

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F611420

JOHN M. HUITT,
EMPLOYEE

CLAIMANT

EVERS & WHATLEY ELECTRIC CO.,
EMPLOYER

RESPONDENT

AMERICAN HOME ASSURANCE CO.,
INSURANCE CARRIER

RESPONDENT

OPINION FILED AUGUST 27, 2007

Hearing conducted before ADMINISTRATIVE LAW JUDGE MARK CHURCHWELL, in El Dorado, Union County, Arkansas.

The claimant was represented by HONORABLE KEITH L. GRAYSON, Attorney at Law, Heber Springs, Arkansas.

The respondents were represented by HONORABLE CAROL L. WORLEY, Attorney at Law, Little Rock, Arkansas.

STATEMENT OF THE CASE

A hearing was held in the above-styled claim on July 12, 2007, in El Dorado, Arkansas. A Prehearing Order was entered in this case on June 6, 2007. This Prehearing Order outlined the issues to be litigated and resolved at the present time. A copy of this Prehearing Order was made Commission's Exhibit No. 1 to the hearing record.

The following stipulations were submitted by the parties during the course of the hearing and are hereby accepted:

1. Mr. Huitt earned sufficient wages to be entitled to compensation at the maximum compensation rates

in effect for compensable injuries sustained in 2006 under the Arkansas Workers' Compensation Law if this claim is found compensable.

2. If called to testify, Mr. Fogle would corroborate Mr. Huitt's testimony with regard to employment related activities at the time of his injury.

The issues to be litigated and resolved at the present time are limited to the following:

1. Whether the Arkansas Workers' Compensation Commission has jurisdiction over this claim for an injury sustained in Mississippi.
2. Whether Mr. Huitt's injury arose out of and in the course of his employment with Evers & Whatley Electric Company, and whether Mr. Huitt was performing employment services when the injury occurred. All other issues are reserved.

The record consists of the July 12, 2007, hearing transcript and the exhibits contained therein.

DISCUSSION

I. Jurisdiction

John Huitt sustained a severe injury in an automobile accident in Mississippi on October 2, 2006. The threshold issue in this case which I raised at the hearing on July 12,

2007, is whether the Arkansas Workers' Compensation Commission has grounds to assert jurisdiction to enter findings regarding the claimant's injury sustained in Mississippi.

Arkansas Code Annotated Section 11-9-707 (Repl. 2002) provides that a prima facie presumption shall exist that the Arkansas Workers' Compensation Commission has jurisdiction in any proceeding to enforce a claim for compensation. The Arkansas Supreme Court has listed six grounds to consider in making a finding on whether jurisdiction is proper in Arkansas: (1) the place where the injury occurred, (2) the place of making the contract, (3) the place where the employment relationship exists or is carried out, (4) the place where the industry is localized, (5) the place where the employee resides, or (6) the place whose statute the parties expressly adopted by contract. Baker v. Frozen Food Express Transport, 336 Ark. 451, 987 S.W.2d 658 (1999).

In the present case, Mr. Huitt is currently, and was at the time of the accident, a resident of Warren, Arkansas. Evers & Whatley Electric Company is located in El Dorado, Arkansas. At the time of the accident, Mr. Huitt was employed by Evers & Whatley Electric Company as a master electrician.

Mr. Huitt would normally perform his work for Evers & Whatley Electric Company in Arkansas but would sometimes work out of state. Mr. Huitt had been working on the job in Mississippi approximately four or five weeks before the accident on October 2, 2006.

In resolving a somewhat similar jurisdictional question in International Paper Co. v. Tidwell, 250 Ark. 623, 466 S.W.2d 488 (1971), the Arkansas Supreme Court concluded:

We have no hesitation in holding that where the contract of employment is entered into in this state between an Arkansas resident and an employer who is localized as a resident or who maintains an office which exercises general superintendence and control over the employment which is not carried on at a fixed location, the Arkansas Workmen's Compensation Act applies and the Arkansas Workmen's Compensation Commission has jurisdiction, even though the injury occurred in a state in which it was contemplated by the parties that the employment would be entirely performed.

Id. at 633.

In Tidwell, the claimant was hired to work exclusively in Texas. I find the facts supporting jurisdiction in Arkansas even more compelling in the present case where Mr. Huitt was an Arkansas resident, Evers & Whatley Electric Company was located in Arkansas, and Mr. Huitt normally worked in Arkansas. I find that the Arkansas Workers' Compensation Commission

has sufficient grounds to accept jurisdiction to resolve the issues presented by the parties to this Commission even though the accident at issue occurred in Mississippi.

In addition, the Arkansas Supreme Court has previously noted that an injured employee's exclusive remedy on account of injury or death arising out of and in the course of employment is a claim for workers' compensation under Ark. Code Ann. § 11-9-105, and that the Arkansas Workers' Compensation Commission has exclusive original jurisdiction to determine the facts that establish jurisdiction, unless the facts are so one-sided that the issue is no longer one of fact but one of law, such as intentional tort. Van Wagoner v. Beverly Enterprises, 334 Ark. 12, 970 S.W.2d 810 (1998). Accord Boudreau v. Wal-Mart, 249 F.2d 715 (8th Cir. 2006). Consequently, I find that the Arkansas Workers' Compensation Commission has jurisdiction to determine whether Mr. Huitt's injury occurred in the course of Mr. Huitt's employment with Evers & Whatley Electric Company and to determine whether Mr. Huitt was performing employment services at the time of the accident.

II. Course Of Employment/Employment Services

The Arkansas Workers' Compensation Law defines a compensable injury in part as "[a]n accidental injury...arising out of and in the course of employment...." Ark. Code Ann. § 11-9-102(4)(A)(i). A compensable injury does not include "[i]njury inflicted upon the employee at a time when employment services were not being performed...." Ark. Code Ann. §11-9-102(4)(B)(iii). The Arkansas Workers' Compensation Law does not define the term "in the course of employment" or the term "employment services." Pifer v. Single Source Transportation, 347 Ark. 851, 69 S.W.3d 1 (2002). However, the Court in Pifer summarized:

We have held that an employee is performing "employment services" when he or she "is doing something that is generally required by his or her employer...." We use the same test to determine whether an employee was performing "employment services" as we do when determining whether an employee was acting within "the course of employment." The 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. at 857 [Internal citations omitted].

When an employee sustains injuries from an accident involving a company vehicle, the critical

inquiry remains whether the employee was performing employment services when he was involved in the accident. I must therefore determine how, if at all, Mr. Huitt's employer benefitted from Mr. Huitt's actions during his travel at the time of the accident. Farler v. City of Cabot, 95 Ark. App. 121, ___ S.W.3d ___ (2006); Swearengin v. Evergreen Lawns, 85 Ark. App. 61, 145 S.W3d 830 (2004).

In the present case, the testimony establishes that Mr. Huitt left his personal vehicle in Arkansas and used a company truck for transportation in Mississippi. Mr. Huitt worked four days per week from 6:00 a.m. to 4:00 p.m. On October 2, 2006, Mr. Huitt returned to the hotel after work and ate dinner. At approximately 7:00 p.m. that evening, Mr. Huitt and Mr. Fogle, a co-worker, left the hotel in a company truck to take a sightseeing tour of a game reserve on an island. The accident occurred while returning from the sightseeing tour.

I find that Mr. Huitt's actions during the sightseeing tour provided no direct or indirect benefit to his employer, so that the accident at issue occurred at a time when Mr. Huitt was not performing services

for his employer within the meaning of the Arkansas Workers' Compensation Law. In this regard, the evidence establishes that the accident occurred at least several hours after Mr. Huitt completed his primary job duties for the day as an electrician. Mr. Huitt and Mr. Fogle were not paid during the time that they were on the sightseeing tour. The two were not running any errand for the employer. Mr. Huitt was not on call at the time. Mr. Huitt was not talking on the telephone to anyone about work when the accident occurred nor was he looking at notes from work. Because the Arkansas Supreme Court applies the same test to determine whether an employer is performing "employment services" as the Court uses when determining whether an employee was acting within "the course of employment," I also find based on these same facts that Mr. Huitt was not acting within the course of his employment when the accident occurred. Mr. Huitt therefore did not sustain a compensable injury within the meaning of the Arkansas Workers' Compensation Law.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. John M. Huitt was an employee of Evers & Whatley Electric Company on October 2, 2006.
2. Mr. Huitt was injured on October 2, 2006, during an automobile accident in Mississippi in a company truck while engaged in a sightseeing tour.
3. Mr. Huitt's actions during the sightseeing tour did not provide any direct or indirect benefit to Evers & Whatley Electric Company.
4. The Arkansas Workers' Compensation Commission has jurisdiction to determine the facts that establish jurisdiction even though Mr. Huitt sustained his injury in Mississippi.
5. Mr. Huitt earned sufficient wages to be entitled to compensation at the maximum compensation rates in effect for compensable injuries sustained in 2006 under the Arkansas Workers' Compensation Law if this claim is found compensable.
6. Mr. Huitt was not performing employment services at the time the accident occurred.

7. Mr. Huitt was not acting within the course of his employment for Evers & Whatley Electric Company when the accident occurred.
8. Mr. Huitt did not sustain a compensable injury within the meaning of the Arkansas Workers' Compensation Law.

ORDER

Because Mr. Huitt was not acting within the course of his employment when he became injured, this matter before the Arkansas Workers' Compensation Commission is hereby dismissed.

IT IS SO ORDERED.

MARK CHURCHWELL
Administrative Law Judge