

NOT DESIGNATED FOR PUBLICATION

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F305560

MELINDA S. PENDERGRASS,
EMPLOYEE

CLAIMANT

BEVERLY ENTERPRISES, D/B/A
SALINE NURSING CENTER,
EMPLOYER

RESPONDENT

INSURANCE COMPANY OF THE STATE
OF PENNSYLVANIA,
INSURANCE CARRIER

RESPONDENT

OPINION FILED JUNE 28, 2004

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

Claimant represented by HONORABLE D. FLOYD HERRING, Attorney
at Law, Little Rock, Arkansas.

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

Decision of the Administrative Law Judge: Affirmed and
adopted.

OPINION AND ORDER

The claimant appeals from a decision of the
Administrative Law Judge filed September 19, 2003. The
Administrative Law Judge entered the following findings of
fact and conclusions of law:

1. The Arkansas Workers' Compensation Commission has jurisdiction of the parties and subject matter of this claim.
2. Pursuant to the stipulations of the parties and the record, the employment relationship existed at all pertinent times; the claimant

sustained injuries to her left knee February 27, 2003, when she slipped in the employer's parking lot on the way to her personal vehicle; and that her average weekly wage was \$328.50, so that she would be entitled to a compensation rate for total disability in the amount of \$219.00.

3. The preponderance of the evidence fails to show that the claimant's left knee injuries occurred at a time when she was performing employment services.

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.

OLAN W. REEVES, Chairman

KAREN H. MCKINNEY, Commissioner

Commissioner Turner dissents.

I dissent from the Majority opinion finding that Claimant was not performing employment services at the time of her injury. The undisputed evidence shows that at the time of Claimant's fall, she was acting pursuant to a specific directive of her supervisor. I, therefore, find that Claimant's knee injury is compensable.

On the date of the injury, Claimant was a probationary employee of Respondent and worked the 11:00 p.m. to 7:00 a.m. shift. Claimant called in prior to her shift to inform her supervisor that she could not come to work because she could not drive her young daughter to her mother's home as a result of severe winter weather and had no childcare for her daughter. The undisputed evidence shows that Claimant was told that Respondent was short staffed due to the weather and that Claimant could bring her daughter to work or be terminated. Given these choices, Claimant brought her daughter to work with her and the child slept in an extra bed during Claimant's shift.

At 6:30 a.m., Claimant's supervisor, Laura Jo Kirby, told Claimant to go outside and start her car so that Claimant's child would not get ill while riding in the car as a result of the severe cold and ice. Kirby testified

that she directed Claimant to go outside to start her car and that she expected Claimant to follow her orders:

Q: Now, at some time in the morning of February 27th, did you direct Melinda to do anything?

A: Uh-huh. It was about 6:30. We had done, we had go some of the patients up, and we changed the residents. And I told her, you know, she had been working all night long and hadn't had a break, and I said, "Why don't you go ahead and take your break and go ahead and warm the car up so the baby won't get sick. You know, I have a four-year-old. I said, "Go ahead and warm you car up, and I'll sit back here and watch the hall till you get back," which would have taken her about five minutes to (unintelligible).

Q: Do you normally expect your CNA's, the people you supervise, to do what you tell them to do?

A: Oh, yeah.

Respondents have argued that Claimant was on her break at the time of the injury. I find this argument irrelevant in light of the fact that Claimant was following her supervisor's orders at the time of her injury. In any event, Kirby's also testified that Claimant was not to take a normal 15 minute break, but was to simply follow her directive to go outside to warm up the car and come directly back inside so that additional work could be done before

their shift ended. Kirby also explained that Claimant was the only CNA on that particular hall and that she had to be present to monitor the patients in order for Claimant to leave the hall.

For these reasons, I find that the Majority's has erred in failing to award benefits to Claimant.

SHELBY W. TURNER, Commissioner