

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F302496

THELMA M. FRYER, EMPLOYEE

CLAIMANT

DEPARTMENT OF HEALTH, EMPLOYER

RESPONDENT

PUBLIC EMPLOYEE CLAIMS, CARRIER

RESPONDENT

OPINION FILED NOVEMBER 3, 2003

Hearing before ADMINISTRATIVE LAW JUDGE ANDREW L. BLOOD, on August 22, 2003, at Forrest City, St. Francis County, Arkansas.

Claimant represented by the HONORABLE JESSE B. DAGGETT, Attorney at Law, Marianna, Arkansas.

Respondents represented by the HONORABLE RICHARD S. SMITH, Attorney at Law, Little Rock, Arkansas.

STATEMENT OF THE CASE

A hearing was conducted in the above-styled claim to determine claimant's entitlement to workers' compensation benefits.

On July 15, 2003, a prehearing conference was conducted in this claim from which a prehearing order of July 16, 2003, was filed. The prehearing order reflects stipulations entered by the parties, the issues to be addressed during the course of the hearing, and the parties' respective contentions relative to the issues. The prehearing order is herein designated a part of the record as Commission's Exhibit #1.

The testimony of Thelma M. Fryer, the claimant, coupled with medical reports and other documents comprise the record in this claim.

DISCUSSION

Thelma M. Fryer, the claimant, with a date of birth of November 14, 1942, has been

employed by respondent as a home health nurse since May 26, 1992. Claimant is a register nurse. Claimant works out of the local office in Forrest City, Arkansas.

The testimony of the claimant reflects that her normal office hours are from 8:00 a.m. until 4:30 p.m. The testimony of the claimant further reflects that of a normal eight hour work day, as a home health nurse, she spends approximately six hours traveling and seeing patients. Claimant utilizes her own vehicle when traveling to see patients in the discharge of her employment duties, for which she is paid mileage by respondent-employer. Claimant acknowledged that she is not paid for mileage from her home to the office nor is she paid mileage from the office to her home at the completion of the work day. Exceptions to the afore is if the claimant provides patient care to a patient before arriving at the office during the morning or in route home from the office at the conclusion of the work day.

On Monday, February 24, 2003, the Forrest City office of respondent-employer was open for routine business. Due to inclement weather, ice and snow, the office was closed on Tuesday, February 25, 2003. The testimony of the claimant reflects that her customary practice, as a home health nurse, was to report to the office at 8:00 a.m., pickup her assignment of patient files, and thereafter proceed to patients visit. Claimant's testimony reflects that she was scheduled to see fifteen patients on Tuesday, February 25, 2003. Claimant's testimony reflects, with respect to the afore:

I went to the office to see if I could reschedule some of my patients, or see if they had to be seen on that day, and I had to go to the office to get their phone numbers to call them. When I got the office I contacted each patient and was able to reschedule every patient but one.. (T.10)

As a consequence the afore, claimant did in fact see one patient on Tuesday, February 25, 2003. After her visit to the patient, claimant did not return to the office but rather went home.

The evidence discloses that on Wednesday, February 26, 2003, the office of respondent remained closed because of inclement weather. Claimant did not discharge any employment duties for respondent on Wednesday, February 26, 2003.

On Thursday, February 27, 2003, the office of respondent opened at 10:00 a.m. The testimony of the claimant reflects that it was her intentions to report to the office on Thursday, February 27, 2003, drop of the file of the patient that she had seen on Tuesday, February 25, 2003, and pick-up her patients assignment. Thereafter, claimant had plan to see patients in her official capacity as a home health nurse. On Thursday, February 27, 2003, claimant suffered an accident which is the basis of the of the present claim. The testimony of the claimant reflects:

I parked my car, walked up on the sidewalk, and when I put my foot down it was slick, so I moved my foot over into some snow so I wouldn't fall, and when I moved my foot over, well, I crunched on down. I didn't see any ice underneath it, but when I put my foot down into the snow my foot just went out from under me. (T. 12)

Claimant fell and broke her right leg in the accident. Following the fall, claimant was transported, by ambulance, to Baptist Hospital in Forrest City, and thereafter, transferred to St. Bernard Regional Hospital in Jonesboro, Arkansas where she underwent surgery relative to the injury. Claimant remained off work following the February 27, 2003, accident until May 12, 2003, when she was released to light duty work.

In addition to the testimony of the claimant, the record reflects a recorded statement furnished by the claimant to respondent on March 7, 2003, and medical bill totaling \$6,761.58, attributable to

medical treatment received by the claimant relative to the February 27, 2003, accident.

From all of the evidence, I make the following:

FINDINGS

1. The Arkansas Workers' Compensation Commission has jurisdiction of this claim.
2. On February 27, 2003, the relationship of employee-employer-carrier existed among the parties.
3. On February 27, 2003, the claimant earned wages sufficient to entitle her to weekly compensation benefits of \$440.00/\$330.00 for TTD/PPD benefits.
4. On February 27, 2003, the claimant did not sustain an injury arising out of and in the course of her employment.

CONCLUSIONS

Claimant, a registered nurse, has been employed by respondent since May 26, 1992, as a home health nurse. On February 27, 2003, while entering the unit or office of respondent-employer, claimant suffered a fall, when resulted in a fracture of her right leg. Claimant asserts that as a results of the February 27, 2003, accident, she is entitled to workers' compensation benefits, to include temporary total disability benefits and medical benefits. Respondents deny that the claimant was performing employment services at the time of the February 27, 2003, accident. Respondents have controverted this claim in its entirety.

The present claim is one governed by Act 796 of 1993, in that claimant asserts entitlement to workers' compensation benefits as a result of an injury having been sustained subsequent to the effective date of the afore provision. There is not a dispute regarding the mechanics of the claimant's February 27, 2003, accident or the injuries incurred as a result of same. Claimant asserts

that her injury represents an exception to the going and coming rule.

The evidence in the record reflects that the claimant's normal work day was from 8:00 a.m. to 4:30 p.m. Claimant reported to the office at 8:00 a.m. daily, and after picking up her charts and patients assignment, proceeded to call on patients. Claimant utilized her own vehicle in traveling to the patient's home and was reimbursed for mileage by respondent for said travel. Claimant however, was not paid for mileage from her home to the office nor was she paid for mileage for the office to her home at the conclusion of the day. The evidence further reflects that after seeing patients during the day claimant usually would return to the office to leave the files, provided it was before the office closed at 4:30 p.m. Thereafter, claimant would proceed home. In those instances when the office was closed by the time claimant had finished seeing patients, she would proceed home, and would drop off any files that she had in her possession at the office the following morning when she picked up her new patients assignments.

On Tuesday, February 25, 2003, the office of respondent was closed do to inclement weather. Claimant has fifteen scheduled patients on said date. Claimant proceeded to the office of respondent on Tuesday, February 25, 2003, where she contact the scheduled patients to rescheduled her visit. Claimant was successful in the afore with all of the patients except one. Claimant did see one patient on Tuesday, February 25, 2003, and after the visit, did not return to the office but rather proceeded home. On Wednesday, February 26, 2003, the office of respondent was again closed do to inclement weather. The office opened Thursday, February 27, 2003, at 10:00 a.m., pursuant to the inclement weather policy. The evidence in the record preponderates that on Thursday, February 27, 2003, claimant followed her normal routine with respect to reporting to the office to pick-up her patients assignments. After parking her vehicle, claimant exited same an proceed to enter the unit or building.

Prior to entering the unit, claimant slipped and fell on the ice and snow and broke her right leg.

The evidence preponderates that claimant had not commenced her work day on Thursday, February 27, 2003, at the time she suffered the fall and injury to her right leg. The exception to the going-and-coming rule recognized in Olsten Kimberly Quality Care v. Pettey, 328 Ark. 381, 944 S.W. 2d 524 (1997) is not applicable in the instant claim. As the court pointed out in Olsten, one of the recognized exceptions of the going-and-coming rule is where the journey itself is a part of the service. In the instant claim, the evidence preponderates that the claimant did not commence her job duties as the home health nurse on February 27, 2003, until she had reported into the office, reviewed her schedule for the day, picked up her assignments, and thereafter proceeded to visit patients.

Ark. Code Ann. §11-9-102(4)(A)(Repl. 2002) provides that “compensable injury” means an accidental injury causing internal or external physical harm arising out of and in the course of employment. Employment services are performed when the employee does something that is generally required by his or her employer. The same test is used to determine whether an employee is performing employment services as to determine whether an employee was acting within the course of employment. The test is whether the injury occurred “within the time and space boundaries of employment, when the employee was carrying out the employer’s purpose of advancing the employer’s interest directly or indirectly.” Collins v. Excel. Specialty Products, 347 Ark. 811, 69 S.W. 3d 14 (2002); Pifer v. Single Source Transportation, 347 Ark. 851, 69 S.W. 3d 1 (2002).

The evidence in this record preponderates that at the time the claimant suffered her accidental injury on February 27, 2003, she was not performing employment services. At the time of claimant’s fall, she had not commenced her work day and was subjective to the same hazard and

danger of the public at-large. Further, claimant was not discharging employment services at the time of the accident. This claim is respectfully denied and dismissed.

IT IS SO ORDERED.

Andrew L. Blood
Administrative Law Judge