

NOT DESIGNATED FOR PUBLICATION

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F306369

LINDA BOSS FOSTER, EMPLOYEE	CLAIMANT
EXPRESS PERSONNEL SERVICES, EMPLOYER	RESPONDENT
AMERICAN HOME ASSURANCE COMPANY, CARRIER	RESPONDENT

OPINION FILED APRIL 22, 2005

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

Claimant represented by HONORABLE GREGORY R. GILES, Attorney at Law, Texarkana, Arkansas.

Respondent represented by HONORABLE CAROL L. WORLEY, 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 April 21, 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. Claimant's compensation rate for TTD at the time of the incident was \$240.00 and her PPD compensation rate was \$180.00.
3. The stipulations agreed to by the parties and set forth above are hereby accepted as fact.

4. I find that the claimant was not performing any employment duties at the time of her fall.

5. The respondents have 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.

In affirming and adopting the decision of the Administrative Law Judge we acknowledge an error on page 6 of the Administrative Law Judge's opinion. Accordingly, we have carefully reviewed the case cited by the Administrative Law Judge, and find that the following quotation properly sets forth the law with regard to employment services.

Act 796 defines a compensable injury as "[a]n accidental injury ... arising out of and in the course of employment. ..." Ark. Code Ann. § 11-9-102(4) (A) (i). A compensable injury does not include an "[i]njury which was inflicted upon the employee at a time when employment services were not being performed... ." Ark. Code Ann. § 11-9-102(4) (B) (iii) (emphasis added). However, Act 796 does

not define the phrase "in the course of employment" or the term "employment services," Olsten Kimberly Quality Care v. Pettey, 328 Ark. 381, 944 S.W.2d 524 (1997). It, therefore, falls to this court to define these terms in a manner that neither broadens nor narrows the scope Act 796 of 1993. Ark. Code Ann. § 11-9-1001 (Repl. 1996). When the meaning of a statutory term is ambiguous, we look to the language of the statute, the subject matter, the object to be accomplished, the purpose to be served, the remedy provided, the legislative history, and other appropriate means that shed light on the subject. Stephens v. Arkansas Sch. for the Blind, 341 Ark. 939, 20 S.W.3d 397 (2000). Although the statute does not define the term "employment services," the Commission as well as the Arkansas appellate courts have previously held that an employee is performing employment services when he is engaging in an activity which carries out the employer's purpose or advances the employer's interest directly or indirectly. Cheri Pettey v. Olsten Kimberly Quality Care, Full Commission Opinion Sept. 13, 1995 (E405037); 328 Ark. 381, 944 S.W.2d 381 (1997). An employee carries out the employer's purpose or advances the employer's interest when he engages in the primary activity which he was hired to perform. Id.; Kenneth Behr v. Universal Antenna, Full Commission Opinion Dec. 6, 1995 (E408376). When an employee engages in incidental activities which are inherently necessary for the performance of the primary employment activity, the employee carries out the employer's purpose or advances the employer's interest. Id.

Pifer v. Single Source Transportation, 347 Ark. 851, 69 S.W.3d 1 (2002).

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.

DISSENTING OPINION

The Majority is affirming a dismissal of this claim. Because I find that the Administrative Law Judge's decision did not correctly apply the law as it applies to this case, I dissent.

The claimant was injured shortly after arriving at work on the morning of June 6, 2003. The claimant had entered her place of employment and slipped and fell on a wet floor. The fall occurred in the service area of the car

dealership in which the respondent had assigned the claimant to work. While the claimant did not have any employment duties in the service area, she was following the designated route to the location of her assigned duties. Significantly, the time clock was located at the door through which the claimant had entered (the claimant did not clock since she was, at this time, an employee of the respondent, a temporary employment company, and her time sheets were handled in a different manner).

In denying this claim, the ALJ based the denial upon his interpretation of A.C.A. §11-9-102 (4) (B) (iii) which states:

An injury is not compensable if it was inflicted upon the employee at a time when employment services were not being performed, or before the employee was hired or after the employment relationship is terminated.

The Arkansas Supreme Court reviewed that statute in Pifer v. Single Source Transport, 347 Ark. 851, 69 S. W. 3rd 1 (2002). The Court held that the test for determining whether an employee is performing an employment service was the same used when determining whether an employee was acting within the course of the employment. The Court explained that the test was 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 (citing to White v. Georgia Pacific Corporation, 339, Ark. 474, 6 S. W. 3rd 98 (1999)).

I find that the present claim is controlled by the Court of Appeals' decision in Caffey v. Sanyo Manufacturing Corporation, ___ Ark. App. ___, ___ S. W. 3rd ___ (March 10, 2004). In that case, the claimant had passed through two security guard check points and was approaching the clock-in area. The claimant fell just before reaching the time clock. The Court applied the Pifer definition of employment services and noted that the claimant was following the procedures required by the employer to enter their facility. Accordingly, the Court held that she was performing an employment service.

In the present case, the claimant was following the procedure required by her employer. That is, she was entering through the service area, and going directly to a co-employee's work station to receive records of the previous day's transactions. This procedure was what the employer required her to do and in performing them, she was advancing their interest. I do not see any doubt that under

the statutory interpretations of the Arkansas Supreme Court and the Arkansas Court of Appeals, not to mention this Commission, the claimant was performing an employment service. Therefore, I find that she established that she was injured while acting in the course and scope of her employment and that she is entitled to all appropriate benefits.

For the above stated reasons, I respectfully dissent.

SHELBY W. TURNER, Commissioner