

NOT DESIGNATED FOR PUBLICATION

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F405352

JANICE M. PARKER,
EMPLOYEE

CLAIMANT

COMCAST CORPORATION,
EMPLOYER

RESPONDENT

USF&G,
INSURANCE CARRIER

RESPONDENT

OPINION FILED DECEMBER 18, 2006

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

Claimant appears pro se.

Respondents represented by the HONORABLE DAVID C. JONES,
Attorney at Law, Little Rock, Arkansas.

Decision of Administrative Law Judge: Affirmed and
Adopted.

OPINION AND ORDER

Claimant appeals an opinion and order of the
Administrative Law Judge filed May 24, 2006. In said
order, the Administrative Law Judge made the following
findings of fact and conclusions of law:

1. There was an employer-employee
relationship on May 8, 2004.
2. The compensation rates are \$428/321.

3. The respondents have accepted a 13% permanent impairment rating.

4. The claimant has failed to prove by a preponderance of the evidence that she was performing employment services at the time of her injury on May 8, 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.

The claimant alleges that she sustained a compensable injury that is governed by the Arkansas Workers' Compensation Act, A.C.A. § 11-9-101 et seq. The claimant's alleged injury is, indeed, an injury that is covered by the Act; however, the claimant has failed to establish the elements necessary to prove a compensable injury by a preponderance of the evidence.

Therefore we affirm and adopt the May 24, 2006 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 must respectfully dissent from the Majority opinion finding that the claimant was not acting in the course and scope of employment at the time of her injury. Instead, I find that the claimant has met her burden of proof and shown by a preponderance of the evidence that she was acting in the course and scope of employment at the time of her injury.

The facts in the present case are relatively simple. The claimant worked as a Customer Executive III. The claimant was scheduled to work on a Saturday. The claimant worked in a building that housed both the respondents and other employers. On the weekends, the

respondents' workers were required to use a badge to enter the building for security purposes. It is unclear what security measures the other companies housed in the building used.

On the day of injury, the claimant went to the first floor for a soda. She then went to the third floor, where she would perform her job. In order to start her job, the claimant would have to exit the elevator, use a badge to get in an office, and then clock in on her phone. Approximately four or five minutes before the claimant's scheduled shift, she exited the third floor public elevator. However, the elevator had stopped between floors, causing the claimant to jerk while exiting the elevator and causing injury to her back.

The Majority, by affirming and adopting the decision of the Administrative Law Judge as their own, denies the claimant benefits on the basis that she was not performing employment services. In making this finding, the Majority reasons that the claimant was in a public place and had not begun her job and therefore was not acting in the course and scope of employment.

Arkansas Code Annotated §11-9-102(4)(B)(iii) provides that an injury is not compensable if the injury was sustained during a time in which employment services were not being performed. An employee is performing employment services when he or she is doing something that is generally required by his employer. Collins v. Excel Spec. Products, 347 Ark. 811, 69 S.W.3d 14 (2002). The test of determining whether an injury occurred during employment services is the same test that is used for determining if an injury occurred out of and in the course and scope of employment. 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 interest either directly or indirectly. Foster v. Express Personnel Services, CA 05-602 (Ark. App. 1-4-2006), citing, Collins, supra, also citing White v. Georgia-Pacific Corp., 339 Ark. 474, 6 S.W. 3d 98 (1999); Olsten Kimberly Quality Care v. Pettey, 328 Ark. 381, 944 S.W.2d 524 (1997). The going and coming rule ordinarily precludes recovery for an injury sustained while an employee is going or returning from work. Moncus v. Billingsley Logging, CA 05-1353 (Ark. App. 5-18-06).

One exception to the rule is in the instance that an employee must travel from job site to job site, whether or not he is paid for travel time. Pettey, See, supra.

I also note that in addition to Caffey and Moncus, the Courts have repeatedly ruled for the claimant in instances where they were not "on the clock", but were acting on behalf of the employer's interest. See, Wal-Mart Stores, Inc., v. Sands, 80 Ark. App. 51, 91 S.W. 3d 93, (finding that a worker injured while attempting to comply with a security measure imposed by the respondent and returning from break was performing employment services). See also; Wallace v. West Fraser South, Inc., (05-254) (Ark. 1-26-06) (finding that a claimant that was merely returning from an authorized on-site break and injured while returning to work was acting in the course and scope of employment). See also; Shults v. Pulaski County Sp. School Dist., 63 Ark. App. 171, 976 S.W. 2d 399, (finding that a claimant who worked as a custodian and was required to disarm the alarm system and tripped and was injured while entering the building to see if he needed to perform that duty was performing employment services). See also; Foster, supra, (finding that a worker that was injured while

obtaining work papers and walking to her desk was performing employment services).

I find that this case is similar to the case of Caffey v. Sanyo Mfg. Corp., 85 Ark. App. 342, 154 S.W.3d 274, (2004). In Caffey, the claimant worked as a factory worker. She used a time clock and was not paid until 7:30 a.m., which was the time her line began production. The claimant was required to report to show identification at a guard shack before parking their vehicles. She was required to show a badge again at a guard shack before entering the plant. At the time of her injury, the claimant had entered the building and was going to the time clock. She fell approximately five feet before she got to the clock. Id.

In finding the claimant sustained a compensable injury that was sustained while performing employment services, the Court of Appeals reasoned that the claimant was required to perform the tasks of showing identification and clocking in before she was paid. However, despite the fact the claimant was not paid for these services, the claimant's actions were required by the employer and advanced their interests. The Court further opined,

The testimony demonstrates that appellant arrived in sufficient time to perform the identification procedure and clock in although she was not paid for her compliance. We do not, however, view payment of for these services as determinative of employment services. Appellants actions were not only required by appellee, but the acts also advanced appellee's interest.

Id.

I note the Majority's argument that the present case is distinguished from Foster and from Wallace. However, I find that pursuant to the rationale of Caffey, this claim is compensable. In my opinion, the present case is similar to Caffey, in that in both instances the claimants had not yet begun their scheduled tasks. Rather, they were merely on their way to their work station after entering the building. Just as in Caffey, the claimant in the present case was required to use a badge in order to report to work and was not paid for the act of showing or using the badge. Additionally, just as in Caffey, in the present case, the purpose of using such a badge was to promote security for the employer. Finally, just as in Caffey, the claimant in the present case was merely steps away from her desk or from being able to clock in. Accordingly, I find that just as in Caffey, the claimant in the present case was promoting the interests of the

employer. Accordingly, I find that the claimant was performing employment services at the time of her injury.

For the aforementioned reasons, I must respectfully dissent.

SHELBY W. TURNER, Commissioner