

**BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION**

**CLAIM NO. F507625**

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| <b>SYLVIA BARNUM, EMPLOYEE</b>                                    | <b>CLAIMANT</b>   |
| <b>H &amp; L POULTRY, EMPLOYER</b>                                | <b>RESPONDENT</b> |
| <b>ACE PROPERTY &amp; CASUALTY<br/>INSURANCE COMPANY, CARRIER</b> | <b>RESPONDENT</b> |

**OPINION FILED JUNE 30, 2006**

Submitted on the record in lieu of a full hearing before ADMINISTRATIVE LAW JUDGE ELIZABETH W. HOGAN.

Claimant represented by the HONORABLE SILAS H. BREWER, Attorney at Law, Little Rock, Arkansas.

Respondents represented by the HONORABLE E. DIANE GRAHAM, Attorney at Law, Fort Smith, Arkansas.

**ISSUES**

This claim was submitted on the record in lieu of a hearing to determine the claimant's entitlement to payment of medical expenses, temporary total disability benefits, anatomical impairment and attorney fees.

At issue is whether or not the claimant was performing employment services at the time of the injury pursuant to Ark. Code Ann. §11-9-102(4)(B)(iii).

After reviewing the evidence impartially without giving the benefit of the doubt to either party, Ark. Code Ann. §11-9-704, I find the evidence does not preponderate in favor of the claimant.

## **STATEMENT OF THE CASE**

The parties stipulated to an employer-employee-carrier relationship on July 5, 2005 at which time the claimant injured her left knee when she stepped in a pothole on the employer's parking lot. The accident happened at 5:45 A.M. when she arrived to start her shift (6:00 A.M. to 3:00 P.M.) and before she entered the building to clock in and begin her duties. She reported the injury and received payment of her medical expenses from the employer's premises liability carrier. The claimant also received short term disability benefits through UNUM Life Insurance Company.

The claimant contends she sustained a compensable injury entitling her to payment of medical expenses, temporary total disability benefits, anatomical impairment and attorney's fees.

The respondents contend the claimant was not in the course and scope of her employment at the time of the accident.

A prehearing conference was conducted by Judge Cynthia Rogers in November, 2005, however no prehearing order was entered in this case. The following were submitted without objection and comprise the evidence of record: the parties' prehearing questionnaires and exhibits, Stipulated Facts, and respondents' brief.

## FINDINGS AND CONCLUSIONS

As this claim arose after July 1, 1993, this case is governed by Act 796 of 1993 which must be strictly construed, Ark. Code Ann. §11-9-704, §11-9-717. The claimant has the burden of proving the following requirements, as defined by Ark. Code Ann. §11-9-102, by a preponderance of the evidence of record, which means “evidence of greater convincing force,” Smith v. Magnet Cove Barium Corporation, 212 Ark 491, 206 S.W.2d 442 (1947):

- 1) proof that the injury arose out of and in the course of employment
- 2) proof that the injury caused internal or external physical harm to the body which required medical services or resulted in disability
- 3) proof establishing the injury by objective medical evidence
- 4)(a) proof that the injury was caused by a specific incident identifiable by time and place of occurrence

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- (b) proof that the injury was caused by rapid, repetitive motion and proof that the injury was the major cause of disability or need for medical treatment.

Compensation must be denied if the claimant fails to prove any one of these requirements. Mikel v. Engineering Specialty Plastics, 56 Ark. App. 126, 938 S.W.2d

876 (1997).

Injuries sustained by employees going to and coming from work are not considered to “arise out of and in the course of” employment. The “going-and-coming” rule ordinarily precludes recovery for an injury sustained while an employee is not within the course of his employment and all persons, including employees, are subject to the recognized hazards of travel. Swearingen v. Evergreen Lawns, 85 Ark. App. 61, 145 S.W.3d 830 (2004).

The cases of Hightower v. Newark Public School System, 57 Ark. App. 159, 943 S.W.2d 608 (1997) and Srebalus v. Rose Care, Inc., 69 Ark. App. 142, 10 S.W.3d 112 (2000) involve parking lot injuries and are directly on point. The mere fact that the injury happens on the employer’s premises does not mean the accident is compensable.

Under the Act, a compensable injury does not include an injury suffered by the employee at a time when employment services were not being performed, Ark. Code Ann. §11-9-102(4)(B)(iii). An employee is performing employment services when she is doing something generally required by her employer. White v. Georgia-Pacific Corporation, 339 Ark. 474, 6 S.W.3d 98 (1999). The test for determining whether the employee was performing employment services at the time of the injury is whether the injury occurred within the time and space boundaries of the employment, when the employee was carrying out the employer’s purpose or advancing the employer’s interest directly or indirectly. Pifer v. Single Source

Transp., 347 Ark. 851, 69 S.W.3d 1 (2002).

The evidence of record shows that the claimant was merely walking from her car to the plant. She was not performing employment services at the time of the accident nor advancing her employer's interest directly or indirectly. Therefore, I find the claimant did not sustain a compensable injury and benefits must be denied.

1. The Workers' Compensation Commission has jurisdiction of this claim in which the relationship of employer-employee-carrier existed among the parties on July 5, 2005.
2. The claimant has failed to prove by a preponderance of the credible evidence that she sustained a compensable injury, caused by a specific incident, arising out of and in the course of her employment which produced physical bodily harm, supported by objective findings, requiring medical treatment or producing disability, pursuant to Ark. Code Ann. §11-9-102.

This claim is respectfully denied and dismissed.

IT IS SO ORDERED.

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ELIZABETH W. HOGAN  
Administrative Law Judge