

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F308838

TONY F. MONCUS, EMPLOYEE	CLAIMANT
BILLINGSLEY LOGGING, EMPLOYER	RESPONDENT
AMERICAN INTERSTATE INSURANCE, INSURANCE CARRIER	RESPONDENT

OPINION FILED MAY 28, 2004

Hearing conducted before Administrative Law Judge C. MICHAEL WHITE in Hope, Hempstead County, Arkansas.

The claimant was represented by NEAL L. HART, Attorney at Law, Little Rock, Arkansas.

The respondents were represented by MICHAEL E. RYBURN, Attorney at Law, Little Rock, Arkansas.

OPINION AND ORDER

A hearing was held in this matter on March 5, 2004. A prehearing conference was conducted on January 6, 2004, and a prehearing order was filed on January 6, 2004. A copy of the prehearing order has been marked as Commission Exhibit No. 1 and made a part of the record without objection.

During the prehearing conference, the parties agreed to the following stipulations:

1. The employer/employee/carrier relationship existed on August 19, 2003.
2. The claimant was killed in a motor vehicular accident that occurred on August 19, 2003.
3. The claimant was earning an average weekly wage of \$880.35.

4. The claimant was earning sufficient wages to entitle him to the maximum compensation rate.
5. Respondents No. 1 have controverted this claim in its entirety.

During the prehearing conference, the parties also agreed that the issues to be litigated at the hearing were limited to the following:

1. Whether the motor vehicle accident which took the life of the claimant was compensable under the Arkansas Workers' Compensation law.

From a review of the record as a whole, to include the testimony of Mitchell Billingsley, medical records and other documentary evidence, the following findings of fact and conclusions of law are made in accordance with Ark. Code Ann. § 11-9-704 (Cumm. Supp. 1997):

FINDINGS AND CONCLUSIONS

1. The Arkansas Workers' Compensation Commission has jurisdiction over this claim.
2. The stipulations agreed to by the parties and set forth above are hereby accepted as fact.
3. I find that a preponderance of the evidence fails to establish that the claimant was performing an employment service at the time that the accident occurred.
4. I find that a preponderance of the evidence fails to prove that the claimant's death was the result of an injury that is compensable under the Arkansas Workers' Compensation Law.
5. The respondents controverted this claim in its entirety.

DISCUSSION

The respondent/employer is a logging operation engaged in the business of cutting timber, preparing the timber for market, and carrying timber to a mill on log trucks. The owner of the respondent/employer, Mitchell Billingsley, contracts for timber to cut and he is advised where the tracts of land are located when the timber is to be cut. He then advises his employees where these tracts are located and each employee is responsible for providing their own transportation to the tract of land to work each day. According to Mr. Billingsley's testimony, his employees are typically familiar with the areas where the timber is cut so, when the operation moved to a new tract of land, he simply had to advise them where the new tract was located. However, he also testified that occasionally the employees were not familiar with the location of the new tract of land. On those occasions his employees would meet Mr. Billingsley on the first day that they were to work on the tract at a prearranged location and they would follow him to the location where the timber was to be cut. After the first day the employees would simply travel to the location where the timber was being cut on their own.

On August 19, 2003 the respondent/employer was going to begin cutting timber from a new tract of land and the employees were not familiar

TONY F. MONCUS-F308838

with the location of that tract. Therefore, Mr. Billingsley made arrangements for his employees to meet him at a prearranged location to follow him to the tract where the timber was to be cut. The deceased claimant met Mr. Billingsley at the prearranged location and was in the caravan of vehicles following Mr. Billingsley when he was involved in a motor tragic motor vehicle accident that resulted in his death. Under the Arkansas Workers' Compensation law as amended by Act 796 of 1993: A) Compensable injury is an accidental injury causing internal or external physical harm to the body arising out of and in the course of employment Ark. Code Ann. §11-9-104(a) Repl. 2002 Daniels v. Ark. Department of Human Services, 77 Ark. App. 99, 72 S.W. 3d 128, 2002. However, under the amended law the term "compensable injury" does not include an injury that was inflicted upon the employee at the time when employment services were not being performed. Ark. Code Ann. §11-9-102(4)(B)(iii) Repl. 2002. Daniels Supra. The test used to determine whether the employee was performing "employment services" is the same as the test traditionally used to determine whether an employee was acting within "the course of employment." That is, the test is whether the accident occurred within the time and space boundaries of the employment, at a time when the employee was carrying out the employer's purpose or advancing the employer's interest, directly or indirectly. Daniels Supra That

employee is generally said not to be acting in the course of employment when he or she is traveling to or from the work-place. Thus, unless it is shown that the travel to or from the work-place somehow promotes the employers purpose or advances the employers interest in some manner other than that in which the employers purpose or interest is typically advanced by the travel of its employees to work. The "Going and Coming Rule" ordinarily precludes an injury sustained while the employee is going to or returning from work. Daniels Supra In the present claim I find that the claimant was not performing an employment service at the time that the tragic accident occurred. As discussed above, employees of the respondent employer were responsible for providing their own transportation to and from the tracts of land where timber was cut each day. On rare occasions, approximately two to three times each year, work would begin on a new tract of land and the employees would not be familiar with the location of that tract of land. Although the employees meet Mr. Billingsley and follow him to the tract of land on the first day that timber is cut from such tracts, it cannot be said that their travel to the tract of land advances the employers purpose or interest on those days any more than any other day when the employees travel to the tract of land where timber is to be cut. Accordingly, I find that a preponderance of the evidence fails to establish that the claimant was performing an employment service at the time that the

TONY F. MONCUS-F308838

accident occurred. Therefore, I find that a preponderance of the evidence fails to prove that the claimant's death was the result of an injury that is compensable under the Arkansas Workers' Compensation Law.

ORDER

Accordingly, based on my review of the entire record and for the reasons discussed herein, I find that this claim must be, and hereby is, denied and dismissed.

IT IS SO ORDERED.

C. MICHAEL WHITE
Administrative Law Judge