

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F313204

WILLIAM K. GLADDEN, EMPLOYEE	CLAIMANT
COMMUNITY FIRST BANK, EMPLOYER	RESPONDENT
ST. PAUL FIRE & MARINE INS. CO., INSURANCE CARRIER	RESPONDENT

OPINION FILED DECEMBER 8, 2004

Hearing conducted before ADMINISTRATIVE LAW JUDGE MARK CHURCHWELL, in Harrison, Boone County, Arkansas.

The claimant was represented by HONORABLE RONALD MCCANN, Attorney at Law, Fayetteville, Arkansas.

The respondent was represented by HONORABLE RICHARD A. SMITH, Attorney at Law, Little Rock, Arkansas.

STATEMENT OF THE CASE

A hearing was held in the above-styled claim on October 19, 2004 in Harrison, Arkansas. A prehearing order was entered in this case on May 13, 2004. A copy of this prehearing order set out the stipulations offered by the parties and outlined the issues to be litigated and resolved at the present time. A copy of this prehearing order was made Commission's Exhibit No. 1 to the hearing record.

The following stipulations were submitted by the parties in the prehearing order and are hereby accepted:

1. That the relationship of employer-employee existed on October 8, 2003.

2. That claimant's compensation rate is the maximum allowed by law.

By agreement of the parties at the start of the hearing, the only issue to be litigated and resolved at the present time is whether or not the claimant was performing employment services at the time of his injury.

The record consists of the October 19, 2004 hearing transcript and the exhibits contained therein. In addition, I have "blue-backed" Mr. Smith's October 21, 2004 post-hearing letter to me for identification purposes.

DISCUSSION

The Arkansas Court of Appeals has recently summarized the law on "employment services" as follows:

Employment services are performed when the employee does something that is generally required by his or her employer. *Collins v. Excel Spec. Prod.*, 347 Ark. 811, 69 S.W.3d 14 (2002); *Pifer v. Single Source Transp.*, 347 Ark. 851, 69 S.W.3d 1 (2000). 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." *Collins, supra; Pifer, supra*. The test is whether the injury occurred "within the time and space boundaries of employment, when the employee [was] carrying out the employer's purpose or advancing the employer's interest directly or indirectly." *Collins, supra* at 817, 69 S.W.3d at 18; *Pifer, supra*.

Daniels v. Arkansas Waffles, Inc., 83 Ark. App. 106, 117 S.W.3d 653 (2003).

For the most part, the relevant facts in the present case are not in dispute. At all relevant times William Gladden has been the Chief Executive Officer of Community First Bank. In July of 2003, Renfroe Engineering leased an airplane to Community First Bank. The only individual at Community First Bank authorized to fly the airplane was William Gladden, and the only other person identified at the hearing as being authorized to fly the airplane was Anthony Freeman, a Renfroe Engineering employee.

Under the terms of the lease agreement Community First Bank was responsible for arranging for airplane repairs, and Community First Bank was required to pay for maintenance and repairs. The lease agreement required that maintenance be performed by competent and qualified personnel in accordance with FAA regulations. William Gladden was responsible for seeing that the leased airplane was maintained. William Gladden is not aware of anyone in Harrison, Arkansas who performs avionics work. To the best of his recollection, all of the mechanical and avionics work performed on the aircraft prior to October 8, 2003 was performed at Sam's Repair Shop in Springdale, Arkansas. To the best of Mr.

Gladden's recollection, Sam's Repair Shop is the closest and easiest to reach place to take an airplane from Harrison for repairs.

On October 8, 2003, William Gladden flew the airplane from Harrison to St. Louis, Missouri in order to fly his mother home to St. Louis. William Gladden had made personal trips in the airplane before, and there is no dispute that the Harrison to St. Louis leg of his journey that day was purely personal in nature.

For the next leg of his journey that day, Mr. Gladden flew the airplane from St. Louis to Springdale, Arkansas and stopped at the airport only long enough to pick up Anthony Freeman. Mr. Gladden flew from St. Louis to Springdale so that he and Mr. Freeman could fly together back to Harrison. Mr. Gladden picked up Mr. Freeman with the intention that Mr. Gladden would get out of the airplane at the Harrison Airport, and Mr. Freeman would then fly the airplane back to Springdale to deliver the airplane to Sam's Repair Shop in Springdale for radio repairs. Unfortunately, on the third and final leg of Mr. Gladden's journey, from Springdale to Harrison, the airplane crashed.

The only issue presented by the parties is whether Mr. Gladden was performing employment services for Community

First Bank at the time the airplane crashed during the flight from Springdale to Harrison.

Although the respondents assert that Mr. Gladden was merely attempting to return to Harrison from a purely personal trip, I respectfully point out that Mr. Gladden flew from St. Louis to Springdale, (instead of returning directly to Harrison from St. Louis) solely for the benefit of Community First Bank in facilitating radio repairs which by contract Community First Bank was required to arrange and pay for. Notably, had Mr. Gladden had not flown at all to St. Louis on October 8, 2003, he would have flown from Harrison to Springdale directly to pick up Mr. Freeman solely to facilitate the radio's repairs for Community First Bank's benefit. [T. 36] Under these circumstances, the preponderance of the evidence therefore establishes that Mr. Gladden's October 8, 2003 flight from Springdale to Harrison served the dual purposes of (1) returning Mr. Gladden to Harrison from his personal trip to St. Louis and (2) facilitating aircraft radio repairs for which Community First Bank was responsible.

The Arkansas Courts have long recognized that a trip which serves both a business purpose and a personal purpose is within the course and scope of employment if the trip

involves the performance of a service for the employer which would have caused the trip to be undertaken by someone else if the service had not coincided with the personal journey. See generally Lytle v. Arkansas Trucking Servs., 54 Ark. App. 73, 923 S.W.2d 292 (1996). In the present case, because the claimant was engaged in a dual purpose trip at the time the accident occurred, I find that the claimant was performing employment services at the time of the crash which occurred on October 8, 2003. Accord Ray v. Layne Smith Trucking, 68 Ark. 115, 4 S.W.3d 506 (1996) [Long-haul trucker performing employment services while preparing his truck for a cross-country drive on his day off]; Ray v. University of Arkansas, 66 Ark. App. 177, 990 S.W.2d 558 (1999) [Cafeteria employee performed employment services where employer benefitted from cafeteria worker being available during break to assist students if needed, and cafeteria employee was injured while on break]; White v. Georgia Pacific Corp., 339 Ark. 474, 6 S.W.3d 98 (1999) [Industrial employee performing employment services during smoke break when he remained near his work station to monitor equipment].

With regard to the attorneys fee questions raised by Mr. McCann and discussed in Mr. Smith's post-hearing letter,

I note only the following. First, there is certainly no dispute that the claimant's claim for a work related injury has been controverted in its entirety. Second, I note that any fees to which Mr. McCann is entitled for that controversion are subject to the provisions of Ark. Code Ann. § 11-9-715. Because of the respondents' controversion of this claim in its entirety, I interpret that Mr. McCann would be entitled to a 25% attorneys fee, one-half to be paid by the employer or carrier and one-half to be paid by the the claimant, on any indemnity benefits which Mr. Gladden may receive from the respondents arising out of this claim. See generally Linda Sanders v. K-Mart Corporation, Full Workers' Compensation Commission, May 11, 1999 (D402737). However, as Mr. Smith's letter points out, I am not in a position to make any specific award of attorneys fee at this time, and I point out the respondents' liability for an attorneys fee solely for informational purposes for the parties should the parties later determine that Mr. Gladden is entitled to indemnity benefits for temporary or permanent disability.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. That the relationship of employer-employee existed on October 8, 2003.

2. That claimant's compensation rate is the maximum allowed by law.

3. The preponderance of the evidence establishes that Mr. Gladden's flight from Springdale, Arkansas to Harrison, Arkansas on October 8, 2003 was for the dual purposes of returning Mr. Gladden home from a personal trip to St. Louis and to facilitate aircraft radio repairs for the benefit of Community First Bank.

4. The preponderance of the evidence therefore establishes that Mr. Gladden was performing employment services at the time the airplane crashed on October 8, 2003.

5. For the foregoing reasons, the preponderance of the evidence establishes that Mr. Gladden sustained a compensable injury on October 8, 2003.

6. The respondents have controverted this claim in its entirety.

AWARD

The respondents are directed to pay appropriate benefits in accordance with the findings of fact set forth herein.

The claimant's attorney will be entitled to a 25% attorneys fee on any indemnity benefits to which the

claimant may be entitled as a result of this injury, one-half of which is to be paid by the claimant and one-half to be paid by the respondent in accordance with Ark. Code Ann. § 11-9-715; and Death & Permanent Total Disability Trust Fund v. Brewer, 76 Ark. App. 348, 65 S.W.3d 463 (2002).

IT IS SO ORDERED.

MARK CHURCHWELL
Administrative Law Judge