

**NOT DESIGNATED FOR PUBLICATION**

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F308838

TONY F. MONCUS, DEC'D., EMPLOYEE	CLAIMANT
BILLINGSLEY LOGGING, EMPLOYER	RESPONDENT
AMERICAN INTERSTATE INSURANCE, INSURANCE CARRIER	RESPONDENT

OPINION FILED DECEMBER 27, 2004

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

Claimant represented by HONORABLE NEAL L. HART, Attorney at Law, Little Rock, Arkansas.

Respondent represented by HONORABLE MICHAEL E. RYBURN, 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 May 28, 2004.

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

1. The Arkansas Workers' Compensation Commission has jurisdiction over this claim.
2. The stipulations agreed to by the parties and set forth above are hereby accepted as fact.

3. I find that a preponderance of the evidence fails to establish that the claimant was performing an employment service at the time that the accident occurred.

4. I find that a preponderance of the evidence fails to prove that the claimant's death was the result of an injury that is compensable under the Arkansas Workers' Compensation Law.

5. The respondents controverted this claim in its entirety.

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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KAREN H. MCKINNEY, Commissioner

Commissioner Turner dissents.

**DISSENTING OPINION**

I dissent from the majority opinion and find that Claimant was performing employment services at the time of his fatal work related accident.

Claimant incurred fatal injuries on August 19, 2003 as a result of a motor vehicle accident while traveling in a caravan, pursuant to his employer's instructions, to a new work site. Claimant worked as a cutter for the Respondent logging company owned by Mitchell Billingsley, who was the only witness at the hearing. It is undisputed that about two to three times a year, Billingsley required his employees to meet him at a central location so that he could show them where a new tract of land was located. It is undisputed that the employees normally drove themselves to

their worksite. However, on rare occasions when Billingsley was the only person who knew where the new tracts were located, he required his employees to meet him at a central location and follow him in a convoy to the new logging site so that they could begin cutting on the new tract.

Billingsley testified that on the evening of August 18, 2003, he called Claimant and the other employees and instructed them to meet him at a service station in Nashville, Arkansas the next morning. Pursuant to Billingsley's instructions, Claimant, along with the other employees, met Billingsley at the service station on the morning of August 19, 2003. He testified that they discussed how they were going to get to the new tract of land. Billingsley instructed them to form a vehicle convoy and follow him there. Billingsley testified that he told the men to "stay behind me," meaning to follow him in the convoy line on the way to the land. Billingsley testified as follows:

Q: All right. I want to go back to the date of this accident, which was August 19, 2003. On that particular morning y'all met at a service station, true?

A: Yes, we did.

Q: Where was that service station located?

A: Shell station in Nashville, Arkansas.

Q: And that was at your request?

A: Yes.

Q: And why did you want your guys to meet you at a service station in Nashville, Arkansas?

A: We was moving to a new track of timber over in the Hope area and they would have to follow me to work to know where they was going.

Q: Because they didn't know where it was?

A: Right.

Q: But you did?

A: Yes.

Q: And you needed them to get there?

A: Yes.

Q: So that you could do your work?

A: Yes.

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Q: And that wasn't an optional meeting, that was mandatory? They needed to meet you there, right?

A: Yes, if they wanted to work that

week.

Billingsley also agreed that he was benefitted by his employees following him to the new track of land.

Claimant was driving his truck in the convoy line behind Billingsley when he was fatally injured in a head on collision with a car that crossed into his lane. Billingsley testified that he had no problem with Claimant following him to the work site in his own vehicle, but had offered for Claimant to ride with him so that Claimant could avoid incurring the transportation expense.

The test for determining whether an employee is acting "within the course of employment" is whether the injury occurred "within time and space boundaries of employment, when the employee is carrying out the employer's purpose or advancing the employer's interests directly or indirectly." Olsten Kimberly Quality Care v. Pettey, 328 Ark. 381, 944 S.W.2d 524 (1997). See also Collins v. Excel Specialty Products, 347 Ark. 811 at 817 (2002); Pifer v. Single Source Transportation, 347 Ark. 851, 69 S.W.3d 1 (2002).

I find that on these occasions, such as a the day that Claimant was killed, where employees are ordered to

convoy and follow their boss to a new location, which is unknown to the employees, that these travels are in the course and scope of employment because it directly furthers the employer's interest. Here, it is undisputed that without following Billingsley, the employees would not have known where to work. In fact, Billingsley ordered the employees to follow him and to "stay behind him" so that he could lead them to the tract of land where they were to begin cutting timber. Billingsley's employees did not know where the new work site was located and, therefore, had no choice but to meet him at the service station that morning to follow him to the land. In fact, Billingsley testified that it was not optional, his employees were required to meet him at the service station if they wanted to work that week. I find, therefore, that Claimant's travel on the day of his accident and fatal injury constituted employment services.

For these reasons, I dissent from the majority opinion and find that Claimant was performing employment services at the time of his fatal work related accident.

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SHELBY W. TURNER, Commissioner