

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F208640

MARIA PENA, EMPLOYEE

CLAIMANT

THE WORK PLACE, EMPLOYER

RESPONDENT

**WAUSAU INSURANCE COMPANIES,
INSURANCE CARRIER**

RESPONDENT

OPINION FILED AUGUST 4, 2003

Hearing before Administrative Law Judge Dail Stiles on July 2, 2003, in Little Rock, Pulaski County, Arkansas.

Claimant represented herself Pro Se.

Respondents represented by Mr. Michael E. Ryburn, Attorney at Law, Little Rock, Arkansas.

A hearing was held on July 2, 2003, to determine the compensability of the claim filed herein.

It was stipulated that the employer/employee relationship existed on July 10, 2002. It was stipulated that the claimant was earning sufficient wages to entitle her to weekly indemnity benefits of \$224.00 for temporary total disability benefits and \$168.00 for permanent partial disability benefits.

The claimant contends she sustained an injury arising out of and during the course and scope of her employment on July 10, 2002. The claimant contends she is entitled to temporary total disability benefits from July 10, 2002 until February 1, 2003, as well as past and ongoing medical benefits.

The respondents controvert the claim in its entirety contending the claimant was not performing employment services or employment duties at the time of her alleged injury. In addition, respondents contend that there are no objective findings in the medical evidence to support a claim of compensability.

STATEMENT OF THE CASE

The claimant testified that she worked on a processing line for a poultry processing plant in Danville, Arkansas.

The claimant said she was going to take her break when she turned away from the line and slipped on a piece of chicken on the floor. The claimant fell, contending that she injured her back and leg.

The claimant reported the accident, saw a physician, and according to her testimony, was released to light duty. The claimant testified she could not perform the light duty but attempted it for one day. In approximately a week from the alleged injury, the claimant left Arkansas and returned to her home in Brownsville, Texas.

The claimant testified that she continues to have headaches, and that her back and leg still bother her some, but that she returned to work on February 1, 2003.

No medical evidence was introduced by either party.

FINDING OF FACT

The claimant does not meet her burden of proving by a preponderance of the evidence of record that she sustained an injury arising out of and during the course and scope of her employment on July 10, 2002.

DISCUSSION

“Performing employment services” set out in Ark. Code Ann. §11-9-102(5)(B)(iii), must include the performance of those functions which are essential to the success of the enterprise in which the employer is engaged. Olsten Kimberly Quality Care v. Pettey, 55 Ark. App. 343, 934 S.W.2d 956 (1996). Generally speaking, employees who are injured while taking a break are not deemed to be performing employment services if they are injured while taking that break. In the

instant case, the claimant testified that the respondent employer for whom she worked designates breaks and actually shuts down a line when the break is to occur, and that is what had happened in this case. There was no evidence presented that the claimant had any ancillary duties which would have created an exception to the general premise that employees are not covered if injured while on a break.

Ark. Code Ann. §11-9-102(D) states:

A compensable injury must be established by medical evidence supported by “objective findings” as defined in subdivision (16) of this section.

In the instant case, there is no medical evidence.

The above claim is respectfully denied and dismissed.

IT IS SO ORDERED.

DAIL STILES
Administrative Law Judge