Court went on to find, however, that the particular statement in this case was not corroborated and should not have been admitted. Therefore, it affirmed the result reached by the Court of Appeals, and held that this particular statement was not admissible.

Gray v. The Club Group, Inc., ___ S.C. ___, ___ S.E.2d ___ (Ct. App. 2000). Court of Appeals Opinion No. 3119; filed February 22, 2000; Shearouse Advance Sheet No. 7, p. 1. JURISDICTION (STANDARD OF REVIEW); EMPLOYMENT; EXCESSIVE SPEED NOT A SUBSTANTIAL DEVIATION.

Gray was killed in an automobile accident where there was evidence of excessive speed. He worked as a bellman for Club Group for five days a week. Friday was normally his day off. He agreed, however, to deliver checks and financial records on Friday at the request of King, a Club Group manager, for \$35.00 plus mileage. The automobile accident occurred on a Friday about a half mile from where Gray was supposed to make his first pick up. Club Group asserted that Gray was an independent contractor at the time of the injury. Club Group asserted that there was no substantial evidence that the injury arose out of and in the course of employment. Club Group asserted the going and coming rule. Finally, Club Group asserted that Gray's excessive speed was a substantial deviation from his employment. The single commissioner awarded death benefits. The full commission affirmed. A circuit judge affirmed, finding there was substantial evidence that Gray was an employee. The Club Group appealed.

HELD: The Court of Appeals agreed with the Club Group that the circuit judge erred by applying a "substantial evidence" standard of review rather than a "preponderance of the evidence" standard of review to the jurisdictional issue of employment. The Court, however, found this was harmless error because, in the Court of Appeals' view, a preponderance of the evidence supported the Commission's finding that Gray was an employee of the Club Group and not an independent contractor. The Court of Appeals also found that Gray's accident was directly attributable to his Friday duties to act as a courier and therefore arose out of and in the course of his employment. The Court of Appeals further found that Gray was being paid for the trip, which made his injury on the way to pick up the records to be delivered an exception to the going and coming rule. Finally, the Court of Appeals ruled that the excessive speed was not a substantial deviation. The award of death benefits was affirmed.

Meyer v. Piggly Wiggly No. 24, Inc., ___ S.C. ___, ___ S.E.2d ___, Supreme Court Opinion No. 25066; filed February 14, 2000; Shearouse Advance Sheet No. 6, p.23. STATUTORY EMPLOYER IMMUNITY DEFENSE NOT AVAILABLE AGAINST EMPLOYEE OF VENDOR.

Meyer, a route salesman for Derst Baking Company, slipped and fell in the defendant's grocery store. He received workers' compensation benefits from Derst. He brought a slip and fall claim against the Piggly Wiggly store. Piggly Wiggly moved to dismiss on grounds that it was Meyer's statutory employer and was therefore immune from tort liability under the Workers' Compensation Act. The trial judge granted the motion. The Court of Appeals reversed and remanded for a trial. Piggly Wiggly petitioned for writ of certiorari.

HELD: The Supreme Court affirmed the decision of the Court of Appeals. Piggly Wiggly argued that because the route salesman kept his assigned shelf space stocked, his work in the store was "important, necessary, essential, and an integral part of Piggly Wiggly's business." The Supreme Court held, however, these activities related only to the sale of the vendor's goods and were "insubstantial in the context of Piggly Wiggly's general business." The case was therefore remanded for a trial.

City of Greenville v. South Carolina Second Injury Fund, ___ S.C. ___, ___ S.E.2d ___ (Ct. App. 2000). Court of Appeals Opinion No. 3115; filed February 7, 2000; Shearouse Advance Sheet No. 5, p. 39. SECOND INJURY FUND; PRE-EXISTING CONDITIONS THAT DO NOT RESULT IN SUBSTANTIALLY GREATER DISABILITY OR SUBSTANTIALLY GREATER MEDICAL PAYMENT LIABILITY DO NOT QUALIFY AN EMPLOYER FOR REIMBURSEMENT.

Gilstrap, a Greenville police officer, became a paraplegic as the result of a thirty to forty foot fall during a training exercise. The City of Greenville brought a claim for reimbursement from the South Carolina Second Injury Fund based on preexisting degenerative disc disease and pre-existing arthritis in the knee. The Second Injury Fund denied the City of Greenville's claim. The City of Greenville asked for a hearing. The single commissioner denied the claim on four grounds: 1) substantially all of Gilstrap's disability was caused by the fall rather than the pre-existing conditions; 2) Gilstrap is a paraplegic as a result of the fall and cannot suffer a greater disability under S.C. Code Ann. Section 42-9-10 than the lifetime benefits provided in that statute for a paraplegic; 3) the City did not meet the knowledge requirement for the knee injury; and 4) there is no evidence that the City incurred greater medical expenses. The full commission and circuit court affirmed. The City of Greenville appealed.

HELD: The Court of Appeals affirmed the denial as well. The Court of Appeals agreed that the City of Greenville had not shown that the pre-existing degenerative disc disease had resulted in substantially greater disability. The Court also pointed out that while Gilstrap did have a CAT Scan and an injection for his knee, the costs of these did not "constitute a substantial increase in medical expenses" (which totaled \$153,989.79 during his hospital stay). Gilstrap had prior knee surgery. Therefore, the court said, "he was presumably aware he had arthritis in this knee." The Court of Appeals then agreed with the full commission that the City of Greenville had not proven that it had knowledge of the arthritis condition, or that Gilstrap had concealed it.

Gibson v. Spartanburg School District No. 3, ___ S.C. ___, ___ S.E.2d ___ (Ct. App. 2000). Court of Appeals Opinion No. 3102, filed January 17, 2000; Shearouse Advance Sheet No. 2, p. 17. ARISING OUT OF AND IN THE COURSE OF; DUAL PURPOSE DOCTRINE; SLIGHT DEVIATION.

Gibson was injured while on a shopping trip for her employer. She had gone to Wal-Mart with a purchase order for school supplies. After selecting items on the list and having them charged to the school district's account, she returned to the school supplies area to purchase a lunch box for her own child. While reaching for the lunch box, a box cutter fell from the shelf and injured her right eye. The single commissioner denied the claim, holding that the injury did not arise out of and in the course of employment. An appellate panel affirmed the denial by a two to one vote. A circuit judge reversed and held the injury compensable, citing the "personal comfort doctrine" and the "dual purpose rule" as grounds for awarding benefits. The school district appealed.

HELD: The Court of Appeals affirmed the circuit court decision and held that the injury was compensable. Gibson's counsel had conceded that the personal comfort doctrine was not applicable, and the Court agreed. The Court of Appeals found the trip to Wal-Mart was a dual purpose trip in that it served both a business and personal purpose. The Court stated that a predominant issue in this case was whether Gibson's injury occurred during an act that was a "slight deviation" from the purpose of the trip. The Court of Appeals held that Gibson's deviation was "slight, insubstantial, and insignificant," and the injury was therefore compensable under the dual purpose doctrine.

**McCraw v. Mary Black Hospital, ___ S.C. ___, ___ S.E.2d ___ (Ct. App. 2000).
Court of Appeals Opinion No. 3059; Refiled January 17, 2000; Shearouse Advance
Sheet No. 3, p. 2. OCCUPATIONAL DISEASE; STATUTE OF LIMITATIONS.**

McCraw was employed by Mary Black Hospital as an assistant in the endoscopy unit for over thirty years. Her duties included cleaning and disinfecting equipment with cleaners that contained a respiratory irritant (Glutaraldehyde). The cleaners caused respiratory symptoms that progressed. In September 1991, she asked Dr. Applebaum, the pulmonary center director of the hospital, about transferring to another department. The physician said that “she certainly thought it was worth a try.” McCraw transferred out of the endoscopy unit and eventually was placed in the child care center. McCraw saw Dr. Applebaum on November 13, 1992 complaining of congestion and shortness of breath. Dr. Applebaum took her out of work and admitted her to the hospital on November 19, 1992. According to the decision, November 19, 1992 was the date when a physician first definitely diagnosed McCraw with an occupational disease. McCraw filed Form 50 requesting a hearing on November 14, 1994. A single commissioner awarded her workers’ compensation benefits for an occupational disease. The full commission reversed, holding that the claim was barred by the two year statute of limitations under S.C. Code Ann. Section 42-15-40. The circuit court reversed the full commission and remanded the claim for “disposition and payment of benefits.” The hospital appealed, contending McCraw had failed to comply with the two year statute of limitations or the 90-day notice requirement.

HELD: The Court of Appeals ruled that November 19, 1992 was the date when the claimant received a definitive diagnosis of the occupational disease and therefore, the Form 50 filed on November 14, 1994 was timely under the two year statute of limitations. (The hospital had argued that a definitive diagnosis had been made in September of 1991.) The single commissioner had found that the employee had given notice of a claim by January 6, 1993, which was within 90 days of November 19, 1992, but not within 90 days of the alleged September, 1991 diagnosis. In affirming the circuit court, the Court of Appeals made the following ruling: The two year statute of limitation begins to run in an occupational disease claim when the claimant receives notice of a definitely diagnosed occupational disease and suffers some compensable injury, that is, some disability.

Abbott v. The Limited, Inc., ___ S.C. ___, ___ S.E.2d ___ (2000). Supreme Court Opinion No. 25045; filed January 10, 2000; Shearouse Advance Sheet No. 1, p. 46. STATUTORY EMPLOYER IMMUNITY; EMPLOYEE OF COMMON CARRIER NOT A STATUTORY EMPLOYEE OF RETAILER.

Abbott was employed by Observer Transport, a common carrier. Observer had a contract to deliver goods to The Limited, a retail store. Abbott slipped and fell on the premises of the store. He received workers' compensation benefits from Observer Transport's carrier. He brought a slip and fall claim against the Limited. The trial judge granted the store's motion to dismiss, finding that Abbott was a statutory employee of The Limited and, therefore, Abbott's exclusive remedy was under the Workers' Compensation Act. Abbott appealed. The Court of Appeals affirmed. Abbott petitioned for writ of certiorari, which was granted.

HELD: The Supreme Court reversed the Court of Appeals, holding that the mere recipient of goods delivered by a common carrier is not the statutory employer of the common carrier's employee. [In a footnote, the Supreme Court stated that to the extent that Neese v. Michelin Tire Corp., 324 S.C. 465, 478 S.E.2d 91 (Ct. App. 1996) and Hairston v. Re: Leasing, Inc., 286 S.C. 493, 334 S.E.2d 825 (Ct. App. 1985), may be read to hold otherwise, they are hereby overruled.]

Harrell v. Pineland Plantation, ___ S.C. ___, 523 S.E.2d 766 (1999). STATUTORY IMMUNITY; OWNER OF PROJECT HAS TORT IMMUNITY ONLY IF HAS PURCHASED WORKERS' COMPENSATION COVERAGE OR HAS QUALIFIED AS A SELF-INSURER.

Harrell was employed by Folk Land Management, Inc. to supervise work on a 275-acre plantation in Colleton County called Pineland Plantation. This property was owned by a limited partnership of the same name. It operated the plantation as a vacation home and hunting resort. Harrell was swimming in a pond on the property. A rope swing broke, causing Harrell to fall and break his neck. He brought a workers' compensation claim against Folk Land Management, Inc., which was settled for \$1.1 million. He then brought a tort action against Pineland Plantation for negligence. The trial court dismissed the claim, holding that workers' compensation was Harrell's exclusive remedy against the owner of the property. In a split decision, the Court of Appeals reversed. Pineland petitioned for writ of certiorari, which was granted.

HELD: In a split decision, the Supreme Court held that Pineland Plantation would only have tort immunity if it had secured workers' compensation coverage or had qualified as a workers' compensation self-insurer. Two justices dissented, noting that Pineland Plantation could have been held liable for workers' compensation benefits under S.C. Code Ann. Section 42-1-400 as an "owner", and therefore should have been afforded tort immunity.

**Glover v. United States of America, ____ S.C. ____, 523 S.E.2d 763 (1999).
STATUTORY IMMUNITY; STATUTORY EMPLOYER MUST SECURE THE
PAYMENT OF COMPENSATION IN COMPLIANCE WITH S.C. CODE ANN. §
42-5-20 TO CLAIM TORT IMMUNITY.**

Glover and Vance worked for Carolina Builders of Florida. Their employer subcontracted with White-Infinger Joint Venture to construct and renovate a barracks building at Charleston Air Force Base. White-Infinger had a contract with the federal government. Glover and Vance were both injured after they accidentally contacted a high voltage line. They received workers' compensation benefits from their direct employer. Then they brought an action in federal district court against the federal government pursuant to the Federal Tort Claims Act. The federal district court sent the following question to the South Carolina Supreme Court for its response:

In light of the South Carolina Court of Appeals' decision in *Harrell v. Pineland Plantation, Inc.*, must an owner within the meaning of S.C. Code § 42-1-400 have either directly purchased insurance to cover his potential workers' compensation liabilities or have qualified as a self-insurer (as set forth in S.C. Code § 42-5-20) before the owner may claim immunity from suit in tort by an injured worker of his contractor or subcontractor pursuant to the "exclusive remedy" provisions of the Workers' Compensation Act?

HELD: In a split decision, the Supreme Court held that an owner, within the meaning of S.C. Code § 42-1-400, must comply with § 42-5-20 by either directly purchasing insurance to cover its potential workers' compensation liabilities or qualifying as a self-insurer before the owner may claim immunity under the Act's exclusive remedy provision. Two justices dissented.

State Farm Mut. Auto Ins. Co. v. James, ___ S.C. ___, 522 S.E.2d 345 (Ct. App. 1999). EFFECT OF EXCLUSION BARRING RECOVERY FOR INJURIES TO AN INSURED’S EMPLOYEES ARISING OUT OF EMPLOYMENT.

James, a contractor, borrowed a truck from Frierson while repairs were being done to James’ truck. Both James’ truck and the one he borrowed were covered by State Farm under policies that excluded coverage for claims brought by an insured’s employees arising out of employment. Echols, James’ employee, was burned while helping James start Frierson’s truck. Echols sued James for negligence. State Farm brought a declaratory judgment action against James and Echols to determine whether it had coverage. A circuit judge upheld State Farm’s exclusion in both policies, but found that Echols was entitled to underinsured coverage on one truck. Echols appealed.

HELD: The Court of Appeals affirmed, finding that James was an “insured” under both policies and the exclusion applied. The Court also agreed that Echols was engaged in employment when injured. The Court of Appeals ruled that Echols could not “stack” the underinsured motorist coverage because he did not own either vehicle. Finally, the Court of Appeals ruled that Echols was not entitled to uninsured motorists coverage.

Rogers v. Kunja Knitting Mills, U.S.A., 336 S.C. 533, 520 S.E.2d 815 (Ct. App. 1999). OCCUPATIONAL DISEASE; RES JUDICATA.

Rogers worked in Kunja's knitting department from February 1988 until November 1989. Her job required her to clean knitting machines with Shima oil. This caused a rash to her hands and face. On November 16, 1990, she filed a claim for dermatitis. It was described as both an accidental injury and an occupational disease. The single commissioner denied the claim. The full commission affirmed. The circuit court reversed, concluding that the Commission's ruling was not based on the evidence. The Court of Appeals reversed again, finding that the circuit court erred in making its own determination as to the weight of the evidence. See, Rogers v. Kunja Knitting Mills, Inc., 312 S.C. 377, 440 S.E.2d 401 (Ct. App. 1994). The Supreme Court granted certiorari, but later dismissed the writ as improvidently granted. See, Rogers v. Kunja Knitting Mills, Inc., 318 S.C. 187, 456 S.E.2d 918 (1995). In 1993, while the appeals of Rogers' dermatitis claim were in progress, Rogers filed a Form 50 alleging "systemic failure." The Form 50 alleged injuries to multiple body organs and systems. The claimant's attorney wrote the Commission and asserted that this was, in fact, "a claim for a new occupational disease based upon newly discovered medical diagnosis." A hearing was held on the 1993 Form 50 after the Supreme Court's dismissal of the writ of certiorari it had granted with regard to the 1990 claim. The single commissioner concluded that the 1993 claim was barred by res judicata because "[t]he claim for benefits for alleged injuries resulting from exposure to Shima oil starting in February, 1988 has been denied by a final adjudication and may not be heard a second time." The single commissioner's decision was affirmed by full commission and the circuit court. Rogers appealed.

HELD: The Court of Appeals reversed. The issue, the Court said, was whether the subject matter of Rogers' 1993 claim is the same as that of the 1990 claim. While both had been alleged to be occupational diseases, and both had been alleged to have been the result of exposure to toxic chemicals in the workplace, the Court of Appeals held that "There was no evidence in the record supporting the full commission's conclusion that they were the same." The Court reversed the decisions below and remanded the 1993 claim for a hearing on its merits. In a footnote, the Court stated that Kunja was "free to reassert its defense of res judicata and to present medical or other evidence supporting its contention that Rogers' current claim in fact is the same as her 1990 claim."

**Broughton v. South of the Border, 336 S.C. 488, 520 S.E.2d 634 (Ct. App. 1999).
ARISING OUT OF AND IN THE COURSE OF; EMPLOYEE INJURED WHILE
VISITING SICK CO-WORKER.**

Broughton worked as a clerk at South of the Border. A co-worker, Mims, was sick and requested that someone check on her. Broughton decided to go check on Mims. She slipped and fell at the co-worker's house and broke her leg. The single commissioner denied her claim, finding that Broughton failed to establish her injury arose out of and in the course of employment. The single commissioner ruled that Broughton had neither the express nor implied permission of South of the Border to leave the workplace to check on the health of the co-worker. The full commission reversed. The circuit court affirmed. South of the Border appealed.

HELD: The Court of Appeals reversed, finding that the circuit court erred in affirming the full commission's finding that Broughton's injuries arose out of and in the course of her employment. The Court of Appeals ruled that this was a case where no evidence supported the decision of the full commission that Broughton's injury occurred "in the course of" her employment. Because no evidence supported the decision of the full commission, the Court cited the following rule: "Where the evidence is susceptible of but one reasonable inference, the question is one of law for the court, rather than one of fact for the Commission." See, Mullinax v. Winn-Dixie Stores, Inc., 318 S.C. 431, 458 S.E.2d 76 (Ct. App. 1995).

Muir v. C.R. Bard, Inc., 336 S.C. 266, 519 S.E.2d 583 (Ct. App. 1999). HEPATITIS C AS OCCUPATIONAL DISEASE. NO OFFSET FOR GROUP DISABILITY BENEFITS.

Muir was employed for approximately fifteen years as a quality assurance engineer at a facility which manufactured foley catheters. From 1977 to 1980 Muir worked for a company called Davol. Then the plant where Muir worked was sold to Bard. Muir's job required him to inspect used catheters that had malfunctioned. He contracted hepatitis C, aplastic anemia, and myelodysplasia. He went on short-term disability in August of 1992 and received full salary for twenty-two weeks. Thereafter, he was paid long-term disability benefits under the company's plan, to which he had contributed. He continued to receive long-term disability benefits and Social Security benefits comprising sixty percent of his salary. On March 30, 1993, Muir filed Form 50, alleging an occupational disease, diagnosed on April 21, 1992. The single commissioner ruled that Muir contracted hepatitis C as a direct result of his exposure to contaminated blood and body fluids while examining and testing failed catheters in his employment with Bard. She awarded 500 weeks for total disability. She refused to allow Bard an offset or credit for amounts paid to Muir for short and long-term disability. The full commission and the circuit court affirmed. Bard appealed.

HELD: The Court of Appeals affirmed. The Court held that Muir had proven all six elements of an occupational disease. See, Fox v. Newberry County Memorial Hospital, 319 S.C. 278, 461 S.E.2d 392 (1995). The Court also discussed ten different issues raised by Bard on appeal and affirmed the decision of the circuit court with regard to each. A summary of these rulings would be as follows: The circuit court did not err in (1) affirming the full commission's decision that Muir contracted an occupational disease, hepatitis C, as a direct result of his employment with Bard; (2) affirming the full commission's conclusion that Muir's aplastic anemia and myelodysplasia were caused by hepatitis C; (3) refusing to find the Commission had violated Bard's due process rights; (4) failing to rule that the Commission should have added Davol as a party; (5) affirming the Commission's conclusion that the claimant had complied with S.C. Code Ann. Section 42-11-70 (the occupational disease statute providing that disease must be contracted within one year of last exposure); (6) refusing to find that Muir did not give timely notice; (7) failing to rule that the claim was barred by the two year statute of limitations; (8) refusing to rule that the claim was barred by the doctrine of laches; (9) failing to give Bard credit for the short-term or long-term disability benefits paid; and (10) failing to rule that the Commission made prejudicial and erroneous evidentiary rulings.

Sharpe v. Case Produce, Inc., 336 S.C. 154, 519 S.E.2d 102 (1999). APPEALS. SUBSTANTIAL EVIDENCE RULE. APPELLATE COURT MAY NOT SUBSTITUTE ITS VIEW OF THE EVIDENCE WHERE SUBSTANTIAL EVIDENCE SUPPORTS THE FINDINGS OF THE COMMISSION.

Sharpe alleged straining his back while lifting crates of tomatoes. His employer testified that he had come to work three days earlier and had said he had hurt his back in a fight with his girlfriend. The girlfriend testified that he had, indeed, injured his back in that fight. The single commissioner found the employer and girlfriend credible and denied the claim. The full commission and circuit court affirmed. The Court of Appeals reversed, finding “no evidence the injury, as Sharpe relate[d], did not happen.” The Court of Appeals also found that the Commission had ignored two medical reports that repeated Sharpe’s version of the accident. In addition, the Court of Appeals held that even if Sharpe hurt his back in the altercation with the girlfriend, he was nonetheless entitled to compensation for an aggravation of his pre-existing condition. The employer and carrier petitioned for writ of certiorari, which was granted.

HELD: The Supreme Court reversed. The Court found there was substantial evidence which supported the Commission’s holding that Sharpe had not suffered a compensable accident. Accordingly, it was error for the Court of Appeals to substitute its own view of the evidence for that of the Commission.

**Hamilton v. Bob Bennett Ford, 336 S.C. 72, 518 S.E.2d 599 (Ct. App. 1999).
STATUTE OF LIMITATIONS; FILING OF FORM 15 SATISFIES
REQUIREMENT THAT CLAIM BE FILED WITHIN TWO YEARS.**

Hamilton, a mechanic, was injured on September 9, 1992 when he fell at work. On November 24, 1992, Hamilton and the employer signed Form 15 (Agreement for Compensation) and Form 17 (receipt of temporary total). The Commission approved the Form 15 on December 23, 1992. These documents showed Hamilton received four days of compensation (from September 16 through September 20). On December 9, 1996, or approximately four years and three months after the injury, Hamilton filed Form 50. The single commissioner, full commission, and circuit court ruled that Hamilton's claim was barred by the two year statute of limitations under S.C. Code Ann. Section 42-15-40. Hamilton appealed.

HELD: The Court of Appeals held that a Form 15, filed with and approved by the Commission, satisfies the statutory requirement of S.C. Code Ann. Section 42-15-40 that a claim for compensation be filed within two years after the accident. The Form 15 referred to a hip and leg injury, while the Form 50 referred to a low back injury. The Court of Appeals dismissed the employer's argument that this was a different claim by stating "it was not contemplated by the Act that different parts of the total result of one accident should be regarded as separate claims." [Editor's Note: Compare to Rogers v. Kunja Knitting Mills, USA, 336 S.C. 533, 520 S.E.2d 815 (Ct. App. 1999).] The Court also addressed a hearsay issue for the guidance of the Commission. It held that hearsay evidence is not admissible before the Workers' Compensation Commission. The Supreme Court granted a writ of certiorari with regard to the admissibility of hearsay issue. See, Hamilton v. Bob Bennett Ford, Supreme Court Opinion No. 25071; Filed February 22, 2000; Shearouse Advance Sheet No. 7, page 16 (summarized herein).

Munn v. Nucor Steel, 336 S.C. 28, 518 S.E.2d 289 (Ct. App. 1999). MEDICAL BENEFITS; CAUSAL RELATIONSHIP NECESSARY.

Munn injured his back and received a total disability award with lifetime medical benefits in 1986. He brought a claim in 1995 for payment of medical bills related to treatment of a heart condition. The single commissioner, full commission, and circuit court all denied his claim because the heart condition was not causally related to the back injury. Munn appealed.

HELD: The Court of Appeals affirmed, holding that medical treatment claimed under S.C. Code Ann. Section 42-15-60, the medical statute, must be causally related to the injury.

Tatum v. Medical University of South Carolina, 335 S.C. 499, 517 S.E.2d 706 (Ct. App. 1999). DUAL PERSONA DOCTRINE AS EXCEPTION TO EXCLUSIVE REMEDY.

Tatum, an employee of the Medical University of South Carolina (“MUSC”), injured her back transporting a pig in the course of her employment as an animal care technician for the hospital. She received workers’ compensation benefits. She had two back surgeries that were performed by MUSC physicians. She sued MUSC for medical malpractice as the result of damage to her spinal cord. MUSC moved to dismiss the lawsuit on grounds that workers’ compensation was Tatum’s exclusive remedy. The circuit court judge granted the motion. Tatum appealed.

HELD: The Court of Appeals reversed. The Court distinguished previous decisions in which the “dual capacity” doctrine was rejected as involving claims by employees who were injured while doing the work for which they were hired. In this case, the employee was allegedly injured while a patient, and the employer assumed a relationship “which created obligations to the employee independent of its obligations as employer.” This secondary relationship was so “completely independent as to create a separate legal person.” The Court of Appeals thus held that Tatum could maintain a malpractice action against MUSC in its “dual persona” as a medical care provider.

**Smith v. S.C. Dept. of Mental Health, 335 S.C. 396, 517 S.E.2d 694 (1999).
STOPPING PAYMENT; TEMPORARY TOTAL DISABILITY BENEFITS MAY
BE TERMINATED IN FAVOR OF PERMANENT BENEFITS UPON A FINDING
OF MMI.**

Smith was a laborer for the Department of Mental Health. He had a back injury in 1989. The employer petitioned to stop payment under R.67-507(c)(3) and attached a medical certificate showing Smith had reached MMI on November 11, 1992. The single commissioner found the employer was entitled to stop payment on November 11, 1992 and awarded Smith 35% of the back. The full commission affirmed, but reduced Smith's award to 12% of the back. The circuit court affirmed. The Court of Appeals affirmed the finding that Smith had reached MMI, but held that Smith was deprived of due process rights when the single commissioner ceased taking testimony at the hearing. The Court of Appeals also ruled that the full commission should not have reduced Smith's award because the employer had not appealed that ruling. Smith petitioned for writ of certiorari, which was granted.

HELD: The Supreme Court affirmed the Court of Appeals finding that the employer was entitled to stop payment of temporary total benefits under R.67-507(c)(3)(a) upon establishing Smith had reached MMI.

Steele v. Self-Serve, Inc., 335 S.C. 323, 516 S.E.2d 674 (Ct. App. 1999). AVERAGE WEEKLY WAGE; EFFECT OF AWARD TO ONLY ONE OF THREE WHOLE DEPENDENTS.

The wife and two sons of an employee killed on July 30, 1977 in a convenience store robbery filed a claim for death benefits sixteen years after the occurrence. At that time, Eric Steele, the younger of the sons, had just turned 18. The single commissioner found the claim was not barred by the statute of limitations due to estoppel. The single commissioner also found that the decedent's average weekly wage based on two jobs was \$170 per week. The single commissioner awarded \$40,000 (the maximum award in 1977) and funeral benefits. The full commission reversed, finding an average weekly wage of \$99.02, and holding that the claims of the mother and older brother were barred by the statute of limitations. The full commission held that the \$40,000 maximum applied, but awarded Eric only one-third of it. Eric appealed to the circuit court, which affirmed. Eric then appealed to the Court of Appeals.

HELD: The Court of Appeals affirmed the reduced compensation rate, holding that under the Workers' Compensation Commission's regulations, the claimant has the burden of proving wages earned in jobs other than the one in which the accident occurred. No Form 20 was presented for the second job. The full commission had taken the total earned in the second job as shown on a W-2 and had divided the total by the weeks in 1977 that Phillip Steele had lived. Eric Steele's mother had testified that Phillip worked at the second job "only a couple of months." She admitted, however, that she was not sure and had not checked. The Court of Appeals held there was substantial evidence to support the full commission's method of determining the average weekly wage. With regard to Eric's argument that he should receive the full award, the Court of Appeals ruled that as one of three whole dependents, the most he was entitled to receive by statute was one-third of the death benefit. The claims of the brother and widow to the other two-thirds had been found to be barred by the statute of limitations by the full commission and this ruling was not appealed.

**Hinton v. Designer Ensembles, Inc., 335 S.C. 305, 516 S.E.2d 665 (Ct. App. 1999).
RETALIATORY DISCHARGE; VIOLATION OF WORK RULE DEFENSE FOR
NON-EXCUSED ABSENCES FOUND TO BE PRETEXTUAL IN THIS CASE;
REINSTATEMENT INAPPROPRIATE.**

Hinton, a supervisor, had a back injury on August 2, 1994. Prior to the accident, he had a perfect attendance record. He returned to work on November 1, 1994. He left work on November 2, 1994 due to pain. On November 3 and November 4, he called in and refused to work. On November 5 (a Saturday) and November 7, he failed to call. On November 8, 9, and 10, he called in. On November 11, the employer called him and terminated him for too many unexcused absences. Under the employer's work attendance policy, an employee could be terminated for being absent for five consecutive days without providing a doctor's excuse. On February 14, 1995, an authorized treating physician released him to return to work retroactive to January 20, 1995, the date his impairment was rated as 5% of the back. Hinton attempted to return to work, but the employer told him he no longer had a job. He found a new job in September of 1995 but later left it over a salary dispute. He subsequently brought a retaliatory discharge action against Designer Ensembles. A circuit judge ruled in his favor, awarding him lost salary from January 20, 1995 to September 5, 1995, and ordered reinstatement. The employer appealed.

HELD: The Court of Appeals, in a split decision, affirmed the award of lost wages, but reversed the award of reinstatement. The two judges for the majority pointed to Hinton's prior perfect attendance record, the timing of the firing, and the employee's "substantial compliance" with the employer's absentee policy as circumstantial evidence that the employer used the work rule as a pretext for firing Hinton for bringing a workers' compensation claim. The majority did find that reinstatement was inappropriate in this particular case due to the fact the employee had found another job in the interim and due to animosity between the parties. One judge dissented, finding that the employer had successfully established an affirmative defense (violation of a "specific written company policy for which the action [termination] is a stated remedy of the violation.")

Hicks v. Piedmont Cold Storage, Inc., 335 S.C. 46, 515 S.E.2d 532 (1999).
ARISING OUT OF AND IN THE COURSE OF; DEATH OF HANDYMAN ON
THE PREMISES DOING PERSONAL WORK FOR PLANT MANAGER.

Hicks was a handyman for Piedmont Cold Storage. He was killed while doing repairs on the plant manager's car. The accident occurred on the premises, but on a Saturday, when Hicks was normally off from work. Hicks had not clocked in, and the plant manager was prepared to pay him out of his own pocket. The single commissioner and the full commission denied the claim. A circuit court judge reversed the denial, finding that Hicks' death arose out of and in the course of his employment. The employer appealed. The Court of Appeals affirmed the circuit court, finding that where an employee is asked by a person in authority to do personal work for that person, the employee might have risked losing his job if he refused to do it. This, the court reasoned, meant that the employee's injury arose out and in the course of his employment. One judge dissented, finding no evidence that Hicks "might have risked losing his job" by refusing to help the plant manager do repairs to his car. The Supreme Court granted certiorari.

HELD: The Supreme Court reversed the Court of Appeals and affirmed the Workers' Compensation Commission's denial of the claim. In so doing, the Supreme Court noted that the key factor was whether the work being performed was for the primary benefit of the employer. One justice dissented.

Lester v. South Carolina Workers' Compensation Commission, 334 S.C. 557, 514 S.E.2d 751 (1999). JURISDICTION. EXEMPTION OF PERSONS WITH LESS THAN A \$3,000 PAYROLL IN PREVIOUS YEAR NOT AVAILABLE TO EMPLOYER WHO HAD NO PAYROLL.

Lester opened a video poker casino in 1992, but had no employees until 1993. In May of 1993, an employee was injured in a robbery. Lester had no workers' compensation coverage. Lester argued that under S.C. Code Ann. §42-1-360(2), he was exempt because his payroll in 1992 was less than \$3,000. The single commissioner, full commission and circuit court ruled against him. Lester appealed. The Court of Appeals affirmed. The Court held that the exemption from the Workers' Compensation Act that is available to employers who had an annual payroll of less than \$3,000 during the previous calendar year would not apply to an employer who had no employees and no payroll during the previous calendar year. The Supreme Court granted certiorari.

HELD: The Supreme Court affirmed in part and reversed in part. It agreed that Section 42-1-360(2) did not apply because Lester had no payroll. The Court of Appeals had added a requirement that an employer must also reasonably expect less than a \$3,000 payroll in the current year. The Supreme Court reversed that part of the holding, finding that this "forecasting requirement" should not have been added to the statute by the Court of Appeals.

**Hendricks v. Pickens County, 335 S.C. 405, 517 S.E.2d 698 (Ct. App. 1999).
MEDICAL EXPENSE LIABILITY LIMITED BY DATE OF MAXIMUM
MEDICAL IMPROVEMENT; EMPLOYER ENTITLED TO CREDIT FOR
TEMPORARY TOTAL BENEFITS PAID AFTER DATE OF MMI; FULL
COMMISSION OBLIGED TO CONSIDER ALL EVIDENCE ADMITTED BY
THE SINGLE COMMISSIONER.**

Hendricks, a paramedic, injured his back and left leg when he stepped into a hole while carrying 150 lbs. of medical equipment. He subsequently underwent surgery, and Pickens County, his employer, refused to pay for any medical treatment. At the initial hearing before a commissioner, Pickens County was held liable for all Hendricks' medical expenses causally related to the injury until Hendricks reached MMI. Approximately one year later, Pickens County sought to stop payment of temporary total disability benefits, and the commissioner held that Hendricks had reached MMI and that he had a 20% impairment to the left leg and a 19% impairment to the back. The commissioner further ordered that Pickens County was entitled to a credit for all TTD benefits paid after the date they filed their stop payment request. The Full Commission modified the order, increasing the permanent impairment to Hendricks' back to 40% and awarding Pickens County a credit for all TTD benefits paid after Hendricks' MMI. In all other respects, the Full Commission affirmed the single commissioner. The circuit court affirmed, but reinstated the single commissioner's award of 19% disability for Hendricks' back.

HELD: The Court of Appeals remanded the case back to the Commission to determine whether Hendricks should receive general disability compensation. On the issue of whether Pickens County should have been granted credit for overpayment of TTD benefits, the court affirmed the circuit court, noting that it was appropriate to terminate TTD benefits after MMI in favor of either permanent partial or permanent total benefits, thus entitling Pickens County to a credit for those TTD payments paid after MMI. The court further held that Pickens County was liable for Hendricks' medical expenses only until the date of MMI for each respective injury. Thus, Pickens County was responsible for medical expenses relating to Hendricks' back until it reached MMI, and was responsible for medical expenses relating to Hendricks' knee until it reached MMI. Finally, the court held that the full commission has a responsibility to consider all evidence that was admitted by the single commissioner; thus, regarding a video tape, the full commission erred by viewing only three minutes of the tape. It should have viewed the entire tape because the entire tape was admitted into evidence by the single commissioner.

Tiller v. National Health Care Center, 334 S.C. 333, 573 S.E.2d 843 (1999).
MEDICAL CAUSATION MAY BE ESTABLISHED WITHOUT EXPERT TESTIMONY.

Tiller, a registered nurse, experienced pain in her lower back and right leg when the wheels on the medication cart she was pushing unexpectedly jammed. Upon medical examination, Tiller was diagnosed with discitis, a disc space infection caused by E. Coli. The single commissioner awarded Tiller temporary total weekly benefits, determining that the jamming of the medical cart wheels aggravated Tiller's pre-existing conditions of a degenerated disc and discitis. National Health Care appealed, arguing that Tiller failed to prove her case by a preponderance of the evidence because she failed to provide expert medical testimony about causation. The full commission, circuit court, and the Court of Appeals affirmed the single commissioner.

HELD: The Supreme Court affirmed the Court of Appeals. The court determined that in medically complex workers' compensation cases, the claimant doesn't have to provide expert testimony in order to establish causation. Rather, courts must consider lay and expert evidence in deciding whether substantial evidence supports a finding of causation.

Getsinger v. Owens-Corning Fiberglas Corp., 335 S.C. 77, 515 S.E.2d 104 Ct. App. 1999). MENTAL INJURY COMPENSABLE WHEN INDUCED BY PHYSICAL INJURY OR UNUSUAL OR EXTRAORDINARY CONDITIONS OF EMPLOYMENT.

Getsinger injured his right foot while at work in August, 1990. In June 1993, he was awarded 30% disability, and in October 1995 that award was increased by 10%. The condition of his foot continued to deteriorate, and his physician determined that he could not return to work in any capacity. The pain and the inability to work drove Getsinger into severe depression, and his psychological and physical conditions continued to render him unable to work. The single commissioner determined that Getsinger had reached maximum medical improvement and that he had sustained total loss of earning capacity, and awarded him 500 weeks compensation and ordered Owens-Corning to pay all Getsinger's past and future medical bills incurred from treatment of both physical and psychological problems. The full commission affirmed the single commissioner.

HELD: The Court of Appeals affirmed. The court ruled that mental injuries are compensable if induced either by physical injury or by unusual or extraordinary conditions of employment. Further, a mental condition which is induced by a compensable physical injury is causally related to that injury. Getsinger was entitled to general disability for total loss of earning capacity.