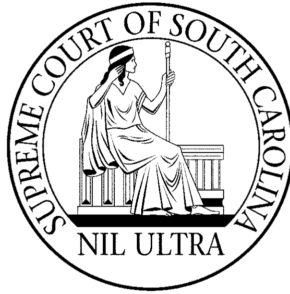

OPINIONS

OF

THE SUPREME COURT

AND

COURT OF APPEALS

OF

SOUTH CAROLINA

ADVANCE SHEET NO. 2
January 14, 2015
Daniel E. Shearouse, Clerk
Columbia, South Carolina
www.sccourts.org

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THE STATE OF SOUTH CAROLINA
In The Supreme Court

The State, Respondent,

v.

Charvus Tarrel Nesbitt, Appellant.

Appellate Case No. 2012-212222

Appeal From Spartanburg County
Roger L. Couch, Circuit Court Judge

Opinion No. 27477
Heard November 19, 2014 – Filed January 14, 2015

AFFIRMED AS MODIFIED

Kenneth Philip Shabel, of Campbell & Shabel, LLC, of Spartanburg, for Appellant.

Attorney General Alan McCrory Wilson, Chief Deputy Attorney General John W. McIntosh, Senior Assistant Deputy Attorney General Donald J. Zelenka, Senior Assistant Attorney General W. Edgar Salter, III, all of Columbia, and Solicitor Barry Joe Barnette, of Spartanburg, for Respondent.

CHIEF JUSTICE TOAL: Charvus Nesbitt (Appellant) appeals the circuit court's finding that he entered knowing and voluntary *Alford*[1] pleas as to three of four charges listed in a negotiated plea agreement. On appeal, Appellant argues that his negotiated plea agreement was a "package deal," and that because his plea for one of the charges was invalid, his pleas for the remaining three charges were likewise invalid. We affirm as modified.

FACTS/PROCEDURAL BACKGROUND

On December 7, 2010, Appellant and three co-conspirators arranged to purchase marijuana from Daniel Landrum (the victim) at the victim's mobile home, intending instead to rob the victim. While inside the mobile home, Appellant shot the victim eight times, killing him, and one of the bullets hit the victim's sister in the neck. The police arrested Appellant and his co-conspirators, and a grand jury subsequently indicted Appellant for murder, possession of a firearm during the commission of a violent crime, attempted murder, and attempted armed robbery.

Throughout the pre-trial proceedings, Appellant consistently maintained that one of his co-conspirators shot the victim, and that Appellant was merely present during the shooting. Nonetheless, Appellant elected to enter an *Alford* plea.[2]

During the plea colloquy, the State informed the circuit court that there were three indictments pending against Appellant, including a two-count indictment for murder and possession of a firearm during a violent crime. The State listed the four crimes covered in the indictments and informed the circuit court that Appellant and the State negotiated the plea in exchange for the State's recommendation of a forty-year sentence. Appellant's attorney acknowledged that the State correctly summarized the pending charges and negotiated sentence.

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[1] *North Carolina v. Alford*, 400 U.S. 25 (1970).

[2] *See State v. Ray*, 310 S.C. 431, 435, 427 S.E.2d 171, 173 (1993) ("The United States Supreme Court held in *Alford* that an accused may consent voluntarily, knowingly, and understandingly to the imposition of a prison sentence although unwilling to admit culpability, or even if the guilty plea contains a protestation of innocence, when the accused intelligently concludes that his interests require a guilty plea and the evidence strongly supports his guilt of the offense charged.").

However, at various points in the hearing, the circuit court incorrectly stated that Appellant was before the court on three charges. Omitting the firearm charge entirely, the court outlined the possible sentences for murder, attempted murder, and attempted armed robbery, and asked Appellant if he understood those potential sentences.[3] The circuit court also told Appellant that the court had the right to accept or reject the plea negotiations and the sentencing recommendation, and informed Appellant that, if the court did not accept the negotiations, Appellant could withdraw his plea.

The circuit court then asked Appellant whether he was satisfied with his attorney's representation; whether he pled no contest; whether he entered the plea of his own free will; and whether he understood the constitutional rights he was giving up by pleading no contest, including the right to remain silent and the right to a jury trial. Appellant answered yes to each of the questions. The circuit court also asked whether anyone had promised Appellant anything or threatened him to acquire his guilty plea, and whether Appellant was under the influence of alcohol or drugs. Appellant answered no to both of the questions.

At the conclusion of its discussion with Appellant, the circuit court found that Appellant entered his pleas freely and voluntarily. Therefore, the court accepted the negotiated sentence, and sentenced Appellant to forty years' imprisonment for murder, thirty years' imprisonment for attempted murder, and twenty years' imprisonment for attempted armed robbery, the sentences to run concurrently.

Appellant then exited the courtroom. Immediately after Appellant's departure, the following discussion occurred:

[APPELLANT'S ATTORNEY]: Wait one second.

[THE SOLICITOR]: There's a second count, [possession of a firearm during the commission of a violent crime].

THE COURT: Beg your pardon?

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[3] Both parties agree that the circuit court properly referenced the charges for murder, attempted murder, and attempted armed robbery during the plea colloquy.

[THE SOLICITOR]:	The pistol count.
THE COURT:	I didn't see that one in there.
DEPUTY CLERK:	There's another sentencing sheet under that one.
THE COURT:	Oh, I see it.
[THE SOLICITOR]:	That's up to five years, Your Honor.
THE COURT:	You want [Appellant] to come back in to get that? I'll run it concurrent.
[APPELLANT'S ATTORNEY]:	Yes, sir. Thank you.
THE COURT:	It won't affect the sentence.
[APPELLANT'S ATTORNEY]:	Thank you, Your Honor.
THE COURT:	All right, thank you very much.
[THE SOLICITOR]:	Thank you, Your Honor.
THE COURT:	It is five years, run concurrent.

Thus, although Appellant was never brought back into the courtroom to enter a plea on the firearm charge, the circuit court nonetheless "accepted" Appellant's plea in his absence and sentenced him to an additional five years' imprisonment, to run concurrently with his other three sentences.[4]

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[4] Both parties agree the court erred in accepting Appellant's plea to the firearm charge in Appellant's absence. *See Boykin v. Alabama*, 395 U.S. 238, 243 n.5 (1969) (stating that such a plea is void because it is not an intentional relinquishment of a known constitutional right or privilege); *cf. Dover v. State*, 304 S.C. 433, 434–35, 405 S.E.2d 391, 392 (1991) (finding that a defendant's guilty plea was not knowing and voluntary when the trial court did not discuss the maximum allowable sentences for the crimes with the defendant).

Appellant made a motion for reconsideration or new trial, as well as an amended motion for reconsideration or new trial, alleging, *inter alia*, that he was neither properly questioned by the court regarding the firearm charge, nor even present when the court imposed the sentence for that charge. Thus, Appellant contended that his plea as to the firearm charge was invalid, and that he did not knowingly and voluntarily give up his constitutional rights with respect to that particular charge. Appellant further asserted that his negotiated plea agreement was a "package deal," and that because one plea was invalid, the entire negotiated plea was unenforceable.

Ultimately, the circuit court found that the "plea deal that [Appellant] agreed to on the record was forty (40) years for murder, attempted murder, and attempted armed robbery." Further, the court found that Appellant "was never questioned by the [c]ourt about his plea to the offense of possession of a weapon during the commission of a violent crime," and did not waive his right to be present for the discussion of that charge. Thus, the court invalidated Appellant's five-year sentence for the firearm charge. However, the circuit court held that because the firearm charge "was not a part of the negotiated plea[,] . . . [t]his decision has no bearing on the validity of the plea given by [Appellant] on the other three charges." (Citing *Phillips v. State*, 281 S.C. 41, 314 S.E.2d 313 (1984) (finding that invalidating a defendant's guilty plea on one charge does not affect the validity of a guilty plea for a different charge taken at the same hearing)). The court stated that the firearm charge was "reopened and subject to prosecution by the State."[5]

Appellant appealed, and we certified the appeal pursuant to Rule 204(b), SCACR.

ISSUE

> Whether a negotiated plea agreement involving multiple charges is invalid when the defendant does not enter knowing and voluntary pleas for all of the charges contained in the agreement?

STANDARD OF REVIEW

"In criminal cases, the appellate court sits to review errors of law only." *State v. Jacobs*, 393 S.C. 584, 586, 713 S.E.2d 621, 622 (2011) (citation omitted).

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[5] On March 27, 2013, the State *nolle prossed* the firearm charge.

"Appellate courts are bound by fact findings in response to motions preliminary to trial when the findings are supported by the evidence and not clearly wrong or controlled by error of law." *State v. Amerson*, 311 S.C. 316, 320, 428 S.E.2d 871, 873 (1993).

ANALYSIS

In general, a defendant's guilty plea is more than an admission of conduct; rather, it is a conviction that can deprive him of his liberty or other constitutionally protected interests. *Mabry v. Johnson*, 467 U.S. 504, 507 (1984); *Boykin*, 395 U.S. at 242. Therefore, the entry of a guilty plea implicates the protections of the Due Process Clause of the federal and state constitutions. *See* U.S. Const. amend. XIV (providing that states may not deprive a person of life, liberty, or property without due process of law); S.C. Const. art. I, § 3 (same).

Among these protections, the Due Process Clause requires that a defendant enter his guilty plea voluntarily, knowingly, and intelligently. *Anderson v. State*, 342 S.C. 54, 57, 535 S.E.2d 649, 651 (2000). Thus, prior to receiving a defendant's guilty plea, the court must advise the defendant of "the nature and crucial elements of the charges, the consequences of the plea [including any maximum and minimum penalties for the crimes], and the constitutional rights he is waiving" by pleading guilty. *Rollison v. State*, 346 S.C. 506, 511, 552 S.E.2d 290, 292 (2001) (citing *Anderson*, 342 S.C. at 57, 535 S.E.2d at 651); *see also Dover v. State*, 304 S.C. 433, 434, 405 S.E.2d 391, 392 (1991) (stating that a defendant knowingly and voluntarily pleads guilty when he fully understands the consequences of his plea and the charges against him).

Here, the State concedes that the circuit court erred in failing to properly question and advise Appellant of his rights with respect to the firearm charge. However, Appellant further argues that, in invalidating the firearm sentence, the circuit court simultaneously invalidated a portion of Appellant's negotiated plea agreement, thus rendering all other parts of the plea agreement—namely, Appellant's remaining three pleas—unenforceable as well. *Cf. Puckett v. United States*, 556 U.S. 129, 137 (2009) ("When a defendant agrees to [a] plea bargain, the Government takes on certain obligations. If those obligations are not met, the defendant is entitled to seek a remedy which might in some cases be rescission of the agreement, allowing him to take back the consideration he has furnished, *i.e.*, to withdraw his plea.").

When the terms and obligations set forth in a plea agreement are not fulfilled, appellate courts may consider whether that failure constitutes harmless error. *Id.* at 141 (stating that "breach of a plea deal is not a 'structural error,'" and thus is subject to harmless error analysis).[6] Here, Appellant received the forty-year sentence which he negotiated,[7] and further received the benefit of having one of the charges against him essentially dropped, as his criminal record will only reflect three convictions and not four. Therefore, to the extent there was error, Appellant has suffered no prejudice. *See id.* at 141–42 ("The defendant whose plea agreement has been broken by the Government will not always be able to show prejudice, either *because he obtained the benefits contemplated by the deal anyway (e.g., the sentence that the prosecutor promised to request)* or because he likely would not have obtained those benefits in any event . . . ." (emphasis added)).

Moreover, any possible error is harmless beyond a reasonable doubt. *Cf. Joseph v. State*, 351 S.C. 551, 560, 571 S.E.2d 280, 284 (2002) (rejecting the defendant's argument that his second guilty plea was involuntary and unknowing because it was part of a "package deal," after the PCR court invalidated the first of his two guilty pleas, and finding that "Petitioner was properly advised and sentenced on the murder charge. Further, [P]etitioner failed to show he was

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[6] *See also Puckett*, 556 U.S. at 141 (explaining that a "plea breach does not necessarily render a criminal trial fundamentally unfair or an unreliable vehicle for determining guilt or innocence; it does not defy analysis by harmless-error standards by affecting the entire adjudicatory framework; and the difficulty of assessing the effect of the error is no greater with respect to plea breaches . . . than with respect to other procedural errors at sentencing, which are routinely subject to harmlessness review" (internal citations omitted) (internal quotation marks omitted)).

[7] We note that the Due Process Clause is not implicated until the defendant enters his guilty plea, and that plea is accepted by the court. *See Mabry*, 467 U.S. at 507. Therefore, if the defendant enters into a negotiated plea agreement prior to the court's acceptance of his guilty plea, that agreement is a mere executory promise that, standing alone, has no constitutional significance, as it binds neither the government nor the defendant. *Id.*; *Reed v. Becka*, 333 S.C. 676, 685–87, 511 S.E.2d 396, 401–02 (Ct. App. 1999) (citations omitted). Only after the court accepts the defendant's guilty plea will the negotiated plea agreement become operative. *Reed*, 333 S.C. at 687, 511 S.E.2d at 402 (citation omitted).

induced to plead guilty or that he would have not pled guilty to murder but for the [invalidated] grand larceny charge"), *overruled on other grounds by State v. Gentry*, 363 S.C. 93, 610 S.E.2d 494 (2005); *Roscoe v. State*, 345 S.C. 16, 21, 546 S.E.2d 417, 419 (2001) (rejecting the defendant's argument that "**all** of his pleas [we]re affected by the [circuit court's] erroneous advice concerning the [maximum sentence for the] armed robbery charge," because the defendant "was properly advised and sentenced on the [remaining] charges, and he fail[ed] to demonstrate his pleas to these offenses were in any way affected by the mis-advice concerning armed robbery").

CONCLUSION

For the foregoing reasons, the circuit court's decision is

AFFIRMED AS MODIFIED.

BEATTY, HEARN, JJ. and Acting Justice James E. Moore, concur. PLEICONES, J., concurring in result only.

THE STATE OF SOUTH CAROLINA
In The Supreme Court

Carolyn M. Nicholson, Claimant, Petitioner,

v.

S.C. Department of Social Services, Employer, and State Accident Fund, Carrier, Defendants, Respondents.

Appellate Case No. 2014-000329

ON WRIT OF CERTIORARI TO THE COURT OF APPEALS

Appeal from The Workers' Compensation Commission

Opinion No. 27478
Heard September 24, 2014 – Filed January 14, 2015

REVERSED AND REMANDED

Kathryn Williams, of Kathryn Williams, PA, of Greenville, for Petitioner.

L. Brenn Watson and Zachary M. Smith, of Willson Jones Carter & Baxley, P.A., of Greenville, for Respondents.

JUSTICE HEARN: The question in this case is whether a woman who sustains a non-idiopathic fall at her place of employment while performing her job is entitled to receive workers' compensation. Despite how straightforward this issue appears to be, both the single commissioner and the court of appeals found Carolyn Nicholson, who fell while walking down the hallway on her way to a meeting, was not entitled to recover because her fall could have occurred anywhere. We reverse.

FACTUAL/PROCEDURAL HISTORY

Nicholson, a supervisor in the investigations area of child protective services for the South Carolina Department of Social Services (DSS), was on her way to a meeting when her foot caught on the hall carpet and she fell. She received treatment for pain to her neck, left shoulder, and left side connected with her fall. Nicholson's claim for workers' compensation was denied by the single commissioner because she failed to prove a causal connection between her fall and employment. The commissioner held there was nothing specific to the floor at DSS which contributed to Nicholson's fall and that she could have fallen anywhere.

A split panel of the commission reversed the single commissioner, with two members holding that Nicholson's fall was not unexplained or idiopathic,[1] but rather was a result of the friction on the carpeted area where she was required to work. The panel also noted it was irrelevant that she could have fallen in a similar way in any number of places—she fell at DSS. Accordingly, it held Nicholson's fall arose out of her employment and was therefore compensable.

The court of appeals reversed, holding that although the fall was not unexplained or idiopathic, the carpet was not a hazard or special condition peculiar to her employment that contributed to or caused Nicholson's injuries. *Nicholson v. S.C. Dep't of Soc. Servs.*, 405 S.C. 537, 546–48 784 S.E.2d 256, 261–62 (Ct. App. 2013). Therefore, it concluded her injuries did not arise out of her employment as a matter of law. *Id.* at 551, 784 S.E.2d at 264. We granted certiorari.

---

[1]An idiopathic fall is one that is "brought on by a purely personal condition unrelated to the employment, such as heart attack or seizure." 2 Modern Workers Compensation § 110:8.

ISSUE PRESENTED

Does an injury arise out of a claimant's employment when she falls while carrying out a task for her employer, but there is no evidence that a specific danger or hazard of the work caused the fall?

STANDARD OF REVIEW

On appeal from an appellate panel of the Workers' Compensation Commission, this Court can reverse or modify the decision if it is affected by an error of law or is clearly erroneous in view of the reliable, probative, and substantial evidence in the whole record. *Pierre v. Seaside Farms, Inc.*, 386 S.C. 534, 540, 689 S.E.2d 615, 618 (2010). "The claimant has 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." *Crisp v. SouthCo.*, 401 S.C. 627, 641, 738 S.E.2d 835, 842 (2013). In a workers' compensation case, the appellate panel is the ultimate fact-finder. *Pratt v. Morris Roofing, Inc.*, 357 S.C. 619, 622, 594 S.E.2d 272, 273 (2004). However, where there are no disputed facts, the question of whether an accident is compensable is a question of law. *Grant v. Grant Textiles*, 372 S.C. 196, 201, 641 S.E.2d 869, 872 (2007). Workers' compensation law is to be liberally construed in favor of coverage in order to serve the beneficent purpose of the Workers' Compensation Act; only exceptions and restrictions on coverage are to be strictly construed. *James v. Anne's Inc.*, 390 S.C. 188, 198, 701 S.E.2d 730, 735 (2010).

LAW/ANALYSIS

Nicholson argues the court of appeals erred in finding her injury did not arise out of her employment. Specifically, she contends the court incorrectly focused on whether there was a specific hazard or danger unique to her employment that occasioned her fall. We agree and clarify the framework for this analysis.

For an accidental injury to be compensable, it must "aris[e] out of and in the course of employment." S.C. Code Ann. § 42-1-160(A) (Supp. 2013). An injury arises out of employment if it is proximately caused by the employment. *Douglas v. Spartan Mills, Startex Div.*, 245 S.C. 265, 269, 140 S.E.2d 173, 175 (1965). Therefore "[i]t must be apparent to the rational mind, considering all the circumstances, that a causal relationship exists between the conditions under which

the work is performed and the resulting injury." *Hall v. Desert Aire, Inc.*, 376 S.C. 338, 350, 656 S.E.2d 753, 759 (Ct. App. 2007).

It is undisputed Nicholson's injuries occurred within the course of her employment. Thus, the only question is whether they arose out of her employment. In addressing this question, the court of appeals observed that "the causative danger must be peculiar to the work and not common to the neighborhood." The court reasoned that because carpet was a common danger not peculiar to Nicholson's employment, there was no causal connection between her injuries and her employment. *Nicholson*, 405 S.C. at 550–51, 748 S.E.2d at 264. In reaching this conclusion, the court relied on a larger pronouncement of the rule found in *Douglas*, 245 S.C. at 269, 140 S.E.2d at 175:

> It (the injury) arises 'out of' the 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.

Id. at 269, 140 S.E.2d at 175. We do not read this language to compel the result reached by the court of appeals. In our view, it simply establishes that an injury is not compensable absent some causal connection to the workplace. In other words, but for the claimant being at work, the injury would not have occurred. It does not require claimant to prove her injury is entirely unique to her employment, for any other interpretation would seriously undermine the law of workers' compensation. For example, a chef may cut himself with a knife, or a carpenter may fall off a

ladder just as easily while at home rather than at work. However, this possibility alone does not remove such an accident from the scope of compensation if the accident *occurred* at work. Alleging an accident is not unique to employment, without more, is not a viable basis for denying compensation.[2]

The court of appeals also concluded Nicholson failed to prove a causal connection between her employment and injury because she failed to establish her fall was the result of a hazard or special condition. Specifically, in reversing the appellate panel's award of coverage, the court of appeals held "the only fact connecting Nicholson's fall to her employment is that her injuries occurred while she was working in a carpeted area of DSS's building. The carpet on which Nicholson tripped and fell was not a hazard, a special condition, or peculiar to her employment." *Nicholson*, 405 S.C. at 551, 748 S.E.2d at 264. In support of its analysis, the court relied on *Bagwell v. Burwell*, 227 S.C. 444, 88 S.E.2d 611 (1955), and *Pierre* for the proposition that a claimant must demonstrate some danger or hazard caused the fall. Again, we believe the court of appeals erred in finding those cases controlled this factual scenario.

In *Bagwell*, the claimant suffered an idiopathic fall and died as a result of a subdural hemorrhage caused when his head struck the concrete floor. *Bagwell*,

[2] Furthermore, this constrained view of recovery is directly contrary to our workers' compensation jurisprudence, which has consistently allowed recovery for accidents that could occur under circumstances not related to employment. *See, e.g.*, *Beam v. State Workmen's Comp. Fund*, 261 S.C. 327, 330, 200 S.E.2d 83, 85 (1973) (affirming award of compensation for two teachers who died in an automobile accident on their way to a meeting); *Allsep v. Daniel Const. Co.*, 216 S.C. 268, 270, 57 S.E.2d 427, 427 (1950) (finding injury arose out of employment where claimant was injured after another employee engaged him in horseplay); *Schrader v. Monarch Mills*, 215 S.C. 357, 359, 55 S.E.2d 285, 286 (1949) (affirming finding that claimant's injuries arose out of his employment where claimant was bitten by a black widow spider); *Lanford v. Clinton Cotton Mills*, 204 S.C. 423, 429–32, 30 S.E.2d 36, 40 (1944) (affirming award of compensation for injuries sustained when claimant was involved in a physical altercation over the repair of crankshaft); *Ardis v. Combined Ins. Co.*, 380 S.C. 313, 323, 669 S.E.2d 628, 633 (Ct. App. 2008) (finding injury arose out of employment as a matter of law where claimant died of asphyxiation from smoke inhalation at the hotel he was staying for a work conference).

227 S.C. at 449, 88 S.E.2d at 613. The Court observed the well-settled notion that "[a] physical seizure unrelated to the employment is not such an accident as is compensable." *Id.* at 450–51, 88 S.E.2d at 614. However, it noted that simply concluding the fall was idiopathic was not the end of the inquiry, and that "[i]f, except for the employment, the fall, though due to a cause not related to the employment, would not have carried the consequences it did, then causal connection is established between injury and employment, and the accidental injury arose out of the employment." *Id.* at 453, 88 S.E.2d at 615. Accordingly, the Court proceeded to consider whether a special danger or hazard of claimant's employment contributed to the resultant injury. *Id.* The Court ultimately held the concrete floor was not a hazard of employment capable of bringing his idiopathic fall within the ambit of coverage. *Id.* at 454, 88 S.E.2d at 615.

The *Bagwell* court inquired whether there was a work-related hazard *only* after concluding the injury was not otherwise compensable. It therefore did not examine whether some hazard *caused* the fall, but looked at the *effect* on the resultant injury and whether a hazard increased the severity of the injury. *See* 2 Modern Workers Compensation § 110:8 ("In [one] type of idiopathic fall, employment does not cause the fall but it significantly contributes to the injury by placing the employee in a position which increases the dangerous effects of the fall. These injuries are compensable."). Here, Nicholson is not contending the carpet caused her to sustain a more serious injury; she simply argues she suffered a non-idiopathic fall that was proximately caused by the performance of her employment. *Bagwell* is thus not relevant to this case.

The court of appeals' reliance on *Pierre* is also misplaced. In *Pierre*, the claimant, a migrant worker, was injured when he slipped and fell on a wet sidewalk at the employer-provided housing. *Pierre*, 386 S.C. at 538, 689 S.E.2d at 617. The primary issue involved in *Pierre* was the application of the bunkhouse rule to a claimant who lived at a labor camp but was not expressly required to do so by his employer. *Id.* at 542–48, 689 S.E.2d at 619–22. After concluding Pierre was obligated to live at the camp due to the nature of the employment, the Court proceeded to consider the employer's assertion that Pierre's fall was not compensable because the sidewalk he fell on was no different in character from other sidewalks. *Id.* at 548–49, 689 S.E.2d at 622. The Court rejected this argument and found Pierre was exposed to the wet sidewalk because of his employment and therefore the requisite connection between injury and employment was established. *Id.*

Based on *Pierre*, the court of appeals held Nicholson could not recover because no special condition or hazard existed on the carpet. This reasoning misses the import of our holding in that case. There, the reference to the hazard or risk of the sidewalk was in response to the argument that because it could have happened anywhere, the fall was noncompensable. The Court's analysis did not hinge on whether the cause of the fall was something that could be characterized as hazardous or dangerous. Instead, it noted Pierre's work brought about his exposure to the situation which led to his fall, and the fact that this circumstance was not unique to his employment did not preclude recovery. Thus, the court of appeals erred in misapplying this isolated language in *Pierre*, which was employed to respond to the employer's argument that his fall could have occurred anywhere. This Court has never stated an injury must stem from a particular hazard or risk of the employment.

The court of appeals erred in requiring a claimant to prove the existence of a hazard or danger because it erroneously injected fault into workers' compensation law. The Workers' Compensation Act was designed to supplant tort law by providing a no-fault system focusing on quick recovery, relatively ascertainable awards, and limited litigation. *Wigfall v. Tideland Utils., Inc.*, 354 S.C. 100, 115, 580 S.E.2d 100, 107 (2003). Therefore, an employee need only prove a causal connection between the conditions under which the work is required to be performed and the resulting injury. *Grant Textiles*, 372 S.C. at 201, 641 S.E.2d at 871. As Professor Larson has aptly observed:

> The right to compensation benefits depends on one simple test: Was there a work-connected injury? Negligence, and, for the most part, fault, are not in issue and cannot affect the result. Let the employer's conduct be flawless in its perfection, and let the employee's be abysmal in its clumsiness, rashness and ineptitude; if the accident arises out of and in the course of employment, the employee receives an award. Reverse the positions, with a careless and stupid employer and a wholly innocent employee and the same award issues.
>
> Thus, the test is not the relation of an individual's personal quality (fault) to an event, but the relationship of an event to an employment. The essence of applying the test is not a matter of assessing blame, but of marking out boundaries.

Arthur Larson & Lex K. Larson, *Larson's Workers' Compensation Law* § 1.03[1]

(2014). Requiring an employee to prove a fall was the "fault" of the employer in creating a danger or hazard is unfaithful to the principles underlying the creation of workers' compensation and turns the entire system on its head. For an accidental injury to be compensable under the workers' compensation scheme there must be a causal connection between the employment and the injury; that is the test and the claimant need prove nothing more.

Having established the proper framework for this analysis, we turn to the ultimate question of whether Nicholson's fall and subsequent injury were causally connected to her employment. Because the facts surrounding her fall are undisputed, we decide this issue as a matter of law. *Grant Textiles*, 372 S.C. at 201, 641 S.E.2d at 872. Quite simply, Nicholson was at work on the way to a meeting when she tripped and fell. The circumstances of her employment required her to walk down the hallway to perform her responsibilities and in the course of those duties she sustained an injury. We hold these facts establish a causal connection between her employment and her injuries—the law requires nothing more. Because Nicholson's fall happened at work and was not caused by a condition peculiar to her, it was causally connected to her employment. Therefore, her injuries arose out of her employment as a matter of law and she is entitled to workers' compensation.

CONCLUSION

Based on the foregoing, we reverse the opinion of the court of appeals and remand for reinstatement of Nicholson's award.

TOAL, C.J., BEATTY, and KITTREDGE, JJ., concur. PLEICONES, J., concurring in a separate opinion.

JUSTICE PLEICONES: I concur in the decision to reverse the Court of Appeals because, in my opinion, the Commission's finding that petitioner suffered a compensable injury when her foot caught on the carpet was supported by substantial evidence and therefore should have been upheld. *Whigham v. Jackson Dawson Commc'ns*, 410 S.C. 131, 763 S.E.2d 420 (2014). I write separately because I disagree with much of the majority's exposition of law.

The majority commits two errors, in my opinion. First, it misapplies the "arising out of" requirement for compensability by equating it to the "in the course of" requirement. *See e.g. Owings v. Anderson County Sheriff's Dep't*, 315 S.C. 297, 433 S.E.2d 869 (1993) ("in the course of" refers to the time, place, and circumstances under which the accident occurred, while "arising out of" requires a causative connection between employment and the cause of the accident). Second, the majority absolves petitioner of her obligation to present evidence that her unexplained fall on a level surface was the result of special conditions or circumstances. *Bagwell v. Ernest Burnwell, Inc.*, 227 S.C. 444, 88 S.E.2d 611 (1955).

South Carolina is in the minority of jurisdictions that deny compensation for unexplained falls. *Crosby v. Wal-Mart Store, Inc.*, 330 S.C. 489, 499 S.E.2d 253 (1998), citing 1 Arthur Larson & Lex K. Larson, *Workers Compensation Law* § 10.31(a) (1977). Accordingly, it is not enough that a claimant show that she fell while at work but rather, when the fall occurs on a level surface, that she present evidence to explain her fall. *Id.*; *Bagwell, supra*. In my opinion, there is evidence in this record to support the Commission's finding that petitioner met her burden of proving her fall was compensable.

I concur in the decision to reverse the Court of Appeals' decision.

THE STATE OF SOUTH CAROLINA
In The Supreme Court

Judy Marie Barnes, Employee, Petitioner,

v.

Charter 1 Realty, Employer, and Technology Insurance Co. Amtrust South, Carrier, Respondents.

Appellate Case No. 2012-212389

ON WRIT OF CERTIORARI TO THE COURT OF APPEALS

Appeal from The Workers' Compensation Commission

Opinion No. 27479
Heard September 24, 2014 – Filed January 14, 2015

REVERSED AND REMANDED

James K. Holmes and David T. Pearlman, both of the Steinberg Law Firm, LLP, of Charleston, and Michael J. Jordan, of The Steinberg Law Firm, LLP, of Goose Creek, for Petitioner.

Natalie B. Fisher, of Fisher Law Firm, LLC, of Mount Pleasant, for Respondents.

JUSTICE HEARN: This case requires us to clarify the idiopathic exception to workers' compensation. Judy Barnes tripped and fell at work while walking down the hallway to check e-mail for another employee. Although there was no evidence that her fall was precipitated by an internal condition—such as her legs giving out or her fainting—the single commissioner and appellate panel found that her fall was idiopathic and therefore noncompensable. The court of appeals affirmed. We now reverse.

FACTUAL/PROCEDURAL HISTORY

Barnes was employed as an administrative assistant at Charter 1 Realty. On the day of her injury, Barnes was asked to check the e-mail of one of the realtors before noon. Around 11:30 a.m., Barnes left her desk and walked toward the realtor's office. However, she stumbled, fell, and sustained serious injuries: a broken left femur, broken left humerus and a torn rotator cuff.

Barnes subsequently filed a claim for workers' compensation. At the hearing, Barnes testified she was hurrying to the realtor's office to check her e-mail and that caused her to fall. Evidence was also introduced that her husband did not like the shoes she wore, and he had told her she needed to pick up her feet when she walked.

The single commissioner denied her claim, finding there was no explanation for the fall and it was not caused by some hazard at work or a deficiency in the carpet. Based upon these findings, the commissioner concluded Barnes' fall was idiopathic. The commissioner also concluded no competent evidence was presented that her employment contributed to her fall.

The appellate panel affirmed, adopting the order of the single commissioner in its entirety. Barnes appealed and the court of appeals affirmed in a memorandum decision. *Barnes v. Charter 1 Realty*, Op. No 2012-UP-025 (S.C. Ct. App. filed Jan. 25, 2012). We granted a writ of certiorari.

ISSUES PRESENTED

I. Did the court of appeals err in affirming the appellate panel's finding that Barnes' fall was idiopathic?

II. Did the court of appeals err in affirming the appellate panel's finding that Barnes' fall did not arise out of her employment?

STANDARD OF REVIEW

Workers' compensation law is to be liberally construed in favor of coverage to serve the beneficent purpose of the Workers' Compensation Act; therefore, only exceptions and restrictions on coverage are to be strictly construed. *James v. Anne's Inc.*, 390 S.C. 188, 198, 701 S.E.2d 730, 735 (2010). On appeal from an appellate panel of the Workers' Compensation Commission, this Court can reverse or modify the decision if it is affected by an error of law or is clearly erroneous in view of the reliable, probative, and substantial evidence in the whole record. *Pierre v. Seaside Farms, Inc.*, 386 S.C. 534, 540, 689 S.E.2d 615, 618 (2010). "The claimant has 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." *Crisp v. SouthCo.*, 401 S.C. 627, 641, 738 S.E.2d 835, 842 (2013). In a workers' compensation case, the appellate panel is the ultimate fact-finder. *Pratt v. Morris Roofing, Inc.*, 357 S.C. 619, 622, 594 S.E.2d 272, 273 (2004). However, where there are no disputed facts, the question of whether an accident is compensable is a question of law. *Grant v. Grant Textiles*, 372 S.C. 196, 201, 641 S.E.2d 869, 872 (2007).

LAW/ANALYSIS

Barnes argues the court of appeals erred in affirming the finding that her fall was idiopathic and that it did not arise out of her employment. We agree.

I. IDIOPATHIC INJURIES

Based on the finding that there was no irregularity in the carpeting and Barnes could not otherwise explain her fall, the appellate panel held the fall was idiopathic and the court of appeals affirmed based on substantial evidence. However, we conclude the panel's holding is a departure from settled jurisprudence regarding idiopathic falls, and endeavor to clarify the scope of this doctrine. Because we hold the appellate panel committed an error of law, we do not believe the substantial evidence rule controls our decision.

Idiopathic falls are excepted from the general rule that a work-related injury

is compensable. As an exception to workers' compensation coverage, the idiopathic doctrine should be strictly construed. *See Anne's Inc.*, 390 S.C. at 198, 701 S.E.2d at 735. An idiopathic fall is one that is "brought on by a purely personal condition unrelated to the employment, such as heart attack or seizure." 2 Modern Workers Compensation § 110:8. Idiopathic injuries are generally noncompensable absent evidence the workplace contributed to the severity of the injury. *Bagwell v. Ernest Burwell, Inc.*, 227 S.C. 444, 452, 88 S.E.2d 611, 614 (1955). The idiopathic fall doctrine is based on the notion that an idiopathic injury does not stem from an accident, but is brought on by a condition particular to the employee that could have manifested itself anywhere. *See Ellis v. Spartan Mills*, 276 S.C. 216, 219, 277 S.E.2d 590, 592 (1981) ("'The adjective 'accidental' qualifies and described the injuries contemplated by the statute as having the quality or condition of happening or coming by chance or without design, taking place unexpectedly or unintentionally. If one becomes ill while at work from natural causes, the state or condition is not accidental since it is a natural result or consequence and might be termed normal and to be expected.'" (quoting *Hiers v. Brunson Constr. Co.*, 221 S.C. 212, 230, 70 S.E.2d 211, 219–220 (1952)).

In finding the unexplained nature of Barnes' fall rendered it idiopathic, the appellate panel relied on the court of appeals' opinion in *Crosby v. Wal-Mart Store, Inc.*, 330 S.C. 489, 499 S.E.2d 253 (Ct. App. 1998). In *Crosby*, the court affirmed the finding that the claimant's fall was idiopathic, basing its conclusion on the fact the fall was a result of an internal failure or breakdown in the knee. *Id.* at 494–495, 499 S.E.2d at 256. The court specifically referenced testimony of another employee that Crosby had indicated her leg "gave out" to support this finding. *Id.* at 494, 499 S.E.2d at 256. Thus, in *Crosby* the court did not find the cause of the fall was unknown, but found it was in fact occasioned by an internal and personal condition specific to Crosby, and was therefore idiopathic in nature.

The holding in Crosby is in harmony with how our courts have consistently applied the idiopathic exception—the circumstances of the fall were not simply unexplained, but indicated the cause was internal. *See, e.g.*, *Bagwell*, 227 S.C. at 450, 88 S.E.2d at 613 (finding fall was idiopathic where employee was standing at a desk and suddenly fell rigidly backward without crying out or making any attempt to catch himself); *Miller v. Springs Cotton Mills*, 225 S.C. 326, 330, 82 S.E.2d 458, 459 (1954) (denying compensation finding the claimant's knee failed to function normally and concluding the fall was caused by "some internal failure or breakdown in the knee which might have happened at any time"): *c.f. Shatto v.*

McLeod Reg'l Med. Ctr., 408 S.C. 595, 600, 759 S.E.2d 443, 445–46 (Ct. App. 2014) (affirming award of compensation and concluding fall was not idiopathic where claimant did not "directly and unequivocally testify to what specifically caused her fall" but "identified specific, non-internal reasons for tripping").

By contrast, the appellate panel here concluded Barnes' fall was idiopathic simply because she could not point to any cause of the fall. Specifically, it found:

> There was no substance, no object, no item, no debris, or anything else over which the Claimant tripped. The surface she walked on in the hallway was level without any bubbling or alterations in the carpet. There was no evidence her fall was caused by any hazards of her work. Therefore, the greater weight of the evidence, including the Claimant's own testimony, indicates that the Claimant's injuries were caused by an idiopathic fall.

This reasoning does not comport with our jurisprudence of idiopathy. As discussed *supra*, an idiopathic fall arises from an internal breakdown personal to the employee, thus negating any causal connection. A finding that a fall is idiopathic is not warranted simply because the claimant is unable to point to a specific cause of her fall.

We therefore find the appellate panel's conclusion that Barnes' fall was idiopathic is an error of law and contrary to the very foundation of the idiopathic exception. There is no evidence that her leg gave out or she suffered some other internal breakdown or failure. She did not faint or have a seizure. It is irrelevant that the carpet or hallway was not defective. Whether she tripped because she was hurrying or she tripped over her own feet, neither is an internal breakdown or weakness that falls within the ambit of idiopathy. Accordingly, we find the court of appeals erred in affirming the finding that Barnes' fall was idiopathic.[1]

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[1] We soundly reject the respondents' assertion that there is substantial evidence in the record to support the finding that Barnes suffered an idiopathic fall. In support of this argument, the respondents point only to the evidence that Barnes tripped over her own feet, asserting that this could have happened anywhere. We have no quarrel with that characterization of the facts; however, as discussed *supra*, they fail to establish an idiopathic fall. Additionally, our review of the record contains no suggestion that Barnes suffered any internal breakdown which caused this fall.

II. ARISING OUT OF EMPLOYMENT

The respondents also argue there is substantial evidence in the record to support the finding Barnes' injury did not arise out of her employment. We disagree.

For an accidental injury to be compensable, it must "aris[e] out of and in the course of the employment." S.C. Code Ann. § 42-1-160(A) (Supp. 2013). Arising out of refers to the injury's origin and cause, whereas in the course of refers to the injury's time, place, and circumstances. *Osteen v. Greenville Cnty. Sch. Dist.*, 333 S.C. 43, 50, 508 S.E.2d 21, 24 (1998). An injury arises out of employment if it is proximately caused by the employment. *Douglas v. Spartan Mills, Startex Div.*, 245 S.C. 265, 269, 140 S.E.2d 173, 175 (1965). For an injury to arise out of employment, there must be a causal connection between the conditions under which the work is required to be performed and the resulting injury. *Grant Textiles*, 372 S.C. at 201, 641 S.E.2d at 871.

Because we find the material facts are not in dispute, we decide this issue as a matter of law. In holding Barnes' injury was noncompensable, the appellate panel found:

> Although the Claimant undoubtedly fell while in the work place this fact alone does not make her claim compensable. The Claimant was at work and she testified she was going to check e-mails when she fell in the hallway, but there is no competent evidence that her employment contributed to her fall or its effect on her.

In our view, the appellate panel's finding does not support its ultimate conclusion. As the panel acknowledged, Barnes was performing a work task when she tripped and fell. Those facts alone clearly establish a causal connection between her employment and the injuries she sustained.[2] *See Nicholson v. S.C. Dep't of Social*

Although she fell previously in a grocery store parking lot, that fall was also apparently due to her tripping, not a personal health defect. We find no legal authority indicating clumsiness is an exception to workers' compensation.

[2] As the respondents' attorney admitted during oral arguments, had Barnes been on the way to the bathroom or to get a cup of coffee, her injuries would be compensable under the personal comfort doctrine. *See Mack v. Branch No. 12,*

Servs., Op. No. 27478 (S.C. Sup. Ct. filed Jan. 14, 2015) (finding claimant who tripped and fell on the way to a meeting was entitled to compensation because "[t]he circumstances of her employment required her to walk down the hallway to perform her responsibilities and in the course of those duties she sustained an injury; these facts establish a causal connection between her employment and her injuries"). Barnes clearly established that she was performing her job when she sustained an accidental injury; we therefore hold her injuries arose out of her employment as a matter of law.

CONCLUSION

Based on the foregoing, we reverse the court of appeals' opinion affirming the appellate panel's denial of compensation and remand for a determination of the appropriate award.

TOAL, C.J., BEATTY, and KITTREDGE, JJ., concur. PLEICONES, J., dissenting in a separate opinion.

Post Exch., Fort Jackson, 207 S.C. 258, 264, 35 S.E.2d 838, 840 (1945) ("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."). We reject any interpretation of workers' compensation law which would permit recovery when an employee falls while attending to her personal needs but denies recovery when she falls while actually working.

JUSTICE PLEICONES: I respectfully dissent. In my opinion, this case presents a question of substantial evidence and not one of law, and the Court of Appeals was correct to affirm the Workers' Compensation Commission's decision to deny compensation. I would therefore dismiss the writ of certiorari as improvidently granted.

An accident is compensable only where it both "arises out" of employment and occurs "in the course of employment." These two requirements are not synonymous, and the claimant must prove both. An injury "arises out" of employment when there is a causal connection between the conditions under which the work is required to be performed and the injury. "In the course of employment" requirement is met by proof that the accident happened within the period of employment, at a place the employee reasonably may be in the performance of her duties, and while fulfilling those duties or engaging in something incidental to those duties. *See*, *e.g.*, *Ardis v. Combined Ins. Co.*, 380 S.C. 313, 669 S.E.2d 628 (Ct. App. 2008). In my opinion, the majority erroneously equates these two requirements when it concludes petitioner's fall "arose out" of her employment because she was performing her job when she fell.

South Carolina is among the minority of jurisdictions that deny compensation for unexplained falls. *Crosby v. Wal-Mart Store, Inc.*, 330 S.C. 489, 499 S.E.2d 253 (1998), citing 1 Arthur Larson & Lex K. Larson, *Workers' Compensation Law* § 10.31(a) (1977). Absent special conditions or circumstances, a level floor cannot cause an accident. *Bagwell v. Ernest Burwell, Inc.*, 227 S.C. 444, 88 S.E.2d 611 (1955). Where the claimant presents no evidence as to what caused the fall, it is wholly conjectural to say that "employment was a contributing cause of [petitioner's] injury." *Id.* Here, since petitioner presented no evidence that her employment was a proximate cause of her fall, she did not meet the "arises out of employment" component required to prove a compensable injury.

In my opinion, substantial evidence supports the Commission's decision that petitioner failed to meet her burden of showing her fall was compensable. Further, to the extent the Commission erred in equating 'idiopathic' falls with 'unexplained' falls, the record nonetheless reflects petitioner presented no

evidence that her fall arose out of her employment, that is, that her fall on a level surface was the result of a special condition or circumstance. *Bagwell*, *supra*.

I respectfully dissent and would dismiss the writ of certiorari as improvidently granted.