

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F610949

EVA L. FRAZIER, EMPLOYEE	CLAIMANT
WAL-MART ASSOCIATES, INC., EMPLOYER	RESPONDENT
CLAIMS MANAGEMENT, INC., TPA	RESPONDENT

OPINION FILED AUGUST 20, 2008

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

Claimant represented by HONORABLE JAMES BENNETT, Attorney at Law, El Dorado, Arkansas.

Respondent represented by HONORABLE JEREMY SWEARINGEN, Attorney at Law, Little Rock, Arkansas.

Decision of Administrative Law Judge: Reversed.

OPINION AND ORDER

The respondents appeal a decision by the Administrative Law Judge finding that the claimant was performing employment services on September 30, 2006 and finding that the claimant proved by a preponderance of the evidence that she sustained a compensable injury to her neck. Based upon our de novo review of the record, we find that the claimant has failed to meet her burden of proof that she was performing employment services at the time of her fall. Accordingly, we hereby reverse the decision of the

Administrative Law Judge. The claimant, at the hearing, had alleged that she sustained injuries to her right hip, right shoulder and right elbow as well and the Administrative Law Judge found these injuries were not compensable. The claimant did not appeal this finding.

The respondent's have also appealed the Administrative Law Judge's finding that claimant's failure to respond timely to the Respondent's Requests for Admissions was excused, such that the requested facts were not deemed admitted. In our opinion, the decision of the Administrative Law Judge was correct.

At the onset of the hearing, respondents requested a ruling on their Motion to Deem Requests for Admissions Admitted. Claimant's counsel did not dispute the fact that respondents submitted Requests for Admission to the claimant on January 25, 2007. Claimant's counsel also did not dispute the fact that the Requests for Admissions were not answered by the claimant and submitted to respondents' counsel until March 5, 2007. Claimant's counsel stated he had trouble getting the claimant in to answer the Requests for

Admissions, but that, in his opinion, respondents had not been prejudiced by the delay. Respondents correctly argued Rule 36 of the Arkansas Rules of Civil Procedure with regard to the Requests for Admissions. However, Ark. Code Ann. § 11-9-705(a)(1) states, in part: ".... The Arkansas Workers' Compensation Commission shall not be bound by technical or statutory rules of evidence or by technical or formal rules of procedure...." The purpose of Ark. Code Ann. § 11-9-705(a)(1) is to allow a simplified forum for parties to present evidence which is equitable and expeditious. Here, claimant provided the respondents her answers almost thirty (30) days prior to the full hearing in this matter. We find the respondents were not unduly prejudiced by the claimant's delay and that Ark. Code Ann. § 11-9-705(a)(1) quoted herein applies. Therefore, we find respondents Motion to Deem Requests for Admissions Admitted should be and hereby is denied and the decision of the Administrative Law Judge should be and hereby is affirmed.

There was no dispute between the parties about the fact that the claimant fell inside the respondent employer's

store on September 30, 2006. There was also no dispute that the claimant was clocked in at the time of her fall.

However, what is in dispute is whether or not the claimant was performing employment services at the time she fell.

Act 796 defines a compensable injury as a "an accidental injury causing internal or external physical harm to the body or accidental injury to prosthetic appliances, including eyeglasses, contact lenses, or hearing aids, arising out of and in the course of employment and which requires medical services or results in disability or death." 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).

Employment services are performed when the employee does something that is generally required by his or her employer. Collins v. Excel Specialty Products, 347 Ark. 811, 69 S.W.3d 14 (2002); Pifer v. Single Source Transport, 347 Ark. 851, 69 S.W.3d 1 (2002); White v. Georgia-Pacific

Corp., 339 Ark 474, 6 S.W.3d 98 (1999). 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." Smith v. City of Ft. Smith, 84 Ark. App. 430, 143 S.W.3d 593 (2004); Collins, supra; Pifer, supra; White, supra; Olsten Kimberly Quality Care v. Pettey, 328 Ark. 381, 944 S.W.2d 524 (1997). The test is 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." Collins, supra; Pifer, supra; White, supra; Olsten, supra. The critical issue is whether the interests of the employer were being carried out by the employee at the time of the injury. Collins, supra. In Collins and Pifer, the Arkansas Supreme Court specifically overruled "all prior decisions by the Arkansas Court of Appeals" to the extent that they were inconsistent with the holdings in those two cases. Wal-Mart Stores, Inc. v. King, 93 Ark. App. 101, ___ S.W.3d ___ (2005).

An employee is generally said not to be acting within the course and scope of employment when he is traveling to and from the workplace, the rationale being that an employee is not within the course and scope of his/her employment while traveling to and from his job. Pettey, supra.

Whether a worker was performing employment services within the course of employment depends on the particular facts and circumstances of each case. The controlling test is whether the employee is engaged in the primary activity that she was hired to perform, or in incidental activities that are inherently necessary for the performance of the primary activity.

In Conner v. Texarkana School District, ___ Ark. App. ___, ___ S.W.3d ___ (2007) the Court set forth a summary of all precedent specifically dealing with employees injured during breaks. The Court stated:

Our cases seem to point in different directions. On one hand, we and the supreme court have held injuries compensable when the employee is required to stay on his or her employer's premises and perform duties,

if the need arises, during the break. E.g., Ray v. University of Arkansas, 66 Ark. App. 177, 990 S.W.2d 558 (1999); Wallace v. West Fraser South, 365 Ark. 68, 225 S.W.3d 361 (2006). In these cases, the employee's presence and availability advanced the employer's interest. On the other hand, we have held injuries not compensable when the employer receives no benefit from the activity being performed during the break or when the activity is not inherently necessary for the performance of the employee's job, even though his or her presence or action benefits the employer. E.g., McKinney v. Trane Co., 84 Ark. App. 424, 429, 143 S.W.3d 581, 585 (2004); Smith v. City of Fort Smith, 84 Ark. App. 430, 435, 143 S.W.3d 593, 596-97 (2004). We must explore these precedents in some detail to decide where Conner's case fits. The Commission found this case similar to Ray v. University of Arkansas. There, this court held that a cafeteria worker was performing employment services when she slipped in the cafeteria during a fifteen-minute break. Ray was required to remain on her employer's premises during breaks, was paid for her breaks, and was required to assist students during her breaks if the need arose. 66 Ark. App. at 180-82, 990 S.W.2d at 560-62. Thus Ray's employer gleaned benefits from her being present in the cafeteria and available to help students during her breaks. Ibid. Here the Commission found that, like in Ray, Conner "at the time of his injury, had returned to the employer's premises and was, once again,

on-call and subject to being required to carry out all of his employment duties.”

An injury suffered by an employee while on a break is compensable if the employer has imposed some duty or requirement to be fulfilled by the employee during the break. E.g., Moncus v. Billingsley Logging and American Ins. Co., 366 Ark. 383, 390, ___ S.W.3d ___, ___ (2006). In Moncus, although the employee was not engaged in the activity for which he was primarily employed when he was fatally injured, he was carrying out the express directions of his employer by following the employer to a job site to begin working. Ibid. Similarly, in Wal-Mart Stores, Inc. v. Sands, 80 Ark. App. 51, 91 S.W.3d 93 (2002), Sands suffered a compensable injury when she was returning her purse to her locker on her way back from a scheduled break. For security reasons, Wal-Mart required employees to place their belongings in their locker before returning to work. 80 Ark. App. at 55, 91 S.W.3d at 95. Finally, in Wallace v. West Fraser South, our supreme court held that an employee suffered a compensable injury when he fell while walking over a board—a board placed by his employer across a ditch for employees to use as a bridge—when returning from a break. 365 Ark. at 70-75, 225 S.W.3d at 364-68. Wallace was advancing his employer’s interest during the break because he remained on the clock, was not allowed to leave the premises, and could be called back to work. Wallace, 365 Ark. at 75, 225 S.W.3d at 367-68.

Further, our supreme court recently drew a bright-line rule for “residential employees.” Economy Inn & Suites v. Jivan, ___ Ark. ___, ___ S.W.3d ___ (June 28, 2007). In Economy Inn, a hotel

manager who lived on the premises and was "on-call" twenty-four hours a day suffered a compensable injury while she was changing clothes in her bathroom to go to the gym. In so ruling, the supreme court employed an increased-risk analysis and held that "[Jivan's] presence on the premises during the fire exposed her to a greater degree of risk than someone who did not live on the premises. . . . Thus, [she] indirectly advanced her employer's interests, even while remaining on the premises during the fire." Ibid. (Conner's case has remained under submission for so long because of the need for *en banc* consideration and because we hoped the supreme court's decision in Economy Inn would consider and reconcile all the cases in point. It did not.)

In contrast, an injury suffered by a non-residential employee is not compensable where the employee is performing an activity merely for the purpose of attending to his personal needs. In Cook v. ABF Freight Systems, Inc., 88 Ark. App. 86, 194 S.W.3d 794 (2004), a truck driver who was "off the clock" but "on-call" in a motel room provided by his employer was injured while turning on the lights in the bathroom. We held that he was not performing employment services because there was no evidence that his going into the bathroom was for any reason other than to attend to his own personal needs. 88 Ark. App. at 90-91, 194 S.W.3d at 797.

The activity being performed at the time of the injury must also be inherently necessary for the performance of the employee's job. For example, in Smith v. City of Fort Smith, 84 Ark. App. 430, 143 S.W.3d 593 (2004), we affirmed the Commission's denial of benefits for an injury that occurred within normal working hours, on the employer's premises, and while he was advancing the employer's interest because the activity was not inherently necessary for Smith's job. He worked as a truck driver for Fort Smith at the city dump. The city allowed employees to remove debris from the dump for their own personal use, which, in turn benefitted the city. Smith was injured removing gravel for his own use. We rejected compensability because loading gravel for one's own use was not inherently necessary for the performance of Smith's job as a dump-truck driver. 84 Ark. App. at 435, 143 S.W.3d at 596-97.

The claimant worked early in the day as a cashier at the front of the respondent employer's store. She decided to order Chinese food and eat lunch with her daughter in the employee break room at the back of the store. After eating lunch, the claimant clocked back in, left the back of the store and walked down the grocery aisle on the side of the store toward the front entrance by the Portrait Studio. The

claimant's daughter worked in the Portrait Studio inside the store. As the claimant was walking down the aisle, she slipped and fell on a grape near the produce section.

In our opinion, a review of the evidence demonstrates that the claimant was not performing employment services at the time of her fall. The claimant testified that when she fell she was headed for the customer service desk (CSM) to obtain her afternoon cashiering assignment. However, immediately following the accident the claimant advised that she was headed outside to finish her lunch. After learning that workers' compensation would not cover her injury, the claimant changed her story. After considering all the evidence, including the contemporaneous statements made by the claimant, we do not find the claimant credible. It is well settled that questions concerning the credibility of witnesses and the weight to be given to their testimony are within the exclusive province of the Commission. White v. Gregg Agriculture Ent., 72 Ark. App. 309, 37 S.W.3d 649 (2001); Scarborough v. Cherokee Enterprises, 306 Ark. 641, 816 S.W.2d 876 (1991); Ark. Coal

Co. v. Steele, 237 Ark. 727, 375 S.W.2d 673 (1964); Potlatch Forest Inc. v. Smith, 237 Ark. 468, 374 S.W.2d 166 (1964).

Arkansas Code Annotated section 11-9-704(b) (6) (A) vests with the Commission the duty to "review the evidence" and if deemed advisable to "hear the parties, their representatives, and witnesses." The statute further requires the Commission to determine, "on the basis of the record as a whole, whether the party having the burden of proof on the issue has established it by preponderance of the evidence." A.C.A. § 11-9-704(c) (2). Thus, in determining that the Commission's authority and duty to conduct a de novo review of the entire record, including issues of credibility as being constitutional, the Court of Appeals stated in Stiger v. State Tire Serv., 72 Ark. App. 250, 35 S.W.3d 335 (2000):

When the Commission reviews a cold record, demeanor is merely one factor to be considered in credibility determinations. Numerous other factors must be included in the Commission's analysis of a case and reaching its decision, including the plausibility of the witness's

testimony, the consistency of the witness's testimony with the other evidence and testimony, the interest of the witness in the outcome of the case, and the witness's bias, prejudice, or motives. The flexibility permitted the Commission adequately protects the claimant's right of due process of law.

Accordingly, when there are contradictions in the evidence, it is constitutionally within the Commission's exclusive province to reconcile the conflicting evidence and to determine the true facts. White v. Gregg Agriculture Ent., supra. In addition, the Commission is not required to believe the testimony of the claimant or other witnesses, but may accept and translate into findings of fact only those portions of the testimony it deems worthy of belief. Morelock v. Kearney Co., 48 Ark. App. 227, 894 S.W.2d 603 (1995)

It is the exclusive function of the Commission to determine the credibility of the witnesses and the weight to be given their testimony. Johnson v. Riceland Foods, 47 Ark. App. 71, 884 S.W.2d 275 (1994). Neither

the Workers' Compensation Act nor Arkansas case law contains a requirement that the Commission personally hear the testimony of any witness. There is nothing in the statutes that precludes the Commission from accepting or rejecting any finding made by the Administrative Law Judge, including findings pertaining to the credibility of witnesses. Stiger v. State Tire Serv., 72 Ark. App. 250, 35 S.W.3d 335 (2000). However, the findings of the Administrative Law Judge on issue of credibility are not binding on the Commission. Roberts v. Leo-Levi Hospital, 8 Ark. App. 184, 649 S.W.2d 402 (1983); Linthicum v. Mar-Bax Shirt Co., 23 Ark. App. 26, 741 S.W.2d (1987). By allowing the Commission to review evidence or, if deemed advisable, hear the parties, their representatives and witnesses, Ark. Code Ann. §11-9-704(b)(6)(A)(Repl. 2002), adequately protects a claimant's due-process rights. Id. When the Commission reviews a cold record, demeanor is merely one factor to be considered in determining credibility. Numerous other factors must be considered, including the plausibility of the witness's testimony, the consistency of the witness's

testimony with the other evidence and testimony, the interest of the witness in the outcome of the case, and the witness's bias, prejudice, or motives. Id. "The flexibility permitted the Commission adequately protects the claimant's right of due process of law." Id.

The respondent's offered the testimony of Mr. Robert "Shane" George, assistant manager. Mr. George testified that the route the claimant was taking placed her "well past the corner where she would have turned to go to the CSM area."

Immediately following the incident, Mr. George and Amanda Jones took the claimant to the back of the store to fill out an incident report. The claimant signed the "Workers' Compensation Request for Medical Care" form which stated that she had "clocked out for lunch, was walking through produce, stepped on a grape & slipped & fell on right side. The claimant also completed an "Associate Statement - Workers' Compensation" where she initially indicated that she was on lunch in response to the question

regarding "Was This Your Regular Job Duty". She then crossed out the statement and put "No" in response to the question.

Ms. Jones' testimony demonstrates that the claimant changed her history about the fall only after learning that her injuries would not be covered by workers' compensation if the claimant was on lunch at the time of the fall. The claimant changed her story from being on lunch to being clocked back in. The claimant was indeed clocked back in but at the time of the fall she was not wearing her company vest which is required to be worn by all employees when they are on duty. Ms. Jones testified that if the claimant was going outside then this was "stealing time." The claimant admitted that she and her daughter were active smokers and if she had continued walking in the direction she was going, she would have been in the area where employees smoke during their breaks. In fact, the claimant told both Mr. George and Ms. Jones that she was going back outside to finish her lunch at the time of her fall.

In our opinion, the claimant's credibility is suspect at best. She initially told Mr. George and Ms. Jones

that she was going outside to finish her lunch but changed her story when she found out that she would not receive workers' compensation benefits if she was on lunch. The claimant was clocked back in, contrary to the respondent employer's policy that she was to be clocked out when she was on her lunch break. Her story that she was headed back to the CSM desk to get her afternoon assignment does not make any sense either since she was clearly not in the path she would take to go to the CSM desk from the back of the store.

Therefore, after considering the evidence, we find that the claimant has failed to prove by a preponderance of the evidence that she was performing employment services at the time of her fall. When we consider the claimant's testimony, her lack of credibility, the testimony of Mr. George and Ms. Jones, it is clear that the claimant was on lunch at the time she fell and was not performing employment services. Accordingly, we hereby reverse the decision of the Administrative Law Judge.

IT IS SO ORDERED.

OLAN W. REEVES, Chairman

KAREN H. MCKINNEY, Commissioner

Commissioner Hood concurs, in part, and dissents, in part.

CONCURRING AND DISSENTING OPINION

I concur with the majority's finding regarding the Requests for Admissions. However, as I find the majority's reversal of the Administrative Law Judge's finding that the claimant was engaged in employment services at the time of her injury to be utterly ridiculous, I must respectfully dissent on that issue. Based upon a de novo review of the record in its entirety, I find that the preponderance of the evidence of record clearly shows that the claimant was performing employment services when she was injured.

The claimant testified that she ate lunch in the employee's break room on September 30, 2006. The claimant testified that after completing her meal, she clocked back

in, and as she was walking to the front of the store to get her work assignment from her supervisor, she slipped on a grape and fell. At the hearing, both parties admitted that the claimant slipped and fell on the respondent's premises and that the claimant was clocked-in at the time of the injury. The respondent, however, made lengthy arguments that the claimant was not performing employment services at the time of her fall. The Supreme Court of Arkansas has held several times that an employee is performing "employment services" when he or she "is doing something that is generally required by his or her employer...." Pifer v. Single Source Transportation, 347 Ark. 851, 69 S.W.3d 1 (2002); Collins v. Excel Specialty Products, 347 Ark. 811, 69 S.W.3d 14 (2002). Specifically, the Court has held that the test is 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." Wallace v. West Fraser South, Inc., 365 Ark. 68, 225 S.W. 3d 361 (2006), Moncus v. Billingsley Logging, 366 Ark. 383 (2006).

I find, as did the Administrative Law Judge, that the claimant was advancing the interests of her employer at the time of her fall. She was inside the employer's premises, on the clock, and walking to her supervisor to be instructed as to which department she was to report. The respondents argued that the claimant's daughter was walking beside her and they were going to the portrait studio instead of to the claimant's supervisor. The respondents also argued that the claimant was going outside to smoke or to possibly finish her lunch. While interesting, all of the respondent's theories about what the claimant may or may not have intended to do had she not fallen are merely speculations. The fact is, that the claimant ate in the employee's break room, finished eating, clocked back in, and then left the break area to report to a supervisor. En route from the break room to the front of the store, the claimant slipped and fell. Based on the above, I find that the claimant was performing employment services at the time of the injury.

In the majority opinion reversing the Administrative Law Judge's determination that the claimant was performing employment services when she fell the majority stated:

When we consider the claimant's testimony, her lack of credibility, the testimony of Mr. George and Ms. Jones, it is clear that the claimant was on lunch at the time she fell and was not performing employment services.

First, I wholeheartedly disagree with the majority's conclusion that the claimant was not credible. I find the claimant to be a credible witness. The majority asserts that the claimant is not credible because she "changed her story." However, I find that the claimant did not change her story. The claimant has consistently testified that she finished lunch, clocked back in and was walking in the store when she fell. She has also consistently testified that her intent in walking through the store was to report to a supervisor to receive her station assignment.

The majority erroneously relies on the testimony of the claimant's supervisor, Robert "Shane" George, for the proposition that the claimant "changed her story." Mr. George testified that the route the claimant was taking placed her "well past the corner where she would have turned to go to the CSM area." I would note that the respondent failed to offer any sort of diagram to demonstrate where the claimant actually fell. Without an actual diagram, any conclusion made by the majority as to the claimant's actual route or intended route is nothing more than sheer speculation.

The majority also relies on the testimony of Ms. Amanda Jones for the proposition that the claimant "changed her story." However, after reviewing the record, I find that Ms. Jones' testimony does not contradict the claimant's. At the hearing, Ms. Jones admitted that the claimant was clocked-in at the time of the injury. Subsequently, Ms. Jones opined that the claimant worked in Sporting Goods section and then corrected herself to state that the claimant actually worked in the Garden Center. Ms. Jones

also testified that the claimant "should have been going to [the Garden Center] unless specified by a manager to be in another area of the store." Contrary to the majority's conclusion that Ms. Jones' testimony undermines the testimony of the claimant, I find that Ms. Jones' testimony actually bolsters the claimant's testimony that the claimant was headed to the CSM area to ask about her section assignment when she fell.

Along the same lines, the respondent's brief states "the fact remains that her fall occurred before [underlined and italicized in original] she had turned the corner and started toward the CSM desk...." However, Mr. George testified that the claimant's route was "well past the corner where she would have turned to go to the CSM area [emphasis added here]." Again, without a diagram, it is really impossible to determine where the claimant was on her route through the store, however, when there are contradictions in the evidence, it is within the Commission's province to reconcile conflicting evidence and to determine the true facts. White v. Gregg Agricultural

Ent., 72 Ark. App. 309, 37 S.W.3d 649 (2001). The Commission is not required to believe the testimony of the claimant or any other witness. The testimony of an interested party is always considered to be controverted. Continental Express v. Harris, 61 Ark. App. 198, 965 S.W. 2d 811 (1998). Here, while the majority has apparently determined that the claimant's testimony is controverted because the claimant is an "interested party", the majority has failed to consider that the testimony of the respondent witnesses must also be considered controverted, as the witnesses are current employees of the respondent, and therefore, interested parties. I find that the testimonies of the respondent witnesses are full of contradictions. Mr. George's testimony does not match Ms. Jones' testimony. The respondent witnesses' testimonies do not match the arguments contained in the respondent's brief. **MR. WELLS:** With such contradictions, I must find that the claimant, who has consistently stated that she was on her way to get her register assignment when she fell, to be more credible.

The majority has also mistakenly relied on the claimant's Associate Statement in which she states "no" as the response to the question "Was this your regular job duty?" as evidence that the claimant is not credible. At the hearing, she testified that she was filling-in at the front registers on that day and testified that she considered herself a Garden Center Associate, an area distinct from the other sections in the store. As she understood the question, the claimant answered the question properly, as she was not performing her regular job duties that day. Indeed, if one reads the question in the Associate Statement literally, the claimant was correct in stating that slipping on grapes or falling down were not her regular job duties, and she answered as such. Furthermore, Mr. George stated at the hearing that the claimant was "somewhat frazzled" after having slipped on the floor. I would also note that the respondent's agent filled out some of the forms, adding to the possibility that material information was either omitted or confused. Under the circumstances, I find the form documents introduced by the respondent to be

extremely poor evidence, and the majority cannot properly base a credibility determination on them, let alone use them to determine whether or not the claimant was performing employment services when she fell.

Second, contrary to the majority's erroneous conclusion that the claimant was on lunch at the time of her fall, the evidence of record clearly shows that the claimant had finished lunch and had clocked back in when she fell. As the majority's conclusion is not supported by the evidence of record, I must find that the majority has based its conclusion on speculative theories advanced by the respondent as to what the claimant may or may not have been about to do had she not fallen, rather than on the evidence of record. The majority, in relying on the respondent's arguments, rather than the evidence of record, has clearly erred. Conjecture and speculation, even if plausible, cannot take the place of proof. Ark. Dept. of Correction v. Glover, 35 Ark. App. 32, 812 S.W.2d 692 (1991). Dena Construction Co. v. Herndon, 264 Ark. 791, 575 S.W.2d 155 (1979). Arkansas Methodist Hospital v. Adams, 43 Ark. App.

1, 858 S.W.2d 125 (1993). The respondent has advanced several theories regarding what the claimant may or may not have intended to do had she not fallen. The respondent speculated that although she was clocked in, she was not performing employment services but was instead attempting to "steal time." The respondent also speculated that the claimant was "going for a smoke break" or "going to finish lunch." While the respondent's "stealing time" or "going for a smoke break" or "going to finish lunch" theories are all interesting, none of them are supported by the evidence of record. Furthermore, as the evidence of record clearly shows that the claimant was not doing any of these activities when she fell, it is completely irrelevant that she may or may not have intended to do any of these things had she not fallen. Ark. Methodist Hospital v. Hampton, 90 Ark. App. 288, 205 S.W.3d 848 (2005).

In conclusion, the preponderance of the evidence of record shows that the claimant had finished eating, had clocked back in, and was reporting to her supervisor to receive her station assignment when she fell. Regardless of

what the claimant may or may not have been about to do had she not fallen, the claimant was advancing her employer's interests and was performing employment services when she fell. See Id.; Wal-Mart Stores, Inc. v. King, 93 Ark. App. 101, 216 S.W.3d 648 (2005); Wal-Mart Stores, Inc. v. Sands, 80 Ark. App. 51, 91 S.W.3d 93 (2002); Wallace v. West Fraser South, 90 Ark. App. 38, 203 S.W.3d 646 (2005).

For the aforementioned reasons, I must concur, in part, and respectfully dissent, in part.

PHILIP A. HOOD, Commissioner