

**BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION**

**WCC NO. F611136**

**WILLIAM FOGLE, EMPLOYEE**

**CLAIMANT**

**EVERS & WHATLEY ELECTRIC CO.,  
EMPLOYER**

**RESPONDENT**

**AMERICAN HOME ASSURANCE CO.  
C/O AIG CLAIM SERVICES, INC.,  
INSURANCE CARRIER/TPA**

**RESPONDENT**

**OPINION FILED JANUARY 25, 2008**

Hearing conducted before Administrative Law Judge S. Dale Douthit in El Dorado, Union County, Arkansas.

Claimant was represented by Mr. Brian H. Ratcliff, Attorney at Law, El Dorado, Arkansas.

The respondents were represented by Mr. Jarrod S. Parrish, Attorney at Law, Little Rock, Arkansas.

**STATEMENT OF THE CASE**

On October 30, 2007, the above captioned claim came on for a hearing in El Dorado, Arkansas. A prehearing conference was conducted on September 19, 2007, and a Prehearing Order was filed on that same day. A copy of the Prehearing Order was marked as Commission Exhibit "1" and made a part of the record without objection, subject to any modifications made at the full hearing.

At the full hearing, the parties stipulated to the following:

- 1) The Arkansas Workers' Compensation Commission has jurisdiction to determine whether employment services were being performed by the claimant at the time of the alleged event on October 2, 2006.

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At the full hearing, the parties agreed to litigate the following issues:

- 1) Whether Mr. Fogle was performing employment services when his injuries occurred on October 2, 2006.
- 2) All issues are reserved.

The claimant contended at the full hearing that on October 2, 2006, he was an employee of Evers & Whatley Electric Company and that on October 2, 2006, he was in an accident while operating an Evers & Whatley vehicle.

Respondents contended at the full hearing that the claimant was not performing employment related services at the time of his alleged injury on October 2, 2006, and as such, it is respondents' position that claimant did not suffer a compensable injury and therefore does not have jurisdiction of this matter. Respondents reserve the intoxication defense.

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

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 his demeanor, the following findings of fact and conclusions of law are hereby made in accordance with A.C.A.

§ 11-9-704:

- 1) The Arkansas Workers' Compensation Commission has jurisdiction of this claim.

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- 2) The stipulations agreed to by the parties are reasonable and are hereby accepted as fact.
- 3) The claimant was not performing employment services at the time the accident occurred on October 2, 2006.
- 4) The claimant was not acting within the course and scope of his employment for Evers & Whatley Electric Company when the accident occurred on October 2, 2006.
- 5) The claimant did not sustain a compensable injury within the meaning of the Arkansas Workers' Compensation Law.

**DISCUSSION**

The claimant worked as an apprentice electrician for Evers & Whatley Electric Company on October 2, 2006. On October 2, 2006, the claimant was assigned to a job in Vicksburg, Mississippi. The claimant testified that while working in Vicksburg, Mississippi, his only mode of transportation was the Evers & Whatley Electrical truck; however, claimant testified that his work hours were from 6:00 a.m. until 4:00 p.m. each day. The claimant testified that he did work on October 2, 2006, and began his work at 6:00 a.m. and ended his work at 4:00 p.m. The claimant testified that after work he and some fellow workers and friends went to eat at Wendy's. Mr. Fogle testified that he drove the Evers & Whatley truck with his co-workers and friends to Wendy's. After Mr. Fogle and the others finished eating, the claimant testified that he drove everyone out to an island game refuge to just ride around.

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The claimant testified that upon returning back from the game refuge he lost control of the truck and had an automobile accident. The claimant testified that his nose was broken during the accident. The claimant testified that he was not benefitting his employer, Evers & Whatley Electric Co., in any way while he was out sightseeing on the game refuge. In fact, the claimant signed an affidavit stating that he was not working at the time of the accident on October 2, 2006, or performing any services that were at all beneficial to Evers & Whatley Electric. (R. Ex. 1). The claimant testified that he was not at the island game refuge at the direction of his employer, but that it was something he decided to do on his own.

Arkansas Code Annotated § 11-9-707 provides that a *prima facie* presumption shall exist that the Arkansas Workers' Compensation Commission has jurisdiction of 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.

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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, the claimant was at the time of the accident a resident of the State of Arkansas. Further, Evers & Whatley Electric Company is located in El Dorado, Arkansas. At the time of the accident the claimant was employed by Evers & Whatley Electric Company as an apprentice electrician. I find the facts of this case support the Arkansas Workers' Compensation Commission's having jurisdiction in light of the fact that Mr. Fogle was an Arkansas resident and Evers & Whatley Electric Company was located in Arkansas on October 2, 2006. 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.

The issue for this Commission to determine is whether Mr. Fogle was performing employment services at the time of the accident on October 2, 2006, where Mr. Fogle and others were sightseeing at an island game refuge. The Arkansas Workers' Compensation Commission Law defines a compensable injury in part as "An accidental injury arising out of and in the course of employment." A.C.A. § 11-9-102(4)(A)(i). A compensable injury does not include "injury inflicted upon the employee in a time when employment services were not being performed." A.C.A. §

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11-9-102(4)(B)(iii). In Pifer v. Single Source Transportation, 347 Ark. 851, 69 S.W.3d 1 (2002), the Court stated “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 is performing employment services as we do when determining whether an employee was acting within the course and scope 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.”

When an employee sustains injuries from an accident involving a company vehicle, the critical inquiry remains whether the employee were performing employment services when he was involved in an accident. In the present case, the testimony and the exhibits clearly show that Mr. Fogle was not performing employment services at the time that he broke his nose in the accident leaving the game refuge on October 2, 2006. The claimant testified that he and some friends had finished their workday and had gone out to eat, watched Monday night football, and then went on a sightseeing tour to an island game refuge that was of no benefit to their employer. Even the claimant himself testified that he provided no direct or indirect benefit to his employer. Therefore, based upon the evidence presented, I find that Mr.

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Fogle's actions during the sightseeing tour on the island game refuge provided no direct or indirect benefit to his employer, so that the accident at issue occurred at a time when the claimant was not performing employment services for his employer within the meaning of the Arkansas Workers' Compensation Law. In this case, the evidence establishes that the accident occurred at least several hours after the claimant completed his primary job duties for the day as an electrician. The claimant was not being paid during the time that he was on the island game refuge. The claimant was not running any errand for his employer. The claimant was not on call at the time of the accident. Based on all the facts outlined herein and contained in the record, I also find that the claimant was not acting within the course and scope of his employment when the accident occurred. Therefore, the claimant did not sustain a compensable injury within the meaning of the Arkansas Workers' Compensation Law.

**ORDER**

Because the claimant was not acting within the course of his employment when he became injured on October 2, 2006, this matter before the Arkansas Workers' Compensation Commission is hereby dismissed.

**IT IS SO ORDERED.**

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**S. DALE DOUTHIT**  
**Administrative Law Judge**

SDD/pjb