

**BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION**

**CLAIM NO. F308900**

<b>PEGGY JACKSON, EMPLOYEE</b>	<b>CLAIMANT</b>
<b>PIKE COUNTY SHERIFF'S DEPT., EMPLOYER</b>	<b>RESPONDENT</b>
<b>ASSOC. OF ARK. COUNTIES, CARRIER</b>	<b>RESPONDENT</b>

**OPINION FILED JUNE 8, 2004**

Hearing before Administrative Law Judge J. Mark White on May 6, 2004, in Hope, Hempstead County, Arkansas.

Claimant represented by Mr. Gregory R. Giles, Attorney at Law, Texarkana, Arkansas.

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

**STATEMENT OF THE CASE**

On May 6, 2004, the above-captioned claim came on for a hearing in Hope, Arkansas. A pre-hearing conference was conducted on March 22, 2004, and a Prehearing Order was entered that same day. A copy of the March 22, 2004, Prehearing Order has been marked as Commission Exhibit No. 1 and made a part of the record herein without objection. At the hearing, the parties confirmed that the stipulations, issues and respective contentions, as amended, were properly set forth in the Prehearing Order.

The parties stipulated that the Arkansas Workers' Compensation Commission has jurisdiction of this claim; that the employee-employer-carrier

relationship existed at all relevant times, including July 9, 2003; that the respondents have controverted this claim in its entirety; and that the claimant earned sufficient wages to entitle her to a compensation rate of \$212 per week for temporary disability benefits and \$159 per week for permanent partial disability benefits.

The parties agreed that the issues to be presented were whether the claimant sustained a compensable injury on July 9, 2003; whether the claimant is entitled to temporary total disability benefits; and controversion and attorney's fees.

The claimant contends that she sustained a compensable injury on July 9, 2003; that she was entitled to temporary total disability benefits from July 9, 2003, to February 2, 2004, exclusive of any days or partial days she worked; and that the medical treatment she has received to date has been reasonable, necessary and related to her injuries.

Respondents contend that the claimant was not injured in the course and scope of her employment; that the claimant was not performing employment services at the time of her alleged accident; that there are no objective medical findings; and that the claimant had no employment duties at the motel where the injury occurred.

## **FINDINGS OF FACT AND CONCLUSIONS OF LAW**

After reviewing the record as a whole, to include medical reports, documents and other matters properly before the Commission, and having had an opportunity to hear the testimony of the claimant and to observe her demeanor, the following findings of fact and conclusions of law are hereby made in accordance with Ark. Code Ann. § 11-9-704:

1. The Arkansas Workers' Compensation Commission has jurisdiction of this claim.
2. The stipulations agreed to by the parties are reasonable and are hereby accepted as fact.
3. The claimant has failed to prove by a preponderance of the evidence that she was engaged in employment services at the time of her July 9, 2003, injury.
4. The claimant has therefore failed to prove by a preponderance of the evidence that she sustained a compensable injury on July 9, 2003.

## **DISCUSSION**

### **I. History**

The claimant worked for the respondent-employer as a dispatcher. On July 8, 2003, she was in Little Rock attending a three-day training session put on by the

Arkansas Crime Information Center (ACIC). Her attendance at this training session was required and paid for by the respondent-employer. She traveled to Little Rock in a police unit provided by the respondent-employer, and her supervisor made a reservation for her at the LaQuinta Inn.

The claimant returned from the day's training session to her room at the hotel, where she spent several hours doing homework for the next day's class. She went to sleep, and at 2 or 3 a.m. the smoke alarm in her room went off. She testified that she called the front desk, but the hotel staff refused to come to her room and turn the alarm off. Nothing in her room was burning, and she described the alarm as a steady beep louder than she had ever heard. She pulled a chair over to the desk underneath the alarm, climbed up on the desk, and removed the battery from the alarm. As she attempted to climb back down to the floor, she fell onto the ground, hitting the end of the bed as she fell. She immediately began to experience pain in her lower back and hip.

When she returned home after the completion of her training, she was treated by a variety of physicians and kept off of work. Her doctors released her to return to work on February 2, 2004, but the respondent-employer had already fired her as of January 22.

## II. Adjudication

An employee is performing "employment services" when she is doing something that is generally required by her employer. *Pifer v. Single Source Transportation*, 347 Ark. 851, 69 S.W.3d 1 (2002). The concept of employment services encompasses the performance of incidental activities that are inherently necessary for the performance of the primary activity. *Privett v. Excel Specialty Prod.*, 76 Ark. App. 527, 69 S.W.3d 445 (2002). It is the burden of the claimant to prove her injury was sustained while she was performing employment services. *Clardy v. Medi Homes LTC Services LLC*, A.W.C.C. E911499 (Oct. 27, 2000), *aff'd on other grounds*, 75 Ark. App. 156, 55 S.W.3d 791.

Given the claimant's testimony, it could certainly be argued that she was engaged in employment services at the time of her injury. Her staying at a hotel was of benefit to her employer, as was her getting a good night's sleep prior to her attendance at the training session the next day. Arguably, her activities were inherently necessary for the performance of her primary job activities.

Nonetheless, the facts herein are remarkably similar to those of *Cook v. ABF Freight System, Inc.*, A.W.C.C. F209838 (Jan. 23, 2004), and I conclude that the holding of *Cook* controls the outcome of the instant claim. Mr. Cook worked as a driver for ABF Freight System, Inc. He was spending the night in an Irving, Texas, hotel room

provided by his employer to accommodate the mandatory eight-hour break required of truck drivers by U.S. Department of Transportation regulations. When he woke up the next morning, he was electrocuted by a light switch in the hotel bathroom. Even though the claimant was in the hotel room because of his employment, the Commission found that Mr. Cook was not engaged in employment services at the time of his injury.

The facts herein are virtually identical. Like Mr. Cook, the present claimant was staying in a hotel room provided by her employer to accommodate the requirements of her job. Like Mr. Cook, this claimant was admittedly free to come and go as she pleased and was not required to stay in the hotel room. Like Mr. Cook, this claimant was injured as a result of an electrical malfunction in the hotel room. I can find no facts in the present claim sufficient to significantly distinguish it from that of Mr. Cook. Therefore, given the Commission's holding in *Cook v. ABF Freight Systems, Inc., supra*, I am constrained to find that this claimant has failed to prove by a preponderance of the evidence that she was engaged in employment services at the time of her July 9, 2003, injury.

In making this finding, I recognize that the claimant's injury almost certainly falls within the "traveling salesman" exception to the going-and-coming rule. The Arkansas Supreme Court has adopted this exception on several occasions. *See, e.g.,*

*Frank Lyon Company v. Oates*, 225 Ark. 682, 284 S.W.2d 637 (1955). Although the courts have not explicitly rejected it since the passage of Act 796 of 1993, more recent holdings demonstrate that the traveling salesman exception will not protect a claimant from the employment services defense. *See, e.g., Coble v. Modern Business Systems*, 62 Ark. App. 26, 966 S.W.2d 938 (1998); *Kinnebrew v. Little John's Trucks, Inc.*, 66 Ark. App. 90, 989 S.W.2d 541 (1999). Therefore, the applicability of the traveling salesman exception is immaterial to consideration of this claim.

#### **AWARD**

The claimant has failed to prove by a preponderance of the evidence that she was engaged in employment services at the time of her injury. She has thus failed to prove that she sustained a compensable injury. Therefore, this claim for benefits must be, and it hereby is, denied and dismissed.

**IT IS SO ORDERED.**

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**HON. J. MARK WHITE**  
Administrative Law Judge