

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

WCC NO. F900391

ROSELIE GINGRAS, Employee	CLAIMANT
LIBERTY BANK, Employer	RESPONDENT
CNA INSURANCE COMPANY, Carrier	RESPONDENT

OPINION FILED AUGUST 24, 2009

Hearing before ADMINISTRATIVE LAW JUDGE GREGORY K. STEWART in Springdale, Washington County, Arkansas.

Claimant represented by JASON HATFIELD, Attorney, Fayetteville, Arkansas.

Respondents represented by FRANK NEWELL, Attorney, Little Rock, Arkansas.

STATEMENT OF THE CASE

On July 22, 2009, the above captioned claim came on for a hearing at Springdale, Arkansas. A pre-hearing conference was conducted on April 8, 2009, and a pre-hearing order was filed on April 9, 2009. A copy of the pre-hearing order has been marked Commission's Exhibit #1 and made a part of the record without objection.

At the pre-hearing conference the parties agreed to the following stipulations:

1. The Arkansas Workers' Compensation Commission has jurisdiction of the within claim.
2. The employee/employer/carrier relationship existed among the parties on April 9, 2007.

At the pre-hearing conference the parties agreed to litigate the following issues:

1. Compensability.
2. Related medical.
3. Reimbursement for changing of automotive and residential locks.
4. Attorney fee.

The claimant's contentions are attached to the pre-hearing order as Exhibit #1 and contained in the transcript as Commission Exhibit A.

The respondents contend the claimant did not sustain an injury arising out of and in the course of her employment with Liberty Bank and is therefore not entitled to any benefits under the Workers' Compensation Act.

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 witnesses and to observe their demeanor, the following findings of fact and conclusions of law are made in accordance with A.C.A. §11-9-704:

FINDINGS OF FACT & CONCLUSIONS OF LAW

1. The stipulations agreed to by the parties at the pre-hearing conference conducted on April 8, 2009, and contained in a pre-hearing order filed April 9, 2009, are hereby accepted as fact.

2. Claimant has failed to prove by a preponderance of the evidence that she suffered a compensable injury on April 9, 2007.

FACTUAL BACKGROUND

_____The claimant is a high school graduate who has also taken some college courses. Claimant began working for the respondent as a teller in December 2006. Claimant testified that her job duties included arriving at the bank at approximately 6:45 a.m. to open the bank doors, open the vault, and get the cash drawers ready for the bank to open at 7:00 a.m. Claimant testified that these opening procedures were to be performed with another employee, but that the second employee was often late and it was necessary for claimant to perform these procedures by herself.

In order to open the bank, the claimant had a key to the bank and the codes to the

bank vault which would contain somewhere between \$50,000 and \$100,000. In addition, claimant also had access to the teller's cash drawers.

On April 9, 2007, the claimant worked her normal shift and left work at approximately 4:15 p.m. After leaving work the claimant drove to meet with the person preparing her taxes. After leaving the tax preparer claimant then drove home and parked in her driveway. As claimant walked in her back door and began walking through her house, a man stepped out of a room wearing a mask and glasses. As he stepped toward her she began walking towards her kitchen and noticed that he had a gun in his hand. Claimant testified that she ran to her front door to escape, unlocking the door. Claimant testified that as she tried to get out of the door the man attempted to grab her shirt, but she pushed the door open and went through the door. As she got outside onto her front porch she fell down the stairs and broke her wrist.

Claimant testified that after getting out of her house she ran across the road to an RV park and knocked on a door. When no one answered she noticed that she still had her cell phone in her hand and she called the police.

On April 11, 2007 the claimant sought medical treatment from the Washington Regional Medical Center emergency room. Claimant was diagnosed as suffering from a fracture of the right wrist. She was given a splint, medication, and instructed to receive follow-up care with the Ozark Orthopaedic Clinic. On April 17, 2007, claimant was evaluated by Dr. Park and he placed her thumb in a cast for approximately eight weeks. In a report dated June 5, 2007, Dr. Park stated that x-rays indicated healing at the fracture site. He placed claimant in a wrist splint and ordered physical therapy. The documentary evidence does not contain any subsequent reports from Dr. Park. The claimant missed approximately four days of work after this incident and she returned to work for the respondent until July 2, 2008.

Testifying at the hearing was Detective David Williams of the Fayetteville Police

Department who was assigned to investigate the incident of April 9, 2007. Williams testified that both the claimant and a neighbor gave a description of the man which included the wearing of a mask. Williams testified that the morning after the assault he and his partner found a Halloween type mask in a wooded area next to the claimant's home. Both the claimant and her neighbor identified the mask as the one worn by the attacker. Williams testified that the mask was sent to the state crime lab in an effort to obtain a DNA match. That DNA match did not occur until more than one year later. Williams testified that a DNA match was made to an individual named Gary Huddleston. Williams testified that Huddleston is currently in jail in Texas awaiting trial for a crime similar to the one in involving claimant.

Williams testified that based upon his discussions with authorities in Texas that Huddleston and a partner held a female bank employee and her husband at gunpoint, threatening to cut off the fingers of the husband if the woman did not take them to the bank where she worked and open it with her key. Williams testified that after he learned of this information he returned to claimant and learned that she also had a key to the bank.

ADJUDICATION

_____ Claimant contends that the injury she sustained to her right wrist when she fell on her porch while fleeing the attacker on April 9, 2007 is a compensable injury. Claimant contends that the injury is compensable because the man in her home was there for the purpose of robbing the bank and that her act of getting away benefitted the respondent because Huddleston was not able to rob the bank.

In order for claimant to prevail she has the burden of proving by a preponderance of the evidence that she was performing "employment services" at the time of her injury. Employment services are performed when an employee does something that is generally required by his or her employer. *Collins v. Excel Specialty Products*, 347 Ark. 811, 69

S.W. 3d 14 (2002); *Pifer v. Single Source Transport*, 347 Ark. 851, 69 S.W. 3d 1 (2002). The Court has stated that we must use the same test to determine whether an employee was performing “employment services” as we do when determining whether an employee was acting within “the course of employment.” *Pifer, supra*. 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, either directly or indirectly, *id*.

In this particular case, claimant’s case depends upon her contention that Huddleston was present in her home in order to rob the respondent bank by requiring her to open the bank and the bank vault. Unfortunately for the claimant there is no direct evidence supporting her contention that the man in her home was there to rob the bank. Fortunately, the claimant was able to escape before the man in her home could grab her. Claimant testified at her deposition that the man’s only statement was, “I’m not here to hurt you. It’ll be all right.” Thus, claimant’s attacker did not make any statement regarding his intent or motive on the night of April 9, 2007.

Claimant contends that the man’s intent and motive to rob the bank is evidenced by an alleged incident in Texas. Based upon the investigation performed by Detective Williams, claimant contends that the man in her home was Gary Huddleston, a man who kidnapped a bank employee and her husband in Texas in order to rob a bank. Claimant then argues that this same motive was the basis for the incident on April 9, 2007.

While the DNA test may have matched the mask found in the woods behind claimant’s house to Gary Huddleston and a gun found at claimant’s home matches the description of a gun stolen in Texas, that evidence does not supply a motive for the attack on April 9, 2007. First, it should be noted that neither Huddleston nor his alleged accomplice have been convicted of any crime in Texas. Furthermore, Detective Williams’ testimony regarding the alleged motive in Texas is based upon hearsay statements made

to him by various individuals in Texas including investigators, prosecutors, and other individuals. While I certainly have no reason to doubt the veracity of Detective Williams' testimony, I do not believe that his testimony which is based in large part upon hearsay statements made to him by various individuals in Texas is sufficient evidence to establish a motive for an alleged crime in Texas and by implication a second crime in Arkansas.

There is no question that claimant was attacked in her home by an unknown assailant on the night of April 9, 2007. That assailant may or may not have been Gary Huddleston. Even if the assailant was Gary Huddleston, there is insufficient credible evidence indicating that the motive for the assault was the robbery of the respondent.

Furthermore, as previously noted, the test to be used is whether an injury occurred within the time and space boundaries of the employment when an employee was carrying out the employer's purpose or advancing the employer's interest, directly or indirectly. *Pifer, supra*. In *Maupin v. Pulaski County Sheriff's Office*, 90 Ark. App. 1, 203 S.W. 3d 668 (2005), the Arkansas Court of Appeals affirmed a Commission decision which found that a deputy employed by the Pulaski County Sheriff's Department was not carrying out his employer's purpose or advancing his employer's interest when he was involved in an accident while driving his Pulaski County squad car from his home in Perry County to work. Claimant in that case testified that he was dressed in his police uniform and listening to the police radio to acquaint himself with the tactical situation before he began his shift. At the hearing in that case the employee's superior officer testified that the employee was furthering the interest of the Sheriff's Department at the time he was injured. In affirming the Commission's decision that claimant was not carrying out his employer's purpose or advancing his employer's interest, the Commission noted that the employee's argument on appeal focused solely on whether at the time of the incident he was carrying out the employer's purpose or advancing the employer's interest directly or indirectly. The Court noted, "This ignores the remainder of the 'employment services' test, *ie*, whether the injury

occurred within the time and space boundaries of the employment.”

Thus, the issue is not simply whether or not this particular claimant was advancing her employer’s interest directly or indirectly at the time of her injury on April 7, 2009, but she must also show that the injury occurred within the time and space boundaries of her employment. While it is not required that an employee be “on the clock” or physically at their place of employment at the time of an injury for an accident to be compensable, it would be difficult to find that this claimant was within the time and space boundaries of her employment at the time her accident occurred. Accordingly, I find that claimant has failed to prove by a preponderance of the evidence that she was performing employment services at the time of her accident.

In summary, claimant contends that the injury she suffered on the night of April 9, 2007 occurred because the man was in her home for the purpose of robbing the respondent. There is no evidence from the incident on April 9, 2007 regarding the man’s motive for attacking the claimant. Claimant contends that the motive is supplied by a similar attack in Texas for which an individual named Gary Huddleston awaits trial. However, Huddleston has not been convicted of any crime in Texas and any statements regarding Huddleston’s motives for the crime in Texas are based upon hearsay. Furthermore, the test for determining whether an employee was performing services is not simply whether the employee was advancing the employer’s interest directly or indirectly. In addition, the injury must occur within the time and space boundaries of the employment. Here, claimant’s injury did not occur within the time and space boundaries of her employment.

ORDER

Claimant has failed to prove by a preponderance of the evidence that she has suffered a compensable injury. Therefore, her claim for compensation benefits is hereby

denied and dismissed.

The respondents are ordered to pay the court reporter's charges for preparing the hearing transcript in the amount of \$265.50.

IT IS SO ORDERED.

GREGORY K. STEWART
ADMINISTRATIVE LAW JUDGE