

# NOT DESIGNATED FOR PUBLICATION

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F009014

JIMMY LINTON, EMPLOYEE CLAIMANT

ARKANSAS DEPARTMENT OF CORRECTION,  
EMPLOYER RESPONDENT

PUBLIC EMPLOYEE CLAIMS DIVISION,  
INSURANCE CARRIER RESPONDENT

OPINION FILED JULY 29, 2003

Upon review before the FULL COMMISSION, Little Rock, Pulaski County, Arkansas.

Claimant represented by HONORABLE R. THEODOR STRICKER,  
Attorney at Law, Jonesboro, Arkansas.

Respondent represented by HONORABLE RICHARD S. SMITH,  
Attorney at Law, Little Rock, Arkansas.

Decision of Administrative Law Judge: Affirmed and Adopted.

## OPINION AND ORDER

The claimant appeals from a decision of the  
Administrative Law Judge filed October 8, 2002.

The Administrative Law Judge entered the following  
findings of fact and conclusions of law:

1. There was a motor vehicle accident on January 7, 2000.
2. The compensation rates are \$351/\$263.
3. The Arkansas Workers' Compensation Commission has jurisdiction of this claim.
4. The claimant has failed to prove by a preponderance of the evidence that he

sustained a compensable injury in the course of and arising out of his employment.

We have carefully conducted a de novo review of the entire record herein and it is our opinion that the Administrative Law Judge's decision is supported by a preponderance of the credible evidence, correctly applies the law, and should be affirmed. Specifically, we find from a preponderance of the evidence that the findings of fact made by the Administrative Law Judge are correct and they are, therefore, adopted by the Full Commission.

Thus, we affirm and adopt the decision of the Administrative Law Judge, including all findings and conclusions therein, as the decision of the Full Commission on appeal.

IT IS SO ORDERED.

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OLAN W. REEVES, Chairman

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JOE E. YATES, Commissioner

Commissioner Turner dissents.

DISSENTING OPINION

\_\_\_\_\_I must respectfully dissent from the majority opinion finding that claimant was not performing employment

services at the time of the accident.

On January 6, 2000, claimant was advised of a mandatory staff meeting to be held on his regular day off, January 7, 2000 at 6:30 a.m. At approximately 6:05 a.m. on January 7, claimant was involved in a motor vehicle accident on the way to the staff meeting and sustained injuries which have left him paralyzed from the waist down.

Respondent argues, and the Administrative Law Judge found, that this claim was barred by the going and coming rule, which holds that an employee is generally not acting within the course of employment when he or she is traveling to and from the workplace. However, there are several well-known exceptions to the going and coming rule. One such exception is when the employer compensates the employee for his time from the moment he leaves home until he returns home. Traylor, Inc. v. Cooksey, 31 Ark. App. 245, 792 S.W.2d 351 (1990). Stated another way, the exception applies whenever the employee is compensated during the time the activity occurs. Ray v. University of Arkansas, 66 Ark. App. 177, 990 S.W.2d 558 (1999). In my opinion, the greater weight of the evidence supports a finding that this exception applies in the present case.

According to the employer's policies and procedures, the employees are compensated for "[t]ravel during normal working hours on regularly scheduled working

days and travel performed on non-work days during the same hours...." It appears that just prior to the accident, claimant's work schedule had changed to 7:00 a.m. until 4:30 p.m. Since claimant's accident occurred before 7:00 a.m., he would not have been compensated according to the policies and procedures manual. However, claimant, Walter Todd, a retired lieutenant for the Arkansas Department of Correction, and Kenneth Bassett, a retired sergeant for the Department, each testified that if an employee was required to travel to a mandatory meeting on his or her day off, the employee was paid for the time traveled from home to work and back. This additional time was indicated on the time sheet, i.e., an hour was added to the time sheet to cover the time traveled to and from work. Understandably, Joe Porchia, the center's supervisor, testified that he knew of no such practice and the practice would not have been authorized. However, I do not find Porchia's testimony to be credible, particularly since claimant testified that Porchia authorized the practice and in light of the disinterested testimony of Todd and Bassett, who no longer work for the employer.

Based on the above evidence, I find that claimant was performing employment services at the time of the accident. Since claimant would have been compensated for his time from the moment he left home until he returned

home, this situation represents an exception to the going and coming rule. Accordingly, the opinion of the Administrative Law Judge should be reversed.

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SHELBY W. TURNER, Commissioner