

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F406690

MICHAEL CURRY, EMPLOYEE

CLAIMANT

AREA AGENCY ON AGING, EMPLOYER

RESPONDENT

AGING SERVICES FUND, CARRIER

RESPONDENT

OPINION FILED JUNE 26, 2006

Hearing before Administrative Law Judge Cynthia Estes Rogers on April 14, 2006, in Pine Bluff, Jefferson County, Arkansas.

Claimant appeared *pro se*.

Respondents represented by Mr. Michael Dennis, Attorney at Law, Pine Bluff, Arkansas.

STATEMENT OF THE CASE

On April 7, 2006, the above-captioned claim came on for a hearing in Texarkana, Arkansas. A pre-hearing conference was conducted on March 6, 2006, and a Prehearing Order was entered that same day. A copy of the March 6, 2006, Prehearing Order has been marked as Commission Exhibit No. 1 and made a part of the record herein without objection. At the hearing, the parties confirmed that the stipulations, issues, and respective contentions were properly set forth in the Prehearing Order.

The parties stipulated that the employer/employee relationship existed on June 14, 2004; and that the claimant was earning an average weekly wage of \$140.68.

The parties agreed that the sole issue to be presented was compensability.

The claimant contended that he was injured in a motor vehicle accident while in the course and scope of his employment on June 14, 2004, and sustained injuries as a result; that he missed only three days of work but is seeking the payment of his past medical bills incurred as a result of his injury; and that he was fired by respondent employer in December of 2004, after he gave a recorded statement about the injury.

Respondents contended that they accepted the claim originally as compensable although no benefits were paid; that the injury was accepted as compensable until December 13, 2004, when claimant gave a recorded statement in which it was discovered that claimant had deviated from his work to a tobacco shop to buy cigarettes and that his wife was in the company van with him at the time of the accident, which was a violation of regulations; and that the claimant was therefore not in the course and scope of his employment at the time of the alleged injury under the Workers' Compensation Act and is not entitled to any benefits as a result.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

As noted above, this hearing was presided over by Administrative Law Judge

Cynthia Estes Rogers, who subsequently left her employment with the Commission. The case was then transferred to this Administrative Law Judge to issue an opinion based solely on the record of the hearing.

After reviewing the record as a whole, to include medical reports, documents, and other matters properly before the Commission, the following findings of fact and conclusions of law are hereby made in accordance with Ark. Code Ann. § 11-9-704:

1. The Arkansas Workers' Compensation Commission has jurisdiction of this claim.
2. The stipulations agreed to by the parties are reasonable and are hereby accepted as fact.
3. The claimant has failed to prove by a preponderance of the evidence that he was engaged in employment services at the time of his injury.
4. The claimant has failed to prove by a preponderance of the evidence that he sustained an injury arising out of and in the course of his employment.
5. The claimant has therefore failed to prove by a preponderance of the evidence that he sustained a compensable injury.
6. The respondents have controverted this claim in its entirety.

DISCUSSION

The claimant worked for the respondent as a driver delivering meals to elderly clients. He testified that he regularly took his wife along with him on his route, and that other employees did the same. On June 14, 2004, after completing his meal deliveries, he stopped at a tobacco store to purchase cigarettes. As he was leaving the tobacco store, another car hit his van, injuring the claimant. The claimant admitted in his testimony that had the accident not occurred, he would have proceeded to his home to drop off his wife before returning to the respondent-employer's premises to perform other tasks.

The claimant bears the burden of proving that his injury occurred while he was engaged in employment services. *Morales v. Hector Martinez, et al*, __ Ark. App. __, __ S.W.3d __ (Nov. 10, 2004). An employee is performing "employment services" when he or she is doing something that is generally required by his or her employer. *Pifer v. Single Source Transportation*, 347 Ark. 851, 69 S.W.3d 1 (2002). The relevant test 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. *Id.*

In the present matter, it is plain that at the time of his injury, the claimant had deviated from his expected employment services. He had stopped at a tobacco store

to purchase cigarettes, a task wholly personal and unrelated to his job duties. Had the accident not happened, he would have taken his wife home – another task wholly personal and unrelated to his job duties. Though the employer might have derived some benefits from his wife’s presence in the van, the employer derived no benefit from the claimant taking his wife home.

I find that the claimant has failed to prove by a preponderance of the evidence that he was engaged in employment services at the time of his injury, and that the claimant has failed to prove by a preponderance of the evidence that he sustained an injury arising out of and in the course of his employment. I therefore conclude that the claimant has failed to prove by a preponderance of the evidence that he sustained a compensable injury.

CONCLUSION

The claimant has failed to prove by a preponderance of the evidence that he sustained a compensable injury. Therefore, this claim for benefits must be, and it hereby is, denied and dismissed.

IT IS SO ORDERED.

HON. J. MARK WHITE
Administrative Law Judge