BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

WCC NO. F706255

WILLA DEAN SMITH	**CLAIMANT**
WAL-MART ASSOCIATES, INC., SELF-INSURED EMPLOYER	**RESPONDENT NO. 1**
CLAIMS MANAGEMENT, INC., THIRD PARTY ADMINISTRATOR	**RESPONDENT NO. 1**
SECOND INJURY FUND	**RESPONDENT NO. 2**

OPINION FILED MAY 20, 2008

Hearing before Administrative Law Judge O. Milton Fine II on February 20, 2008 in Conway, Faulkner County, Arkansas.

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

Respondents No. 1 represented by Ms. Susan Fowler, Attorney at Law, Little Rock, Arkansas.

Respondent No. 2 represented by Ms. Judy Rudd, Attorney at Law, Little Rock, Arkansas (not participating).

STATEMENT OF THE CASE

On February 20, 2008, the above-captioned claim was heard in Conway, Arkansas. A pre-hearing conference took place on November 26, 2007 A prehearing order entered that same day pursuant to the conference was admitted without objection as Commission Exhibit 1. At the hearing, the parties confirmed that the stipulations, issues, and respective contentions, as amended, were properly set forth in the order.

Stipulations

At the hearing, the parties discussed the stipulations set forth in Commission Exhibit 1. With the amendment of the second stipulation and the addition of the third, they are as follows:

1. The Arkansas Workers' Compensation Commission has jurisdiction over this claim.
2. The employee/self-insured employer relationship existed on January 16, 2007.
3. Claimant's average weekly wage was $347.00..

<u>Issues</u>

At the hearing, the parties discussed the issues set forth in Commission Exhibit 1. They are as follows:

<u>Claimant</u>:

1. Whether Claimant is entitled to temporary total disability benefits.
2. Whether Claimant is entitled to reasonable and necessary medical treatment.
3. Whether Claimant is entitled to an attorney's fee.
4. All other issues are reserved.

<u>Respondent</u>:

1. Whether Claimant sustained a compensable injury.

<u>Contentions</u>

The contentions of the parties are as follows:

<u>Claimant</u>:

1. Claimant contends that she was required to park in an employee parking lot for the benefit of her employer, and that on January 16, 2007, she fell on the ice in the parking lot as she returned from her lunch break. Claimant injured the entire left side of her body, which has required surgery. Claimant contends that Respondent is responsible for the payment of workers'

compensation benefits based upon case law including *Williams v. Arkansas Department of Human Services*, 2007 WL 1277919 (Ark. App. 2007) and *Wal-Mart Stores, Inc. et al v. King*, 216 S.W.3d 648 (Ark. App. 2005). Claimant is seeking medical benefits, temporary total disability benefits, permanent partial disability benefits, attorney's fees, wage loss, reimbursement for mileage, and rehabilitation benefits.

Respondents:

1. Respondents contend that Claimant's injury did not arise out of and in the course of Claimant's employment, and that Claimant was not performing employment-related services at the time of her injury. Discovery is still pending in this matter and Respondents respectfully reserve the right to assert additional defenses at a later date.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the record as a whole, including medical reports, documents, and other matters properly before the Commission, and having had an opportunity to hear the testimony of the Claimant/witness and to observe his demeanor, I hereby make the following findings of fact and conclusions of law in accordance with Ark. Code Ann. § 11-9-704 (Repl. 2002):

1. The Arkansas Workers' Compensation Commission has jurisdiction over this claim.
2. The stipulations set forth above are reasonable and are hereby accepted.
3. Claimant has not proven by a preponderance of the evidence that she sustained a compensable injury on January 16, 2007 because she was not performing employment services at the time of her fall.

4. Because of the above finding, the balance of the issues–whether Claimant is entitled to reasonable and necessary medical treatment, temporary total disability benefits and a controverted attorney's fee–are moot and will not be addressed.

CASE IN CHIEF

Summary of Evidence

Seven witnesses testified at the hearing: Claimant, Andrean Lynn White and Candy Lynn VanHoak on behalf of Claimant; and Chuck Edward Huddleston, Arlene Janet Wells, Laura Diane Murphree and Tracy Domenical Roth on behalf of Respondents No. 1.

In addition to the prehearing order discussed above, also admitted into evidence in this case was Claimant's Exhibit 1, consisting of a two-page index and 14 numbered pages thereafter, containing a compilation of her medical records; Claimant's Exhibit 2, consisting of a two page index and 15 separately numbered pages thereafter, containing witness statements by Andrean White and Candy VanHoak, photographs (both color and black and white copies are included) of the parking lot at the Wal-Mart store in Clinton, and Wal-Mart's parking policy; and Respondents' Exhibit 1, consisting of a one-page index and four numbered pages thereafter, containing an earnings report for Claimant.

Testimony

Willa Dean Smith. Claimant testified that she is 67 years old. She began work at Wal-Mart Store 0788 in Clinton, Arkansas at the delicatessen in November 2004, and her duties did not change up through the accident date, January 16, 2007. Her hours changed every week. Claimant stated that in addition to making salads and sandwiches, she cooked the hot food that was in the cases, cleaned the kitchen, and waited on customers.

She testified that an ice storm had occurred on the night of January 15-16, 2007. The parking lot at the store on the 16th was icy, making it difficult to even stand on it. Claimant worked that morning and checked out for lunch at 10:00 to 10:30 a.m. She clocked out using her name tag, and used her break to go to the eye doctor. Approximately one hour later, she returned and parked. When she stepped out of her car, she stepped on a patch of black ice and her feet went out from under her. She stated that her head struck the pavement and her left shoulder and kneecap were injured. Claimant felt “excruciating” pain in her left arm.

She was taken to the hospital in Clinton, where she was given pain medication and her shoulder was popped back into place. Claimant was discharged the same day. Her personal physician referred her to Dr. David Collins, a Little Rock orthopedic surgeon. Claimant underwent surgery on April 29, 2007, and has continued to see Dr. Collins. He has not released her–she last saw him two days before the hearing. She currently lives in Georgia, but must return to see Collins because no one in Georgia will treat her. She testified that her treatment has been paid by “Medicare, my supplement insurance and myself.” Claimant has not received treatment for her knee, and she stated that that particular injury has not hindered her in any way. Respondent Wal-Mart has not paid for any of her treatment. She testified that she has been advised that she needs another shoulder surgery.

When asked why she parked where she did at the time of the fall, Claimant stated that this was designated as employee parking and that she was required to park there. She testified that Lorrie Brock, the office manager, instructed her during employee orientation that employees are expected to park in the lot at the north end of the store in the designated area, and that if an employee is written up three times for violating the

policy, termination is possible. However, Claimant did not know of anyone who had been disciplined for breaching the policy. While Claimant stated that she had not been disciplined in the past for her own violations of the policy, she was advised from someone named Arlene not to do it. Customer parking is marked with yellow lines, and employee parking has white lines. On the date of the accident, the lot on the north side had white stripes. Claimant stated that if she had been given the choice where to park on the day she fell, she would not have parked where she did. In her opinion, she benefitted Respondent Wal-Mart by parking there because it left more customer parking in the front of the store.

Claimant viewed the photographs in Claimant's Exhibit 2 and marked with a red pen the location of her car at the time of the fall. At the time the photograph was taken, on October 11, 2007, the space was marked with white lines.

Claimant stated that whenever she was on her lunch break, she was not allowed to perform any employment-related activities. She was not allowed to work "off the clock." Claimant testified that at the time of the fall, she was on her way to clock back in.

When questioned by Respondents, Claimant stated that Wal-Mart employees did not need to obtain permission to leave the premises during break. During her eye doctor appointment, the physician dilated one of her eyes. After the appointment, she stopped by Sonic Drive-In and bought lunch. When she returned, she intended to take her lunch inside the store and eat it.

With respect to the parking areas, Claimant stated that customers were allowed to park on the north side of the store, or anywhere else they wished. The north side was not reserved solely for employees, and no sign designated it as employee parking. No one

had an assigned space there. She has not been disciplined for not parking there. Claimant admitted that she did not have to park where she did the day she fell; she did not see the ice.

Andrea Lynn White. Called by Claimant, White testified that she is a friend of Claimant. The two worked together at Wal-Mart for a period. White was employed there from March 2005 to April 2007, and was aware of an employee parking policy. During employee orientation, Arlene Wells instructed her to park on the north side of the building, and warned that repeated violations were grounds for termination. However, White had no first-hand knowledge of any employee being disciplined for violating the policy. Also, she did not know if the policy was in writing.

When questioned by Respondents, White admitted that while she took detailed notes during the orientation, the notes do not reflect a penalty for violating the parking policy. She stated that one reason she no longer worked at Wal-Mart was her disagreement with the policies of Mr. Huddleston, the manager.

Candy Lynn VanHoak. Called by Claimant, VanHoak stated that she was a friend and co-worker of Claimant. She worked at Wal-Mart in Clinton from March 2000 to January 2007. She was not only aware of the policy that employees were to park on the north side of the building, but also was told by members of management and office personnel that employees could get written up or even terminated for violating the policy. However, she admitted that she did not know of anyone being disciplined for violating the policy. She recalled receiving newsletters during the term of her employment that reminded employees to park on the north side of the building. She testified that she

witnessed Mr. Huddleston, the store manager, request that Claimant be administered a drug test while she was at the hospital.

When questioned by Respondents, Claimant stated that she was good friends with Claimant and that she left Wal-Mart because she disagreed with Mr. Huddleston's management.

Chuck Edward Huddleston. Called by Respondents, Huddleston testified that he is currently the manager of the Wal-Mart store in Clinton, and has held that position since June 30, 2006. He stated that while he went to the hospital to check on Claimant, he did not request that she be administered a drug test. Wal-Mart has a policy requiring such a test in connection with employee injuries, but the Claims Department makes that decision.

As for the parking issue, Huddleston stated: "The north side of the building is considered employee parking. It's not a condition of employment." He testified that he is familiar with the corporate parking policy, that employees are to park in white-striped areas. But the north side of the building on January 16, 2007 had "quite a few" yellow-striped spaces, including the area that Claimant stated she parked in. He has never asked an employee to move his car. However, employees are informed of the policy during orientation and are asked to park on the north side of the building. Huddleston testified that not only had he never disciplined an employee for breaching the parking policy, but he does not "ever bring it up." He stated that while two employees were "coached"–one in December 2003 and the other in October 2004–for abridging the policy, both instances occurred prior to his tenure as manager and appeared to involve behavior more severe than merely parking in the wrong place. He denied that violating the parking policy could lead to termination, unless it became a severe problem.

As for “working off the clock,” Huddleston testified that he has no discretion regarding the enforcement of the policy against this practice. He can be terminated for knowing about the practice but not stopping it. He stated that Claimant would have had to have eaten her lunch before she clocked back in.

When questioned by Claimant, Huddleston testified that Phil Austin was his predecessor as store manager. The “coachings” took place prior to Huddleston’s tenure, and reflected that his predecessors “had a different opinion” of the parking policy. A “coaching” is a disciplinary action. One the “coachings” was for parking in the wrong area, and the other involved someone not only doing this but “squealing their tires” when they were asked to move. Coaching is a step that can lead to termination. The “coachings” reflect that the policy was more strictly enforced prior to Huddleston becoming manager. He admitted that he has not affirmatively stated that he will not enforce the policy, but felt that Claimant should have known from his inaction that she had a choice regarding where to park. He stated that a photograph in Claimant’s Exhibit 2 shows that he parked his vehicle in the white-striped area on the north side.

Under further questioning by Respondents, Huddleston stated that Claimant did not have to park in the particular spot she chose on the day she fell. He testified that only ten percent (10%) of the north lot was covered by ice on the day of the fall.

When questioned by me, Huddleston confirmed that he never communicated that he was not going to enforce the parking policy. After he became manager, he became aware that employees were using both the white and yellow zones for parking. He explained that, regardless of the nomenclature, a “coaching” is a documented disciplinary

action. Only Huddleston, a co-manager, or one of the assistant managers could provide official instruction regarding the parking policy.

Arlene Wells. Called by Respondents, Wells testified that she has worked in the Wal-Mart store in Clinton for 22 years. She has been the personnel manager there for one year. Prior to that, she was the support manager and worked in UPC invoicing. Wells could not recall if she was involved in the orientation of Claimant. She did handle Andrea White's orientation. She told her group that "the parking for associate[s] was on the north side of the building. That's pretty much what I usually say all the time." But she denied ever stating that an associate could be disciplined or terminated for violating the policy. Wells stated that she was present when Brock spoke during orientation, and that Brock never stated that an employee could be disciplined or termination for violating the parking policy. She was not aware of any disciplinary actions related to parking, and was aware that some employees park in places other than on the north side. Wells testified that the north side had both yellow and white-striped areas on January 16, 2007. But while she had no personal knowledge of which area Claimant parked that day, the area that Claimant identified on the photograph in the exhibit as being where she parked was a yellow-striped area.

Under questioning from Claimant, Wells stated that she was not aware of any spaces on the north side being changed from white to yellow after the accident. She was also unaware of an coaching of an employee for violating the parking policy. Wells agreed that if a coaching does not change behavior, it ultimately can lead to a termination.

Laura Diane Murphree. Called by Respondents, Murphree testified that she has worked at the Clinton store for 13 years. She stated the policy as follows: "On the north

side of the building, we have the associate parking. The parking lot is striped in white and yellow. Yellow is customer parking and white is associate parking." She was not aware of any employee ever being disciplined for violating the policy.

Tracy Domenical Roth. Called by Respondents, Roth testified that she has worked at the Clinton store for nearly four and a half years. When she went through orientation, Wells told her that employee parking was to the north side of the building. She did not explain the consequences for violating the policy. No one else at the store has explained the consequences to her. She was not aware of any employee being disciplined for parking elsewhere. Roth stated that she has parked outside the designated area before and no one even asked her to move her car. Under questioning from Claimant, she stated that one time, a member of management asked why she was parking there, and she told him that it was for safety because she was not getting off until 11:00 p.m. The manager said, "okay."

Records

Claimant's Exhibit 1. The medical records of Claimant that were introduced at the February 20, 2008 hearing and are part of Claimant's Exhibit 1 reflect the following:

Claimant saw Dr. David Collins on January 24, 2007 regarding her left shoulder. He diagnosed her as having an acute anterior glenohumeral dislocation, along with a possible complication of axillary nerve injury. He noted that "[r]adiographs suggest pre-existing rotator cuff disease."

On February 7, 2007, Claimant returned to Dr. Collins. Because she had previously reported chronic problems with her right shoulder, he examined it as well. She underwent an MRI of both shoulders. The left shoulder MRI reflected a large anterior supraspinatus

tear, along with a partial tear or sprain of the subscapularis tendon, plus degenerative changes. On February 21, 2007, Collins wrote that she needed an electrodiagnostic study of the left shoulder. Dr. Collins on March 5, 2007 that Claimant should be kept off work for one month. Following the study, he wrote that there was evidence of ulnar nerve and possibly an axillary nerve lesion on the left, along with carpal tunnel syndrome "but no change." He wrote that there were no indications for surgery at this time, and that she was capable of doing her job as described. However, "[s]he cannot effectively use the arm away from the body."

On March 11, 2007, Dr. Gordon Newbern wrote that x-rays showed that Claimant's knee replacement and the bones near it appear to be intact and without damage from the fall.

In a follow-up appointment with Dr. Collins on April 16, 2007, Claimant presented with a recovering ulnar nerve, but significant weakness and atrophy. He wrote that "[s]he has a rotator cuff tear that may not be repairable." Nonetheless, he wrote that he would do his best to repair it.

Claimant underwent the surgery on April 27, 2007. She had pre- and post-operative diagnoses of anterior dislocation of left shoulder, axillary nerve palsy, and rotator cuff tear. The surgery revealed a complex tear of the rotator interval capsular tissue, the supraspinatus and to a lesser extent the anterior portion of the infraspinatus. On May 7, 2007, she was noted to be improving. Therapy was not recommended.

Claimant's Exhibit 2. Her non-medical exhibit contains the following:

Andrean White on October 10, 2007 gave a statement that reads in pertinent part,

> During orientation with Arlene Wells, we where [sic] instructed that employee parking was on the far right side of the store. We where [sic] also instructed that if employees parked on the premises any place other than the designated area, it could lead to termination.

White attached to her statement a copy of her notes taken during orientation. But the notes only reflect that she is to "Park far Side-Facing-Far Right." The notes reflect termination as the penalty for misuse of discount cards, but no penalty for a parking violation.

Candy VanHoak gave a sworn statement on November 15, 2007 that was mostly along the lines of her hearing testimony. She stated that in years past, employees were told that they could be written up for violating the parking policy; however, in the past two years, this was changed to a threat of termination.

Wal-Mart's Parking Policy (PD-28) provides in pertinent part that the Facility Manager is responsible for designating areas for employee parking, and that employees must park there during their scheduled work time, unless prior authorization has been obtained. The Facility Manager may designate temporary parking elsewhere due to bad weather conditions such as ice and snow. The policy states that violators "will be subject to discipline, up to and including termination."

The balance of the exhibit consists of 13 photographs–once in black and white and then in color–depicting the parking lot of the Wal-Mart.

<u>Respondents' Exhibit 1</u>. This exhibit is comprised of an earnings history report for Claimant.

ADJUDICATION

A. Compensability

Claimant has contended that on January 16, 2006, she sustained a compensable injury to the left side of her body when she fell on the parking lot of Respondent Wal-Mart in Clinton. Respondents have countered that her injury did not arise out of and in the course of her employment, and that she was not performing employment-related services at the time of the fall.

Arkansas Code Annotated § 11-9-102(4)(A)(i) (Repl. 2002), which the I find applies to the analysis of Claimant's alleged injury, defines "compensable injury":

> (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[.]

A compensable injury must be established by medical evidence supported by objective findings. Ark. Code Ann. § 11-9-102(4)(D) (Repl. 2002). "Objective findings" are those findings that cannot come under the voluntary control of the patient. *Id*. § 11-9-102(16). The element "arising out of . . . [the] employment" relates to the causal connection between the claimant's injury and his or her employment. *City of El Dorado v. Sartor*, 21 Ark. App. 143, 729 S.W.2d 430 (1987). An injury arises out of a claimant's employment "when a causal connection between work conditions and the injury is apparent to the rational mind." *Id*.

A compensable injury does not include one suffered when employment services are not being performed. Ark. Code Ann. § 11-9-102(4)(B)(iii). *See Parker v. Comcast Cable*

Corp., ___ Ark. App. ___, ___ S.W.3d ___ (Ark. App. Dec. 5, 2007). Employment services are being performed when the employee is engaged in an activity that is generally required by the performer. *Dairy Farmers of America, Inc. v. Coker*, 98 Ark. App. 400, ___ S.W.3d ___ (2007). The Commission employs the same test to determine whether an employee is performing employment services as it does when determining whether an employee is acting within the scope and course of his employment. *Pifer v. Single Source Transp.*, 347 Ark. 851, 69 S.W.2d 1 (2002). The question is whether the injury happened 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*.

If the claimant fails to establish by a preponderance of the evidence any of the requirements for establishing compensability, compensation must be denied. *Mikel v. Engineered Specialty Plastics*, 56 Ark. App. 126, 938 S.W.2d 876 (1997). The term "preponderance of the evidence" does not mean preponderance in amount, but implies an overbalancing in weight. *Smith v. Magnet Cove Barium Corp.*, 212 Ark. 491, 206 S.W.2d 442 (1947).

In arguing for compensability, Claimant in her contentions has directed the Commission to two cases: *Williams v. Ark. Dept. of Human Svcs.*, 2007 WL 1277919, No. CA 06-1003 (Ark. App. May 2, 2007); and *Wal-Mart Stores, Inc. v. King*, 93 Ark. App. 101, 216 S.W.3d 648 (2005). *Williams* is an unpublished case, and hence has no precedential value. It will not be considered here. *See Dodson v. Norris*, ___ Ark. ___, ___ S.W.3d ___ (2008); *Weatherford v. State*, 352 Ark. 324, 101 S.W.3d 227 (2003). The injury the claimant incurred in *King* happened during her "regular working hours and while she was

being paid, or 'on the clock.'" That makes the case distinguishable from the one at bar. Claimant testified that she had clocked out to go on her lunch break, and was returning from that break at the time of her fall. Both she and Huddleston testified that she was not allowed to perform her employment duties while she was off the clock. Hence, *King* is inapposite.

The core question here is whether Claimant was required to park where she did prior to her fall. It is clear from the evidence that her fall occurred on ice that she encountered very shortly after parking. If she was required to park there, she was advancing Wal-Mart's interests, directly or indirectly, and was performing employment services. *See Caffey v. Sanyo Mfg. Corp*., 85 Ark. 342, 154 S.W.3d 274 (2004). *See also Pifer* and *Coker*, *supra.* Had the fall occurred at some point after she left the parking area, but before she clocked in, the answer would be different.

Claimant, White and VanHoak all testified that they had been instructed to park on the north side of the store. Huddleston, Murphree and Roth, Respondents' witnesses, were aware of the requirement as well. However, the restriction was not limited to any space on the north side; as Claimant, Huddleston and Murphree also testified, employees may park only in a space with white stripes. Yellow-striped spaces are for customers.

While none of these witnesses were aware of anyone who had been disciplined for violating the policy, Huddleston, the manager, testified that two "coachings" had taken place in the period of 2003 to 2004 that were grounded at least in part on abridgment of the parking policy. The Wal-Mart corporate policy on parking, part of Claimant's Exhibit 2, provides that "[t]he Facility Manager will designate areas for Associate parking at each

facility . . . ." As the evidence shows, Huddleston's predecessors made the white-striped area north of the store the designated parking for employees. Huddleston, who was manager of the Clinton Wal-Mart at the time of Claimant's fall, testified that he did not abrogate this policy upon becoming manager. While he testified that he did not enforce the policy, he admitted that he did not affirmatively communicate that the policy would not be enforced.

In light of the above, the parking requirement was in place on January 16, 2007. Moreover, as stated above, the requirement advanced the employer's interests, directly or indirectly. As the policy reads, "we reserve parking closes to our Stores and Clubs for our Customers and Members . . . ." Freeing up parking closest to the store for customers by requiring employees to park at the more distant location on the north side advances the employer's interests. *Cf. Caffey, supra* (requiring Claimant to produce identification upon entering employer's parking lot and to display badge before entering plant advanced employer's interests).

However, the question remains regarding whether Claimant actually parked in a white-striped space on January 16, 2007. She testified that she did. At the hearing, she marked two photographs, on pages 6 and 7, in Claimant's Exhibit 2 to show where she parked that day. Those photographs unquestionably show that the area in question is striped in yellow, not white. Claimant stated that "[t]hey were white," but added that "by the time these [photographs] were taken, they had started painting these lines yellow." She did not explain the source of this information. The photographs reflect that they were taken on October 11, 2007–nearly nine months after her fall. Under the bottom set of the photographs on page 5 is the notation, "They are now in they are now in [sic] the process

of painting yellow." No direct evidence was offered as to who took the photographs or made this notation. Page 8 of Claimant's Exhibit 2 contains a return address label for Candy VanHoak, who testified at the hearing and who supplied a sworn statement that is also in the exhibit. But neither her hearing testimony or her statement contains any statement concerning the photographs or the notation, and she was not asked about the striping on the north side of the store. The notation is hearsay; while Ark. Code Ann. § 11-9-705(a) provides that the Commission in conducting a hearing is not bound by the Arkansas Rules of Evidence, but may conduct the hearing "in a manner as will best ascertain the rights of the parties," as it stands this unattributed statement has no credible value and will not be considered.

Claimant's testimony on this point is rebutted by Huddleston, who testified as follows:

> Q. The north side of the building on January 16th, 2007, did it have yellow-striped areas in it?
>
> A. Oh, yes, it has quite a few.
>
> Q. Okay. And the area that she was talking about parking in earlier today, did that have yellow stripes in it on January 16th, 2007?
>
> A. Yes, yes it did.

Arlene Wells testified that the north lot had yellow and white-striped areas on the day Claimant fell. She was not aware of any white areas being repainted yellow later.

The determination of a witness' credibility and how much weight to accord to that person's testimony are solely up to the Commission. *White v. Gregg Agricultural Ent.*, 72 Ark. App. 309, 37 S.W.3d 649 (2001). The Commission must sort through conflicting

evidence and determine the true facts. *Id*. In so doing, the Commission is not required to believe the testimony of the claimant or any other witness, but may accept and translate into findings of fact only those portions of the testimony that it deems worthy of belief. *Id*.

Based upon my evaluation of the evidence, I cannot find that Claimant has proven by a preponderance of the evidence that she parked in a white-striped area immediately prior to her fall on January 16, 2007. Consequently, she has not proven that she was performing employment services and thus sustained a compensable injury.

B. Balance of Issues

Because Claimant has not proven by a preponderance of the evidence that she incurred a compensable injury, the balance of the issues–whether she is entitled to reasonable and necessary medical treatment, temporary total disability benefits and a controverted attorney's fee–are moot and will not be addressed.

CONCLUSION

Claimant bears the burden of proving by a preponderance of the evidence that her alleged injury is compensable. She has been unable to do this. Therefore, her claim must be, and hereby is, denied and dismissed.

IT IS SO ORDERED.

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Hon. O. Milton Fine II
Administrative Law Judge