

**NOT DESIGNATED FOR PUBLICATION**

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F308900

PEGGY JACKSON, EMPLOYEE	CLAIMANT
PIKE COUNTY SHERIFF'S DEPT., EMPLOYER	RESPONDENT
ASSOC. OF ARK. COUNTIES, CARRIER	RESPONDENT

**OPINION FILED MARCH 15, 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 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 June 8, 2004.

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

1. The Arkansas Workers' Compensation Commission has jurisdiction of this claim.
2. The stipulations agreed to by the parties are reasonable and are hereby accepted as fact.
3. The claimant has failed to prove by a preponderance of the evidence that she

was engaged in employment services at the time of her July 9, 2003, injury.

4. The claimant has therefore failed to prove by a preponderance of the evidence that she sustained a compensable injury on July 9, 2004.

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.

**DISSENTING OPINION**

I respectfully dissent from the majority opinion. I find that Claimant was performing employment services at the time of her injury.

Claimant, a dispatcher for Respondent, was sent to Little Rock for a three day training seminar when she was injured on July 8, 2003. Her supervisor made hotel reservations for her and she drove to Little Rock in a police unit provided by the employer. Claimant attended one day of the seminar and returned to the hotel room to do homework required for the next day's seminar before going to sleep. About 2 or 3 o'clock in the morning, Claimant was awakened by the smoke alarm in her room. There was not a fire or smoke in her room and the hotel staff refused to assist her in turning the alarm off. The loud, constant noise from the alarm prevented her from falling back to sleep, so she attempted to take the batteries out of the alarm by climbing onto a desk located beneath the alarm. She ultimately fell while attempting to step back down from the desk onto a chair. Claimant incurred injuries to her lower back and hip. She was released to return to work on

February 2, 2004, but the Respondent had already fired her on January 22<sup>nd</sup>. Respondent has controverted this claim and argues that Claimant was not performing employment services at the time of the fall.

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 Claimant was performing employment services at the time of her fall because she was furthering her employer's interest. Had Claimant not attempted to turn off the alarm, she would not have been able to obtain the additional rest needed to be alert and attentive for the training that she was to attend later that morning. It was not feasible for Claimant to attempt to obtain other lodging arrangements in the middle of the night and she was

unsuccessful in obtaining assistance from the hotel staff. Clearly, Claimant's actions in turning off the alarm were an attempt to enable her to return to sleep and be well rested for the training session she was to attend later that morning. I find, therefore, that Claimant was advancing her employer's interest at the time she was injured.

For these reasons, I dissent and find that the Administrative Law Judge's decision should be reversed.

---

SHELBY W. TURNER, Commissioner