

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F601308

MARISA L. BOBO

CLAIMANT

ARBOR OAKS HEALTHCARE REHAB

RESPONDENT EMPLOYER

PENNSYLVANIA MANUFACTURERS' ASSOC.

RESPONDENT CARRIER

ORDER AND OPINION FILED AUGUST 8, 2006

Hearing before Administrative Law JUDGE LINDA K. MARSHALL.

Claimant represented by the HONORABLE SHERRI ARMAN MCDONOUGH, Attorney at Law, Hot Springs, Arkansas.

Respondents represented by the HONORABLE GUY ALTON WADE, Attorney at Law, Little Rock, Arkansas.

STATEMENT OF THE CASE

The above claim came on for a hearing in Hot Springs, Arkansas on July 7, 2006. A prehearing conference was held on April 18, 2006, and a prehearing order was filed the same date. A copy of the prehearing order was marked as Commission Exhibit No. 1 and made a part of the record without objection.

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

1. There was an employer-employee relationship on January 11, 2006.
2. The temporary total disability rate is based on an average weekly wage of \$310.84.

The claimant contends that she slipped and fell at her place of employment and injured her shoulder. The claimant is contending she is entitled to medical benefits and temporary total disability benefits from January 12, 2006 through April 18, 2006, and attorney's fees.

Respondents contend the claimant was not in the course and scope of her employment and was not performing employment services. Respondents further contend there are no objective findings to support a compensable injury. Benefits have been controverted in its entirety.

ISSUES TO BE LITIGATED

1. Compensability.
2. Medical benefits.
3. Temporary total disability benefits.
4. Attorney's fees.

From a review of 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 witnesses and to observe their demeanor, the following findings of fact and conclusions of law are made in accordance with Ark. Code Ann. §11-9-704:

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. There was an employer-employee relationship on January 11, 2006.
2. The temporary total disability rate is based on an average weekly wage of \$310.84.
3. The claimant has proved by a preponderance of the evidence that she was performing "employment services" on January 11, 2006, when she slipped and caught herself.

4. The claimant has failed to prove by a preponderance of the evidence that she sustained a compensable injury arising out of and in the course of her employment and supported by objective findings.

5. Respondents are responsible for the one emergency room visit on January 13, 2006.

DISCUSSION

The claimant, 26 years old, worked as a CNA for the respondent employer. The claimant worked from 6:00 a.m. until 2:00 p.m. On January 11, 2006, the claimant arrived at the employer about 5:45 a.m. According to the claimant, the floors were being waxed and she was walking to the area to clock in and then wait for her shift. As she was in the east hall, beside the nurse's desk, she slipped on the wet floor and fell to her right knee, catching with her right hand. According to the claimant, she did not immediately feel pain; however, she reported the incident to the charge nurse, Gail Jones. According to the claimant, another CNA, Teresa Lawrence, saw her fall. The claimant had not clocked in at the time of the fall, but did clock in and worked until 12:00 and left because she had prearranged to take off at that time.

The claimant testified that she also performed all her normal home duties such as washing clothes and cooking that evening. The next morning when she woke up, the claimant testified that her right shoulder was really sore. The following morning, according to the claimant, she was unable to move her shoulder and she called Denise Bradley with the respondent and asked about going to the emergency room. According to the claimant, she was told she could go to the emergency room and she received some medications, was x-rayed and advised to follow up with her family doctor. The

family doctor wanted to have a MRI; however, the insurance company would not authorize such and the claimant testified she could not afford the test. According to the claimant, she was fired on January 19, 2006, because of a positive drug screen for cocaine. The claimant denied ever using cocaine, although her husband has used cocaine in the past.

According to the claimant, her family doctor referred her to Dr. Robert Olive, an orthopedic in Hot Springs, and he ordered some physical therapy. Her last visit was April 18, 2006, and her shoulder was better and she felt she could return to work if she was still employed.

Respondents contend the claimant was not performing employment services at the time of her fall. A compensable injury is an accidental injury causing internal or external harm that arises out of and in the course of employment. Ark. Code Ann. §11-9-102(4)(A)(i) (Supp. 2005). A compensable injury does not include an “[i]njury which was inflicted upon 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 he or she is doing something that is generally required by his or her employer. *Collins v. Excel Spec. Prods.*, 347 Ark. 811, 69 S.W.3d 14 (2002). The test for determining whether an employee was injured while performing employment services is the same as the test for determining whether an injury occurred out of and in the course of employment: 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. *Id.*; *White v. Georgia-Pacific Corp.*, 339 Ark. 474, 6 S.W.3d 98 (1999); *Olsten Kimberly*

Quality Care v. Pettey, 328 Ark. 381, 944 S.W.2d 524 (1997). Thus, the critical issue is whether the interests of the employer were being directly or indirectly advanced by the employee at the time of the injury. *Collins, supra*.

I find the instant case is on point with *Caffey v. Sanyo Mfg. Corp.*, ____ Ark. App. ____, S.W.3d ____ (3/10/04). In *Caffey*, the claimant was required to clock in; however, she was not actually paid until she was at her work station and her shift began at 7:30 a.m. The claimant slipped in some water in the hallway before she actually clocked in. The Court of Appeals agreed with the Commission in its decision that the claimant was performing “employment services” when she slipped and fell on her way to clock in for the morning shift, because her actions were required by the employer and advanced the employer’s interests. The Court further stated that payment for services is not determinative of employment services. In the instant case, I find the claimant, like *Caffey*, was performing “employment services” at the time she slipped and fell.

In order to prove a compensable injury as a result of a specific incident that is identifiable by time and place of occurrence, a claimant must establish (1) proof by a preponderance of the evidence of an injury arising out of and in the course of employment; (2) proof by a preponderance of the evidence that the injury caused internal or external harm to the body that required medical services; (3) medical evidence supported by objective findings establishing the injury; and (4) proof by a preponderance of the evidence that the injury was caused by a specific incident and identifiable by time and place of occurrence. Ark. Code Ann. §11-9-102(4) (Repl.

2005). If the claimant fails to establish by a preponderance of the evidence any of the requirements for establishing the compensability of the claim, compensation must be denied. *Mikel v. Engineering Specialty Plastics*, 56 Ark. App. 126, 938 S.W.2d 876 (1997).

In the present case, the claimant has failed to prove by a preponderance of the evidence that she sustained a compensable injury. While I found the claimant to present a credible account of a slip and fall injury as she was approaching the time clock, I found the claimant failed to provide “objective findings” that are necessary to support compensability of an injury, as required by Ark. Code Ann. §11-9-102(4)(D). The January 13, 2006, x-rays revealed a normal right shoulder. The sparse medical evidence did not mention any swelling or muscle spasms or other objective findings.

While it was not totally clear if respondents paid for the initial emergency room visit, the claimant presented testimony that she was authorized to go to the emergency room by Denise Bradley, the supervisor on call on January 13, 2006. I find that respondents are responsible for the one emergency room visit, as the claimant was authorized to seek an evaluation. See, *Britain v. Southern Hospitalities*, 54 Ark. App. 318, 925 S.W.2d 81 (1996). Respondents are estopped from denying responsibility for the cost of the employer-directed doctor’s visit, notwithstanding the fact that the injury was ultimately found not to be compensable.

ORDER

The claimant has proved by a preponderance of the evidence that she was performing “employment services” on January 11, 2006, when she slipped and caught

herself. The claimant has failed to prove by a preponderance of the evidence that she sustained a compensable injury arising out of and in the course of her employment and supported by objective findings. Respondents are responsible for the one emergency room visit on January 13, 2006.

No indemnity benefits have been awarded herein. An attorney's fee may be awarded only on indemnity benefits owed and controverted. Ark. Code Ann. §11-9-715. Therefore, no attorney's fees are awarded.

IT IS SO ORDERED.

**LINDA K. MARSHALL
ADMINISTRATIVE LAW JUDGE**