THE STATE OF SOUTH CAROLINA
In The Supreme Court

Frantz Pierre, Appellant,

v.

Seaside Farms, Inc., Employer, and American Home Assurance Insurance Co. C/O AIG, Carrier, Respondents.

Appeal From Beaufort County
Marvin H. Dukes, III, Circuit Court Judge

Opinion No. 26777
Heard October 20, 2009 – Filed February 16, 2010

REVERSED AND REMANDED

Ilene Stacey King, of Turnipseed & Associates, of Columbia; Shaundra F. Young and James Hadstate, both of North Charleston; and Andrew H. Tuner, of Montgomery, Alabama; for Appellant.

Stephen L. Brown, Catherine H. Chase, and Lee Louis Gremillion, IV, all of Young Clement Rivers, of Charleston, for Respondents.

Each room held three people, and up to 96 people could reside there. Outside the building there was also a sink for washing clothes and other items.

As soon as Pierre finished his paperwork around 4 p.m. or 5 p.m. on June 5, 2003, the crew leader drove Pierre to the housing supplied by Seaside

continuous call. In addition, he was not engaged in any activities that were calculated to further, either directly or indirectly, the business of his employer. Finally, the wet sidewalk where Pierre fell was not different in character or design from other sidewalks, and the risk associated with slipping on the sidewalk was not one uniquely associated with his employment; rather, it was one he would have been equally exposed to apart from his employment.

The Commission's Appellate Panel upheld the hearing commissioner's order and incorporated it by reference. However, one member separately wrote to state that, although he agreed with the hearing commissioner's refusal to adopt the "bunkhouse rule," he disagreed with the hearing commissioner's conclusion that Pierre's accident did not arise out of his employment because the sidewalk in question was no different in character or design from any other sidewalk. The member stated this was too narrow a reading of the requirement that the accident "arise out of" the claimant's employment.

Pierre appealed to the circuit court, arguing his accident did arise out of and in the course ofse o

Seaside Farms because he was not performing any duties for his employer when the accident occurred. The court stated Pierre's proposed common-law theory of the "bunkhouse rule" was not applicable, in any event, as it does not apply when the employee is not required to reside in the employer-supplied housing. Pierre appeals.

STANDARD OF REVIEW

The Administrative Procedures Act (APA) provides the standard for judicial review of decisions by the Commission. Geathers v. 3V, Inc., 371 S.C. 570, 641 S.E.2d 29 (2007); Shealy v. Aiken County, 341 S.C. 448, 535

LAW/ANALYSIS

A claimant may recover workers' compensation benefits if he sustains an "injury by accident arising out of and in the course of employment." S.C. Code Ann. § 42-1-160(A) (Supp. 2009). "Arising out of" refers to the origin and cause of the accident; the phrase "in the course of" refers to the time, place, and circumstances under which the accident occurred. Hall v. Desert Aire, Inc., 376 S.C. 338, 349, 656 S.E.2d 753, 758 (Ct. App. 2007). An accident arises out of the employment when the accident happens because of the employment, as when the employment is a contributing proximate cause. Sola v. Sunny Slope Farms, 244 S.C. 6, 135 S.E.2d 321 (1964).

"In determining if an accident arose out of and in the course of employment, each case must be decided with reference to its own attendant circumstances." Hall, 376 S.C. at 349, 656 S.E.2d at 759. "The general policy in South Carolina is to construe the Workers' Compensation Act in favor of coverage, and any reasonable doubts as to construction should be resolved in favor of the claimant." Id. at 350, 656 S.E.2d at 759.

"Where employer and employee are subject to the compensation act, . . . an injured employee should not be excluded from the benefits of the law upon the ground that the accident did not arise out of and in the course of his employment when there is substantial doubt (arising from the proven facts) of the propriety of such conclusion." Pelfrey v. Oconee County, 207 S.C. 433, 440, 36 S.E.2d 297, 300 (1945). "These words are construed broadly and should continue to be so construed." Id. (citation omitted). "Common sense indicates that a compensation law passed to increase workers' rights (because their common law rights were too narrow) should not ther094(s)-0.108 0v2989(t)0(O)-0.

The court found that, "although the nature of his employment arguably required that he live on the premises," Jauregui was not continuously on call and at the time of his injury was not engaged in a duty that was calculated to further, directly or indirectly, the employer's business. Id. at 271. The court noted there was no precedent in that jurisdiction for it to follow the bunkhouse rule, in any event, and without it the employee could not prevail. Id. at 271-72.

Initially, we note that, although South Carolina courts frequently look to North Carolina's rulings since our workers' compensation code is very similar, there is no requirement that we abide by North Carolina's determination for our own law, particularly since it was decided by an intermediate appellate court. See Parrott v. Barfield Used Parts, 206 S.C. 381, 34 S.E.2d 802 (1945) (stating North Carolina workers' compensation decisions, while generally persuasive, are not binding on this Court).

Further, we do not find Jauregui persuasive. The decision does not comport with emerging developments in workers' compensation law, as courts have become more cognizant of the realities of the particularized conditions under which migrant workers are employed. For example, although the North Carolina court ostensibly determined that Jauregui was not "required" to live at the labor camp, presumably because he was not contractually required to do so, this ignores the reality that virtually all of the migrant workers lived on the employer's premises as there was no real housing alternative, and their presence on the employer's premises benefited not only the workers, but also the employer, since the workers could be transported each day to begin work without delay. The employer could not have found workers if it had not provided housing since the wages earned by the workers did not enable them to afford housing in the area. Thus, the first premise in its analysis, i.e., that Jauregui was not required to live at the labor camp, is inaccurate.

The North Carolina court, despite its holding, acknowledged this fact when it observed that "the nature of his [Jauregui's] employment arguably

"adopt that opinion as [its] own." Chandler v. Nello L. Teer Co., 287 S.E.2d

cases is that it is the obligation of employment to be on the premises that creates the risk of injury to the employee; when the employee is free to leave when he or she pleases, that employment connection does not exist." Id. "The bunkhouse rule represents an incremental extension of that line of cases." Id. "It is the obligation of employment to reside on the premises that subjects the employee to the risk that resulted in injury." Id. at 216.

The court observed that although Hernandez was not contractually required to live on the premises, there was no other practical alternative, as even the employer had acknowledged that housing was supplied only because there was no other place for the workers to stay. Id. at 216-17. The court noted: "Larson observes that . . . the 'better view

duty exclusively to the particular barracks where the employee was required to live." Id.

The court observed that migrant farm workers, by the nature of their jobs, must travel to follow the harvesting of produce and thus they do not establish residences, so often their housing is supplied as part of their employment;[5] additionally, their proximity to the farms benefits their employers since the products they are dealing with are perishable and providing housing "is an assurance that the workers are readily available at any time within a short distance from the work area." Id. (quoting Dupree v. Barney, 163 A.2d 901, 906-07 (Penn. 1960)).

In a case involving a logging employee, the New Mexico Court of Appeals also recognized the unique employment circumstances of workers who must live at remote work sites. Lujan v. Payroll Express, Inc., 837 P.2d 451 (N.M. Ct. App. 1992), cert. denied (N.M. 1992). In Lujan, the employee died of carbon monoxide poisoning while residing in a van at a logging site that was accessible only by rough roads. Id. at 452.

The court, applying the bunkhouse rule and citing the preferred view, i.e., that "even in the absence of a requirement in the employment contract,

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were available within a reasonable distance . . . ." Id. at 454. The court remarked, "It seems particularly unreasonable to suggest that the worker in this case had viable alternative sleeping arrangements" where the nearest motels were thirty miles away and would have cost Lujan almost half of his daily wages to obtain. Id.

We find the reasoning in these cases persuasive and that they represent the modern view in employee-residence jurisprudence. Applying this reasoning, we conclude in the current appeal that the Commission's findings that Pierre was not required to live on his employer's premises and that his presence did not further, either directly or indirectly, the interest of his employer are not supported by substantial evidence. The president and part-owner of Seaside Farms stated that up to 96 people are allowed to reside in the Land's End camp, where most of the packers stayed. At peak operation, over 100 people were employed, and approximately 10 people (mostly locals

different in character from other sidewalks is not supported by substantial evidence in the record. Pierre's accident occurred as a result of a hazard that existed on the employer's premises, i.e., Pierre slipped and fell on a wet sidewalk just outside the employees' housing facility. The sidewalk was wet because another person was using the outside sink and the water ran down the sidewalk. The employer's placement of the sink and the apparent lack of drainage created the wet conditions that caused Pierre to fall. Thus, the source of the injury was a risk associwas wet

premises by the nature of his employment, and he was making a reasonable use of the employer-provided premises at the time of his accident. Moreover, his injury is causally related to his employment in that it was due to the conditions under which he lived, i.e., a wet sidewalk outside his building. Consequently, the decision of the circuit court is reversed and the matter is remanded for further proceedings in accordance with this opinion.

REVERSED AND REMANDED.

TOAL, C.J., WALLER and KITTREDGE, JJ., concur. PLEICONES, J., concurring in result only.