

**NOT DESIGNATED FOR PUBLICATION**

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F204638

KELLY RAYES,  
EMPLOYEE

CLAIMANT

ACE PALLET COMPANY,  
EMPLOYER

RESPONDENT

CCMSI,  
INSURANCE CARRIER

RESPONDENT

OPINION FILED MARCH 22, 2004

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

Claimant represented by HONORABLE JAY TOLLEY, Attorney at  
Law, Fayetteville, Arkansas.

Respondents represented by HONORABLE MICHAEL RYBURN,  
Attorney at Law, Little Rock, Arkansas.

Decision of the Administrative Law Judge: Affirmed and  
adopted.

OPINION AND ORDER

The respondents appeal from a decision of the  
Administrative Law Judge filed February 19, 2003. The  
Administrative Law Judge entered the following findings of  
fact and conclusions of law:

1. The stipulations agreed to by the parties at  
the pre-hearing conference conducted on  
November 21, 2002, and contained in a pre-  
hearing order filed that same date, are  
hereby accepted as fact.
2. Claimant met her burden of proving by a  
preponderance of the evidence that she  
suffered a compensable injury to her

cervical, thoracic, and lumbar spine while employed by respondent on April 24, 2002.

3. Claimant is entitled to temporary total disability benefits beginning May 2, 2002, and continuing through August 15, 2002.
4. Respondent is liable for payment of all reasonable and necessary medical treatment.
5. Respondent has controverted claimant's entitlement to temporary total disability benefits.

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. All accrued benefits shall be paid in a lump sum without discount and with interest thereon at the lawful rate from the date of the Administrative Law Judge's decision in accordance with Ark. Code Ann. § 11-9-809 (Repl. 2002).

Since the claimant's injury occurred after July 1, 2001, the claimant's attorney's fee is governed by the provisions of Ark. Code Ann. § 11-9-715 as amended by Act 1281 of 2001. Compare Ark. Code Ann. § 11-9-715 (Repl. 1996) with Ark. Code Ann. § 11-9-715 (Repl. 2002). For prevailing on this appeal before the Full Commission, claimant's attorney is hereby awarded an additional attorney's fee in the amount of \$500.00 in accordance with Ark. Code Ann. § 11-9-715(b) (Repl. 2002).

IT IS SO ORDERED.

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OLAN W. REEVES, Chairman

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SHELBY W. TURNER, Commissioner

Commissioner McKinney dissents.

#### DISSENTING OPINION

I respectfully dissent from the majority opinion finding that the claimant proved by a preponderance of the evidence that she sustained a compensable injury. Based upon my de novo review of the record, I find that the claimant has failed to meet her burden of proof that she was performing employment services at the time of the accident.

The claimant was employed by the respondent-employer as a "special administrator." The claimant's job

duties entailed bookkeeping, as well as emptying the trash and cleaning. The claimant was also responsible for picking up the respondent-owner's children from school and taking them to the residence, which is the same location as the respondent's business.

On April 24, 2002, at approximately 2:08 p.m., while driving to pick up the respondent's children from school, the claimant was involved in a motor vehicle accident, when her vehicle was struck from behind. The claimant was taken to the emergency room and sought treatment with Dr. John Murphy, a chiropractic physician. The claimant continued to treat with Dr. Murphy through August 15, 2002.

Arkansas Code Annotated §11-9-102(4)(A)(i)(Repl. 2002) defines "compensable injury" as "[a]n accidental injury causing internal or external physical harm to the body . . . arising out of and in the course of employment and which requires medical services or results in disability or death. An injury is 'accidental' only if it is caused by a specific incident and is identifiable by time and place of occurrence." Under the statute, for an accidental injury to be compensable, the claimant must show that he sustained an accidental injury; that it caused internal or external

physical injury to the body; that the injury arose out of and in the course of employment; and that the injury required medical services or resulted in disability or death. Id. Additionally, the claimant must establish a compensable injury by medical evidence, supported by objective findings. Id. The injured party bears the burden of proof in establishing entitlement to benefits under the Workers' Compensation Act and must sustain that burden by a preponderance of the evidence. See Ark. Code Ann. § 11-9-102(4)(E)(i) (Repl. 2002); Clardy v. Medi-Homes LTC Servs. LLC, 75 Ark. App. 156, 55 S.W.3d 791 (2001).

Arkansas Code Annotated §11-9-102(4)(A)(i) (Repl. 2002) defines "compensable injury" as "an accidental injury causing internal or external harm . . . arising out of and in the course of employment . . ." Employment services are performed when the employee does something that is generally required by his or her employer. Collins v. Excel Spec. Prods., 347 Ark. 811, 69 S.W.3d 14 (March 7, 2002); Pifer v. Single Source Transp., 347 Ark. 851, 69 S.W.3d 1 (2002). We 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." Collins, supra; Pifer, supra. The test is

whether the injury occurred "within the time and space boundaries of employment, when the employee [was] carrying out the employer's purpose or advancing the employer's interests directly or indirectly." Collins, supra; Pifer, supra. This test has also been previously stated as whether the employee was engaged in the primary activity that he was hired to perform or in incidental activities which are inherently necessary for the performance of the primary activity. Olsten Kimberly Quality Care v. Pettey, 328 Ark. 381, 944 S.W.2d 524 (1997).

In my opinion, the evidence indicates that the claimant was not performing employment services at the time of her motor vehicle accident. According to the police report, the claimant's accident happened at approximately 2:08 in the afternoon. The claimant was not required to pick the children up until 2:45. The claimant was unable to explain why she was where she was at the time of the accident and why she was 37 minutes early picking up the respondent's children. The claimant testified that she was in a truck that belonged to her and that she left the employment's premises and went toward the school where the kids were in school. The only reasonable deduction is that

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the claimant was going to do something else other than pick up the kids.

Therefore, for all the reasons set forth herein, I respectfully dissent from the majority opinion.

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KAREN H. MCKINNEY, Commissioner