

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F503762

MICHAEL FREYALDENHOVEN, EMPLOYEE	CLAIMANT
PERENNIAL HEALTHCARE, EMPLOYER	RESPONDENT
AMERICAN HOME ASSURANCE CO., CARRIER	RESPONDENT

OPINION FILED OCTOBER 4, 2005

Hearing before ADMINISTRATIVE LAW JUDGE ANDREW L. BLOOD, on August 5, 2005, at Jonesboro, Craighead County, Arkansas.

Claimant represented by the HONORABLE JOHN BARTTELT, Attorney At Law, Jonesboro, Arkansas.

Respondents represented by the HONORABLE MELISSA ROSS CRINER, 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 June 28, 2005, 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' contentions regarding the issues. The Pre-hearing Order is herein designated a part of the record as Commission Exhibit #1.

The testimony of Michael Freyaldenhoven, the claimant; Georginna Price; Belinda

Looney; Starla Busbea; and Kerry Zecchimi, coupled with medical reports and other documents comprise the record in this claim.

DISCUSSION

Michael Andrew Freyaldenhoven, the claimant, with a date of birth of February 5, 1953, is a high school graduate with some college education. Claimant commenced his employment with respondent on September 30, 2002, as Director of Maintenance. Respondent, dba, Broadway Healthcare Center, is a nursing home in West Memphis, Arkansas.

Claimant estimated that there are approximately one hundred (100) residents at the nursing facility. Claimant's testimony reflects that as Director of Maintenance he is responsible for maintenance of the buildings, the grounds and equipment inside the facility. The claimant is the only maintenance employee of respondent. The testimony in the record further reflects that all maintenance issues or issues involving anything other than patient care encompassed the claimant's job duties.

Claimant asserts that prior to March 21, 2005, he was in a state of good health. Claimant acknowledged that he underwent arthroscopic knee surgery in February 2005, and was on light duty while the knee healed. Claimant denies receiving medical treatment relative to his shoulders, arms or upper back prior to March 21, 2005.

Claimant's testimony reflects that he normally commenced his work day at 8:00 a.m. Regarding his routine activities upon reporting to work, claimant testified:

I usually walk around the buildings and go to the two nurse's stations and I have a clipboard there that had maintenance request slips on it, pick those up and determine what is most important that needs to be taken care of first. (T. 10).

Claimant noted that at approximately 9:00 a.m. all department heads meet for a standup meeting in the lobby of the nursing home. The meetings are conducted by the facility's the Executive Director, Belinda Looney. Claimant testified that customarily during the standup meetings Ms. Looney discussed any information that needed to be relayed to the department heads or that she wanted to be accomplished.

The testimony of the claimant reflects that during a standup meeting in January 2005, Ms. Looney divided the department heads into four separate groups with each group being responsible for organizing a quarterly meeting. Regarding the purpose of the quarterly meeting claimant testified that Ms. Looney explained:

That she thought it would be a good idea that each quarter we would meet away from the building, away from the stresses of the building, rubbing shoulders and be more comfortable communicating with each other. (T. 12).

Claimant's testimony further reflects:

The department heads are divided into four separate groups which would be five or six per group that would organize, plan and execute a meeting. A meeting to be rubbing shoulders with, bonding with all the key personnel and department heads, away from the building, away from the stress of the building so that we would be more comfortable in our business dealings and work more efficiently. (T. 11-12).

Claimant testified that approximately a month following the January 2005 recommendation of Ms. Looney there was a meeting with her of the subgroup which would be responsible for the first quarterly meeting, in March 2005. During the meeting suggestions were solicited as to where and how the quarterly meeting would be done. As a consequence of the meeting claimant's testimony reflects the actions he took:

I visited Riverside Drive looking to see if that might be a setting.

I found no picnic tables, no grill and reported back. (T. 14).

Claimant testified that the scouting of Riverside Drive occurred at approximately 10:00 a.m., that he remained on the clock while doing so, that he was paid for that time, and that he reported his results to Ms. Looney. Claimant was in the respondents' vehicle, a van. During cross-examination claimant testified he was accompanied by Ms. Looney and possibly another member of his subgroup when he checked out Riverside Park. (T. 30). Claimant testified that he was on the clock at the time of the Riverside Park visit and that he received his full paycheck for the pay period inclusive of that date.(T. 36).

On March 21, 2005, claimant testified that a routine standup was meeting was held. After the meeting, claimant's testimony reflects that the Executive Director, Ms. Looney, called the subgroup of which he was a member together. Claimant explained:

We gathered in her office and she decided that the weather was deteriorating toward the latter part of that week, that later in the week wouldn't be good. There were some key personnel that weren't going to be available to meet in the latter part of the week. The weather was pretty this day, let's do it today.

We decided we were going to have a picnic. (T. 13).

It was decided that the picnic would be held at Tilden Rogers Park, a baseball park in West Memphis, approximately three to four miles from respondents' facility. Claimant's testimony reflects that he was provided further instructions by Ms. Looney:

I was instructed to go to our Business Office Manager, Kerry Zecchimi and to get cash from the petty cash fund to go to the grocery store, Wal-Mart, to purchase the food items for that event. (T. 15).

Accordingly, claimant asserts that he received cash to purchase the supplied. Claimant was accompanied by another member of his subgroup, Cindy Kellum, to purchase the items and

prepare the picnic.

Using the company van, claimant testified that he and Ms. Kellum went to Wal-Mart and purchased hamburgers, hotdogs, buns, condiments, soft drinks, chips, dip, paper towels, and charcoal. After purchasing the supplies and food, claimant testified:

Ms. Kellum took the hamburger meat to her home and put the meat into hamburger patties, prepared it. I went to the park and started the charcoal and set the condiments out and put the drinks on ice, that type thing. (T. 16).

Claimant asserts that he remained on the clock as the afore activity took place. Claimant testified that he did not return to the nursing home after purchasing the supplies for the picnic and going to the park. Regarding his activities between 11:00 and 12:00 on the morning of March 21, 2005, claimant testified:

I prepared the fire and Ms. Kellum brought the hamburger meat out and we cooked the hamburgers and hotdogs and got them ready so that when the department personnel came out they would prepared food. (T. 17-18)

Claimant estimates that there were “20 plus people there”, at the picnic which consisted of department heads and key personnel of respondent. Claimant’s testimony reflects that once the personnel arrived they gathered and sat at the picnic tables, food was served, and “ate lunch and rubbed shoulders”. (T. 18). Claimant further observed:

Any time you get 20 department heads together, there’s always some business that is discussed. (T. 18).

Claimant testified regarding the conversation he had with Ms. Looney during the picnic:

With Ms. Belinda Looney we discussed things that were ongoing at the building, hopes of getting some air conditioners that were needed to be ordered, getting them ordered and getting them in the building early, that type of thing. I don’t remember specifics. I mean, a general

type discussion. (T. 31-32).

The testimony in the record also reflects that games were played during the picnic, to include a Easter egg hunt. Regarding the requirement to attend the quarterly meeting, claimant asserts that the same was mandatory. Claimant's testimony reflects the attendance instructions as relayed by Ms. Looney:

I don't remember her exact words. I know that it was discussed in our sub-meeting with the other Directors that were involved in that quarterly, that these meetings were going to be held quarterly and everyone was to attend so that it would be beneficial to the company, that we would be more relaxed around each other. (T. 30-31).

The testimony of the claimant reflects that he suffered an injury to his shoulder on March 21, 2005, which serves as the basis for the present claim. Claimant described the mechanic of the March 21, 2005, injury:

I had started the cleanup process to remove the food and the condiments there were left over into boxes, put it in the company van to return to work, had an ice chest of soft drinks and ice that I picked up and when I picked it up I busted a tendon in my rotator cuff.

The ice chest was sitting on a standard ballpark picnic table. It had two benches, one on each side. And our Assistant Director of Nursing was sitting on a bench, she's a rather small lady. And I reached around her to pick this ice chest up and did not ask her to move and slide it over to me and picked it up. I simply picked it up away from my body. And that's after I got it up approximately 12, 15 inches off the picnic table coming toward me is when the pain hit. (T. 19).

Claimant noted the Ms. Looney was approximately 10 feet from him at the time of the accident and was aware of his injury. Regarding the afore claimant explained:

I may have walked over to her and said, I've hurt myself or she may have eyeballed it and knew it immediately. (T. 20).

Claimant maintains that while at the park he did talk to Ms. Looney about his shoulder injury:

I told her that I hurt my arm picking up the ice chest.

We went ahead and gathered up all the remaining condiments, chips, stuff that was left over and put them in the company van. I returned to the building. I took all the foods and drinks and chest into Belinda's office and at that point she turned around and told me to go see Dr. Trent Pierce who was our Medical Director. That's who we go see if we're injured at work. (T. 20).

The testimony of the claimant reflects that Dr. Pierce does not have an office on the premise of respondent. As a consequence, he drove himself to Dr. Pierce's office. Claimant testified that he was eventually diagnosed by Dr. Pierce with a torn tendon from the rotator cuff which required surgery. On April 22, 2005, claimant underwent surgery under the care of Dr. Denka, an orthopedic surgeon. Claimant notes that at one point he was released to light duty work relative to his shoulder by Dr. Denka, however there were restrictions. Claimant testified that he was informed by Ms. Looney that he could return to work only without restrictions.

Claimant's testimony reflects that it was not until approximately April 18, 2005, that he was informed by Ms. Looney that the March 21, 2005, picnic was an activity that was supposed to be off the clock. Claimant asserts that the product of the disclaimer was the fact that he had been scheduled for surgery relative to his shoulder and he was informed that the claim was denied by the insurance company as being compensable. (T. 24). The testimony of the claimant reflects that he received his usual/full paycheck for the pay period inclusive of the March 21, 2005, date. Claimant further maintains that at no point prior to March 21, 2005, was he informed that attendance at the picnic was optional.

The claimant testified regarding the nature of his contact with Ms. Looney subsequent to the March 21, 2005, accident and prior to April 20, 2005:

They had filed some paperwork that, First Report of Injury type thing that had been filled out. Every time that I would go see Dr. Pierce or talk with him I relayed that information to her, what he suggested. I had the MRI - -

When Dr. Pierce suggested I have an MRI I told Ms. Looney it was, Kerry Zecchimi is the business manager, did the paperwork with our workers' compensation insurance agency, informed them so that they could get this approved. The MRI was approved. I had the MRI. That information was relayed to Ms. Looney on the day that the MRI occurred. (T. 27-28).

Claimant asserts that respondents paid the cost of the MRI scan as well as the bill for Dr. Pierce's examination.

In addition to his employment with respondent, the testimony of the claimant reflects that he is employed as a supervisor for a concession stand in an Auto Zone Park for Ovations, which is part-time and after his normal hours at the nursing home. Claimant's testimony reflects that his job responsibility in the afore is to verify that the company owned products are inventoried before and after an event. Claimant noted the this is his second season in the position. The season started in March 2005. Claimant acknowledged that he has been working as the concession stand since his limited duty release by the doctor in June 2005.

Ms. Georgianna Price, a LPN Admissions Coordinator for respondent, testified that her employment position is that of a Department Head. Ms. Price provided corroborative testimony regarding the daily standup meeting at respondent. Ms. Price testified that she attended the picnic at Tilden Park on March 21, 2005, the occurrence of same was discussed earlier that morning during the standup meeting. Ms. Price's testimony reflects, with respect to her understand of the purpose and nature of the quarterly meetings, the picnic being one of which:

All department heads in January when we went over our

new policy and procedures Belinda got up and said, we're going to do something that's fun, you know, to make us be closer. We can spend time together and do it with our families. We're going to do it on the weekends. And she said she'd like to make it mandatory but she couldn't, you know, and it was going to be on weekends. The first one we had was during the week. It was during the week on a weekday.(T. 39).

Ms. Price attended the picnic on March 21, 2005. While uncertain if she was salaried or paid by the hour at the time, Ms. Price testified that she did not clock/check out while she attended the picnic. Ms. Price acknowledge providing a written statement to the claimant in which she relayed that "all department heads attended a mandatory meeting at the park" and that "no one clocked out". The testimony of Ms. Price reflects that several days after the picnic and knowledge of the claimant's injury, she was informed:

Because we were told after everybody didn't clock - - after several, it wasn't everybody, but there were a few people that did not clock out and we were told that it was not a mandatory thing. (T. 41).

The afore was relayed by Ms. Looney. Ms. Price testified that most of the department heads of respondent-employer were at the park during the picnic. Ms. Price further testified regarding the March 21, 2005, statements of Ms. Looney, the Executive Director:

She said, we're going to have this picnic at the park. She said, everybody needs to be there, we're going to have a lot of fun. (T. 42).

Ms. Price testified regarding a conversation she had with Ms. Looney after receiving a subpoena to attend the scheduled hearing in this claim:

She asked me if I had written a statement. I told her yes. I showed her a copy of my statement. She asked me why? And I told her because Mike needed this for insurance because they had denied the claim. And I didn't do this in any malice attempt for anybody. I'm not trying to harm anybody. I was just trying to help him because at the time that I went I was under the impression that I was supposed to be there, mandatory. And she said okay. She said, then you need to go to

court and you need to tell the truth and I said, okay. And that was the end of that conversation. (T. 43).

Ms. Price maintains that the written statement is accurate and truthful. Ms. Price testified that it was her understanding that everyone that was at the picnic returned to work after it was over.

On cross-examination Ms. Price testified that she wrote two statement on behalf of the claimant regarding the picnic. Ms. Price's credible and candid testimony reflects, in that regard:

No. She, the statement that - - this is the original statement that I wrote. I wrote another statement for Mike. This is the one that's on my desk when he came in. This is the one I gave him because this is the one that he told me he needed. I gave him the wrong one. Whenever I looked at that I realized that. However, the one that I should have given him also stated that Belinda did come back and say that this was not mandatory and that she had told us that earlier. But I assumed because it was during the week, and so did several others, you know, I can only speak for myself, I assumed that it was mandatory because it was during the day, during the week. And I'm in a really bad situation here, you know, this is my job, this is my friend, this is my friend, this is my job, you know.(T. 46-47) .

While unable to specifically identify department heads that did not attend the picnic, Ms. Price recalls that one or two did not because there were some Easter baskets left over. (T. 47-48).

Ms. Johnnie Belinda Looney testified that she is the administrator and executive director of Broadway Healthcare, respondent-employer, with job duties which include overseeing the building and functions, patient and staff care, and payroll. Ms. Looney has held her current position for one year and was the Director of Nursing for two years prior to that. Ms. Looney noted that the claimant started to working for respondent the same year she was Director of Nursing.

Regarding the events of March 21, 2005, Ms. Looney denies that she instructed the claimant to go purchase supplies for the picnic. Ms. Looney's testimony reflects:

We had a meeting where we all got together, the groups that we sub-divided into we met in my office and we were discussing what we were going to do. Cindy Kellum stated that she would do the grilling because previously we did not think Mike was going to be there because he had to be - - it was planned on Wednesday and Mike had to be in court that Wednesday so Cindy had said that she would do the grilling. (T. 50).

Ms. Looney noted that Ms. Kellum is the care plan coordinator for the facility.

In our meeting when I asked Cindy - - I asked who was going to do the grilling, Mike said, at that meeting, if this is on Wednesday, I will not be there. At that point Cindy said - -

Okay it was, I think we had met the week before that Monday because we had been planning this and Mike was checking the weather back and forth to see, no, we can't do it that day it's going to be a downpour but this certain Wednesday was out because Mike had to be in court. So, the week before that we all got together and for one last time to plan the picnic. And we were going to do it on Wednesday. And Cindy was going to grill because Mike was not going to be there.

Well, when we came to work Monday Mike had said, one of us had said, I don't know if Mike specifically said - -

Ok. It was going to rain Wednesday according to the forecast. And so we decided not to do it Wednesday. I asked my group could we get together and do this this morning. And they said, yes. That quick we changed from Wednesday to Monday.

Monday the 21st. When we got together for the meeting it was like okay who's going to grill. Well, Cindy Kellum's husband come out there to grill. Cindy Kellum grilled, Cindy Kellum's husband grilled and Mike grilled. (T. 50- 52).

Ms. Looney testified that there were an number of people attending the picnic that were not employees of respondent. Regarding the purpose for the picnic, Ms. Looney testified:

It was just a fun time to get together. It didn't have a purpose. It was not work. I introduced the quarterly plans in January at a mandatory meeting. And by mandatory I mean that the staff had to sign in. I told all of them we would have a mandatory meeting at 1:00 on Monday. And the staff had to sign in because that's how you do a mandatory meeting.

You have to show that you were there. (T. 53).

Just so that the morale throughout the building - - like any company having a picnic to show their employees they are appreciated. That was it. (T. 67).

It was to get away - - to get away from work and have a good time. (T. 68).

Ms. Looney testified that mandatory meetings were not very frequent, only when there was an instance where dissemination of information was required relative to job performance. Further, Ms. Looney testified that notice of the mandatory meeting was disclosed to department heads through memos being placed in their boxes. Ms. Looney noted that no memos were distributed regarding the March 21, 2005, picnic and there was no sign sheet at the picnic.

Ms. Looney testified that there were no sanctions imposed of individuals that did not attend the picnic. Ms. Looney maintains that she did not tell employees/department heads that attending the picnic was mandatory. Further, Ms. Looney testified that she was not aware that people attending the picnic did not clock out from work. Upon learning of the afore, Ms. Looney testified:

The next standup meeting we had I informed all of them that it had been my understanding that some of them did not clock out for the picnic and that I needed everyone to know that when we had these picnics that I could not make them go. On the same token I could not pay them to go. I said, however, if it is during the week and you're gone for an hour and a half, to keep your paycheck for being short you can make up your hour and a half during that week so that you are not short. But to pay you to leave here and go to a picnic, we can't do that. (T. 55).

Ms. Looney testified regarding her observation of the claimant during the picnic on March 21, 2005, at the park:

He was at the grill with Cindy and Mike, her husband's name is

Mike as well. And just grilling. He socialized. He ran in the egg hunt. He laughed. He played. He picked up Starla Busbea and swung her around. He picked up Kerry Zecchimi and swung her around. All in play, which I have to say had it been on clock there would have been a disciplinary because I don't run a building to where my employees pick up one another up and swing them around. If I thought for one instance that Mike was on the clock I would have had to discipline him for, given him a disciplinary for horseplay on the job. I mean, we were having a egg hunt. We were running. We were playing. It was not on company time. (T. 55-56).

Ms. Looney testified regarding her knowledge of the claimant's injury:

I never, I did not know at the park that Mike was hurt. It wasn't until we got back to the building Mike had brought an ice chest in and set it down. He never said anything to me at that point about being hurt. It was not until later on that another employee came to me and said, did you know Mike hurt - -

No, he did not. When I found out, Mike came to my office later on that day and I said to him, did you hurt your arm and he said, yeah, I think I did and kind of done it like that (indicating).

I said, well, Mike, what do you need to do? He said, I think I need to go to the doctor. I said, well, go. That's what I would have said to anybody. (T. 57).

Ms. Looney noted that a subsequent quarterly get together occurred in June 2005, on a Saturday morning in the park.

The testimony of Ms. Looney reflects that the claimant was on light duty relative to his knee prior to the March 21, 2005, shoulder injury. Claimant continued to work light duty until the surgery on his shoulder. Ms. Looney testified:

. . . Well, after he came back, after he brought me the statement saying he would be on light duty, at that point I knew that I had a building to run, that I needed a maintenance man. I knew that I would not be able to have a maintenance man on light duty for his knee and his arm. (T. 59).

The testimony of Ms. Looney reflects that the department heads of respondents are hourly

employees. In order for employees to check out they have to punch their time clock. There is also a procedure whereby an employee who is on company business may leave the building and not clock out but rather sign the sign out book. Ms. Looney elaborated regarding the sign out book:

Yes. And they come to me and say, I'm going to Wal-Mart to pick up a blouse for Ms. Jones because we lost hers, they would sign out on that book and I would know that they are out of the building on company time. (T. 62).

Ms. Looney acknowledged that the log of the sign out book for March 21, 2005, reflects the names of a number of department heads which indicated that they were going to the park for the picnic. (CX. #4). Ms. Looney asserts that unless her permission is given the time the employee is away from the building per the sign out log is not sanctioned, observing that anyone can go up and sign out. (T. 63). Ms. Looney's testimony reflects with respect to the individuals that signed out to go to the picnic in the park on March 21, 2005:

I don't know what it indicates to me. Well, you know what it indicates to me? I can tell you what it indicates to me is that they were leaving the building and needed to sign out. It was not with my permission. That is what it indicates to me. It wasn't my permission. (T. 63).

Ms. Looney concedes that there were fourteen (14) people names listed in the sign out log on March 21, 2005, reflecting that they were attending the picnic in the park. Regarding the afore Ms. Looney testified:

Yes, sir, but there's also another purpose for that log. Because we have a receptionist at the desk that will take a message. If somebody called and said, can I speak to Belinda Looney, they can look at that log and say, I'm sorry, she's out of the building. The purpose of that log is not only for that, it's to show that I'm out of the building. If I get a phone call and I don't answer it you can look at this log and tell I'm gone. (T. 64-65).

It is the position of Ms. Looney that “a lot” of her department heads, whom she supervised, had wrong assumptions on the morning of March 21, 2005, when they signed the sign out log to attend the picnic under the belief that it was mandatory and they would be paid for same. Ms. Looney is uncertain of the specific date when she clarified during the standup meeting that attendance at the quarterly meeting was not mandatory. (T. 67).

Regarding the appropriateness of having the quarterly meeting in the park on Monday, March 21, 2005, Ms. Looney responded:

Yes, I certainly do because you eat lunch. I imagine they were going to eat lunch on Monday just like they would have if it had been on Saturday. (T. 68).

Ms. Looney explained how she notified the department heads of the March 21, 2005, picnic:

During standup I said that our picnic had been changed from Wednesday to today. And I asked the department heads could all of them get away? Was there anything in their schedule that would keep them from coming? And two of them said that they didn’t know if they would make it or not but they would try and I said, find, if you can, come on. And as it turned out, they weren’t able to come. (T. 68).

Ms. Looney asserts that she did not learn of the claimant’s shoulder injury until later in the afternoon of March 21, 2005, between 2:30 and 4:00 p.m. Ms. Looney denies that she directed the claimant to go to Dr. Pierce when he indicated that he thought that he needed medical treatment after she learned of his injury. Ms. Looney added that had she know that the claimant was going to Dr. Pierce, “the policy is to send a specimen because we always drug screen every workmen’s comp injury”. (T. 69). Ms. Looney maintains that the claimant did not tell her that his injury was a workers’ compensation injury. Ms. Looney does not dispute the mechanism of the claimant’s shoulder injury.

Regarding the claimant's use of the company van to transport supplies to the picnic, Ms.

Looney's testimony reflects:

The van was at the park, so I would assume the Mike drove the van. I didn't see the designated van driver there.

When we got to the park and I saw the van there and I saw Mike I knew that he had driven the van. But then it's not uncommon for Mike to use the van for different purposes.

While on the job. (T. 71).

Ms. Looney testified that the claimant was not allowed to take the van when he was off the job, however added:

No, but I never knew when he took the van until after the fact. Did Mike come to me that morning and say, may I take the van to go get the supplies, no, he did not say that. (T. 71-72).

Ms. Looney acknowledged that the claimant was not required to come and ask her permission each time to use the van if he was doing company work.

Ms. Looney acknowledged that the food consumed during the picnic was purchased with petty cash of respondent. Ms. Looney authorized the disbursement of petty cash to purchase the supplies from Wal-Mart that was used at the picnic. Ms. Looney testified that she was reimbursed for the money she used of the Easter baskets that were distributed to the employees at the picnic.

Ms. Looney testified that she and Ms. Cindy Kellum accompanied the claimant to Riverside Park in February 2005 while scouting out a place for the picnic. Ms. Looney asserts that while it was during regular business hours at the time of the visit to Riverside Park they did not use the company van but her car.

Ms. Starla Busbea, assistant director of nursing at Broadway Healthcare, has been employed by respondents for eight years. Ms. Busbea testified that she was familiar with the claimant's March 21, 2005, injury at the picnic in the park. Ms. Busbea testimony reflects her understanding of the picnic:

We were to go out there and have a picnic, have our lunch out there, you know, eat. (T. 82).

Ms. Busbea testified that she learned of the March 21, 2005, picnic during the morning standup meeting:

We [the department heads] were - - I'm not sure if we were in standup or what. We were just called to the front office and said to meet out there. I don't even remember what time we were suppose to meet out there. (T. 82).

In addition to testifying regarding her observation of the claimant during the picnic, the activities that he participated in to include grilling the food and the egg hunt, Ms. Busbea testified that she had no understanding regarding whether attending the picnic was mandatory. Ms. Busbea testified that she did not think attending the picnic was mandatory.

While Ms. Busbea acknowledged that her name appears on the March 21, 2005, sign out log, she denies that she placed it there. Ms. Busbea explained that the entry was made by Ms. Georgianna Price:

We were all in the front office and we all basically ran out and she was up there signing everybody out. I mean, I didn't tell her to sign my name. (T. 86).

Ms. Busbea's testimony reflects that in January 2005, the plan was formulated where the department heads were grouped into subgroups, based on drawing numbers out of a container. Ms. Busbea further testified that the plan entailed:

We would just have a day where we forgot about work, we just got together and, you know, did fun things with our family.(T. 86).

Ms. Busbea's testimony reflects that Ms. Belinda Looney set up the arrangement. Ms. Busbea asserts, regarding the voluntary nature of participating in the get together, that Ms. Looney announced during the January 2005, meeting that if someone did not want to participate they did not have to participate. (T. 87).

Ms. Busbea testified that she did not receive pay for the time she was at the picnic on March 21, 2005, nor did she expect to receive same. Ms. Busbea noted that she did a time adjustment once she returned to the facility following the picnic. Ms. Busbea denied that the purpose of the sign out log was for people who left the building on business relative to respondent. Ms. Busbea explained, relative to the sign out log:

So, whoever is answering the phone knows you're out of the building. There's a lady that sits at the reception desk that is there at the disk. When you leave the building, you are suppose to sign out. (T. 92-93).

Ms. Busbea's testimony reflects when she first learned that Ms. Price had signed her out on March 21, 2005:

I think after I had actually left the building Gorgie yelled to me and Kim because we took separate vehicles, that she had signed us out. (T. 93).

Ms. Busbea testified that when she returned to the facility following the picnic she did not sign back in. The testimony of Ms. Busbea reflects that during the normal course of her shift should she leave the building on personal business she clock out at the time clock, which is in a separate location, and sign the log as well on occasions. Ms. Busbea testified regarding the usual practice:

We - - there's two boards at the building. We have a wipe out board or dry erase board and then that bad there. Sometimes I sign our on the dry erase board.

The testimony of Ms. Busbea reflects that when she leaves the facility on work-related activities she does not clock out, however she does sign the log. Ms. Busbea testified that in signing out on the log there is nothing to denote that the activity was work-related or of a personal nature. (T. 95). Ms. Busbea's testimony reflects that each time she signs out on business during the course of her shift she notify either Ms. Kim McElroy, her supervisor, or Ms. Looney. Ms. Busbea noted that she and Ms. McElroy rode to the park together for the picnic and that neither signed back in upon returning from the picnic.

Ms. Kerry Jane Zecchimi, the business office manager for respondent, has been so employed for two and a half years. Ms. Zecchimi testified that her understanding of the March 21, 2005, picnic in the West Memphis park was, "just a get together for the department heads" of respondent. (T. 99). Ms. Zecchimi asserts that she was not told that the picnic was mandatory. Ms. Zecchimi noted that she is usually informed of mandatory meetings during the standup meeting.

While Ms. Zecchimi acknowledged that her name appears on the sign out log of March 21, 2005, her testimony reflects that the entry was made by Ms. Georgianna Price. Regarding the purpose of the log, Ms. Zecchimi's testimony reflects:

The true purpose of that log is when someone leaves the building that is salaried so that we will know if they're in or out of the building because they don't clock in or out. And then also if you're on the clock and you have to leave the building say to go to the Post Office or different reasons why people would leave while they're on the clock and they would sign that so when they would get phone calls the receptionist would know if they're in or out of the building. (T. 100).

According to Ms. Zecchimi's testimony the picnic was supposed to have taken place on a weekend, however due to rain in the forecast, "they just decided to have it during the lunch break that day". (T. 102). Ms. Zecchimi testified that her two daughters attended the picnic. One of her daughters, Jennifer, volunteers for activities at work and accompanies Ms. Zecchimi everyday. Ms. Zecchimi noted that her other daughter, Tiffany, just happened to show up, pop in at work, on the day of the picnic. Regarding her understanding of whether family members were invited to the picnic, Ms. Zecchimi responded that she was uncertain if it was ever discussed. (T. 105).

The medical in the record reflects that on or about 2:30 p.m. the claimant was seen on March 21, 2005, by Dr. Trent Pierce with complaint of pain in his right shoulder which he attributed to picking up an ice chest. Following his examination of the claimant, Dr. Pierce assessed the complaint as possible strain versus rotator cuff tear of tendon tear. Claimant was treated with Percocet and Bextra with consideration of a MRI scan if no improvement. (CX. #1, p. 1). Claimant was release to return to work following the initial visit with Dr. Pierce with the limitation of "no heavy use of his right shoulder for five days". (RX. #1, p. 1). A March 23, 2005, entry in the records of Dr. Pierce reflects that the claimant's shoulder was still painful and "still wanting for MRI approval". (CX. #1, p. 1).

On March 30, 2005, claimant underwent a MRI of his right shoulder at Methodist LeBonheur Healthcare pursuant to the direction of Dr. Pierce. The MRI disclosed full thickness tear of the supraspinatus tendon and bursal effusions. (CX. #1, p. 2-3). Claimant was referred by Dr. Pierce to Dr. David A. Deneka, a Memphis orthopedic surgeon, for further treatment relative to his right shoulder complaint. In his April 7, 2005, report, Dr. Deneka diagnosed the claimant's

complaints as right rotator cuff tear involving the supraspinatus, right shoulder impingement, and asymptomatic acromioclavicular joint degenerative arthritis. (CX. #1, p. 4-5). On April 22, 2005, claimant underwent surgery. The postoperative diagnoses were right shoulder rotator cuff tear, right shoulder impingement, and right shoulder biceps tendon rupture. (CX. #1, p. 6-8).

After a thorough consideration of all of the evidence in this record, to include the testimony of the witnesses, review of the medical reports and other documentary evidence, 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 March 21, 2005, the relationship of employee-employer-carrier existed among the parties.
3. On March 21, 2005, the claimant earned wages sufficient to entitle him to weekly compensation benefits of \$466.00/\$350.00, for temporary total/permanent partial disability.
4. On March 21, 2005, the claimant sustained an injury to his right shoulder arising out of and in the course of his employment, while performing employment services.
5. The claimant was temporarily totally disabled for the period beginning on or about April 22, 2005, and continuing through the end of his healing period.
6. The respondent shall pay all reasonable hospital and medical expenses arising out of the injury of March 21, 2005.
7. The respondents have controverted this claim in its entirety.

CONCLUSIONS

Claimant is employed by respondents as Director of Maintenance, and discharged the

duties of same throughout his employment. It is undisputed that on March 21, 2005, claimant suffered an injury to his right shoulder while lifting an ice chest as he was cleaning up following a picnic at a local park in West Memphis, Ark., which was attended by department heads and key personnel of respondent. Claimant asserts that he was performing employment services at the time of his injury and is entitled to corresponding temporary total and medical benefits growing out of the March 21, 2005, injury. Respondents content that the injury suffered by the claimant to his right shoulder was not compensable in that same was not sustained in the performance of 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. Ark. Code Ann. §11-9-102 (4) (B) (ii), provides that a "compensable injury" does not include:

Injury incurred while engaging in or performing or as the result of engaging in or performing any recreational or social activities for the employee's personal pleasure;

Ark. Code Ann. §11-9-102 (4) (A) (i) defines "compensable injury" as "an accidental injury causing internal or external harm . . . arising out of and in the course of employment. . ."

Employment services are performed when the employee does something that is generally required by his employer. *Collins v. Excel Spec. Prods.*, 347 Ark. 811, 69 S.W.3d 14 (2002); *Pifer v. Single Source Transp.*, 347 Ark. 851, 69 W.W.3d 1 (2002). An injury is compensable when it occurs within the time and space boundaries of the employment, when the employee is carrying out the employer's purpose or advancing the employer's interest directly or indirectly. *Collins, supra; Pifer, supra.*

In *Matlock v. Arkansas Blue Cross Blue Shield*, 74 Ark. App. 322, 49 S.W.3d 126 (2001), the Arkansas Court of Appeals cited several factors to be examine in determining whether employment services were being performed: 1) whether the accident occurs at a time, place, or under circumstances that facilitate or advance the employer's interest; 2) whether the accident occurs when the employee is engaged in activity necessarily required in order to perform work; 3) whether the activity engaged in when the accident occurs is an expected part of the employment; 4) whether the activity constitutes an interruption or departure, known by or permitted by the employer, either temporally or spatially, from work activities; 5) whether the employee is compensated during the time that the activity occurs; 6) whether the employer expects the worker to cease or return from permitted non-work activity in order to advance some employment objective.

In the instant claim, while claimant discharged employment duties under the title of Director of Maintenance, he was the sole maintenance personnel at the West Memphis facility of respondent. The credible evidence reflects that the administrator of respondent-employer formulated/devised a mechanism geared toward improving morale, communication, and working conditions among the department heads and key personnel of respondent. The afore consisted of a quarterly meeting away from the premises of respondent-employer. In furtherance of the afore, the department heads/key personnel were divided into subgroups with each subgroup being responsible for organizing, planning, and executing their respective quarterly meeting.

Claimant was accompanied by the administrator/executive director in scouting a facility/park where the site of the first quarterly meeting/picnic would be held. Pursuant to the directions of supervisory personnel of respondents, claimant and another member of his subgroup

obtained money from petty cash to purchase supplies and food for the picnic. Claimant used the company van to go to the store and purchase the afore supplies and food for the picnic. Claimant remained on the clock during the afore activities and received his regular pay.

The picnic was held on Monday, March 21, 2005, at a local park in West Memphis, Ark. off the premises of respondent-employer. The credible evidence reflects that the claimant and department heads of respondents were under the belief that attendance of the quarterly meeting, to include the picnic was mandatory. The designation of the quarterly meeting was identified by the administrator, the cost of the food and supplies was borne by respondent-employer, planning and preparation of the picnic was had during routine business/working hours through the use of respondents' resources, participants at the quarterly meeting were supervisory personnel (department heads and key personnel). There is no evidence to reflect that the department heads and key personnel were informed that attendance of the quarterly meetings was not mandatory. The evidence preponderates that the contrary was the case.

The evidence preponderates that the claimant was within the course and scope of his employment and performing employment services at the time he suffered the injury to his right shoulder on March 21, 2005. The injury was suffered by the claimant as he was removing an ice chest while gathering the supplies used during the mandatory quarterly meeting, which entailed a picnic in the park. The ice chest, along with all the other supplies and unused food, was being loaded in the van of respondents to be returned to the facility. The occurrence of the injury, medical treatment rendered relative to same, and the claimant's period of total incapacitation as a result of same are not disputed. Respondents have controverted this claim in its entirety.

AWARD

Respondents are herein ordered and directed to pay to the claimant temporary total disability benefits for the period commencing April 22, 2005, and continuing through the end of his healing period, at a weekly compensation benefits rate of \$466.00, as a result of his compensable right shoulder injury of March 21, 2005. Said sums accrued shall be paid in lump without discount.

Respondents are further ordered and directed to pay all reasonable related medical, hospital, nursing and other apparatus expenses, to include medical related travel, growing out of the compensable injury of March 21, 2005.

Maximum attorney fees are herein awarded to the claimant's attorney on the controverted indemnity benefits herein awarded, pursuant to Ark. Code Ann. § 11-9-715.

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

Matters not addressed herein are expressly reserved.

IT IS SO ORDERED.

Andrew L. Blood, Administrative Law Judge