

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F505002

ERICA D. WILLIAMS, EMPLOYEE	CLAIMANT
DEPARTMENT OF HUMAN SERVICES, EMPLOYER	RESPONDENT
PUBLIC EMPLOYEE CLAIMS, TPA	RESPONDENT

OPINION FILED MARCH 20, 2006

Hearing before Administrative Law Judge J. Mark White on January 31, 2006, in Little Rock, Pulaski County, Arkansas.

Claimant represented by Mr. James Stanley, Attorney at Law, North Little Rock, Arkansas.

Respondents represented by Mr. Richard S. Smith, Attorney at Law, Little Rock, Arkansas.

STATEMENT OF THE CASE

On January 31, 2006, the above-captioned claim came on for a hearing in Little Rock, Arkansas. A pre-hearing conference was conducted on September 26, 2005, and a Prehearing Order was entered that same day. A copy of the September 26, 2005, 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, as amended, were properly set forth in the Prehearing Order.

The parties stipulated that the Arkansas Workers' Compensation Commission has jurisdiction of this claim; that the employee/employer/carrier

relationship existed at all relevant times, including May 3, 2005; and that the claimant earned an average weekly wage of \$437.60, entitling her to a compensation rate of \$292 for total disability benefits and \$219 for permanent partial disability benefits. At the hearing, the parties further stipulated that the respondents have controverted this claim in its entirety.

The parties agreed that the issues to be presented were whether the claimant sustained a compensable injury; whether the claimant is entitled to temporary total disability benefits; whether the claimant is entitled to medical treatment; and attorney's fees.

The claimant contends that she sustained injuries to her back, neck, ankles, legs, and buttocks as a result of a fall arising out of the course of her employment; that she is entitled to medical treatment; that she is entitled to temporary total disability benefits from May 3, 2005 through a date yet to be determined; and that she is entitled to attorney's fees.

The respondents contend that the claim is not compensable; that the claimant was not engaged in employment-related activity at the time of her injury, instead she was on her way to lunch; and that the medical evidence does not contain any objective clinical findings in support of an injury.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing 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 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 she sustained her injury while performing employment services or that her injury arose out of and in the course of her employment.
4. The claimant has therefore failed to prove by a preponderance of the evidence that she sustained a compensable injury.
5. The respondents have controverted this claim in its entirety.

DISCUSSION

The claimant worked for the respondent-employer as an administrative assistant. She testified that on May 3, 2005, she was walking down a stairway when she fell and injured herself. She admitted that she was on her way to a breakroom where she was going to take her lunch break.

To prove her injury compensable, the claimant must show that she was performing employment services at the time she was injured. Ark. Code Ann. § 11-9-102 (4)(B)(iii). An employee is performing “employment services” when she is doing something that is generally required by her employer. *Pifer v. Single Source Transportation*, 347 Ark. 851, 69 S.W.3d 1 (2002). The concept of employment services encompasses the performance of incidental activities that are inherently necessary for the performance of the primary activity. *Privett v. Excel Specialty Prod.*, 76 Ark. App. 527, 69 S.W.3d 445 (2002). The claimant bears the burden of proving that her injury occurred while she was engaged in employment services. *Morales v. Martinez, et al*, __ Ark. App. __, __ S.W.3d __ (Nov. 10, 2004).

The courts have frequently considered whether an employee traveling to or from a break is performing employment services. In the case of *McKinney v. Trane Co.*, 84 Ark. App. 424, 143 S.W.3d 581 (2004), the Court of Appeals held that an employee on his way to a smoke break was not engaged in employment services

where the employee “was involved in nothing generally required by his employer and was doing nothing to carry out the employer's purpose.” On the other hand, in *Ray v. University of Arkansas*, 66 Ark. App. 177, 990 S.W.3d 558 (1999), the Court found that a claimant was engaged in employment services while on a lunch break, because she was required to perform her job duties during the break if the need arose. The claimant in *Arkansas Methodist Hospital, et al, v. Hampton*, __ Ark. App. __ __ S.W.3d __ (March 23, 2005), was likewise found to be performing employment services while on her way to get lunch, given that her shift had no scheduled breaks, she was retrieving lunch for several co-workers, and she and the co-workers intended to eat at their work station for the convenience of their employer. Finally, the Supreme Court has ruled that restroom breaks are inherently necessary activities and therefore constitute the performance of employment services. *Pifer v. Single Source Transportation*, 347 Ark. 851, 69 S.W.3d 1 (2002).

The instant claimant was not on her way to a restroom break, but rather to her lunch break. There is no evidence that she could have been called away to perform job duties during her lunch break. She was not intending to return with her lunch to her desk for the employer’s convenience; rather, she testified she intended to sit in the break room for the duration of the break. Like the claimant in *McKinney v. Trane Co., supra*, the instant claimant “was involved in nothing generally required

by [her] employer and was doing nothing to carry out the employer's purpose.”

Given the evidence of record, I find that the claimant has failed to prove by a preponderance of the evidence that she sustained her injury while performing employment services or that her injury arose out of and in the course of her employment. I conclude that the claimant has failed to prove by a preponderance of the evidence that she sustained a compensable injury.

This finding renders the other issues moot. However, I recognize that respondents may be estopped from denying liability for the initial hospital treatment, in that an agent of the respondents apparently directed the claimant to go to the hospital. *Cf., Southern Hospitalities v. Britain*, 54 Ark. App. 318, 925 S.W.2d 81 (1996). Nonetheless, though the claimant raised the general issue of entitlement to medical treatment, at no point did she specifically raise the issue of estoppel. I decline to raise and decide it *sua sponte*.

The claimant has failed to prove by a preponderance of the evidence that she 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