

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

WCC NO. F708533

MOLLY TAYLOR, EMPLOYEE

CLAIMANT

**UNIQUE CLEANERS,
UNINSURED EMPLOYER**

RESPONDENT

OPINION FILED APRIL 18, 2008

This matter comes before Administrative Law Judge Barbara Webb on the record.

Claimant represented by Mr. E. Dion Wilson, Attorney at Law, Helena, Arkansas.

Respondents represented by Mr. Charles E. Halbert, Jr., Attorney at Law, West Helena, Arkansas.

STATEMENT OF THE CASE

A pre-hearing telephone conference was held on January 8, 2008, before Administrative Law Judge Barbara Webb. A Pre-hearing Order was entered in this case on January 10, 2008. The Pre-hearing Order set forth the stipulations offered by the parties. The parties further agreed that the case would be submitted on the sole issue of whether the Arkansas Workers' Compensation Commission had exclusive jurisdiction of the claim based on the stipulations set forth in the Pre-hearing Order. The stipulated record consists of the stipulations set forth in the Pre-hearing Order filed January 10, 2008. In addition, I have blue-backed a copy of the January 8, 2008 Letter, Motion to Determine Jurisdiction, and Brief in support of the Motion submitted by the respondent. I have also blue-backed a copy of the January 21, 2008 letter submitted by the claimant submitting to the jurisdiction of the Arkansas Worker's Compensation Commission and the January 25, 2008, letter from the respondent.

The following stipulations as submitted by the parties on the record are hereby accepted:

1. The employer/employee relationship existed on August 4, 2007.
2. A claim was filed with the Arkansas Workers' Compensation Commission on September 6, 2007.
3. A lawsuit was filed by Molly Taylor against Eric McIntosh d/b/a Unique Cleaners on August 31, 2007, in Phillips County, CU 2007-313.

ISSUE

By agreement of the parties, the issue presented is whether the Arkansas Workers' Compensation Commission has exclusive jurisdiction of the claim. All other issues are reserved at this time.

DISCUSSION

The claimant contends she sustained a compensable injury to her right hand on August 4, 2007, and that respondent willfully and wantonly placed her at risk for injury, insomuch as respondent knew that the working conditions and the equipment with which claimant worked were all in non-compliance with the rules and regulations established by OSHA. The claimant further contends that she is entitled to temporary total disability from August 4, 2007, until such time as she is, if possible, totally rehabilitated; rehabilitation, medical expenses and attorney's fees.

The respondent contends that the claimant was injured on the job when she suffered a minor burn working a laundry press. The respondent contends the

claimant is not entitled to any medical benefits at this time nor is she entitled to any wage loss, disability, rehabilitation or attorney's fees.

The threshold issue in this case is whether the Arkansas Workers' Compensation Commission has exclusive jurisdiction of this claim. Under Ark. Code Ann. § 11-9-707(1)(Repl. 2002), there is a statutory prima facie presumption that the Commission has jurisdiction over any claims filed before the Commission. Conrad v. Continental Express, 1995 AWCC 84, Full Commission Opinion filed April 12, 1995 (E119927). Before the Commission can assume jurisdiction over the claim, there must be a statutory basis for entertaining the claim. International Paper Co. v. Tidwell, 250 Ark. 623, 466 S.W.2d 488 (1971); McKeag v. Hunt Transportation, Inc., 36 Ark. App. 46, 818 S.W.2d 581 (1991); Patton v. Brown & Root, Inc., 31 Ark. App. 141, 789 S.W.2d 745 (1990). Under the Arkansas Workers' Compensation law, an employer's liability is statutorily based upon disability or death from an injury arising out of and in the course of employment. Ark. Code Ann. § 11-9-401 (1987). In addition, "employment" is defined as "every employment carried on in the state" (subject to statutorily specified limitations). Ark. Code Ann. § 11-9-102(3)(1987).

Ark. Code Ann. § 11-9-105 (a) (Repl. 2002) provides, in pertinent part:

(a) The rights and remedies granted to an employee subject to the provisions of this chapter, on account of injury or death, shall be exclusive of all other rights and remedies of the employee, his legal representative, dependents, next of kin, or anyone otherwise entitled to recover damages from the employer. . . ."

(b)(1) However, if an employer fails to secure the payment of compensation as required by this chapter, an injured employee or his legal representative, in case death results from the injury, may, at his option, elect to claim

compensation under this chapter or to maintain a legal action in court for damages on account of the injury or death.

In the instant case, it is undisputed that the employer was uninsured at the time of the alleged accident. As a result, the claimant has the option of pursuing her claim before the Arkansas Worker's Compensation Commission or pursuing a claim in tort in the circuit court. See, *David Sykes v. Williams, et. al.*, ___ Ark. ___, ___ S.W.3d ___ (No. 07-918, April 17, 2008)(holding that the essence of § 11-9-105(b) is election of remedies). While the evidence demonstrates that a civil action was initially filed, the claimant has now submitted to the jurisdiction of the Arkansas Worker's Compensation Commission. Based on the claimant's election, I find that the preponderance of the evidence provides a sufficient basis to invoke the jurisdiction of the Arkansas Workers' Compensation Act.

Therefore, based on the preponderance of the evidence, I find that the statutory basis required for the Commission's jurisdiction is present and there is a proper and sufficient basis for the Arkansas Workers' Compensation Commission to invoke its jurisdiction.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. The employer/employee relationship existed on August 4, 2007.
2. A claim was filed with the Arkansas Workers' Compensation Commission on September 6, 2007.
3. A lawsuit was filed by Molly Taylor against Eric McIntosh d/b/a Unique Cleaners on August 31, 2007, in Phillips County, CU 2007-313.

4. The claimant has voluntarily submitted to the jurisdiction of the Arkansas Workers' Compensation Commission
5. The Arkansas Worker's Compensation Commission has jurisdiction of the claim.

ORDER

For the reasons discussed herein, I find that this claim is properly within the jurisdiction of the Arkansas Worker's Compensation Commission.

IT IS SO ORDERED.

HONORABLE BARBARA WEBB
Administrative Law Judge