

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F312912

ROSIE COLLIER, EMPLOYEE

CLAIMANT

**CITY OF LITTLE ROCK,
SELF-INSURED EMPLOYER**

RESPONDENT

**RISK MANAGEMENT RESOURCES,
THIRD PARTY ADMINISTRATOR**

RESPONDENT

OPINION FILED JUNE 15, 2004

Hearing before ADMINISTRATIVE LAW JUDGE ANDREW L. BLOOD, on March 11, 2004, at Little Rock, Pulaski County, Arkansas.

Claimant represented by the HONORABLE GARY DAVIS, Attorney at Law, Little Rock, Arkansas.

Respondents represented by the HONORABLE BETTY J. DEMORY, Attorney at Law, Little Rock, 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 January 27, 2004, a pre-hearing conference was conducted in this claim, from which a Pre-hearing Order of the same date was filed. The Pre-hearing 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 Pre-hearing Order is herein designated a part of the record as Commission Exhibit No. 1.

The testimony of Rosie Collier, the claimant, Jill Johnson, Daniel Smith, and Aaron Theodore, coupled with medical reports and other documents comprise the record in this claim.

DISCUSSION

Rosie Collier, the claimant, with a date of birth of January 4, 1955, has a Bachelor of Science Degree with thirteen years of educational teaching experience. The claimant has been employed by the City of Little Rock for a period of approximately eleven years as a facilitator and five years in the Parks and Recreations Department. There was a thirteen (13) month gap in the claimant's employment with the city during which time she was employed by UAMS. The claimant has been continuously employed by the city of Little Rock since June 15, 1998.

As a facilitator the claimant's job duties entail connecting agencies to persons in need. In describing the nature and objective of her job duties the claimant's testimony reflects:

I can help senior citizens who are homebound to make sure that they have food and to make sure – give them brochures where they can get meals on wheels or get a nurse to come assist them or if we have a family that has burnout; they need to be placed in some type of placement or clothing or furniture. I work with the schools. If we have some kids that have been in trouble with the schools, I work with the elementary schools, the Boys and Girls Club, just about anything that a resident needs, I try to provide a resource and an avenue to assist them. (T. 21)

The claimant was assigned to the Alert Center at Kavanaugh and Markham Streets in Little Rock. The testimony in the record reflects that the claimant's normal hours were from 8:00 a.m. until 5:00 p.m. The claimant's annual salary is \$24,000.00.

The evidence in the record reflects that while the claimant was assigned to the Alert Center at Markham and Kavanaugh, in Little Rock, she did not spend the entirety of her work shift inside the Alert Center. The nature of the claimant's job duties entailed community contact with residents or "work in the field". The claimant was assigned a city vehicle, which was located at the Alert

Center, to utilize in the discharge of her job duties as well as a cell phone. The evidence further reflects that the claimant, as with all other Alert Center facilitators, was required to submit a weekly report relative to her contacts.

Mr. Aaron Theodore, Alert Center operation supervisor, has been employed by the City of Little Rock for five years and a supervisor of the Alert Center since July 2000, testified regarding flex time as applicable to Alert Center employees or facilitators:

Facilitators work neighborhood association meetings on different evenings and if they work a two-hour meeting then they can take off for two hours the next day or by the Friday of that week, the end of the week. (T. 68-69)

Mr. Theodore further testified that the claimant had arranged to use her fifteen minute afternoon break to pick up her daughter at school.

The claimant acknowledged that she suffered an injury to her left knee for which she underwent treatment under the care of Dr. Rex Easter, a Little Rock orthopedic physician. The claimant was seen by Dr. Easter on May 23, 1984, for a left knee injury having been sustained on May 15, 1984. The claimant later underwent surgery under the care of Dr. Easter relative to the left knee complaint. There is no evidence in the record to reflect that the claimant experienced complaints or required medical treatment in close proximity to October 23, 2003, relative to her left knee.

The claimant asserts that on October 23, 2003, between 2:30 and 2:45, she suffered an injury to her left knee within the course and scope of her employment. The testimony of Mr. Daniel Smith, a code enforcement officer for the City of Little Rock, reflects that he worked out of the station referred to as the Alert Center, located at 3001 W. Markham, at the intersection of Markham and

Kavanaugh. Though performing different functions and job duties, Mr. Smith and the claimant worked out of the same Alert Center. Also the evidence reflects that on occasions Mr. Smith would be at the Alert Center and the claimant might be out in the field performing employment duties and conversely the claimant may be at the Alert Center and Mr. Smith out performing employment duties in the field. Also there were occasions when both the claimant and Mr. Smith were at the Alert Center at the same time performing their respective job duties.

The evidence in the record reflects that on October 23, 2003, Central Arkansas Water was performing construction work in the area of the Alert Center. Mr. Smith's testimony reflects that at approximately 2:30 p.m. on October 23, 2003, the claimant left the Alert Center. At the time the claimant left the Alert Center Mr. Smith testified the claimant relayed, with respect to her actions:

What she told me was when she left that she would be out in the field and that she would be back. (T. 14)

The credible testimony in the record reflects that the term "in the field" was a shortened communication used by Alert Center personnel and well as code enforcement employees of the City of the Little Rock reflecting that they would be performing job duties out in the neighborhood. Mr. Smith later provided an Affidavit of November 14, 2003, reflecting his contact with the claimant on October 23, 2003. (CX1, Exhibit A)

The testimony of the claimant reflects, regarding the events of October 23, 2003:

Probably about 7:00 that morning, 7:30, they had been out there disconnecting a water line in the back of the building. The water line shut off the water from the Alert Center and the Oyster Bar. We share the same water line. They ran a temporary water line from the meter in front of the Alert Center door, in front of the Oyster Bar and into the Oyster Bar. And they taped it off with two pieces of wood and a black water hose right in between the two pieces of wood and they taped it down and it was like less than a foot in front of the door.

The door has a big wheelchair hump and that's where they placed it.

* * *

That afternoon, I had been getting phone calls in and out of the office all day doing some work with the other residents and I had a resident concerned about Ms. Kirkpatrick, a Dana Sparks. Dana Sparks had been over there Monday to Kirkpatrick's. She's one of my senior citizens that walks around the neighborhood and pulls grass and she is about 88 years old.

* * *

Ms. Kirkpatrick. And so Ms. Sparks wanted to see if I could get some brochures, I had already dropped one off, to see if I could get a brochure on Care Link and drop it off at her house and see if we could get her to read all that and maybe get her some meals on wheels or someone in there to clean her house up. [Ms. Kirkpatrick]. (T. 23-24)

The claimant's testimony reflects that she left the desk and told Mr. Smith that she was going out in the field. The claimant testified:

Going out in the field is a way we communicate that I'm going to work. And before I got ready to get up the phone rang and it was Ms. Sparks and she was reminding me and I told her that's what I was getting ready to do to go and take her [Ms. Kirkpatrick] some brochures. (T. 24)

The claimant's testimony reflects that at the time she received the telephone call from Ms. Sparks, she was in the process of completing her log of daily contacts to include the entry regarding taking the brochure to Ms. Kirkpatrick. (CX1, Exhibit C3) After completing the telephone conversation with Ms. Sparks and the entry in her daily log, the claimant proceeded out of the door of the Alert Center in route to deliver the brochure to Ms. Kirkpatrick. The claimant's personal vehicle was parked at the rear of the Alert Center as was the assigned city vehicle.

The credible testimony of the claimant reflects that she walked out of the door and the heel of her shoe hit the board placed in front of the door by Central Arkansas Water to secure the water

hose, and that the claimant's left knee snapped. The claimant's testimony reflects, with respect to the injury:

All I know is something popped and it was so excruciating pain that I just could barely get to the car and I got to the car and just sat there.
(T. 27)

The claimant's credible testimony reflects that she sat in her vehicle for ten to fifteen minutes adjusting to the pain in her left knee. Claimant noted that it was easier to proceed to her vehicle rather than to the city owned vehicle which was parked further away. Claimant did not return into the Alert Center following the occurrence. After sitting for a period of ten minutes with her knee hurting and beginning to swell, the claimant proceeded to her residence. Upon arriving at her residence, the claimant called the Alert Center and notified Mr. Smith of the injury.

The claimant acknowledged that on October 23, 2003, she was experiencing a headache and had told her supervisor, Mr. Aaron Theodore, that if she did not feel better she might be leaving early. The claimant did not leave early but rather continued to discharge her employment duties until she suffered the accident when in the process of delivering the Care Link brochure to Ms. Kirkpatrick.

The testimony of the claimant reflects that upon arriving home following the accident she elevated her left knee, which was beginning to swell. The claimant thereafter called Mr. Smith and told him about the accident. Later, the claimant called her supervisor, Mr. Aaron Theodore, and left a message on his voice mail regarding the injury. The claimant's testimony further reflects, regarding the reporting of the injury:

I called the City of Little Rock 1-800 number and told them what had happened that I was injured and what should I do. And the nurse called my home back and told me to report to Baptist Hospital, the

emergency room. (T. 30-31)

The testimony of the claimant reflects that she was directed by Mr. Michael Knott, a safety control officer with the City of Little Rock, to report to Dr. Kent Davidson for treatment relative to the October 23, 2003, left knee injury. On October 23, 2003, the claimant was transported to the emergency room of Baptist Hospital for treatment relative to her left knee injury by a friend, who also picked up the claimant's daughter from school on the date of the accident. The claimant noted that her husband, a truck driver, was on the road at the time.

On October 30, 2003, the claimant gave a recorded statement to Ms. Jill Johnson, a claims specialist with Risk Management Resources, the third party administrator for respondent-employer. During the course of the recorded statement, the claimant acknowledged that she may have informed Ms. Johnson that at the time of the October 23, 2003, left knee injury she was leaving for the day due to a headache. The claimant credibly testified that after giving the recorded statement to Ms. Johnson, once she returned to her office and reviewed her daily log she realized that she was in fact in the process of delivering the Care Line brochure to Ms. Kirkpatrick on October 23, 2003, at the time of the accident. The claimant later called Ms. Johnson to correct the information previously furnished. In addition to the October 23, 2003, voice mail reporting the October 23, 2003, injury to her supervisor, the claimant also submitted a detailed account of the accident to her supervisor on November 12, 2003. (CX1, Exhibit D)

Although receiving medical treatment relative to the October 23, 2003, left knee injury, the claimant did work more often than not through December 4, 2003. A review of the evidence in the record reflects that the claimant was off work on October 23, 2003; October 28 through October 31, 2003; and November 24, 2003. The claimant initiated treatment under the care of Dr. Charles

Pierce, a Little Rock orthopedic physician, on November 4, 2003, relative to the October 23, 2003 left knee injury. On December 5, 2003, the claimant underwent surgery under the care of Dr. Pierce relative to the left knee. The claimant remained off work from December 5, 2003 through January 13, 2004. (CX1, Exhibit D)

The testimony of Mr. Aaron Theodore, Alert Center Operation Supervisor, reflects that he learned of the claimant's October 23, 2003, injury on October 24, 2003, from a voice mail that the claimant had left on October 23, 2003. Mr. Theodore testified that based upon the voice mail left by the claimant he completed a supervisor's accident report on October 24, 2003, indicating that the claimant's accident occurred at 3:00 p.m. on October 23, 2003. Regarding the description of the accident, Mr. Theodore testified:

I was told that while leaving the building, there was a black hose and a piece of wood next to it and Rose tripped and hurt her knee. (T. 77)

Mr. Theodore acknowledged that at the time of his interview with the claimant on November 12, 2003, he was furnished more details of the accident by the claimant. (CX1, Exhibit D)

Ms. Jill Johnson, a claims specialist with Risk Management Resources, the third party administrator for respondent-employer, testified regarding her contact with the claimant on October 30, 2003, during which time she obtained a recorded statement. Ms. Johnson acknowledged that the recorded statement was not available due to an error at the time of recording. Instead, only a recorded statement outline regarding the October 30, 2003, recorded statement was available. Ms. Johnson's testimony reflects that among the questions usually asked during a recorded statement is witnesses to the event and the name and identity of the employee's supervisor. In the instant claim, Ms. Johnson acknowledged that she did not contact either Mr. Daniel Smith, the witness, or the

claimant's supervisor, Mr. Aaron Theodore, prior to making a determination to controvert the claimant's claim.

After a thorough consideration of all the evidence in this record, to include the testimony of the witnesses, a review of the medical reports, and application of the appropriate statutory provisions and case law, I make the following:

FINDINGS

1. The Arkansas Workers' Compensation Commission has jurisdiction of this claim.
2. On October 23, 2003, the relationship of employee-employer existed between the parties.
3. On October 23, 2003, the claimant earned wages sufficient to entitle her to weekly compensation benefits of \$308.00/\$231.00 for temporary total/permanent partial disability benefits.
4. On October 23, 2003, the claimant sustained an injury arising out of and in the course of her employment.
5. The claimant was temporarily totally disabled for the periods of October 24, 2003; October 28-October 31, 2003; November 24, 2003, and December 5, 2003 through January 13, 2004.
6. The respondent shall pay all reasonable hospital and medical expenses arising out of and in the course of the injury of October 23, 2003.
7. The respondent has controverted this claim in its entirety.

CONCLUSIONS

The evidence in the record reflects that on October 23, 2003, at approximately 2:30 p.m., the claimant fell on a board outside the Alert Center at Markham and Kavanaugh, injuring her left knee. As a result of the October 23, 2003, left knee injury, the claimant required medical treatment and was off work for a period of time. The claimant maintains that the injury was suffered while performing

employment services for respondent within the course and scope of her employment with same. Respondent denies that the October 23, 2003, injury suffered by the claimant occurred while claimant was performing employment services. The present claim is one governed by the provisions of Act 796 of 1993, in that the 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.

The claimant has been employed by respondent for a number of years, and continuously since June 15, 1998. The claimant has suffered injuries to her left knee prior to 1998 and has previously undergone surgery relative to same. There is no evidence in the record to reflect that the claimant experienced limitations or restrictions relative to her left knee in close proximity to October, 2003, or since returning the employment of respondent on June 15, 1998.

The evidence clearly reflects that on October 23, 2003, Central Arkansas Water was performing construction in the area of the Alert Center at Kavanaugh and Markham. Further, the credible evidence in the record reflects that while the claimant had experienced a headache at approximately 1:00 p.m. on October 23, 2003, and during the course of a telephone conversation with her supervisor, Aaron Theodore, related that if the headache didn't improve she might leave early, the claimant remained at work discharging employment duties through 2:30 p.m.

The credible evidence, testimony of Daniel Smith, a code enforcement officer assigned to the Alert Center, and the claimant's contemporaneous log of daily activity reflects that as of 2:30 p.m. the claimant was discharging employment duties in the employment of respondent. The claimant at the time of the October 23, 2003, injury the claimant was proceeding to deliver a Care Link brochure to a Little Rock resident, Ms. Kirkpatrick, at the time she suffered her fall over the boards outside the door of the Alert Center.

The evidence further reflects that once suffering the injury to her left knee the claimant proceeded home. After the claimant arrived home she telephoned Mr. Smith, the code enforcement officer who was still at the Alert Center, and related the occurrence of the injury to same. Further, the claimant notified appropriate supervisory personnel of respondent-employer of her October 23, 2003, left knee injury, to include her supervisor, Mr. Aaron Theodore. The evidence preponderates that at the time the claimant suffered her October 23, 2003, left knee injury she was performing employment duties for respondent.

Although claimant, on October 30, 2003, one week following the occurrence, may have related to the claim adjuster that she was leaving early because of a headache at the time of the accident the same was based upon the claimant's faulty memory. Indeed, as noted above, on October 23, 2003, the claimant had in fact experienced a headache and related to her supervisor the possibility of leaving work early if the headache did not improve. However, once the claimant had an opportunity to review her October 23, 2003, daily log, which was prepared contemporaneous with the event, she contacted the claim adjuster and corrected the erroneous information previously provided during the October 30, 2003, recorded statement. Further, corroborative of the claimant's account of October 23, 2003, regarding her activity at the time of the accident, the testimony of Mr. Daniel Smith, a code enforcement officer who was present at the Alert Center at the time of the claimant's departure at 2:30 p.m. The claimant had relayed to Mr. Smith that she was going out to the field and would be back.

It is therefore my opinion, after a thorough consideration of all the evidence in this record, that the claimant has sustained her burden of proof by a preponderance of the credible evidence that she sustained an injury arising out of and in the course of her employment with respondent on

October 23, 2003, to her left knee. Further, at the time of the October 23, 2003 left knee injury, the claimant was performing employment services for respondent. Respondents have controverted this claim in its entirety.

The evidence in the record reflects that the claimant's annual earnings during the October 23, 2003 period was \$24,000.00, generating weekly compensation benefit rates of \$308.00 per week for temporary total disability benefits and \$231.00 for permanent partial disability benefits. Further, the evidence preponderates that the claimant was off work as a result of the October 23, 2003 injury on October 24, 2003, October 28 through October 31, 2003, November 24, 2003 and from December 5, 2003 through January 13, 2004. (CX1, Exhibit D) Respondents have controverted the payment of claimant's temporary total disability benefits.

The evidence in the record further reflects that the claimant received treatment under the care of the emergency room of Baptist Hospital, Dr. Kent Davidson, and Dr. Charles Pierce. Medical treatment rendered to the claimant relative to the October 23, 2003 left knee injury, was reasonable, necessary, and related to the claimant's injury. Respondents have controverted the payment of medical benefits to the claimant relative to her compensable injury, to include medical related travel.

AWARD

Respondents are hereby ordered and directed to pay to the claimant temporary total disability benefits at the weekly compensation benefit rate of \$308.00 for the periods October 24, 2003; October 28, 2003 through October 31, 2003; November 24, 2003; and December 5, 2003 through January 13, 2004, as a result of the claimant's October 23, 2003 compensable injury. Said sums accrued shall be paid in a lump without discount.

Respondent is further ordered and directed to pay all reasonably related medical, hospital, nursing, and other apparatus expenses, to include medical related travel, growing out of the claimant's October 23, 2003, compensable injury.

Maximum attorney's fees are herein awarded to the claimant's attorney, the Honorable Gary Davis, on the controverted portion of this award, pursuant to Arkansas Code Annotated §11-9-715.

This award shall bear interest at the legal rate pursuant to Arkansas Code Annotated §11-9-809, until paid.

Matters not addressed herein are expressly reserved.

IT IS SO ORDERED.

ANDREW L. BLOOD
Administrative Law Judge