

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F402042

MARY LOU MEDLOCK

CLAIMANT

BEVERLY ENTERPRISES

RESPONDENT

AMERICAN HOME ASSURANCE COMPANY,
INSURANCE CARRIER

RESPONDENT

OPINION FILED OCTOBER 27, 2004

Hearing before ADMINISTRATIVE LAW JUDGE MICHAEL L. ELLIG in Fort Smith, Sebastian County, Arkansas.

Claimant represented by EDDIE WALKER, JR., Attorney, Fort Smith, Arkansas.

Respondents represented by GREGORY MAGNESS, Attorney, Fort Smith, Arkansas.

STATEMENT OF THE CASE

A hearing was held in the above styled claim on August 17, 2004, in Fort Smith, Arkansas. The deposition of the claimant was taken on July 14, 2004, and has been admitted as Respondent's Exhibit No. 3.

A pre-hearing order was entered in this case on June 30, 2004. This pre-hearing 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 the pre-hearing order was made Commission's Exhibit No. 1 to the hearing.

The following stipulations were offered by the parties and are hereby accepted:

1. On February 5, 2004, the relationship of employee-employer-carrier existed between the parties.
2. The appropriate weekly compensation rates are \$263.00 for total disability and \$197.00 for permanent partial disability.
3. On February 5, 2004, the claimant fell on the respondent's premises and injured her left knee.
4. The claim was controverted in its entirety.

By agreement of the parties, the issues to be litigated and resolved at the present time were limited to the following:

1. Whether the injury caused by the fall on February 5, 2004 represents a “compensable” injury under Ark. Code Ann. §11-9-102(4).
2. The claimant’s entitlement to the payment of medical expenses, temporary total disability benefits from February 6, 2004 through a date yet to be determined, and attorney’s fees.

In regard to these issues, the claimant contends:

- (a) The claimant contends that the law in Arkansas is unclear regarding what constitutes employment services and that therefore a determination needs to be made in this case regarding whether she sustained a compensable injury.
- (b) The claimant contends that if her injury is compensable she is entitled to temporary total disability benefits as reflected by the medical evidence and reasonable and necessary medical treatment.
- (c) The claimant contends that if her injury is compensable, her attorney is entitled to an appropriate attorney’s fee.

In regard to these issues, the respondents contend:

“Respondents contend that claimant’s fall occurred outside the course and scope of her employment with Beverly Enterprises as the claimant was not performing employment services at the time of her injury and consequently her fall was not a “compensable injury” under the Act. See Ark. Code Ann. §11-9-102(4).”

DISCUSSION

_____The central issue in this case is the question of whether the injury the claimant sustained on February 5, 2004, represents a “compensable injury” within the meaning of the Act. There is little dispute over the factual circumstances surrounding the claimant’s accidental fall and resulting left knee injury. The dispute focuses over the question of whether the claimant was “performing employment services” at the time of her accidental fall and resulting injury, as required by Ark. Code Ann. §11-9-102(4)(B)(iii). The Appellate Courts have held that this requirement is simply an expansion of the longstanding “arising out of and in the course of” requirement.

Injured employees are “performing employment services” when they are doing something that is generally required by the employer, White v. Georgia-Pacific Corporation, 339 Ark. 474, 6 S.W. 3rd 98 (1999), when they are performing incidental activities inherently necessary for the performance of the primary employment activity, Ray v. Wayne Smith Trucking Company, 698 Ark. App. 115, 4 S.W. 3rd 506 (1999), or when they are performing activities that directly or indirectly advance the interest of the employer, Pifer v. Single Source Transportation, 347 Ark. 851, 69 S.W. 3rd 1 (2002).

The evidence shows that each work day the claimant would engage in essentially the same routine. She would arrive at the respondent’s place of business shortly before her scheduled clock in time. She would park in the company parking lot and walk down the sidewalk to a specific entry way. She would then present her security badge to an automatic scanner so that she could be “logged” into the building. She would then enter through the doorway and proceed up two tiers of steps to the second floor (her general work area). The claimant’s designated time clock was located at the top of these steps or stairs. She would then “clock in”, as near as possible, to her designated starting time. At that time, her paid working hours would commence. She would then proceed directly to her designated work station and begin the specific activity she had been employed to perform. The greater weight of the evidence establishes that the claimant’s accidental fall and injury occurred after she had presented her security badge to the automatic scanner by the doorway and as she was attempting to actually go through the door into the building.

Clearly, had the claimant slipped and fallen in respondent’s parking lot, or on her way down the sidewalk, her injury would not “compensable,” as she would not yet be performing employment services at the time the injury occurred, Hightower v. Newark, Pub. Sch. Sys. 57, Ark. App. 159, 943 S.W. 2nd 608 (1997). However, in the present case, the claimant had already performed an activity specifically demanded by her employer and which was solely for the benefit of the employer -the presentation of her security badge to the automatic scanner. The evidence shows that the respondent required the claimant to present her security badge to the automatic

scanner anytime she entered or left the building. The sole purpose for this requirement was to allow the employer to keep track of when its employees were inside the building.

The evidence shows further that none of the activities performed by the claimant or intended to be performed by the claimant, after she presented her security badge to the automatic scanner, were of a personal nature. Rather, all of the claimant's subsequently performed or intended activities were directed toward her employment, i.e. entering through the doorway, proceeding up the steps, clocking in, proceeding to her work station, and commencing the performance of her customary duties.

The factual situation in this case is almost identical with that found in Caffey v. Sanyo Manufacturing Corporation, CA 03-943 (Ark. App. 3-10-2004). I find the Court's decision in Caffey to be controlling in the present claim. After consideration of all the evidence presented, it is my opinion that the claimant has proven that she was performing "employment services" at the time of her accidental fall and resulting injury and that this accidental injury "arose out of and was in the course of" her employment with the respondent. I further find that this injury to her left knee constitutes a "compensable injury" within the meaning of the Act. Specifically, I find that it arose out of and occurred in the course of her employment with the respondent, was caused by a specific incident, is identifiable by time and place of occurrence, resulted in internal physical harm to her body, and required medical services or resulted in disability. The actual existence of this injury has also been "established" by the medical evidence presented, which is supported by "objective findings."

It next becomes necessary to address the nature and extent of benefits to which the claimant is entitled, as a result of this compensable injury. At the present time, this includes the payment of expenses incurred for medical services and temporary total disability benefits.

The evidence presented clearly shows that the medical services rendered to the claimant for her left knee difficulties by and at the direction of Dr. John Weddle and by and at the direction of Dr. Keith Bolyard represent "reasonably necessary medical services" for her compensable injury.

All of these medical services were necessitated by and directed toward the claimant's compensable injury of February 5, 2004. The type of services provided were of a nature and duration commonly recognized by the medical community as being appropriate for treatment and injuries such as that experienced by the claimant. Pursuant to Ark. Code Ann. § 11-9-508, the respondents are liable for the expense of such services. This liability is, subject to the medical fee schedule established by this Commission.

As the claimant's injury involves a portion of her body that is "scheduled" under Ark. Code Ann. § 11-9-521, she is entitled to temporary total disability benefits during her healing period or until she returns to work, whichever occurs first. The evidence presented shows that the claimant was off work entirely from the date of her accident on February 5, 2004 through February 24, 2004. Her testimony indicates that she returned to work on a "part time" basis on February 25, 2004. The medical evidence shows that the claimant's healing period had not ended by February 24, 2004. Therefore, I find that the claimant has proven her entitlement to temporary total disability benefits from February 6, 2004 through February 24, 2004.

While the claimant may be entitled to temporary partial disability benefits on and after February 25, 2004, this issue was not specifically raised as an issue or addressed during the hearing. No evidence was presented to allow a determination concerning the specific amount of the reduction of the claimant's wages during this period. Thus, this issue is reserved for future determination, if necessary.

FINDINGS OF FACT & CONCLUSIONS OF LAW

1. The Arkansas Workers' Compensation Commission has jurisdiction of this claim.
2. On February 5, 2004, the relationship of employee-employer- carrier existed between the parties.
3. On February 5, 2004, the claimant earned wages sufficient to entitle her to weekly compensation benefits of \$263.00 for total disability and \$197.00 for permanent partial disability.

4. On February 5, 2004, the claimant sustained a “compensable injury” to her left knee. Specifically, she has proven by the greater weight of the credible evidence the occurrence of a physical injury that is “established by medical evidence,” which is supported by “objective findings.” She has further proven that this physical injury arose out of and occurred in the course of her employment with this respondent, was caused by a specific incident, is identifiable by time and place of occurrence, caused internal physical harm to her body, required medical services, and resulted in disability. Finally, she has proven that this physical injury occurred at a time when “employment services” were being performed.
5. The medical services provided to the claimant for her left knee difficulties by and at the direction of Dr. John Weddle and by and at the direction of Dr. Keith Bolyard, represent reasonably necessary medical services for her claimant’s compensable injury. The expense of these services, subject to the medical fee schedule established by this Commission, is the liability of the respondents herein.
6. The claimant was rendered temporarily totally disabled as a result of the effects of her compensable injury for the period beginning February 5, 2004, and continuing through February 24, 2004. Specifically, during this interval, she continued within her healing period from the effects of her compensable injury and had not returned to work.
7. The respondents have denied the occurrence of a “compensable injury” to the claimant’s left knee and have controverted this claim in its entirety.
8. A reasonable fee for the claimant’s attorney is the maximum statutory attorney’s fee on all indemnity benefits herein and hereinafter awarded.

ORDER

The respondents shall pay to the claimant temporary total disability benefits for the period beginning February 6, 2004 and continuing through February 24, 2004.

The respondents shall be liable for the expenses incurred as the result of reasonably necessary medical services provided to the claimant for her compensable injury and at the direction of Dr. John Weddle and Dr. Keith Bolyard. This liability is subject to the medical fee schedule established by this Commission.

The respondents shall pay to the claimant's attorney the maximum statutory attorney's fee on all controverted indemnity benefits herein and hereinafter awarded to the claimant. One-half of this attorney's fee shall be the obligation of the respondents in addition to these benefits. The remaining one-half of this fee shall be withheld by the respondents from these benefits.

All benefits herein awarded, which have heretofore accrued, are payable in a lump sum without discount.

This award shall bear the maximum legal rate of interest until paid.

IT IS SO ORDERED.

MICHAEL L. ELLIG
Administrative Law Judge