

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NUMBER F401844

HELEN R. BULLARD, EMPLOYEE

CLAIMANT

**WHITE RIVER MEDICAL CENTER,
SELF-INSURED EMPLOYER**

RESPONDENT

RISK MANAGEMENT RESOURCES, CARRIER/TPA

RESPONDENT

OPINION FILED NOVEMBER 8, 2004

A hearing in this case was conducted on August 13, 2004, before ADMINISTRATIVE LAW JUDGE D. FRANKLIN AREY, III, at Batesville, Independence County, Arkansas.

Claimant was represented by James A. McLarty, III, Attorney at Law, Newport, Arkansas.

Respondents were represented by Bill H. Walmsley, Attorney at Law, Batesville, Arkansas.

STATEMENT OF THE CASE

A prehearing telephone conference was held on this claim on June 1, 2004; a Prehearing Order was filed on that same date. A copy of the Prehearing Order was admitted into the record as Commission Exhibit #1.

The parties agreed to five stipulations. Four of the stipulations are set forth in the Prehearing Order, and were confirmed by the parties at the hearing. The fifth stipulation was agreed to at the hearing. The stipulations that follow are hereby accepted:

1. The relationship of employee-employer-carrier existed on July 10, 2002, the date upon which Claimant sustained her alleged injury.

2. Claimant's temporary total disability rate is \$347.00 per week; her compensation rate for permanent partial disability is \$260.00 per week.

3. Claimant's alleged left knee injury is a scheduled injury.
4. Respondents controvert the claim in its entirety.
5. Other than paying for medical services provided by the White River Medical Center emergency room and Dr. Clifford Boswell, Respondents have not provided any medical benefits to Claimant.

At the August 13, 2004 hearing, the parties discussed the issues set forth in the Prehearing Order. The parties agreed that the issues to be litigated and resolved are limited to the following:

1. Whether Claimant suffered a compensable injury in the scope and course of her employment.
2. Whether Claimant is entitled to two months of temporary total disability benefits.
3. Whether Claimant is entitled to reasonably necessary medical treatment or services including the payment of medical bills.

Claimant contends that her July 10, 2002 injury is compensable, and that her left knee injury is a compensable consequence of that original compensable injury. Claimant seeks temporary total disability benefits and medical benefits as appropriate. Respondents controvert her claim. Respondents allege that the injury did not arise out of and in the course of Claimant's employment, and that Claimant was not performing employment services at the time of the injury. If it is found that Claimant suffered a compensable injury, Respondents assert that only her ankle injury has the required causal connection.

DISCUSSION

On July 10, 2002, and as of the date of the hearing, Claimant worked in Respondent White River Medical Center's lab as a medical technologist. Her work day ran from 6:30

a.m. to 3:00 p.m.; she was required to clock in prior to commencing work. On the morning of July 10, 2002, Claimant parked her car in a parking lot near the employee entrance that she used and exited the car. As she walked towards the employee entrance door, she crossed “a grassy area that ... was about ten to twelve feet in width and ran the length of that side of the building.” As she was crossing this area, her “left ankle went into a hole that was in the grassy area” and she fell. Claimant did not clock in prior to her July 10, 2002 fall; she went directly from the parking lot to the site of her injury and then to the emergency room.

Claimant initially experienced pain in her left ankle and right hip, and sought medical treatment. Some months later, apparently in early 2003, Claimant began to experience pain in her left knee. Claimant’s treatment has included surgery on her left knee and physical therapy for her knee and hip. As of the date of the hearing, Claimant was still under a doctor’s care.

Claimant had parked in an area designated or authorized for employee parking. The lot was an open lot; spaces were not assigned to specific employees, but were open to all. Other lots or areas were open and available for employee parking around the hospital, but Claimant testified that this lot was closest to the employee entrance she utilized. Claimant did not mention passing through any gates or any other point that limited access to the parking lot.

Claimant testified that her employer’s human resources department published a map of the hospital grounds that designated parking areas available to the public, doctors, or employees. Florence Grammar, human resource coordinator for Claimant’s employer, testified at the hearing. She agreed that the lot used by Claimant was an authorized,

appropriate place for Claimant to park. Grammar testified:

Q. Okay. Is it fair to say that the hospital back then had a number of places to park, some more favorable than others, some restricted to doctors or executives, and some open to general personnel?

A. The aim of the hospital is to provide the closest parking for our patients and their families. And then on the outreach is where the - you know, outer edges is where the employees park.

Q. So the employees are supposed to take parking spots on the outer edges to provide the more favorable parking to patients and families and friends and visitors?

A. Exactly.

Grammar noted that the normal procedure for employees is “to come in and clock in and go to their work station.”

Respondents contend that Claimant’s injury is not compensable. Among other requirements, a compensable specific incident injury must arise out of and in the course of a claimant’s employment. Ark. Code Ann. § 11-9-102(4)(a)(i). An injury inflicted upon a claimant at a time when employment services were not being performed is not compensable. Ark. Code Ann. § 11-9-102(4)(B)(iii). The Arkansas Supreme Court interprets these provisions as follows:

We use the same test to determine whether an employee was performing “employment services” as we do when determining whether an employee was acting within “the course of employment.” The test is whether the injury occurred “within the time and space boundaries of the employment, when the employee [was] carrying out the employer’s purpose or advancing the employer’s interest directly or indirectly.”

Collins v. Excel Specialty Products, 347 Ark. 811, 816-17, 69 S.W.3d 14, ____ (2002) (citations omitted); see Cook v. ABF Freight Sys., Inc., __ Ark. App. __, __ S.W.3d __ (October 6, 2004). Claimant must sustain her burden of proving that her injury is

compensable by a preponderance of the evidence. Ark. Code Ann. § 11-9-102(4)(E)(i).

The Arkansas Court of Appeals has addressed circumstances similar to Claimant's. See Crossett School Dist. v. Fulton, 65 Ark. App. 63, 984 S.W.2d 833 (1999); Hightower v. Newark Pub. Sch. Sys., 57 Ark. App. 159, 943 S.W.2d 608 (1997). In Hightower, an employee parked her car at the employer's parking lot, exited her car, and then injured herself when she slipped on the ice-covered parking lot. The Arkansas Court of Appeals affirmed a Commission decision denying benefits to the employee.

[The statute] excludes from being compensable injuries that occur "at a time when employment services were not being performed." This provision seems clearly aimed at eliminating the premises exception to the going-and-coming rule since, under a strict construction of [the statute], merely walking to and from one's car, even on the employer's premises, does not qualify as performing "employment services."

Hightower, 56 Ark. App. at 164, 943 S.W.2d at ____.

In Fulton, a teacher parked her car, entered the school building, and began her duty of supervising children before school. She returned to her car for her reading glasses in order to complete an assignment; on her way back to the building, she slipped on ice and fell. The Arkansas Court of Appeals distinguished Hightower.

That case is distinguishable in that the claimant in Hightower was injured before she began her employment services that day. In this case, the [employee] had reported to work, had supervised children before the bell rang beginning school, was given an assignment after reporting to the librarian, and injured herself in efforts taken to complete the assignment. Those facts constitute substantial evidence that [the employee] was performing employment services at the time of her injury.

Fulton, 65 Ark. App. at 66, 984 S.W.2d at ____.

The Commission has also addressed a situation similar to this, in Nicholson v. Ozark Health, Full Workers' Compensation Commission Opinion filed April 17, 2003

(F012618, F012619, and F107491). In Nicholson, an employee clocked out, left the building, and slipped on ice as she was walking to her car to return home. The Commission affirmed an administrative law judge's decision finding that the employee was not performing employment services when she slipped.

The Full Commission has found compensability in instances where employees were injured while walking across a parking lot, if they were performing employment services. In the present matter, however, the preponderance of the evidence supports the administrative law judge's determination that the claimant was not performing employment services at the time of her December 26, 2000 fall. The claimant was merely walking to her car to go home and was not benefitting the employer in any way.

Nicholson, supra (citations omitted).

I find that Claimant's injury did not arise out of or in the course of her employment; in the alternative, I find that it did occur at a time when employment services were not being performed. As in Hightower, Claimant injured herself prior to entering her work place. Claimant had not clocked in; unlike the employee in Fulton, Claimant had not begun her duties and was not engaging in employment services. These facts compel the conclusion that Claimant's injury is not compensable.

Claimant argues that the "premises exception" to the going-and-coming rule is applicable, so that her claim is compensable. However, as quoted above, in Hightower the Arkansas Court of Appeals found that Act 796 of 1993 eliminated the premises exception to the going-and-coming rule. Hightower, 56 Ark. App. at 163-64, 943 S.W.2d at ____. In terms of the Collins test, and in light of Hightower and Nicholson, Claimant simply was not within the time-and-space boundaries of her employment at the time the injury occurred; she was not carrying out her employer's purpose or advancing its interest, merely by walking from her car to the employee entrance.

Based upon the foregoing findings, it is not necessary to discuss Claimant's requests for medical and temporary total disability benefits, or an attorney's fee. Because Claimant failed to establish by a preponderance of the evidence one of the requirements for establishing the compensability of the injury alleged, she failed to establish the compensability of her claim, and compensation must be denied. See Reed v. Conagra Frozen Foods, Full Workers' Compensation Commission Opinion filed February 2, 1995 (E317744).

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. The stipulations agreed upon by the parties are reasonable and are approved.
2. The relationship of employee-employer-carrier existed on July 10, 2002, the date upon which Claimant sustained her alleged injury.
3. Claimant's temporary total disability rate is \$347.00 per week; her compensation rate for permanent partial disability is \$260.00 per week.
4. Claimant's alleged left knee injury is a scheduled injury.
5. Respondents controvert the claim in its entirety.
6. Other than paying for medical services provided by the White River Medical Center emergency room and Dr. Clifford Boswell, Respondents have not provided any medical benefits to Claimant.
7. Claimant did not sustain her burden of proving by a preponderance of the evidence that her injury arose out of and in the course of her employment. The evidence establishes that Claimant's injury occurred as she was walking from her car to the employee entrance prior to clocking in and beginning her work.
8. In the alternative, Claimant suffered her injury at a time when employment

services were not being performed. Merely walking from her car to the employee entrance does not constitute employment services.

9. Because Claimant failed to prove a compensable injury, it is not necessary to discuss her requests for medical and temporary total disability benefits, or the need for an attorney's fee.

ORDER

Claimant failed to sustain her burden of proving that she suffered a compensable injury. Therefore, the above claim is respectfully denied and dismissed.

IT IS SO ORDERED.

D. FRANKLIN AREY, III,
Administrative Law Judge

DFA/ml