

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

WCC NO. F612546

SANDRA M. COOK, EMPLOYEE

CLAIMANT

**GREENE COUNTY TECHNICAL
SCHOOL DISTRICT, EMPLOYER**

RESPONDENT

**RISK MANAGEMENT RESOURCES,
CARRIER/TPA**

RESPONDENT1

OPINION AND ORDER FILED MAY 15, 2008

Hearing before Chief Administrative Law Judge David Greenbaum on March 28, 2008 in Jonesboro, Arkansas.

Claimant represented by Honorable Scott Willhite, Attorney at Law, Jonesboro, Arkansas.

Respondents represented by Honorable Michael Ryburn, Attorney at Law, Little Rock, Arkansas.

STATEMENT OF THE CASE

A hearing was conducted on March 28, 2008 to determine whether the claimant sustained a compensable injury within the meaning of the Arkansas Workers' Compensation laws.

A prehearing conference was conducted in this claim on March 19, 2008, and a Prehearing Order was filed on said date. At the hearing, the parties announced that the stipulations, issues, as well as their respective contentions were properly set out in the Prehearing Order subject to additional stipulations set out below. A copy of the Prehearing Order was introduced as Commission's Exhibit 1.

At the prehearing conference it was agreed that the employment relationship existed between the parties at all relevant times, including November 1, 2006; that

the claimant sustained an injury to her left knee on said date; and that respondents had controverted the claim in its entirety. At the hearing, the parties stipulated that the claimant's average weekly wage would entitle her to a compensation rate of \$67 per week for both temporary total and permanent partial disability.

By agreement of the parties, the primary issue presented for determination concerned compensability. A corollary issue was whether the claimant was performing employment services at the time of her admitted injury.

At the prehearing conference, the claimant contended, in summary, that she sustained an injury arising out of and during the course of her employment on November 1, 2006, when she slipped and fell in the bathroom, injuring her left knee; that she was entitled to temporary total disability benefits from the date of the injury until her release by the treating physician; that her medical treatment was paid by private health insurance and that she was entitled to reimbursement for the medical expenses incurred; and that a controverted attorney's fee should attach to any benefits awarded. At the hearing, the claimant amended her contentions to request temporary total disability for the period beginning November 1, 2006 and continuing through May 17, 2007, at which time she was released by her primary treating physician. At the hearing, respondents agreed that if compensability was overcome, the period of disability claimed was not in dispute. (Tr. 5-6)

The respondents contend that the claimant was not performing employment services at the time of the admitted accident, and is therefore not entitled to workers' compensation benefits.

The claimant was the only witness to testify. The record is composed solely of the transcript of the March 28, 2008 hearing, containing a medical packet consisting of twenty-three pages. Subsequent to the hearing, both parties submitted post-hearing briefs addressing the issue of whether the claimant was performing employment services at the time of her injury.

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 claimant and to observe her demeanor, the following findings of fact and conclusion of law are made in accordance with Ark. Code Ann. § 11-9-704:

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. The Arkansas Workers' Compensation Commission has jurisdiction over this claim.
2. The stipulations agreed to by the parties are hereby accepted as fact..
3. The claimant has proven by a preponderance of the evidence that she sustained an injury arising out of and during the course of her employment with Greene County Tech School District on November 1, 2006 as a result of a specific identifiable in time and place of occurrence when she slipped and fell in the bathroom, injuring her left knee.
4. The claimant is entitled to temporary total disability benefits for the period beginning November 2, 2006 and continuing through May 17, 2007, at which time her healing period ended.

5. Respondents are responsible for all hospital, medical, and related expenses as a result of claimant's November 1, 2006 injury, and respondents remain responsible for continued reasonably necessary medical treatment.
6. Respondents are entitled to a dollar-for-dollar credit or offset for the medical services the claimant has received under her group health care service plan pursuant to Ark. Code Ann. § 11-9-411. Respondents shall reimburse the claimant for any out-of-pocket medical expenses.
7. Issues not addressed herein, including but not limited to, claimant's entitlement to permanent disability benefits are specifically reserved.

DISCUSSION

The relevant facts in this case are basically undisputed. The claimant, Sandra M. Cook, was a substitute school teacher for the employer herein on and before November 1, 2006. The claimant taught school for more than twenty-eight years, at which time she began receiving teacher retirement. After retirement, the claimant sold real estate and well as worked as a substitute teacher. The claimant's average income as a substitute teacher was \$100.00 per week. At the start of the '06 school year, the claimant began substitute teaching at Greene County Tech. On November 1, 2006, she was called to fill in for a math teacher absent that day. The claimant was called at 7:00 a.m. and was to work from 7:30 a.m. until 3:30 p.m. The claimant's injury occurred near the end of her work day. She stated that she had just completed checking math papers. Prior to clocking out to leave for the day, the claimant went into the restroom adjacent to her classroom to rinse out a cup that belonged to the regular teacher, which the claimant had used during the work day.

The claimant explained that she was a diabetic and was required to drink water often during the day. The claimant's description of the accident is set out below:

A Well, it was at the very end of the day and I had just finished checking the math papers. I got ready to leave, and there was a custodian in the room cleaning the room, and my desk was like here (demonstrating) and I was facing the room like this, and the restrooms are behind. There is a girls over there and a guys over here. I got ready to wash a cup that I had used there in the room. I'm diabetic, and I have to drink water often during the day. I got ready to rinse the cup that I had used that belonged to the teacher, and the restroom was like right over here --

JUDGE GREENBAUM: I'm sorry. The record is not going to be able to conceptualize all that.

THE CLAIMANT: The restroom was behind me and probably ten feet away from where I was sitting. I got up to go rinse the cup out, and I didn't even close the door, even though there was someone else in the room, because all I was going to do was just rinse the cup out. When I hit that room, my heel just hit it and I slid from there all the way over to the sink. I hit my kneecap on the sink and then it hurt -- it hit so hard that it flipped me around, and then I hit it on the tile floor after I hit it on the sink.

BY MR. WILLHITE:

Q Now, let's just talk about a few of the details. You said the bathroom was very close behind you?

A Yes.

Q Was it actually in your classroom?

A It was in the classroom. The doors were -- there was a door -- yes, you didn't go out into the hall to get to the restroom. It was directly behind you.

Q So the bathroom you were injured in was in your classroom --

A Yes.

Q -- where you were teaching?

A Yes.

Q Now, what were the normal hours of your employment there for Greene County Tech when you would work?

A You sign in at 7:30 and you sign out at 3:30.

Q Okay. Did you then sign in that morning on November 1st, 2006 at 7:30?

A I think that it was a little bit after 7:30, because they didn't call me until after 7:00.

Q Okay, but you signed in sometime shortly after 7:30 --

A Yes.

Q -- on November 1st?

A Yes.

Q And then were you able to sign out on November 1st?

A No, but when I left, when the ambulance came to get me, I asked someone that was there if they would sign me out.

Q Okay. Did the accident happen before the time you would typically sign out?

A Yes.

Q All right. Was it close in time to when you would sign out?

A It was very close in time to when I would sign out, because the accident happened around 3:20 or 3:25, and that was the last thing that I was going to do before I walked out the door, was to put the cup up and then I was going to walk down the hall and sign out.

Q So you were in the classroom that you typically work in?

A Yes.

Q And you were within the time frame of the hours that you would typically work?

A Yes.

Q But you had not yet signed out for the day?

A That's correct.

Q Okay. Now, you said you were a diabetic?

A Uh-huh.

Q What does that require you to do with regard to drinking water?

A Well, you have to drink as much water as you can.

Q What was in the cup that you were rinsing out earlier in the day?

A It was water. That's all I had in the cup that day was just water.

Q Okay. From your understanding, what type of -- generally what type of injury did you have to your left knee?

A I broke my kneecap laterally, all the way across the kneecap laterally, and then in the left lower quadrant it was broken into lots of little pieces.

Q Were you taken for medical care on November 1st after your accident?

A I was taken to the hospital at Greene County -- at Paragould.
(Tr.9-12)

Again, it is undisputed that the claimant's injury occurred during her normal work hours. In fact, respondents initially provided the claimant with prompt reasonably necessary medical treatment, including ambulance service and emergency room service, prior to controverting the claim the following day when the claimant was advised by an adjuster for the third-party claims administrator that the claim was being disputed because employment services were not being performed when the injury occurred.

A compensable injury is "an accidental injury...arising out of and in the course of employment." Ark. Code Ann. § 11-9-102(4)(A)(i)(Repl. 2002). A compensable

injury does not include injuries suffered 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. White v. Georgia-Pacific Corp., 339 Ark. 474, 6 S.W.3d 98 (1999). The same test is used to determine whether an employee was performing “employment services” as when determining whether an employee was acting within “the course of employment.” Moncus v. Billingsley Logging, 366 Ark. 383, ___ S.W.3d ___ (2006). The Court stated that an employee is performing employment services when he is doing something that is generally required by his employer. Id. 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. White, supra. Furthermore, when the injury occurs outside of the time and space boundaries of employment, the critical determination to be made is whether the employee was directly or indirectly advancing the interests of the employer at the time of the injury. Moncus, supra.

Whether a claimant was performing employment services depends on the particular facts and circumstances of each case. The following factors may be considered in determining whether the claimant’s conduct falls within the meaning of “employment services”: (1) whether the accident occurs at a time, place, or under circumstances that facilitate or advance the employer’s interests; (2) whether the accident occurs when the employee is engaged in activity necessarily required in order to perform work; (3) whether the activity engaged in when the accident

occurs in an unexpected part of the employment; (4) whether the activity constitutes an interruption or departure, known by or permitted by the employer, either temporally or spatially from work activities; (5) whether the employee is compensated during the time that the activity occurs; (6) whether the employer expects the worker to stop or return from permitted non-work activity in order to advance some employment objective. See Matlock v. Ark. Blue Cross Blue Shield, 74 Ark. App. 322, 49 S.W.3d 126 (2001).

I find that the claimant was providing employment services when her injury occurred. Clearly, the claimant had not clocked out at the time of her injury. She was cleaning up after herself which was a benefit to the teacher she was substituting for, as well as a benefit to the employer. It has been long established that although personal in nature, an employee is covered when going to or from the bathroom. Employers provide bathrooms because work interruptions would occur if employees were forced to leave the premises to find a public restroom. There is no substantial distinction between going to the bathroom to relieve oneself, as opposed to using the employer's facilities to clean a cup that is used in the workplace. The claimant was a diabetic. Her condition required her to frequently drink water in order to perform her job. The personal comfort of drinking water should be afforded to all employees. Employment services also include conduct both permitted and anticipated by the employer. Engle v. Thompson Murray, Inc., 97 Ark. App. 200, 239 S.W.3d 561 (2006).

In my opinion, the claimant's accident occurred at a time, place, and under circumstances that advance the employer's interests indirectly. The accident

occurred when the claimant was engaged in an activity necessarily required to complete her work. The activity was not an unexpected part of the employment. The activity was not impermissible and was not a departure from the claimant's work. The claimant was compensated during the time that the activity occurred. After full consideration of the facts, issues, and the law, I find that claimant has proven that she sustained a work-related injury. Accordingly, I hereby make the following award.

AWARD

Respondent, Risk Management Resources, is hereby directed and ordered to pay to the claimant temporary total disability benefits at the rate of \$67 per week beginning November 2, 2007 and continuing through May 17, 2007.

All accrued benefits shall be paid in lump sum and without discount.

Respondents are further directed and ordered to pay outstanding medical expenses consistent with the foregoing findings and conclusions.

Additionally, claimant's attorney, M. Scott Willhite, is hereby awarded the maximum statutory attorney's fee pursuant to and limited by Ark. Code Ann. § 11-9-715. This award shall bear interest at the legal rate until paid.

IT IS SO ORDERED.

DAVID GREENBAUM
Chief Administrative Law Judge