BEFORE THE ARKANSAS WORKERS’ COMPENSATION COMMISSION
CLAIM NUMBER G604481

SUSI EPPERSON, EMPLOYEE CLAIMANT

CEDAR RIDGE SCHOOL DISTRICT,
EMPLOYER RESPONDENT

ARKANSAS SCHOOL BOARDS ASSOCIATION ,
INSURANCE CARRIER/TPA RESPONDENT

OPINION FILED APRIL 19 , 2017

Hearing before Administrative Law Judge, James D. Kennedy on the 14th day of March, 2017, at Searcy, White County, Arkansas.

Claimant represented by Laura Beth York, Attorney at Law, Little Rock, Arkansas.

Respondent represented by Curtis L. Nebben, Attorney at Law, Fayetteville, Arkansas.

STATEMENT OF THE CASE

A hearing was conducted in this matter on the 14th day of March, 2017, to determine the issues of whether the claimant sustained a compensable injury to the left hand that is work related and if the injury is in fact work related, whether the claimant is entitled to medical, and attorney fees. All other issues are reserved. The respondents are contending that the employee did not sustain a compensable injury arising out of the coarse of employment and did not report the injury until June 13th of 2016.
A prehearing conference was conducted in this claim on the 17th day of January 17, 2017, and a Prehearing Order was filed on said date. The Order provides that the parties stipulated that the Arkansas Workers’ Compensation Commission has jurisdiction of the within claim and that an employer/employee relationship existed on June 2, 2016, the date of the injury. At the time of the hearing, the Respondent announced that they would stipulate that the claimant was earning sufficient wages to earn the maximum temporary total disability and permanent partial disability rate. The claimant then announced that vacation time had previously been scheduled to occur immediately after the accident, so the only issue to be determined at the time of the hearing was the compensability of the claim and medical. A copy of the Pre-hearing Order was introduced, without objection, as “Commission’s Exhibit 1.” Additionally, the Prehearing Questionnaires of both parties were also made a part of the record as “Commission’s Exhibit 2” and “Commission’s Exhibit 3” without objection. As stated in the Prehearing Order, the parties stipulated that the Arkansas Workers’ Compensation Commission has jurisdiction of this claim and that an employer/employee relationship existed on June 2, 2016, the date of the injury. The hearing consisted of the testimony of the claimant, Susi Epperson, and of documents introduced into the record without objection.
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 CONCLUSION 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 satisfied the burden of proof, to prove by a preponderance of the evidence that the injury was in fact work related and consequently, the claim is compensable and the claimant is entitled to medical and attorney fees.

**REVIEW OF TESTIMONY AND EVIDENCE**

The Claimant was the sole witness to testify. Claimant testified that her full name is Susanna Epperson, of 120 Liberty Lane Batesville, Arkansas, she was born on November 27, 1978, and that she was thirty eight years old at the time of the hearing. Claimant testified that she had obtained her four year degree in education and went straight to work in the Cedar Ridge School District. The
school district is a consolidated school district that was made up of Oil Trough, Newark, and Cond-Charlotte. Claimant worked three years at the high school teaching English and reading and worked in the summers teaching for the Department of Education. (Tr. P. 7) Claimant further testified that she then left to go to the Batesville School District because she needed three years in elementary to have a K-12 administrator license and she taught three years in elementary there. During this time she obtained her master’s degree and then went to work at the Rose Bud School District as the high school principal.

Claimant was then offered a job back home at the Cedar Ridge School District and she took it. (Tr. 8) Claimant testified that she worked the first four years at Cedar Ridge as the grant writer. At the start of the fifth year, claimant also became the elementary principal. (Tr. 9) Claimant testified that she is on a 12 month contract as principal and grant writer. (Tr. 10)

Claimant testified that she writes all of the grants for the entire school district. I am the one that obtains the “signatures, completed the reports, unless I hired somebody inside the grant. Sometimes some are bigger and so I’ll hire like a program director type and then they’re responsible for the reports, but anything under $20,000, I’m going to be responsible for the report at the end of the year, mid-year, quarterly, however they expect you to report back to them. I apply for
everything from $100 grants for teachers to have a pet in their classroom to, you know, $150,000 grants for after school programs.” (Tr. 11)

Claimant went on to explain that some grants are “very simple forms” but that “anything larger that’s like a state grant for Department of Education, Department of Health, any kind of state agency I’m going to, it’s going to be a lot larger grant. Some of those applications are 100 pages. I have to copy the application, bind it so that I can refer back to it constantly and mark things. State grants are not that difficult to get, but if you don’t follow the directions they will throw your grant application into the trash. For example, if it says it has to be signed in blue ink and you do not sign it in blue ink, they don’t read your grant, they throw it in the trash. The reason that readers do that is because, you know, if they get 1,000 applications, it’s one way to weed them out.” (Tr. 12)

Claimant went on to state that the application for a 21CLC grant might be around 200 pages. Once you get it completed and you get all of the signatures, you may have to have five copies so you may have “five hundred pages stacked up.” In the eight years that I’ve been at the district I’ve always done this the same way. If it involves anybody’s salary, if it’s over $20,000, I’m going to hand deliver that grant. And I have always hand-delivered grants that had anything to do with a salary because they could lose their job. For example, the Department of Ed, when they train us they always say, “If you risk it and mail it and your original
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copy ends up on the bottom and it’s not marked or things get out of order, then it could be thrown out.” (Tr. 13, 14)

Claimant testified that her mechanism for delivering big grants is to put it together in a little package, it’s “Susi-fied” or whatever you want to call it. It is sealed because it is treated as a sealed bid. I try to make it easy for them. (Tr. 15)

On June 2nd, I was going to deliver a grant for the school district and I had to go to two offices at the Department of Education because I was also delivering our 21CCLC report which was due at the end of the year. Our 21CCLC director knew that I was going to deliver a grant so I took her 21CCLC report like I have several years in the past. If you do not do your continuation reports, you do not get your money the next year and that grant is $150,000 for five years. (Tr. 16)

I left for Little Rock about eight-ish in the morning, and I was in my vehicle by myself. Claimant testified that on the way to Little Rock, she thought that she had forgot to mark the original copy in the grant application and that she was thinking, “Oh gosh, if I didn’t put my Post-it on there, you know, it’s going to, it will be thrown out.” “I had told the superintendent the night before that I would be delivering the grant and the report, and that I was taking the rest of the day off to go to Hot Springs for a personal appointment and I was going to start my vacation time.” Claimant stated that she pulled off the side of the road and attempted to get into the box and that she couldn’t, so she used a pair of scissors
in a stabbing motion to get into the box, and that in the process, she stabbed her left hand. She further stated that she was a little “freaked out” because she hit an artery and there was quite a bit of blood. She was able to stop the bleeding with an item in her automobile. (Tr. 19) She was able to get to the Department of Education in Little Rock and go to both offices, dropping off the grant application and the report. She then left there and went on to Hot Springs for her appointment. (Tr. 20)

Claimant testified that she had taken off half of a day starting her vacation, and after leaving the Department of Education, she drove on to Hot Springs to see an esthetician. The esthetician cleaned the wound in the left hand and claimant cancelled her Hot Springs appointment and called her husband to make an appointment with Doctor Bates in Batesville, her primary care physician, and that she further felt that she needed to go to the emergency room if Doctor Bates could not work her in. (Tr. 21)

When claimant returned to Batesville, that afternoon, she saw Doctor Bates, who recommended that the claimant should go and see Doctor Varela, a hand specialist in Mountain View the next morning. Claimant testified that it was her understanding that she was to report work related injuries to Shelly, the superintendent’s secretary or administrative assistant. Claimant stated that she attempted to call Shelly at 870-799-8691 and her phone record shows that the call
was made at 8:58 a.m. The phone call went to a recorder. (Tr. 22-23) Claimant testified that she attempted to call Shelly twice but was unsuccessful, and attempted to call the school several times that day but that no one answered. (Tr. 24)

The following day, the claimant drove to see Doctor Varella, the doctor that her primary care physician referred her to. This was a 45 minute drive from Batesville. Doctor Varella performed surgery on the claimant’s hand. (Tr. 25) Claimant left for her Florida vacation the following week, testifying that she could not get her deposit back, so she left with a cast on her hand. Claimant continued to treat with Doctor Varella, until the week of Christmas vacation. (Tr. 26) Claimant further testified that her pointer finger will still not straighten out, and the colder the weather, the stiffer it gets. (Tr. 27) Claimant stated that she used her sick leave to go to appointments with Doctor Varella and also to go to physical therapy. After the surgery, which was on a weekend, claimant emailed Shelly and Andy Ashley, the superintendent. (Tr. 28) Shelly emailed a Form N but it did not contain the back of the form and there were a number of emails back and forth between the claimant and Shelly. (Tr. 29)

Under cross examination, the claimant testified that her index finger was injured. (Tr. 30) Claimant testified that she is both right and left handed. The following questioning then occurred:
Q. Okay. Now, and I think, and maybe I created - - In the deposition, I have you gone back - - June 2\textsuperscript{nd} of 2016 was a Thursday, wasn’t it?

A. I’m not sure if it was a Thursday or Friday, it was the end of the week.

Q. Okay. I’ve double -checked several times since then. I guess I looked at my calendar wrong on my iPhone during your deposition. And the last time I checked was this morning before I came down, but June 2\textsuperscript{nd} was a Thursday, correct?

A. Okay.

Claimant went on to testify under cross examination that the incident occurred somewhere between Batesville and Bald Knob. (Tr. 33) Claimant admitted to providing a screenshot of a call to the school at 8:58 and 8:59 and that she just sent it to her attorney. (Tr. 34) Claimant was not sure how much time she spent actually delivering the documents to the Department of Education because she had been there so many times but admitted that she went on to Hot Springs to get her eyeliner tattooed. Claimant also testified that after driving to Hot Springs, she made a decision not to have her eyeliner tattooed. (Tr. 36) Claimant also admitted that she is a salaried employee and that she did not miss anytime from her paycheck because she took vacation and sick leave. (Tr. 37) Claimant also could not remember contacting the school before going to see Doctor Varela for her 8:00 o’clock appointment on June 3\textsuperscript{rd}, although she did say that at the time of her deposition, it was thought that June 2\textsuperscript{nd} was a Friday. (Tr 38) Claimant also admitted that the Doctor Bates medical exhibit provided that
the appointment with Doctor Varela was not until 11:30 a.m. (Tr. 39) Claimant also admitted that the medical records provided that the surgery started at 1:41 p.m. (Tr. 40) and that she testified in her deposition that she only attempted to contact the school twice on the day of the incident. (Tr. 41) Claimant further testified under cross examination that she had been told to call Shelly as soon as possible if there was a workers’ compensation injury, that she had an employee under her supervision that had been injured, and that she never had any training in regard to a workers’ compensation injury, except to make the call to Shelly. Claimant admitted that she did not make an attempt to contact the school after the first two attempts. (Tr. 42) Claimant testified that she made no attempt to contact the school on Friday because the Central Office does not work on a Friday. (Tr. 44) Claimant further admitted that she sent an email to the school on Saturday. Claimant also testified that she had a new phone and that she did not have all of the personal contacts in her phone and that she did not know all of the numbers “by heart.” (Tr. 48)

On redirect, claimant testified that she attempted to call the central and high school office on Thursday when the incident happened and that her new phone did not have all the contacts. She also testified that the response from Andy Anderson, the superintendent, which was dated June 5th, stated “My goodness. I just saw this. I’m sorry. I saw that Shelly emailed you back. I hope
you are able to rest and still go on vacation. My number is 501-328-7692.” (Tr. 50, 51). Claimant was also asked about her deposition and the question, “At least if this happened on June 2nd, then June the 3rd, at least on my calendar, is showing that was a Saturday, so - -”. Claimant admitted that there was confusion as to the date and stated in response to the question that “Yes, so I was just assuming that they were looking at a calendar and agreeing, ‘Okay, okay.’” (Tr. 52)

Claimant also testified that in the summer, there was not always someone at the school to answer the phone because someone might be off and some of the district secretaries are not on a 12 month contract. Also there would never be someone at the school at night after the time of seeing Doctor Bates. (Tr. 53) Claimant testified that Cedar Ridge school is small with less than 800 kids district wide. (Tr. 57)

In regard to documentary evidence, the claimant admitted into the record Exhibit One which contains medical reports. A report by Doctor Ron Bates provides that the claimant presented to his office at approximately 5:00, on June 2, 2016. The report provides that the patient states that she lacerated her hand at approximately 8:00 in the morning, lacerating her left hand by using a pair of scissors to cut open an object, impaling the scissors into the junction of the left hand index finger metacarpal phalangeal joint and that she describes profuse
bleeding. Under plan of care, the report provides that Doctor Bates is concerned that “she has a digital artery injury and possible a digital nerve injury.” The report goes on to provide that Doctor Varella was contacted and that he will see the claimant at 11:30 on June 3, 2016. (Cl. Ex. 1, P.1)

Claimant presented to Doctor Varella the following day and the report provides that claimant was taken to the operating room for exploration of the wound and repair of osteophyte structures as indicated. (Cl. Ex. 1, P. 2, 3) The surgery note by Doctor Varela provides that there was noted to be an approximate 3 - cm laceration of the radial border of the MCP joint of the left index finger. The laceration was extended in both distal and proximal direction. The patient was noted to have a complete laceration of the neurovascular bundle on the radial side. Additionally, the report provides that there was noted to be a laceration of the FDS tendon just proximal to the A2 pulley. (Cl. Ex. 1, P. 4, 5) A clinic note dated June 14, 2016, by Doctor John Akins, provides that the claimant is about 10 days post op from repair of the flexor tendon and also the radial digital nerve and that she is doing well and has been in a splint. (Cl. Ex. 1, P. 6)

Claimant also submitted non-medical documents into the record without objection. A screen shot dated June 2, 2016 shows two calls at 8:58 and 8:59 a.m. (Cl. Ex. 2, P. 1) An email chain was also made a part of the record. On June 4, 2016, an email from the claimant to Andy Ashley, the superintendent of Cedar
Ridge Schools, provides that she does not know if the incident in question qualifies for workers’ compensation but that she had attempted to call the central office and the high school office Thursday morning, the day that it happened and there was no answer. The email further provides that the claimant has a new phone and has no contacts in the phone. The claimant also provides in the email that she delivered the application for the JUA grant and the 21CCLC report to the Arkansas Department of Education. Claimant received a response from Mr. Ashley the next day that does not respond to the workers’ compensation question but does provide that “I hope you are able to rest and still go on vacation” and provides the number for the superintendent of schools. The email also provides that the superintendent saw that Shelly had emailed her back. (Cl. Ex. 2, P. 2, 3)

Another email chain was also admitted into evidence. The email from the claimant dated June 13, 2016, provides “I did try to call and report this as soon as my injury occurred. No one answered. I emailed in writing over a week ago. This is the first time I’ve heard back since. What do I need to do now.” Claimant received an email back approximately two hours later from Shelly Hendrix, providing the number for the workers’ compensation hotline and also attaching a form to be filled out. The next day, the claimant emailed back stating that she never received the attachment. On June 15, another email from from Shelly
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Hendrix provided that she was sorry about the form and stated that it needs to be filled out. (Cl. Ex. 2, P. 4)

DISCUSSION AND ADJUDICATION OF ISSUES

The Claimant has the burden of proving by a preponderance of the evidence, that she is entitled to compensation benefits. In determining whether the claimant has sustained her burden of proof, the Commission shall review the evidence impartially, without giving the benefit of the doubt to either party. Ark. Code Ann. §11-9-704. Wade v. Mr. Cavanough’s, 298 Ark. 364, 768 S.W.2d 521 (1989). The alleged compensable injuries must also be established by objective medical findings. Ark. Code. Ann. 11-9-102 (4)(d). “Objective findings” are those findings which can not come under the control of the patient. Ark. Code Ann. §11-9-102 (16).

Here the primary issue is compensability and the burden of proof rests upon the claimant to prove the compensability of his claim. Ringier America v. Combs, 41 Ark. App. 47, 849 A.W2d 1 (1993). There is no presumption that a claim is compensable, that the claimant’s injury is job related or that a claimant is entitled to benefits. Crouch Funeral Home v. Crouch, 262 Ark App 417, 557 S.W.2d 392 (1977); O.K. Processing, Inc., v. Sevold, 265 Ark. 352, 578, S.W2d 224 (1979)
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For the claimant to establish a compensable injury as a result of a specific incident which is identifiable by time and place of occurrence, the following requirements of Ark. Code Ann. §11-9-102 (4) (A) must be established: (1) proof by a preponderance of the evidence of an injury arising out of and in the course of employment; (2) proof by a preponderance of the evidence that the injury caused internal or external physical harm to the body which required medical services or resulted in disability or death; (3) medical evidence supported by objective findings, as defined in Ark. Code Ann 11-9-102(16), establishing the injury; and (4) proof by a preponderance of the evidence that the injury was caused by a specific incident and is identifiable by time and place of occurrence. See also Ark. Code Ann 11-9-103 (4) (E) (I); Freeman v. ConAgra Frozen Foods, 344 Ark. 296, 40 S.W.3d 760 (2001); Wal - Mart Stores, Inc. Westbrook, 77 Ark. App. 167, 72 S.W.3d 889 (2002). If the claimant fails to establish by a preponderance of the evidence any of the requirements for establishing the compensability of a claim, compensation must be denied. Mikel v. Engineered Specialty Plastics, 56 Ark. App 126, 938 S.W.2d 876 (1997). See also Reed v. ConAgra Frozen Foods, Full Commission Opinion, February 2, 1995. (Claim No. E317744)

A compensable injury must be established by medical evidence supported by objective findings, and medical opinions addressing compensability must be stated within a reasonable degree of medical certainty. See. Smith-Blair, Inc. v.

In the present matter, the unrebutted testimony of the claimant is that she was employed by the Cedar Ridge School District on a twelve month contract as both the elementary principal and the grant writer for the entire school district. Further it was her common practice to hand deliver the larger grants and grants involving employment to the Arkansas Department of Education. This practice appeared to be well known by other employees of the school district because on the day that the claimant was taking a grant to the Department of Education, she was also given a 21CCLC Report to deliver to the Department of Education by the director of the 21CCLC program. A 21CCLC Report had to be made yearly so that the $150,000 a year 21CCLC grant would continue. A grant that provided $150,00 a year for a school with less than 800 students would clearly be missed if the grant was lost.

The claimant testified that she was on her way to deliver the report and grant when she pulled off the side of the road to verify that she had placed an “original” Post-it note on a document because she was afraid that she would forget by the time that she got to Little Rock. The document was in a sealed box and to get in the sealed box, she used scissors to gain entry. According to the claimant, she used a stabbing motion with the scissors to enter the box and she missed the box and stabbed her left hand causing severe bleeding. Claimant was eventually able to stop the bleeding and drove on to the Arkansas Board of
Education to deliver both the report and the grant request. Claimant testified that she had scheduled the afternoon off for personal matters in Hot Springs and did in fact continue to Hot Springs, but after having her wound cleaned, she cancelled her appointment and returned back home to see her primary care doctor at 5:00 p.m. on the date of the incident.

A compensable injury does not include an injury that was inflicted on an employee 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. Dairy Farmers of America v. Coker 98 Ark. App. 400, 255 S.W.3d 905 (2007). The same test is used to determine whether an employee is performing employment services as we do when determining whether an employee is acting within the course and scope of employment. Pifer v. Single Source Transportation 347 Ark. 851, 69 S.W.3d 1 (2002). 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. Parker v. Comcast Cable Corp., 100 Ark. App.400, 269. S.W.3d 391 (2007). Whatever “employment services” means must be determined within the context of individual cases, employments, and working relationships, not generalizations made devoid of practical working conditions.
Engle v. Thompson Murry, Inc., 96 Ark. App. 200, 239 S.W.3d 561 (2006). Here, it is clear that the trip to Little Rock was clearly an employment service where the claimant was advancing the respondent’s interest and the school district clearly benefitted from the claimant delivering the report and grant application to the Arkansas Department of Education.

In addition, I find that the testimony of the claimant was credible as to the actual time and type of injury. The description of the injury corresponded with the description in the medical reports of both Doctor Bates and Doctor Varela. The claimant’s testimony is unrebutted. A question did arise as to the date of the injury and the following surgery, but I find that even very competent and capable individuals can be mistaken as to the date and the day of the week that the day fell on during depositions and hearings.

The final question that needs to be reviewed is the claimants notification of the respondent as to the injury. Claimant testified that she initially attempted to contact the school twice and a screen shot was introduced into evidence that purported to show that. Claimant also testified that she had a new phone which did not have all of the contacts in it and that she could not remember the various contact numbers. I find that this is believable in this day of smart phones, that people rely on their smart phone for individual phone numbers and even for basic knowledge, answering even basic questions by using Google.
Later, the claimant determined that she needed to see a doctor for her injury. It is clear that the claimant emailed the superintendent Andy Ashley on June 4, 2016, stating that she delivered the grant and the 21CCLC report. The email to Mr. Ashley provides that the claimant stabbed herself in the hand and that it “bled pretty good.” The claimant also asked if the injury qualified for workers’ compensation in the email. The superintendent, Mr. Ashley, responded the morning of June 5, stating that he had just seen it and he saw that Shelly had responded to the claimant. He did not specifically attempt to answer the claimant’s question in regard to the issue of the injury and a workers’ compensation claim, apparently allowing Shelly to answer the question just as the claimant had earlier explained.

Based upon the testimony, I find that the claimant made an attempt to notify her employer of the incident shortly after it occurred. The school year was out in a district with a total of less than 800 students in all grades. Additionally, the testimony was that the phones were not always covered every day and were never covered in the evenings. Claimant’s understanding was that she was to contact Shelly, and that also appears to be the procedure that the superintendent of the schools thought that the claimant should follow. Claimant made an appointment with her primary care physician on the day of the incident and he then referred her to a specialist, who performed surgery the very next day.
Claimant then emailed Shelly and the superintendent the following day. As mentioned above, the superintendent referred to Shelly in his response to the claimant.

After reviewing the evidence impartially, and without giving the benefit of the doubt to either party, I find that there was sufficient evidence to prove beyond a reasonable doubt that the injury was caused by a specific incident, that the injury arose in the course of employment, and there was objective medical findings as to the injuries. I find that the claimant has satisfied the burden of proof, to prove by a preponderance of the evidence, that the injury was in fact work related and compensable and consequently, the claimant is entitled to workers’ compensation benefits, specifically medical and attorney fees due to the finding of compensability.

IT IS SO ORDERED.

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James D. Kennedy
Administrative Law Judge