

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F312185

JAMES BRAGG, EMPLOYEE

CLAIMANT

CITY OF STUTTGART, EMPLOYER

RESPONDENT

**ARKANSAS MUNICIPAL LEAGUE
WORKERS' COMPENSATION TRUST,
INSURANCE CARRIER**

RESPONDENT

OPINION FILED SEPTEMBER 23, 2004

Hearing before Administrative Law Judge Cynthia Estes Rogers on June 25, 2004, in Pine Bluff, Jefferson County, Arkansas.

Claimant represented by Ms. Sheila F. Campbell, Attorney at Law, Little Rock, Arkansas.

Respondents represented by Mr. J. Chris Bradley, Attorney at Law, North Little Rock, Arkansas.

A hearing was held on June 25, 2004, to determine the compensability of the claim filed herein.

The parties stipulated to the existence of the employee-employer relationship on October 8, 2003. It was further stipulated that the claimant's earnings were sufficient to entitle him to weekly indemnity benefits of \$234.00 for temporary total disability benefits.

Claimant contends that while in the course and scope of his employment, performing duties essential to his job, he broke his leg as he was attempting to apprehend a suspect at Wildlife Bar and Refuge. Claimant contends that he is entitled to temporary total disability indemnity benefits commencing on October 8, 2003 and continuing through a date yet to be determined. He further contends that he is entitled to medical expenses and attorney's fees.

Respondents controvert the claim, contending that this was an off-duty altercation that the claimant entered into voluntarily and that he was not acting within the course and scope of his employment at the time of the injury.

STATEMENT OF THE CASE

Claimant is employed and was employed by respondent employer as a police officer with the City of Stuttgart, at the time he was injured. Claimant has been an Arkansas police officer since 1994 and had been an officer with respondent employer for over two years at the time of the incident. On the date of injury, claimant was considered off duty. He testified that he had been out for a steak dinner with a fellow off-duty officer, Sergeant Shonda Underwood, at the Wildlife Bar and Refuge and was getting ready to leave there, when the owner of the establishment, knowing claimant to be a police officer, told claimant that he had an intoxicated subject who needed to be removed from the premises. Wildlife Bar and Refuge is located just outside the city limits of Stuttgart, in Arkansas County.

Claimant testified that he walked with the subject out the door of the establishment and went to his own vehicle. As he was getting ready to leave, he and Sergeant Underwood noticed the subject “messing around with some vehicles.” Claimant testified that, based upon his observation, the subject was engaging in conduct that would be a violation of law, that being public intoxication and criminal mischief. Both claimant and Sergeant Underwood testified that Sergeant Underwood called the police department from her cell phone.

Claimant testified that he then approached the subject and identified himself as a police officer and attempted to subdue the subject. It was during this time that claimant alleges he slipped and twisted his ankle and broke his leg, tearing all the ligaments in his right ankle and breaking the fibula shaft in his right leg.

Claimant contends that although it was considered an “off duty” day for him, pursuant to Arkansas Code Annotated § 14-52-203, a police officer is required to faithfully enforce *at all times* all such laws, ordinances, and regulations for the preservation of good order and public welfare. Claimant contends that because a person was breaking the law, and claimant was asked to apprehend this person who was breaking the law, claimant was acting

in the capacity as a police officer. Claimant contends that a police officer is considered on duty twenty-four hours a day, seven days a week.

Respondents contend that claimant was acting on his own at the time he entered into the activities that led to his ultimate injuries. Respondents contend that claimant was not on duty, that he was not wearing his badge, and that he was outside his jurisdiction, since the Wildlife Bar is in the county, rather than in the city limits. Respondents contend that because the events took place outside claimant's jurisdiction, the claimant engaged in an illegal arrest, as claimant's activities were not conveying benefit to the City of Stuttgart. Respondents cited two Arkansas cases in support of their argument, *Perry v. State*, 303 Ark. 100, 794 S.W.2d 141 (1990) and *Thomas v. State*, 65 Ark. App. 134, 985 S.W.2d 752 (1999), that deal with officers going into foreign jurisdictions to investigate and make arrests.

Claimant testified that he had been dispatched to Wildlife Bar on several occasions to deal with situations such as public intoxication, disorderly conduct, and fighting. When asked why a city policeman of Stuttgart would be dispatched to a business that is actually in the county, rather than inside the city limits, claimant testified as follows:

A: Because we usually have one deputy working on that end of the county, and sometimes he may be out of reach in a timely manner, to get there in a timely manner.

Q: Has some type of agreement been reached with the Arkansas County police for you-all to assist the deputies in the county?

A: There's no policy, it's just an unspoken rule that we assist each other, the Arkansas County Sheriff's Department and the Stuttgart Police Department would work closely hand-in-hand.

Q: Have you ever been reprimanded by any of your supervisors for appearing at these businesses in the county, as opposed to in the city making arrests?

A: No, I haven't.

Q: Has anyone raised an issue with you that an arrest in Arkansas County would be an illegal arrest?

A: No.

* * *

Q: Did the City of Stuttgart send police officers to the establishment where you attempted to apprehend the subject?

A: Yes, they did.

Q: Did they wait for a deputy from the County of Arkansas to appear to turn that subject over to that particular deputy?

A: No, they didn't.

Q: Did they arrest the subject at the restaurant that caused you to slip and fall?

A: Yes.

* * *

Q: When you serve warrants, can the police department from the city serve warrants for people that are out in the county?

A: Yes.

Claimant further testified in support of his contention that he is at all times considered "on duty."

Q: Are you required to carry your gun at all times?

A: Yes, I am.

Q: Wh[o] told you that you were required to carry your gun at all times?

A: I believe that I was told upon my hire that I'm required to carry my weapon in my bag at all times.

Q: Did you have your gun and your badge on the night that you were injured at this restaurant and attempted to apprehend the subject?

A: Yes, I did.

Q: Did you display that badge to the person that you were attempting to bring under control?

A: Yes, I did.

Q: Did you also tell the person that you were a police officer?

A: Yes, I did.

Deputy Dennis Swinford, who is now a deputy sheriff for Arkansas County, but who was, at the time of this incident, employed as a Sergeant with the City of Stuttgart Police Department, was called to testify for respondents. He testified that when he worked for the city, he was dispatched quite often to make arrests in the county. He confirmed that claimant was correct in the reason he gave for the city and county officers helping one another out. He also testified that he, too, considers himself on duty twenty-four hours a day as a police officer, because he is supposed to “protect the laws of the State of Arkansas and of property and of its lives and civilians.”

Deputy Swinford was actually the officer who made the arrest in question the night of October 8, 2003, inside the county, while he was a city police officer. He was asked if he believed that arrest was appropriate:

A: Yes, I do.

Q: And why is that?

A: Because I got permission from Deputy Burgess.

Respondents contend that it was improper for claimant to make an arrest for a misdemeanor outside his jurisdiction. Respondents’ own witness, Deputy Swinford, however, testified that although he “probably” would not make an arrest for a misdemeanor outside his jurisdiction, he does believe that he would have the authority to do so, because a misdemeanor could involve bodily harm or danger to a person. He testified, “It all depends on the totality of the situation before I can make a decision on that.” He testified that he believes he would have had the authority to do what claimant did.

Police Chief Michael Smith was called to testify on behalf of respondents. The date of the incident was actually Chief Smith’s first day as Chief. Chief Smith testified that although there is no written agreement between the City of Stuttgart and the County of

Arkansas regulating officers outside the jurisdiction, there is, in fact, a verbal agreement, and it has been in effect “[f]orever. However long the department dates back.” He testified:

[T]here’s a verbal agreement, because of the lack of manpower for Arkansas County, they would give our officers permission to go out to their jurisdiction and make an arrest.

Q: Are the officer[s] supposed to do as Sergeant Swinford did at the time and get permission before taking action outside the jurisdiction of the City of Stuttgart?

A: If it’s a misdemeanor.

Q: If it’s a felony, then, they do not have to ask that permission, is that correct?

A: Correct.

Respondents next called Sergeant Shonda Underwood to testify, who was the officer dining with the claimant on the night of claimant’s injuries. She testified that she was a patrolman for the City of Stuttgart Police Department at that time. Sergeant Underwood corroborated all of claimant’s testimony about the events of that evening. Sergeant Underwood further testified, however, that as the events were ensuing, she called the police department dispatcher on behalf of herself and claimant to ask for a deputy. The testimony continued as follows:

Q: All right. What happened then, as far as you understand things?

A: She said that the deputy was busy, and that was pretty much it, and then she was going to send the city unit if they advised her it was okay.

As stated above, Sergeant Swinford, a city police officer, testified that he was dispatched to the scene, since the county deputy was busy; and, he was given permission to arrest the subject by Deputy Burgess.

FINDINGS OF FACT

1. Claimant was acting within the course and scope of his employment at the time of his injury on October 8, 2003.
2. Claimant is entitled to treatment, both past and future, for complaints associated with his October 8, 2003, injury.
3. Claimant is entitled to temporary total disability indemnity benefits commencing October 8, 2003, and continuing through a date to be determined.
4. Respondents have controverted the compensability of the claim.

DISCUSSION

Without dispute, an agreement presently exists and existed at the time of the incident between the City of Stuttgart Police Department and the County of Arkansas Sheriff's Department that enables the city police to assist the county deputies. What is further clear is that the claimant and Sergeant Underwood contacted the dispatcher and requested a deputy, and a city officer was sent with permission from the deputy. Obviously, therefore, the arrest was not illegal, as respondents contend.

This case is distinguishable from the cases cited by respondents, *Perry v. State* and *Thomas v. State, supra*. In those cases, the officer was not authorized to act outside his own jurisdiction. Here, a long-standing policy exists allowing city officers to help in the county *and* permission was granted in this specific instance for a city officer to make the arrest.

In regard to claimant being "off duty" at the time of the incident, each witness testified that he or she, as police officers, believes that they are *required* to be "on duty" at all times and are required to carry their gun and badge with them at all times. Moreover, as claimant contends, Arkansas Code Annotated § 14-52-203 states, in pertinent part:

14-52-203. Duties of police officers.

...

(b) It shall be their duty to:

...

(4) Diligently and faithfully enforce *at all times* all such laws, ordinances, and regulations for the preservation of good order and the public welfare as the city council may ordain.

[Emphasis added.]

Claimant, being recognized by the owner of the Wildlife Bar and Refuge as a police officer, was asked to help preserve the order in the establishment. As a police officer, claimant knew that, although he was not in uniform, he was required to act accordingly. He announced himself to the subject as a police officer and displayed his badge. He and Sergeant Underwood followed proper procedure, and claimant was injured in the process. Claimant was clearly acting within the course and scope of his employment at the time of injury, and his claim is compensable.

AWARD

Respondents are directed to pay the claimant benefits in accordance with the findings of fact above.

Respondents are directed to pay past and future reasonable, necessary, and related medical expenses the claimant has and may incur as a result of his compensable injury.

Respondents are directed to pay the claimant's attorney, Ms. Sheila Campbell, the maximum attorney's fee on this award pursuant to Ark. Code Ann. § 11-9-715.

IT IS SO ORDERED.

CYNTHIA ESTES ROGERS
Administrative Law Judge