

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F607895

HAROLD A. SMITH, EMPLOYEE	CLAIMANT
FAULKNER COUNTY JUDGE, EMPLOYER	RESPONDENT
ASSOCIATION OF ARKANSAS COUNTIES, WCT/ AAC RISK MANAGEMENT, CARRIER/TPA	RESPONDENT

OPINION FILED NOVEMBER 1, 2007

Hearing held before ADMINISTRATIVE LAW JUDGE CHANDRA HICKS, in Little Rock, Pulaski County, Arkansas.

Claimant was represented by THE HONORABLE GARY DAVIS, Attorney at Law, Little Rock, Arkansas.

Respondents were represented by THE HONORABLE GAIL O. MATTHEWS, Attorney at Law, Little Rock, Arkansas.

STATEMENT OF THE CASE

A hearing was held in the above-styled claim on August 29, 2007, in Little Rock, Arkansas. A Prehearing Order was entered in this case on May 21, 2007. This Prehearing Order reflects the stipulations offered by the parties and the issues to be litigated, as well as the parties' respective contentions.

Stipulations

The following stipulations were submitted by the parties during the prehearing conference or at the time of hearing.

These stipulations are hereby accepted:

1. The Arkansas Workers' Compensation Commission has jurisdiction of the within claim.

2. The employee-employer-carrier relationship existed at all relevant times, including June 20, 2006.

3. The claimant's average weekly wage was \$452.00; his temporary total disability rate is \$301.00; and, his permanent partial disability rate is \$226.00.

4. If the claimant's alleged injury is found to be compensable, he is disabled due to his compensable injury, so as to entitle him to temporary total disability compensation from February 21, (2007), to a date yet to be determined.

Issue

By agreement of the parties, the sole issue to be presented at the hearing is as follows:

Whether the claimant's June 20, 2006 injury is compensable.

Contentions

The claimant essentially contends that as a deputy sheriff, he is never off duty, and was acting in the course and scope of his employment at the time of his injury on June 20, 2006.

The respondent contends that the claimant was not acting in the course and scope of his employment at the time of his injury. During the hearing, respondents essentially contended that at the time of the injury, the claimant was on personal business when he went over to make the neighbors turn down their loud music, which was keeping him from sleeping.

The documentary evidence submitted in this case consists of

the Commission's Prehearing Order, dated May 21, 2007, which has been marked as Commission's Exhibit No. 1. The claimant's response to the Prehearing Questionnaire was marked as Commission's Exhibit No. 2. The respondent's amended Prehearing Questionnaire Filing was marked as Commission's Exhibit No. 3. The deposition of Bob Brown was marked as Joint Exhibit No. 1. The deposition of John Randall was marked as Joint Exhibit No. 2. The deposition of Jason Bell was marked as Joint Exhibit No. 3. The deposition of Glenn Wilcox was marked as Joint Exhibit No. 4. The deposition of Rick Beavers was marked as Joint Exhibit No. 5. The claimant's medical packet was marked as Claimant's Exhibit No. 1. The supplement exhibit list was marked as Claimant's Exhibit No. 2. The claimant's deposition was marked as Respondents' Exhibit No. 1.

The following witnesses testified at the hearing: Sheila Smith and the claimant.

DISCUSSION

During the hearing, the claimant's wife, Sheila Smith, gave testimony. Mrs. Smith testified that on June 20, 2006, she and the claimant were in bed trying to sleep, but their neighbors across the street were playing loud music. As a result, the claimant got out of bed, put his clothes on, and told her he was going to go over and ask them to turn down their music. According to Mrs. Smith, she stood at their front door to watch to see what was going to happen. She further testified that as the claimant started across the yard, he yelled back and asked her to call 911.

According to Mrs. Smith, she observed her husband talking to a guy in a truck, but could not hear what was being said. She testified that the guy in the truck backed the truck up, put it in gear and floored it, as he ran up in their yard and hit a tree. Shortly thereafter, she realized her husband had been struck by the truck, and she ran over to assist, and thereafter emergency assistance arrived.

She admitted that while working for the Sheriff's Department, the claimant would sometimes drive an unmarked vehicle home, which was there on the evening of the incident.

According to Mrs. Smith, the claimant was off work from the time of the incident, until some time in February, during which period, he was paid his full salary. She testified that after returning to work, the claimant had problems standing and sitting, so they would send him home. Mrs. Smith testified that since the incident, the claimant has been in pain and has problems sleeping.

On cross examination, Mrs. Smith admitted that a neighbor had not called and asked the claimant to come over. On re-cross examination, the claimant admitted her husband went over to the neighbor's house because the loud music was keeping them from sleeping.

The claimant also gave testimony during the hearing. The claimant testified he lives in Greenbrier, and has been employed by the Faulkner County Sheriff's Department since January 1, 2003. The claimant testified he worked for the respondent as a full-time Certified Deputy Sheriff, and held the rank of Sergeant. His

primary duty, was that of a training instructor. According to the claimant, he would conduct in service training for deputies who had been with the department for a while, and new recruits. He also handled transports from their department's holding facility to the Arkansas Department of Correction, and performed nationwide extraditions wherein he went and picked up individuals in other states and brought them back for trial.

The claimant admitted to having attended an accredited law enforcement training academy in order to become a full-time certified deputy sheriff. According to the claimant, he is a graduate of West Virginia State Police Academy, which is a nationally accredited academy. He testified that when he moved to Arkansas, they gave him full credit for his training, and the only thing he had to do was attend a 40-hour refresher course to become familiar with Arkansas State Law and qualify for a firearm.

The claimant gave the following testimony concerning his duties as a full-time Certified Deputy Sheriff:

A. I'm legally bound and sworn to uphold the laws of the state of Arkansas and the Constitution of the United States, to help render aid to anybody that needs it. And arrest anybody that may be committing a crime in my presence. Or serve any bonafide warrant issued by a court.

Q. Now as a Certified Deputy Sheriff, you have a gun?

A. Correct.

Q. You have a badge?

A. Correct.

Q. On occasion, on appropriate occasion you might wear

a uniform?

A. Correct.

Q. On an appropriate occasion you might drive a Department owned vehicle?

A. Correct.

Q. Was it pretty common knowledge in your neighborhood, do you think, that you were a sheriff's deputy?

A. Yes. They knew. Everybody in my area knew who I was.

As to the incident, the claimant admitted to getting out of bed and getting dressed and going over to ask the neighbor to turn their music down because it was really loud and vibrating the windows. The claimant testified, "... When I was walking out the door and I got past the tree going down across the street, I seen a gentlemen in the driveway and he was beating the crap out of a woman standing there, which right there, I walked into a very nasty domestic violence situation." According to the claimant, at this point, he hollered back to wife and asked her to call 911.

He testified the couple was standing in the driveway in between the vehicle and the house. He then went across the street, and when the guy saw him coming, he jumped in the truck and started it. The claimant next testified that he identified himself as Sergeant Smith, with the Sheriff's Department, and said, "hold up," but the guy backed the truck away from him, stopped his vehicle, and sat there and stared at him, while gunning the engine. According to the claimant, he walked off the street up onto the

grass, and was standing in the grass between the street and the driveway. The claimant testified:

And he looked at me and kept gunning the engine. Then I heard the truck pop into gear. And he just floored it, squalled his tires, and headed towards me. Well I went to jump out of the way, and the grass I guess was wet with dew or where they watered the lawn. But when I jumped I slipped. And the front passenger side tire grabbed my right leg when he hit me. And it just knocked me to the ground, and he rolled up completely up over top of me. The whole truck was on my body. Someway or another I got turned when he went over me. And then he hit the tree and of course I took a real hard lick to my head and I lost teeth --

The claimant was transported to the hospital for treatment, primarily for injuries to his leg. The claimant admitted to undergoing surgery to his leg and to being off work until sometime in January of '07. The claimant testified that at the time of his incident, Marty Montgomery was the sheriff. He admitted he did not personally talk to Sheriff Montgomery about his injury, but he did speak to Chief Deputy Steve Wallace, and he assured him this was a line of duty injury.

The claimant testified that while off work, he was paid his full salary. According to the claimant, he technically was getting workman's comp, but the check was cut by the Faulkner County Sheriff's Department. He also admitted that his physicians were paid by workers' compensation. He essentially admitted benefits were paid up until the time his deposition was taken (June 21, 2007), which was basically one year after the incident.

The claimant gave extensive testimony concerning his disagreement with the department over his departure from the

department and his attempt to return to work. He also testified concerning his current work status and physical abilities. The claimant further testified concerning his prior work experience.

On cross examination, the claimant essentially corroborated his prior testimony concerning the incident. He denied that there was a sheriff's policy in place that required him to call the Greenbrier Police for a city problem.

The claimant's deposition was taken on June 21, 2007. He admitted he had full arrest powers while working at the sheriff's department. The claimant gave extensive testimony concerning his prior work history, and his compensable injury as well as his attempt to return to work for the sheriff's department.

Bobby Brown's deposition was taken on August 16, 2007. He testified he works as the jail administrator, overseeing the day-to-day operations of the two detention facilities. According to Mr. Brown, he has worked for the sheriff's department approximately 14 years.

He essentially testified that at the time of the incident, it was policy that with respect to a matter within the city limits of Greenbrier, normally a deputy sheriff would not investigate something that someone else would be called to, and the policy states that you do get involved in family disturbances or any kind of disturbances in your neighborhood. However, he later testified that you (a deputy), would try not to get involved with a matter unless it was a capital offense.

John Randall also gave deposition testimony on August 16,

2007. He works as an assistant jail administrator for the Faulkner County Sheriff's Office. According to deputy Randall, he is also the captain, and oversees the total operation of both Unit One and Two, and supervises 92 employees.

He admitted to being a certified law enforcement officer and deputy sheriff. He testified, "A deputy sheriff pretty much oversees the operation of just county law enforcement. He's kind of like a police officer, but he has more jurisdiction."

Deputy Randall testified that although he is a salaried employee and does shift work, he is never without authority, as he has the same authority 24 hours a day, arrest powers and investigative powers. With respect to a disturbance such as the one the claimant was involved, he testified he has the authority to investigate, but their policy strictly prohibits them from getting involved in a neighborhood dispute. According to Deputy Randall, this policy has been in effect since 1998. He also testified that while off-duty, he has the authority to attempt to stop a bank robbery, but it would be against their policy. However, he admitted this act would be performing one of the services of his office, if given that authority by the sheriff.

According to Deputy Randall, the claimant, as a sergeant over the jail, did not have the authority to make off-duty arrests when he was off duty.

Jason Bell's deposition testimony was taken on August 16, 2007. He testified he is a lieutenant with the sheriff's department, for Unit One, maximum security, and he is also over the

training program, a position similar to that which the claimant held. Deputy Bell testified he does shift work, is a salaried employee, and is on duty 24 hours a day. He testified if he were out in the community and saw some crime being committed while he was not on shift, he would have authority to make an arrest.

He testified that while living in Greenbrier, he had the authority to look into a domestic disturbance in the neighborhood, while off duty, simply by knocking on the door and saying, "I'm reminding you that I work for the sheriff's department, and there's a disturbance going on here, and I'm using that authority to find out what's going on." He admitted that such an act would be performing employment services in spite of the fact that he was not on his shift. Deputy Bell denied being aware of any policy that says that there is no authority to do such a thing when you're in an off-duty status. He further denied that either Sheriff Marty Montgomery or Sheriff Byrd ever made him aware of such a policy.

Glen Mack Wilcox gave deposition testimony on August 16, 2007. He testified he works as the detention lieutenant at Unit Two over the booking part. His testimony primarily related to the claimant's attempt to return to work.

Rick Beavers also gave deposition on August 16, 2007. He has worked for the sheriff's department 1999. He works as a lieutenant over the 309's trustees and he handles all of the purchasing for the kitchen. He testified he is a certified deputy sheriff. Deputy Beavers testified that he has all the arrest powers of any other deputy. He admitted that they (deputy sheriffs) have arrest

powers anywhere in the county.

He essentially testified that at the time of the claimant's injury, it was the policy of the sheriff's department that if you were off duty, you were off duty, and were to be the best witness to what was going on. However, Deputy Beavers admitted he would have been involved if he had observed his neighbor killing his wife or knew or suspected it to be a life threatening event. According to Deputy Beavers, he would have jumped in the middle of that in a New York instant, if he knew or suspected it was a life threatening event because he would be liable if he did not. Deputy Beavers testified that generally, the sheriff's department does not get involved in city matters as a general rule unless the city requests help.

ADJUDICATION

The sole issue for determination in this matter is whether the claimant was acting within the course and scope of his employment at the time of his injury on June 20, 2006.

Ark. Code Ann. § 11-9-102(4) provides:

(A) "Compensable injury" means:

(i) An accidental injury causing internal or external physical harm to the body. . . arising out of and in the course of employment and which requires medical services or results in disability or death. An injury is "accidental" only if it is caused by a specific incident and is identifiable by time and place of occurrence[.]

(B) "Compensable injury" does not include:

(iii) Injury which was inflicted upon the employee at a time when employment services were not being performed or before the employee was hired or after the employment relationship was

terminated[.]

The test for determining whether an employee was acting within the "course of employment" at the time of the injury requires that the injury occur within the time and space boundaries of the employment, when the employee is carrying out the employer's purpose or advancing the employer's interests directly or indirectly. Pilgrims Pride Corp. v Caldarera, 54 Ark. App. 92, 923 S.W.2d 290 (1996).

Here, the instant claimant is a deputy sheriff with the Faulkner County Sheriff's Department, and is a certified law enforcement officer. The claimant's injury occurred in Greenbrier, where he resides. On the evening of his injury, the claimant was off-duty and was en route to his neighbor's residence with intentions of asking them to turn down their loud music, when he encountered a physical domestic dispute at the residence. The claimant yelled back to his wife and instructed her to call 911. The claimant identified himself as Sergeant Smith, with the Sheriff's Department, and attempted to detain an individual at the residence in a pickup truck, but he refused to stop and struck the claimant with his vehicle. The claimant sustained injuries, primarily to his right leg.

The respondents initially paid benefits on the claim, but they have now controverted its compensability. Specifically, the respondents now contend that at the time of the claimant's injury, he was not performing employment services because he was on personal business, as his purpose for going over to the neighbor's

residence was to ask them to turn down their loud music, which was keeping him and his wife from sleeping.

Although it is a close question, the claimant's purpose for going to his neighbor's residence may have been personal in nature. However, once within visual range of the neighbor's residence, the claimant encountered an undisputed physical domestic dispute. This disturbance constituted a serious criminal offense or threat to life requiring the claimant to act in his official capacity as a law enforcement officer. The claimant's activities at this point were clearly consistent with advancing his employer's interest as conservator of the peace in the county and upholding and preserving the laws in this state.

With respect to the claimant being off-duty at the time of the incident. Five deputies gave deposition testimony, four of them specifically testified regarding the powers and duties of a deputy sheriff. The testimony of these witnesses essentially corroborated the claimant's testimony that he has a sworn duty to preserve the peace, is considered on duty 24 hours a day, and that he has full arrest powers within the county, which would include Greenbrier. The fact that the claimant was off-duty does not relieve him of his obligation to preserve the peace. See Gibson v. State, 316 Ark. 705, 875 S.W. 2d 58 (1994).

Therefore, under these circumstances, I find that the claimant was acting within the course and scope of his employment at the time of his June 20, 2006 injury.

While I recognize there was testimony alleging department

policies which would prohibit a deputy sheriff from getting involved in neighborhood disputes, and investigating matters within the city limits of Greenbrier; however, there was conflicting and confusing testimony among the deputies concerning these policies, and no written proof of these policies were presented during the hearing. As such, I find that there is insufficient evidence to support a finding that any such policies existed at the time of the claimant's injury or that he violated any departmental policy for that matter, during his attempt to quell this physical domestic dispute.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. The Arkansas Workers' Compensation Commission has jurisdiction of the within claim.
2. The employee-employer-carrier relationship existed at all relevant times, including June 20, 2006.
3. The claimant's average weekly wage was \$452.00; his temporary total disability rate is \$301.00; and, his permanent partial disability rate is \$226.00.
4. The claimant was acting within the course and scope of his employment at the time of his injury on June 20, 2006.
5. The claimant has been rendered disabled by his compensable injury, so as to entitle him to temporary total disability compensation from February 21, 2007, to a date yet to be determined.
6. The respondents have controverted the compensability of this claim.

AWARD

Respondents are directed to pay benefits in accordance with

the Findings of Fact cited above. Respondents are directed to pay the claimant's attorney, the maximum attorney's fee on his award pursuant to Ark. Code Ann. §11-9-715. All accrued sums shall be paid in a lump sum without discount and this award shall earn interest at the legal rate until paid, pursuant to Arkansas Code Ann. §11-9-809.

IT IS SO ORDERED.

CHANDRA HICKS
Administrative Law Judge