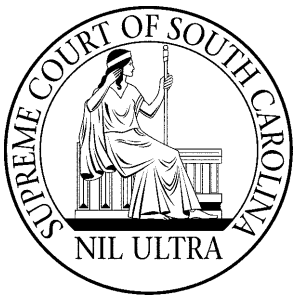
The Supreme Court of South Carolina

RE: Applications for the Position of the Clerk of Court of the Supreme Court of South Carolina

After serving the Supreme Court of South Carolina for almost thirty-eight years with the last twenty-two years as its clerk of court, Daniel E. Shearouse has indicated a desire to retire once a successor has been appointed to fill the position of clerk of court. Accordingly, applications are now being accepted from persons interested in applying for this clerk of court position.

Information regarding the application requirements and the duties of this position may be obtained at https://www.governmentjobs.com/careers/sc/jobs/3029249/clerk-of-court-supreme-court. Applications will be accepted through April 26, 2021.



OPINIONS

OF

THE SUPREME COURT

AND

COURT OF APPEALS

OF

SOUTH CAROLINA

ADVANCE SHEET NO. 11
March 31, 2021
Daniel E. Shearouse, Clerk
Columbia, South Carolina
www.sccourts.org

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THE STATE OF SOUTH CAROLINA
In The Supreme Court

In the Matter of Former Charleston Municipal Court Judge Joseph Sidney Mendelsohn, Respondent.

Appellate Case No. 2020-001622

Opinion No. 28018
Submitted March 9, 2021 – Filed March 31, 2021

PUBLIC REPRIMAND

Disciplinary Counsel John S. Nichols and Deputy Disciplinary Counsel Carey Taylor Markel, of Columbia, for the Office of Disciplinary Counsel.

Donald Higgins Howe, of Charleston, for Respondent.

PER CURIAM: In this judicial disciplinary matter, Respondent and the Office of Disciplinary Counsel (ODC) have entered into an Agreement for Discipline by Consent (the Agreement) pursuant to Rule 21 of the Rules for Judicial Disciplinary Enforcement found in Rule 502 of the South Carolina Appellate Court Rules. In the Agreement, Respondent admits misconduct, agrees to pay the costs incurred by ODC and the Commission on Judicial Conduct (Commission), and consents to the imposition of any sanction set forth in Rule 7(b), RJDE, Rule 502, SCACR. An investigative panel of the Commission unanimously recommends acceptance of the Agreement and that a Public Reprimand be imposed. We accept the Agreement and issue a Public Reprimand. The facts, as set forth in the Agreement, are as follows.

Facts

On January 31, 2019, J.T. was issued a City of Charleston traffic ticket, with a trial date set for February 14, 2019. On February 13, 2019, Respondent obtained from the City of Charleston docket clerk the January 31, 2019 ticket which had been issued to J.T. Respondent told the docket clerk J.T. was his friend. Respondent filled out J.T.'s traffic ticket, checking the boxes for "Municipal Court," "Trial Judge," "Appeared," and "Not Guilty." Respondent affixed his signature to J.T.'s traffic ticket and dated it February 14, 2019. On February 14, 2019, Judge Alesia Rico Flores was scheduled to preside over the City of Charleston Municipal Court Traffic Court cases, including J.T.'s traffic ticket. When Judge Flores obtained J.T.'s ticket, a note was attached which read "Mendolsohn disposed of ticket." J.T. did not appear in City of Charleston Municipal Court on February 13 or February 14, 2019.

On February 22, 2019, Respondent drafted the following note to City of Charleston Police Officer Coghlan, "Mr. Coghlan, Can you see your way clear to a dismissal? Thanks, Joe Mendelsohn." Respondent attached the note to a February 7, 2019 City of Charleston traffic ticket Officer Coghlan issued to P.K. P.K. is Respondent's brother-in-law.

Respondent admits that it was professional misconduct for him to take the actions he took with regard to the two tickets. Respondent states, not by way of excuse for his inappropriate conduct, that both tickets were written for 404 Calhoun Street, the area where the James Island Connector empties onto the downtown peninsula of Charleston into Calhoun Street. During times of heavy traffic, the left lane would back up, forcing drivers to come to a stop on the downside of a bridge, thereby placing them in a position for a rear end collision as other drivers cleared the crest of the expressway. Many drivers chose to move into the right lane and bypass traffic (on the left) by traversing illegally an area delineated by white (not yellow) lines nearer to the bottom of the bridge.

Law

Respondent admits that by his conduct he has violated the following provisions of the Code of Judicial Conduct, Rule 501, SCACR: Canon 1 (judge shall uphold integrity of judiciary); Canon 1(A) (judge shall personally observe high standards

of conduct to preserve integrity of judiciary); Canon 2 (judge shall avoid impropriety and the appearance of impropriety); Canon 2(A) (judge shall comply with the law and act in a manner that promotes public confidence in the integrity and impartiality of the judiciary); Canon 2(B) (judge shall not allow family or social relationships to influence the judge's judicial conduct or judgment); Canon 3(B)(7) (judge shall not initiate or consider ex parte communications); Canon 3(B)(8) (judge shall dispose of all judicial matters fairly); Canon 3(E) (judge shall disqualify himself from proceedings in which his impartiality might be questioned). Respondent also admits his misconduct constitutes grounds for discipline under Rule 7(a)(1), RJDE, Rule 502, SCACR (violation of the Code of Judicial Conduct shall be a ground for discipline).

Conclusion

We find Respondent's misconduct warrants a public reprimand. Accordingly, we accept the Agreement and hereby publicly reprimand Respondent for his misconduct. Notably, this is the strongest sanction we can impose given the fact that Respondent has already resigned his duties as a judge. *See In re Gravely*, 321 S.C. 235, 467 S.E.2d 924 (1996) ("A public reprimand is the most severe sanction that can be imposed when the respondent no longer holds judicial office.").

PUBLIC REPRIMAND.

BEATTY, C.J., KITTREDGE, HEARN, FEW and JAMES, JJ., concur.

THE STATE OF SOUTH CAROLINA
In The Supreme Court

In the Matter of Thurmond Brooker

Appellate Case No. 2020-001181

Opinion No. 28019
Submitted March 12, 2021 – Filed March 31, 2021

PUBLIC REPRIMAND

Disciplinary Counsel John S. Nichols and Deputy Disciplinary Counsel Carey Taylor Markel, both of Columbia, for the Office of Disciplinary Counsel.

Thurmond Brooker, of Florence, Pro Se.

PER CURIAM: In this attorney disciplinary matter, Respondent and the Office of Disciplinary Counsel (ODC) have entered into an Agreement for Discipline by Consent (Agreement) pursuant to Rule 21 of the Rules for Lawyer Disciplinary Enforcement (RLDE) contained in Rule 413 of the South Carolina Appellate Court Rules (SCACR). In the Agreement, Respondent admits misconduct, consents to the imposition of a confidential admonition or a public reprimand, and agrees to pay the costs incurred by ODC and the Commission on Lawyer Conduct (Commission) in investigating and prosecuting this matter. We accept the Agreement and publicly reprimand Respondent. The facts, as set forth in the Agreement, are as follows.

I.

Matter A

In 2006, Respondent represented Client A at a trial in magistrate's court on a charge of public intoxication and successfully moved for dismissal of the case. After the case was dismissed, Client A asked Respondent to represent him in a lawsuit for unlawful arrest. Client A alleges Respondent agreed to represent him but failed to communicate with him and failed to file suit. Respondent maintains that he told Client A that he would look into the matter and would represent Client A if he believed Client A had a viable 42 U.S.C. § 1983 claim with a reasonable chance of success. In May 2007, Respondent's office issued a receipt to Client A indicating he had paid $250 for a court filing. Respondent admits that he received the $250 but claims the notation on the receipt was an error. Respondent states that the $250 was in order to allow him to review the matter to determine whether Client A had a viable claim. Respondent determined the claim was not viable and did not file suit. Respondent believes he orally informed Client A that his section 1983 claim was not viable. Respondent is unsure, however, of when he informed Client A of his decision and did not advise him in writing. Respondent has refunded $250 to Client A. Respondent states that he has implemented office procedures to prevent the reoccurrence of misconduct such as that which occurred with Client A. Respondent admits his conduct in this matter violated the following Rules of Professional Conduct, Rule 407, SCACR: Rule 1.4 (communication) and Rule 1.16(d) (notice to client upon termination of representation).

Matter B

In 2004, Respondent agreed to represent Client B in a personal injury case. Respondent's contingency fee agreement provided that Respondent could withdraw from the representation upon written notice to Client B. The agreement further provided that Respondent's fee would be thirty-three percent of any recovery and that Client B would be responsible for any expenses incurred in connection with the matter. It failed to state, however, whether the fee was to be calculated before or after the deduction of expenses as required by Rule 1.5(c) of the Rules of Professional Conduct, Rule 407, SCACR. Respondent eventually decided to discontinue his representation of Client B. Respondent and Client B disagree as to whether Respondent advised that he was ceasing work in the case, but Respondent

admits he did not notify Client B in writing as envisioned by the fee agreement. Respondent states he has amended his fee agreement to reflect that fees will be deducted prior to the deduction of expenses. Respondent admits his conduct in this matter violated the following Rules of Professional Conduct, Rule 407, SCACR: Rule 1.5(c) (details required in contingency fee agreement) and Rule 1.16(d) (notice to client upon termination of representation).

Matter C

In 2011, a court reporter complained to ODC that Respondent failed to pay for two transcripts, both of which were ordered in 2010. Respondent explains that he ordered the transcripts for two clients, and neither could afford to pay for the transcripts once they were ordered and provided. Respondent paid the court reporter within one month of receipt of the ODC complaint. After the complaint was filed in this matter, Respondent changed his office procedure to pay all court reporter bills directly and not wait for his clients to make payment first. Respondent states that he has timely paid court reporters since 2011. Respondent admits his conduct in this matter violated the following Rules of Professional Conduct, Rule 407, SCACR: Rule 4.4(a) (rights of third parties) and Rule 8.4(e) (engaging in conduct prejudicial to the administration of justice).

Matter D

In 2007, Respondent agreed to represent Client D in a domestic action for a flat fee of $1,150. Client paid Respondent $300 in 2007. Client paid the balance two years later in 2009. Respondent deposited the fee into his operating account, although at the time he had not earned the same. A little more than a year after Client D had paid Respondent's fee in full, she terminated his services because of lack of progress in the case. In 2019, Respondent returned the $1,150 to Client D. Respondent admits his conduct in this matter violated the following Rules of Professional Conduct, Rule 407, SCACR: Rule 1.15(c) (unearned legal fees shall be deposited into a client trust account) and Rule 1.16(d) (refunding unearned fees upon termination of representation).

Matter E

Respondent represented Client E in a divorce action. At the final hearing held on May 16, 2011, Respondent was asked to prepare the divorce decree. Respondent

advised Client E that a written order should be issued within approximately thirty days. Respondent did not submit a proposed order to the family court until February 13, 2012, after Client E filed a complaint against Respondent. Respondent represents he believed he had submitted the proposed order in October 2011 and that he advised Client E incorrectly that the court had the proposed order, but he has no records showing he did so. On March 14, 2012, Respondent provided Client E with a certified copy of the family court's divorce decree. Respondent admits that his conduct in this matter violated the following Rules of Professional Conduct, Rule 407, SCACR: Rule 1.3 (diligence) and Rule 1.4 (communication).

II.

Respondent admits his conduct constitutes grounds for discipline under Rule 7(a)(1), RLDE, Rule 413, SCACR (a violation of the Rules of Professional Conduct shall be grounds for discipline).

We find Respondent's misconduct warrants a public reprimand. Accordingly, we accept the Agreement and publicly reprimand Respondent for his misconduct. Within thirty (30) days of the date of this opinion, Respondent shall pay or enter into a reasonable payment plan with the Commission to pay the costs incurred in the investigation and prosecution of this matter by ODC and the Commission.

PUBLIC REPRIMAND.

BEATTY, C.J., KITTREDGE, FEW and JAMES, JJ., concur. HEARN, J., dissenting in a separate opinion.

JUSTICE HEARN: While I accept the agreement, I disagree with the sanction imposed by the majority. This Court rejected a prior agreement between Brooker and ODC—involving the same misconduct—in 2012 and, inexplicably, a period of over eight years elapsed before this Court was presented with this agreement, during which time no additional complaints were filed against Brooker. Therefore, I would adopt the unanimous decision of the Panel to impose a confidential admonition.

The Supreme Court of South Carolina

In the Matter of Harry B. Gregory, Jr., Respondent.

Appellate Case No. 2021-000288

ORDER

The Office of Disciplinary Counsel asks this Court to place respondent on interim suspension pursuant to Rule 17(a) of the Rules for Lawyer Disciplinary Enforcement (RLDE) contained in Rule 413 of the South Carolina Appellate Court Rules (SCACR).

IT IS ORDERED that respondent's license to practice law in this state is suspended until further order of this Court.

s/ Donald W. Beatty C.J.

s/ John W. Kittredge J.

s/ Kaye G. Hearn J.

s/ John Cannon Few J.

s/ George C. James, Jr. J.

Columbia, South Carolina
March 25, 2021

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

Jayeshkumar K. Patel and Mehulbhai Patel, Dependents Claimants for Hansaben Patel, Deceased Employee, Respondents,

v.

BVM Motel, LLC d/b/a Best Western Point South, Employer, and Auto-Owners Insurance Company, Carrier, Appellants.

Appellate Case No. 2017-001727

Appeal From The Workers' Compensation Commission

Opinion No. 5813
Heard February 11, 2020 – Filed March 31, 2021

AFFIRMED

Helen F. Hiser and Allison Cauthen, both of McAngus, Goudelock, & Courie, LLC, of Mount Pleasant, for Appellants.

Darrell T. Johnson, Jr., Warren Paul Johnson, and Joshua Reece Fester, all of Law Offices of Darrell Thomas Johnson, Jr., LLC, of Hardeeville, for Respondents.

MCDONALD, J.: In this appeal from the Appellate Panel of the Workers' Compensation Commission, BVM Motel, LLC d/b/a Best Western Point South

(Employer) and Auto-Owners Insurance Company (Carrier) challenge the Appellate Panel's finding that Hansaben Patel's death was compensable. Employer and Carrier also seek reversal of the calculation of Hansaben Patel's (Decedent's) average weekly wage. We affirm.

Facts and Procedural History

Decedent was employed as a housekeeper at the Best Western Point South in Yemassee. As a condition of her employment, Decedent was required to live at the motel and be on call when on the premises—she did not clock in or out. Decedent lived in the provided room with her husband, Kantibhai Patel (Husband), who, while not on Best Western's payroll, helped with various tasks as directed by management.[1] At approximately 8:01 a.m. on August 16, 2015, an intruder, who was neither an employee nor a registered motel guest, fatally shot Decedent and Husband during a robbery.[2]

On September 29, 2015, the Patels' children (Claimants) filed a Form 52 claim for death benefits; Appellants denied the claim.[3] The issues before the single commissioner were: 1) whether Decedent's death arose out of and in the course of her employment, 2) whether her death was the result of a compensable accident under the Workers' Compensation Act (the Act), and 3) how to calculate Decedent's average weekly wage and compensation rate should the claim be found compensable. The single commissioner found Decedent's death compensable.[4]

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[1] Husband was a Best Western employee until 2012, when he was removed from the payroll and began drawing social security.

[2] A suspect was later convicted of two counts of murder, armed robbery, and possession of a weapon during the commission of a violent crime.

[3] Decedent's son, Jayeshkumar K. Patel, filed the Form 52; another son, Mehulbhai, was later added as a claimant.

[4] In a related proceeding, the single commissioner also found Husband's death compensable, however, the Appellate Panel reversed as Husband was no longer a Best Western employee at the time of the murders.

The single commissioner determined Decedent was a ten-year employee of Best Western who sustained a fatal injury that arose out of and in the course of her employment. Decedent was "required to live in the room provided by Employer on Employer's premises." Further, "although Decedent-Employee's regular day began at 8:30 a.m., she was required to provide services 'at any time of the day or night' (even in 'the middle of the night')," and she was on call 24/7. When Decedent's body was found, she was dressed for work, with her name badge affixed to her shirt.

The single commissioner held Claimants were entitled to the statutory death benefit in the amount of $2,500, along with 500 weeks of compensation based on an average weekly wage of $408.39. Relying upon the telephonic deposition testimony of Best Western general manager and owner, Raj Vyas, the single commissioner assigned a market value of $80 per night to the motel room. The single commissioner then calculated Decedent's average weekly wage and corresponding compensation rate by assigning half of the value of the motel room to her compensation, as she shared the room with Husband.

Appellants filed a Form 30 challenging the single commissioner's findings and conclusions. Specifically, Appellants contended the single commissioner erred in finding Best Western required Decedent to live at the motel and be on call 24/7, determining her death arose out of and in the course of her employment, and assigning an $80.00 per night value to Decedent's motel room. Appellants further argued the single commissioner erred in finding the Commission had jurisdiction over this matter,[5] determining Decedent died at approximately 8:01 a.m. during an armed robbery on Best Western's premises, and noting the Point South Best Western is located in close proximity to Interstate 95.[6]

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[5] Appellants did not challenge jurisdiction at the hearing before the single commissioner.

[6] The single commissioner based this finding on the address of the motel. The parties also referenced the motel's location across the highway from the Lowcountry Council of Governments building where the single commissioner heard the claim.

At the hearing before the Appellate Panel, Appellants argued the single commissioner erred in determining the injuries resulting in Decedent's death arose from her employment, asserting there was no link between Decedent's employment and her assault during the armed robbery.[7] Claimants responded that consistent with the "bunkhouse rule," Decedent's death arose out of and in the course and scope of her employment because Decedent and Husband were required to be on the motel premises at all times and were essentially on duty day and night.[8] The Patels were dressed for work—wearing company uniforms—when their bodies were found at the motel. Moreover, the only probative evidence in the record as to the value of the motel room—which was added to the figure from Decedent's payroll records to comprise her average weekly wage—was the testimony of Vyas, the Best Western manager and Rule 30(b)(6) designee.

The Appellate Panel affirmed in part and reversed in part. Although the Appellate Panel agreed Decedent's death arose out of and in the course of her employment and that her death was compensable, it found Husband was not an employee—and therefore not covered by the Act. The Panel ruled the full value of the motel room should be attributed to Decedent's compensation, resulting in an average weekly wage of $688.38, with a corresponding compensation rate of $458.92.

Standard of Review

The Administrative Procedures Act (APA) establishes the "substantial evidence" rule as the standard for judicial review of Commission decisions. *Lark v. Bi-Lo, Inc.*, 276 S.C. 130, 133–35, 276 S.E.2d 304, 306 (1981). "An appellate court can

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[7] Other than the pending armed robbery charge, no evidence was submitted as to the perpetrator's motive in the killing of the Patels.

[8] In South Carolina's leading case on the bunkhouse rule, *Pierre v. Seaside Farms, Inc.*, 386 S.C. 534, 549, 689 S.E.2d 615, 623 (2010), our supreme court held, "[a]lthough merely being on an employer's premises, without more, does not automatically confer compensability for an injury, we believe the circumstances of Pierre's accident−including the facts that he was required by the nature of his work to live on the employer's premises and such residence furthered the interests of the employer, the injury arose from a hazard existing on the employer's premises, and he was making reasonable use of the premises −establish the requisite work connection and compel a finding that Pierre's injury arose out of and in the course of his employment at Seaside Farms."

reverse or modify the Commission's 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*, 386 S.C. at 540, 689 S.E.2d at 618; *see also* S.C. Code Ann. § 1-23-380(5) (Supp. 2020). "Substantial evidence is 'not a mere scintilla of evidence nor the evidence viewed blindly from one side of the case, but is evidence which, considering the record as a whole, would allow reasonable minds to reach the conclusion that [the commission] reached or must have reached' to support its orders." *Lewis v. L.B. Dynasty, Inc.*, 419 S.C. 515, 518, 799 S.E.2d 304, 305 (2017) (quoting *Lark*, 276 S.C. at 135, 276 S.E.2d at 306).

"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) (quoting *Clade v. Champion Labs.*, 330 S.C. 8, 11, 496 S.E.2d 856, 857 (1998)). "In a workers' compensation case, the appellate panel is the ultimate fact-finder." *Nicholson v. S.C. Dep't of Soc. Servs.*, 411 S.C. 381, 384, 769 S.E.2d 1, 3 (2015). "However, where there are no disputed facts, the question of whether an accident is compensable is a question of law." *Id.* at 384–85, 769 S.E.2d at 3. "Workers' compensation law is to be liberally construed in favor of coverage in order to serve the beneficent purpose of [the Act]; only exceptions and restrictions on coverage are to be strictly construed." *Id.* at 385, 769 S.E.2d at 3.

Law and Analysis

I. Compensability

The Workers' Compensation Act defines a compensable injury as "only injury by accident arising out of and in the course of the employment and shall not include a disease in any form, except when it results naturally and unavoidably from the accident except such diseases as are compensable under the provisions of Chapter 11 of this title." S.C. Code Ann. § 42-1-160 (2015). "'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." *Pierre*, 386 S.C. at 541, 689 S.E.2d at 618 (quoting *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." *Id.*; *see also Osteen v. Greenville Cnty. Sch. Dist.*, 333 S.C. 43, 50, 508 S.E.2d 21, 25 (1998) ("The 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 resulting injury."). "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." *Id.* (quoting *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.* (quoting *Hall*, 376 S.C. at 350, 656 S.E.2d at 759).

Here, the Appellate Panel affirmed the single commissioner's conclusion that "[p]ursuant to S.C. Code § 42-1-160, there is sufficient evidence which establishes that the Claimants' decedent sustained an injury resulting in her death on August 16, 2015 as a result of an injury arising out of and in the course of her employment." It is undisputed that Decedent's injuries occurred in the course of her employment. Appellants concede Decedent was required to live at the Best Western and that when she was on the premises, she was on call 24/7, stating in their brief, "Decedent was in the course of her employment all the time she was at the hotel because she was on call."

However, Appellants contend Decedent's fatal injuries did not "arise from" the employment because they did not result from a hazardous condition created by Employer and, thus, her death is not compensable *See Bright v. Orr-Lyons Mill*, 285 S.C. 58, 60, 328 S.E.2d 68, 70 (1985) (explaining the fact that an injury occurs on an employer's premises establishes the course of employment prong but not the arising out of prong); *but see Pierre*, 386 S.C. at 545, 689 S.E.2d at 620 (noting persuasive authority from other jurisdictions applying the bunkhouse rule which "found injuries arose out of and in the course of employment where the employee was required, either by contract or by the nature of the work, to reside on the employer's premises" and that in such cases, "the premises are considered an extension of the employer's primary work site. For the rule to apply, the injuries must have occurred during the employee's reasonable use of the premises and does include activities for personal comfort.").

Pierre applied the bunkhouse rule to a claimant who lived on his employer's 400-acre tomato farm although he was not expressly required to do so. 386 S.C. at 542–48, 689 S.E.2d at 619–22. The seasonal worker, who had signed a written document titled "Terms and Conditions of Employment" but had not yet started his farm work, fractured his right ankle when he slipped and fell on a wet sidewalk

outside of his employee housing. *Id*. at 386 S.C. at 538, 689 S.E.2d at 617. After concluding the claimant was obligated to live on the farm due to the nature of his employment, our supreme court considered the employer's argument that the claimant's fall was not compensable because the sidewalk on which he fell did not differ in character or design from other sidewalks. *Id.* at 548–49, 689 S.E.2d at 622. Rejecting this argument, the court found the claimant was exposed to the wet sidewalk because of his employment, therefore establishing the requisite connection between the injury and his employment. *Id.*

While our supreme court recognized the application of the bunkhouse rule in *Pierre*, it had previously considered other cases involving employees injured while living on an employer's premises or going to an employer's work camp. *See*, *e.g.*, *Sola v. Sunny Slope Farms*, 244 S.C. 6, 135 S.E.2d 321 (1964) (holding an employee's death while traveling from a packing shed to a labor camp where he resided and performed additional duties arose out of and in the course of his employment); *Jolly v. S.C. Indus. Sch. for Boys*, 219 S.C. 155, 64 S.E.2d 252 (1951) (holding an employee's injury that occurred while he was off-duty and painting the hallway in the rent-free apartment supplied by his employer arose out of and in the course of his employment as a hog foreman and general utility worker at an industrial school).

More recently, in *Nicholson*, the supreme court examined *Pierre* in finding 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" and that doing so was "unfaithful to principles underlying the creation of workers' compensation and turns the entire system on its head." *Id* at 389–90, 769 S.E.2d at 5. The supreme court explained:

> [In *Pierre*], 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.

Id. at 388–89, 769 S.E.2d at 5.

Appellants attempt to distinguish *Pierre* and *Nicholson* here, arguing, "*Pierre* would be applicable to the case at hand had Decedent tripped on the stairs of the hotel, or over furniture in the room in which she lived" because "[t]hose are risks or dangers associated with the workplace where she was required to live. [Additionally,] [h]er death might be compensable had the hotel caught on fire while she was sleeping and she died as a result." And, Appellants contend, "[a]lthough she was dressed for work at the time she was shot, Decedent had not yet reported for work. There is no evidence that, at the time of the attack, Decedent was doing anything work-related or that benefitted her employer." We disagree. Substantial evidence in the record established that Decedent was on the work premises—where she was required to live and be on call—and was dressed in her uniform at the beginning of the workday when the armed robbery occurred. *See e.g., Ardis v. Combined Ins. Co.*, 380 S.C. 313, 324, 669 S.E.2d 628, 634 (Ct. App. 2008) (considering the personal comfort doctrine in the context of an employee who suffered a fatal injury during an overnight hotel stay following an employer-sponsored sales meeting and explaining that certain personal acts and "'injury sustained in the performance thereof is deemed to have arisen out of the employment.' [The scope of the doctrine] includes 'imperative acts such as eating, drinking, smoking, seeking relief from discomfort, *preparing to begin* or quit work, and resting or sleeping.'" (emphasis added) (quoting *Gibson v. Spartanburg Sch. Dist.*, 338 S.C. 510, 519–20, 526 S.E.2d 725, 730 (Ct. App. 2000))).

Although we have found no South Carolina authority applying the bunkhouse rule to a case in which the claimant was murdered, this court has previously addressed the award of workers' compensation benefits to a widow following the murder of her husband. In finding the husband's death arose out of and in the course of his employment, this court stated in *Suburban Propane Gas Co. v. Deschamps*, 298 S.C. 230, 379 S.E.2d 301 (Ct. App. 1989), "the commission relied on the proposition of law that, where an employee is found injured or dead at a time and place where his employment reasonably required him to be, there is a presumption

of fact that death arose out of and in the course of employment. *Id.* at 233, 379 S.E.2d at 302. The court explained:

> In the instant case, the claimant was killed during the regular working hours of his employer. His body was found in a residential area within the service jurisdiction of the company in which the company had customers. Further, the body was found a short distance from the company car and inches away from the body were tools and documents used by the claimant in his employment. Based on this, the commission found the business of the employer took the claimant to the location at which he was found shot and at the time of the occurrence, he was engaged in the business of his employer.
>
> Because the case has remained unsolved, it is unknown whether the attack on the claimant was motivated by personal or work-related reasons.[9] While it is possible to draw two inconsistent conclusions from the evidence, we hold, in light of the presumption raised and additional circumstantial evidence, there is substantial evidence in the record to support the finding of the commission.

Id.

Chief Judge Sanders's opinion in *Doe v. South Carolina State Hospital*, 285 S.C. 183, 238 S.E.2d 652 (Ct. App. 1985), is also helpful to our analysis. In *Doe*, a nursing supervisor sued the state hospital after she was raped by an escaped mental patient. Finding the nurse's claim barred by the Act's exclusive remedy provision, this court addressed the "arising out of" requirement:

> An injury arises in the course of employment . . . when it occurs within the period of the employment at a place where the employee reasonably may be in the

[9] In *Deschamps*, the sheriff's department ruled out the motive of robbery since a watch and approximately $85 were found on the decedent's body. 298 S.C. at 232, 379 S.E.2d at 302.

> performance of his duties, and while he is fulfilling those duties, or engaged in something incidental thereto. *Fowler v. Abbott Motor Co.*, 236 226, 113 S.E.2d 737, 739 (1960). There is no question here that appellant was assaulted at her place of employment, during her working hours and while she was in the performance of her duties as a nursing supervisor in the Saunders Building on the Hospital's campus. Her complaint specifically pleads these facts.

Id. at 187, 328 S.E.2d at 655. Here, to the extent Appellants challenge the Appellate Panel's findings of fact, such as the location of the motel, the time of Decedent's death, and the presence of her work uniform, we may easily dispose of the challenge: substantial evidence in the record supports the Appellate Panel's findings. As to the legal question of compensability, we find *Nicholson*, *Pierre*, and *Doe* controlling. *See e.g.*, *Nicholson*, 411 S.C. at 390, 769 S.E.2d at 5–6 ("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 worker's compensation."); *see also Ardis v. Combined Ins. Co.*, 380 S.C. at 323, 669 S.E.2d at 633 (finding injury arose out of employment as a matter of law where claimant died of asphyxiation from smoke inhalation at the hotel where he stayed following his attendance at a work seminar).

In sum, substantial evidence supports the Appellate Panel's findings that Decedent was shot and killed while on call on Best Western's premises, where she was required to live and be on call 24/7 as a condition of her employment. There is no evidence the assault was personally motivated, and there is no evidence it was caused by any condition peculiar to her. Decedent was dressed for work, with her name tag affixed, when she was killed. And, although our supreme court "has never stated an injury must stem from a particular hazard or risk of the employment," *see Nicholson*, 411 S.C. at 388–89, 769 S.E.2d at 5, we cannot ignore that the requirement that Decedent live at the interstate-adjacent motel brought about her exposure to the armed robbery that led to her death. Accordingly, we affirm the Appellate Panel's determination that Decedent's death arose from her employment and was compensable under the Act.

II. Average Weekly Wage

Appellants next argue the Commission erred in calculating Decedent's average weekly wage. We disagree.

The Act defines the term "average weekly wage" as "the earnings of the injured employee in the employment in which he was working at the time of the injury during the period of fifty-two weeks immediately preceding the date of the injury . . . ." S.C. Code Ann. § 42-1-40 (2015). The Act further explains how to calculate a claimant's average weekly wage:

> "Average weekly wage" must be calculated by taking the total wages paid for the last four quarters immediately preceding the quarter in which the injury occurred as reported on the Department of Employment and Workforce's Employer [SCDEW] Contribution Reports divided by fifty-two or by the actual number of weeks for which wages were paid, whichever is less. When the employment, prior to the injury, extended over a period of less than fifty-two weeks, the method of dividing the earnings during that period by the number of weeks and parts thereof during which the employee earned wages shall be followed, as long as results fair and just to both parties will be obtained. Where, by reason of a shortness of time during which the employee has been in the employment of his employer or the casual nature or terms of his employment, it is impracticable to compute the average weekly wages as defined in this section, regard is to be had to the average weekly amount which during the fifty-two weeks previous to the injury was being earned by a person of the same grade and character employed in the same class of employment in the same locality or community.
>
> When for exceptional reasons the foregoing would be unfair, either to the employer or employee, such other method of computing average weekly wages may be

> resorted to as will most nearly approximate the amount which the injured employee would be earning were it not for the injury. Whenever allowances of any character made to an employee in lieu of wages are a specified part of a wage contract they are deemed a part of his earnings.

Id. "Thus, before an allowance will be included in the average weekly wage calculation, it must (1) be made in lieu of wages, and (2) be a specified part of a wage contract." *Anderson v. Baptist Med. Ctr.*, 343 S.C. 487, 495, 541 S.E.2d 526, 530 (2001).

In this case, the statements of the general manager and owner regarding the oral agreement between Best Western and Decedent were the only evidence upon which the single commissioner and Appellate Panel could rely in determining the components of Decedent's contract. According to the motel's owner, Decedent, a W-2 employee, was required to live at the motel (rent-free) and be on call 24/7. There was no written contract, and no conflicting testimony exists regarding the contract terms. Because the only evidence in the record indicates the living arrangement was part of Decedent's wage contract, we find no error in the Appellate Panel's consideration of the fair market value of Decedent's use of the motel room in calculating her average weekly wage. *See Bazen v. Badger R. Bazen Co.*, 388 S.C. 58, 64, 693 S.E.2d 436, 439 (Ct. App. 2010) ("Because ample evidence in the record indicates Claimant's living arrangement was not merely a gift but part of his wage contract, we do not believe Appellant's gratuitous benefit argument has any merit. Therefore, we believe the circuit court did not err in affirming the Appellate Panel's decision to award Claimant the fair market value of the use of the house as part of Claimant's average weekly wage.").

Considering evidence of Decedent's earnings, including her payroll earnings "for the last four quarters immediately preceding the quarter in which [her death] occurred" and her SCDEW wage records, the Appellant Panel found the wages reported by Best Western resulted in an average weekly rate of $123.26. While Appellants take no issue with this determination, they challenge the calculation of the value of the motel room included as part of Decedent's average weekly wage. However, because the Appellate Panel concluded the reported wages did not reflect Decedent's actual earnings, it included the value of the motel room because Best Western provided housing as a condition of Decedent's employment. While adding the value of the room resulted in an average weekly wage more than five

times the $123.26 Best Western reported as Decedent's average weekly wage, Vyas's testimony placed the value of Decedent's motel room at $80 per night. Although Vyas noted he rented a room to a bartender working at the motel at a bi-weekly rate of $120, he admitted the bartender's employment "arrangement was a little bit different than what [Best Western] had with [Decedent]." Unlike Decedent, whose room was part of her compensation agreement, the bartender paid $120 biweekly to live at the Best Western. Neither party submitted any other evidence as to Decedent's pay or the value of the motel room. Therefore, based on the substantial evidence in the record of the room's value, the Appellate Panel added the $80 per night value to Decedent's reported payroll earnings, resulting in an average weekly wage of $688.38, and we affirm its determination.

Conclusion

We find no error in the Appellate Panel's finding of compensability, nor its calculation of Decedent's average weekly wage. Accordingly, the decision of the Appellate Panel is

AFFIRMED.

HUFF and THOMAS, JJ., concur.