

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F303987

SANDRA HAMPTON, EMPLOYEE	CLAIMANT
ARKANSAS METHODIST MEDICAL CENTER, EMPLOYER	RESPONDENT
RECIPROCAL OF AMERICA INSURANCE COMPANY/ARKANSAS GUARANTY FUND, INSURANCE CARRIER	RESPONDENT

OPINION FILED NOVEMBER 12, 2003

Hearing before ADMINISTRATIVE LAW JUDGE ANDREW L. BLOOD, on September 5, 2003, at Jonesboro, Craighead County, Arkansas.

Claimant represented by the HONORABLE JOHN BARTTELT, Attorney at Law, Jonesboro, Arkansas.

Respondents represented by the HONORABLE MARK MAYFIELD, Attorney at Law, Jonesboro, Arkansas.

STATEMENT OF THE CASE

A hearing was conducted in the above-styled claim to determine the claimant's entitlement to workers' compensation benefits. On July 22, 2003, a prehearing conference was conducted in this claim, from which a prehearing order of the same date 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 Exhibit No. 1.

The testimony of Sandra Hampton, the claimant, and Kelly Blake, coupled with medical reports and other documents comprise the record in this claim.

DISCUSSION

Sandra Hampton, the claimant, with a date of birth of January 25, 1944, is a registered nurse who commenced her employment with respondent in 1993. The claimant worked as an R.N. in the ICU unit of respondent-employer. The claimant resides in Paragould, Arkansas. Respondent-employer is located in Paragould, Arkansas.

In her employment with respondent, the claimant worked seven days out of fourteen days before being off for two days. Further, the claimant worked a twelve hour shift from 7:00 A.M. through 7:00 P.M. The claimant's testimony reflects, with respect to the commencement of her shift:

You clock in at approximately 6:45. You are considered late if you clock in past 6:52 and you go to the ICU and the outgoing nurses gives reports to the incoming staff. (T. 8)

The claimant further explained that once she had clocked in, as a member of the staff of the ICU, she was not again required to clock in or out at any time during the twelve hour shift unless she was terminating that shift. The testimony of the claimant reflects, with respect to her activity of the first thirty minutes of her shift at work:

You receive report, like I say from the outgoing shift. The next thing you do is you make assignments. Everybody takes like two patients each. And, then you go and you review your chart but before you ever review your chart, we're in like a horseshoe shape so you just visually check your patients, make sure everything is all right. You look at the monitor. Everybody is on a monitor and we have a master monitor that has everybody's vital signs and heart rhythms on it at our work station so you are always aware. You review their chart, their lab that has come in for the day and then you go and assess your patient. (T. 10)

The testimony reflects that the ICU unit of respondent is equipped to service eight patients when at full capacity. Further, respondent requires the presence of at least two licensed personnel, an R.N. or an LPN, at all times. Finally, the testimony in the record reflects that the intensive care unit of respondent is staffed by four licensed personnel as well as a unit coordinator, which is also an R.N., and an secretary.

The testimony of the claimant reflects that during the twelve hour shift in the ICU there is not a scheduled break or lunch period. The claimant explained that during the twelve hour day shift meals were generally eaten at the unit:

You go and pick up your food and make a quick trip down and you come back to the unit and your meals – everything is within the unit of the 12 hour shift.

The claimant added that when eating a meal during the shift staff members in ICU continue to monitor their patients:

Well, you're always in sight of your monitor. Our break room is glass. You always – I mean, you sit always where you can see the monitors. (T. 10)

The claimant testified regarding other tasks performed during the twelve hour shift in the ICU:

If, you know, if you need to catch up on your charting you take, you know, you take your paper work with you. If you are caught up on your charting and your medications are caught up, you know, you just eat a meal and watch your monitors and listen for call lights. (T. 11)

On the morning of December 12, 2002, the claimant sustained a fall while going downstairs to the cafeteria to purchase breakfast for herself and some of her co-workers. The claimant explained that it was a normal routine for one of the staff members to go down and pick up breakfast after clocking in, receiving reports from the outgoing staff, and reviewing the charts of assigned patients:

We alternate times in picking up breakfast. We come to work early and like I say, you have time to – you take time to review your charts and that’s generally when one of us makes a run and brings back breakfast for all of us and then we set it in the kitchen and you can either, you know, after you get caught up go to the kitchen and eat or if it’s like something you can just, like a breakfast bar you can sit and review your charts while you eat it. (T. 11-12)

On the morning of December 12, 2002, the claimant estimates that she left the unit at approximately 7:15 and proceeded downstairs to the cafeteria to get breakfast for herself and co-workers. The ICU is on the first floor of respondent-employer. The cafeteria is located in the basement, one floor below. The claimant testified:

I just – we’re on the first floor, the cafeteria is in the basement which is just one flight of steps down and that’s the fastest way to go. I just got everybody’s money and orders and walked down the steps and opened the door and there was a cart parked by the door and it caught my leg and I fell. (T. 13)

The claimant testified that her leg struck a metal transport cart and that the same resulted in her fall.

Specifically, the claimant testified that the cart caught her on the shin of her right leg:

I just went down on my hands and knees. I mean, I was – I just, you know, how you take a fall and it’s a big shock? I mean, I was looking, I was just – I just fell. I didn’t even realize I had hit anything. I didn’t know until that night where I had bumped myself and caught, I just went down. (T. 14)

The testimony of the claimant reflects that she remained on the floor for a period of approximately ten minutes experiencing symptoms of numbness and tingling over her body. Assistance was offered from co-workers. The claimant observed that she was unable to get up for a period of approximately ten minutes, after which time she was assisted by a co-worker, James. Thereafter, the testimony of the claimant reflects:

Okay. James helped me and we got me on in to the cafeteria. As I come out this door right here (indicating) the cafeteria is an angled door so he got me into the cafeteria and I sat there for about, oh, 15 or 20 minutes if not longer until I had good feelings and then the Director of Nurses – everybody at this time usually comes down and picks up breakfast so our D.O.N. was there and talked to me and asked me if I wanted her to get a wheelchair to take me down to the emergency room and I'm like, you know, I can't do that. I have to – I just started my shift. I don't have – you cannot abandon your post. That's the first thing you do is your patient care. So, after I got the feeling back I got everybody's breakfast and took it back up, told everybody what happened. (T. 15)

The claimant estimated that she returned to the intensive care unit at approximately 8:00 A.M. following the accident. The claimant explained that once arriving back on her unit, she was stiff and sore. The claimant was directed to complete an accident report by the unit coordinator, Ms. Holly Ford, an R.N.

After completing an accident report, the claimant was sent to the human resource of the respondent-employer, and thereafter referred to respondent's designated medical provider, Dr. Benny Mitchell. The claimant acknowledged that on the date of the accident, December 12, 2002, she was informed by personnel in human resources that the workers' compensation carrier would probably deny the compensability of her claim for injuries growing out of the accident.

The claimant was seen by Dr. Bennie Mitchell on December 12, 2002, pursuant to the direction of respondent for complaints relative to the injuries growing out of the December 12, 2002 accident. Dr. Mitchell noted during his physical examination of the claimant that there was slight swelling in the wrists bilaterally and very superficial abrasions were noted over the patella of the claimant's knees. X-rays were obtained relative to the claimant's wrists and hands during the December 12, 2002 visit, pursuant to the direction of Dr. Mitchell. After obtaining the results of the

x-rays, Dr. Mitchell's impression of the claimant's complaints was that of bilateral wrist sprain and contusion and abrasions of the knees bilaterally. The claimant was provided anti-inflammatory medication by Dr. Mitchell and released to return to regular duties for respondent during the December 12, 2002 visit. (CX1, p. 1)

The testimony of the claimant reflects that she continued to discharge her regular employment duties with respondent subsequent to December 12, 2002. The claimant further noted that she continued to experience a progression of symptoms following her accident which she attributed to the accident. By mid-January 2003, the claimant's testimony reflects that her symptoms were such that they were observed by co-workers. The claimant further testified regarding the progression of her symptoms by the third week of January 2003:

By noon I was limping. By the end of the day I was just shot down, I mean, you know, it was all I could do to make it through the day and out to my car at night. And, I have the Jacuzzi tub and that's – that's exactly where I headed. I stayed in the Jacuzzi tub and on my days off I was on the couch all the time with my leg elevated, trying to get better, you know. (T. 18)

The claimant did return to Dr. Mitchell in January 2003, for further treatment attributable to the December 12, 2002 accident. The claimant was provided medication in the form of an injection and anti-inflammatory medication. Additional diagnostic studies were also performed, to include an MRI. Following the MRI, the claimant was referred to Dr. Lon D. Schechter, a Paragould orthopedic physician. The claimant was seen by Dr. Schechter on one occasion, April 3, 2003, pursuant to the referral of Dr. Mitchell. The claimant continued to discharge her employment duties for respondent through March 28, 2003, at which time she was taken off work by Dr. Mitchell.

The testimony of the claimant reflects that at the time she experienced debilitating symptoms,

her complaints were principally in her right hip area. The claimant was ultimately referred to Dr. Davey D. Lavelle, at Campbell Clinic, in Memphis, Tennessee, for a second opinion. The claimant was initially seen by Dr. Lavelle on April 16, 2003. Following his examination of the claimant and a review of diagnostic studies, Dr. Lavelle's diagnosis of the claimant's complaints was that of degenerative arthritis of the right hip and degenerative arthritis of the lumbar spine. (CX1, p. 14-D) On May 16, 2003, the claimant was admitted to the hospital under the care of Dr. Lavelle and underwent a right total hip arthroplasty (CX1, p. 14-C). The claimant has not been released to return to work.

The claimant acknowledged that there was no prohibition by respondent of employees bringing food into the hospital and to their work station relative to the ICU. Further, the claimant acknowledged that she was not directed by supervisory personnel to go to the cafeteria to procure her breakfast or that of her co-workers. Finally, the claimant acknowledged that she performed her job duties in the intensive care unit of respondent-employer where she was able to dispense medication to her assigned patients, monitor the vital signs of her assigned patients, and do charts and reports relative to her assigned patients. The claimant concedes that once she was off of their unit she was not in a position to monitor the patient, hear the monitor go off, or a call light sounding.

The testimony of Kelly Blake, the Director of Human Resources, for respondent-employer reflects that respondent-employer does not require the nurses on the intensive care unit to go to the cafeteria to get breakfast, although they are allowed to do so. Further, Ms. Blake's testimony reflects that respondent-employer does not prohibit an employee such as the claimant from going to get something out of her car during her shift if the claimant wanted to walk out and do so. Ms. Blake further testified that respondent paid the employee during the short break of five to ten minutes, that the employee may take during the course of a shift. Ms. Blake acknowledged that respondent does

not provide a designated thirty minute lunch break during the shift.

From all the evidence, I make the following:

FINDINGS

1. The Arkansas Workers' Compensation Commission has jurisdiction of this claim.
2. On December 12, 2002 the relationship of employee-employer-carrier existed among the parties.
3. On December 12, 2002 the claimant earned wages sufficient to entitle her to weekly compensation benefits.
4. On December 12, 2002 the claimant did not sustain an injury arising out of and in the course of her employment.

CONCLUSIONS

Sandra Hampton, the claimant, was employed by respondent as a registered nurse in the intensive care unit of same. As of December 12, 2002, the claimant had been employed by respondent in excess of nine years. The claimant worked the day shift in the intensive care unit of respondent, from 7:00 A.M. to 7:00 P.M. On December 12, 2002, after clocking in and discharging routine duties on the unit floor for approximately thirty minutes, the claimant proceeded from the first floor intensive care unit to the cafeteria of respondent located one floor down in the basement to purchase breakfast for herself and co-workers. The claimant suffered a fall when her leg struck a metal delivery cart just prior to entering the cafeteria.

The claimant maintains that she suffered injuries as a result of the December 12, 2002 accident which required medical treatment, to include surgery, and resulted in a period of temporary total incapacity from engaging in gainful employment. Respondents deny that the December 12, 2002 accident suffered by the claimant was had at a time that the claimant was performing

employment services or in the course and scope of her employment.

The present claim is one governed by the provisions of 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. Respondents controvert this claim in its entirety and deny that the claimant suffered a compensable injury.

Arkansas Code Annotated §11-9-102(4)(A)(Repl. 2002) defines a compensable injury to mean an accidental injury causing internal or external physical harm, which arises out of and in the course of employment. The injury is accidental only if it is caused by a specific incident and is identifiable by time and place of occurrence. In the instant claim respondents maintain that the claimant was not performing employment services at the time of the December 12, 2002 accident which serves as a basis for her workers' compensation claim.

The Arkansas Court of Appeals has determined that employment services are performed when the employee does something that is generally required by his or her employer. 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 test to determine whether the employee was performing employment services at the time the injury occurred is whether the same was within the time and space boundaries of employment when the employee was carrying out the employer's purpose or advancing the employer's interests directly or indirectly. Collins, supra at 817; Pifer, supra.

In the instant claim, the evidence preponderates that at the time of the claimant's December 12, 2002 accidental fall, she was not performing employment services. The claimant was an R.N. in the ICU of respondent-employer, which is located on the first floor of the facility. It is undisputed that the claimant's work station was within the ICU on the first floor and that her tasks entailed monitoring her assigned patients, providing medication, reading reports, and laboratory work. The

claimant's shift began no earlier than 6:45 A.M. Once claimant clocked in for work, she was not required to clock out again unless she was terminating her shift. The claimant's shift terminated twelve hours from the point in time she clocked in.

The evidence reflects that on December 12, 2002, the claimant was not on the first floor, the location of her job site, at the time she suffered an accidental fall. Instead, the claimant was in the process of going to the cafeteria to purchase her breakfast and that of co-workers. There is no evidence in the record to reflect that respondent mandated its employees to purchase their breakfasts, or any other meal, in the cafeteria on its premises. Additionally, the evidence reflects that claimant was at liberty, as was all other employees of respondent, to eat breakfast before arriving at work or to purchase breakfast and bring it to work to be eaten at anytime on the unit. The claimant clearly was not performing her assigned job duties as a registered nurse in the intensive care unit of respondent at the time she suffered the accidental fall on December 12, 2002. The claimant has failed to sustain her burden of proof by a preponderance of the evidence that she suffered a compensable injury arising out of and in the course of her employment on December 12, 2002, at that time she was performing employment services for respondent. This claim is respectfully denied and dismissed.

IT IS SO ORDERED.

ANDREW L. BLOOD
Administrative Law Judge