

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. G003339

LINDA COBB,  
EMPLOYEE

CLAIMANT

ST. BERNARD'S REGIONAL MEDICAL CENTER,  
SELF-INSURED EMPLOYER

RESPONDENT

CHARTIS,  
TPA

RESPONDENT

OPINION FILED MARCH 3, 2011

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

Claimant represented by the HONORABLE PHILLIP WELLS,  
Attorney at Law, Jonesboro, Arkansas.

Respondent represented by the HONORABLE JARROD S. PARRISH,  
Attorney at Law, Little Rock, Arkansas.

Decision of Administrative Law Judge: Affirmed.

OPINION AND ORDER

The respondents appeal an administrative law judge's  
opinion filed September 22, 2010. The administrative law  
judge found that the claimant proved she sustained a  
compensable injury. After reviewing the entire record *de*  
*novo*, the Full Commission affirms the administrative law  
judge's opinion.

I. HISTORY

Linda Jo Frazier Cobb, age 58, testified that she had been a Registered Nurse since 1973. The record indicates that the claimant was hired by St. Bernards Medical Center on February 23, 2009. The claimant testified that her job title with the respondent-employer was Centralized Transfer Coordinator, which position involved "transferring all patients that come from any other facility to our facility, whether it be a direct admission or a - an emergency room admission." The claimant testified, "I take the telephone calls. We have a - a phone line that's 24-seven, and I take the calls and connect the facility physician that - the calling facility with one of our physicians to set up a transfer."

The parties stipulated that the employment relationship existed at all pertinent times, including March 24, 2010. The respondents' attorney questioned the claimant at deposition:

Q. I show the date of injury as March 24, 2010. Is that right?

A. Yes.

Q. Okay. Describe for me what happened that day?

A. I went to get some water to make some oatmeal and there's a - there's a hot water tap in the, what we call the doctors' lounge, and that's just a few feet down the hall from my office.

Q. Okay.

A. And I got the hot water, and I was coming back to my office, and opened the door to go - step out into the hallway, and the water spilled on my arm.

Q. You say to step out into the hallway from the doctors' lounge into the hallway?

A. Yes....It was - you go through a door that goes through the mail room, and then another door goes into the doctors' lounge, and I was coming through the mail room door into the hallway....

Q. How far is it, just paces wise, steps wise, from your office to where you were when you burnt yourself?

A. Twenty or twenty-five steps.

Q. Okay. And what did you have the water in, the hot water that you'd gathered?

A. In a styrofoam cup....

Q. And what - what made the water spill on you? What is your explanation for why it spilled?

A. I don't really have an explanation. I was going out the door, and it just spilled....The whole thing poured on me....

Q. What time of day did this happen?

A. About 7 a.m....

Q. And had you clocked in or punched in?

A. Yes.

Q. By the time you were doing this with the oatmeal?

A. Oh, yes....

Q. Had you done any work in your patient transfer coordinator job before going to get the oatmeal?

A. Absolutely, yes....

Q. The oatmeal that you're fixing was strictly for you? It was your breakfast for the day?

A. Yes.

Q. Okay. And where were you gonna eat the oatmeal once you prepared it?

A. At my desk.

Zepha McMullen testified that she was director over the respondent-employer's Patient Placement Center on the date of the alleged compensable injury, and that she understood the location of the claimant's accident to be "the physician lounge." Zepha McMullen testified that there was not a policy requiring the claimant to take a break at any certain time during the work day. Ms. McMullen testified on cross-examination that employees were allowed to take one unpaid 30-minute break for lunch and two paid breaks consisting of approximately 15 minutes duration. Ms. McMullen stated, "Let me clarify that the employee is not paid during the

lunch break but they are paid during the regular 15-minute break."

The claimant signed a Form AR-N, Employee's Notice Of Injury, on March 29, 2010. The claimant wrote on the Form AR-N that an accident had occurred in the "Dr. Dining Room" at 7 a.m. on March 24, 2010. The claimant wrote, "spilled hot water from hot water spigot in Drs lounge on hand & upper arm." An employee risk manager prepared a Workers Compensation - First Report Of Injury Or Illness on March 29, 2010. The First Report Of Injury indicated that the claimant had sustained an injury on March 24, 2010 while the claimant was "Making oatmeal for breakfast....Spilled hot water from hot water spigot making oatmeal for breakfast."

The claimant began treating with Dr. Joel Epperson on April 2, 2010: "This is a 57 year old white female who sustained a hot water burn to her left wrist at work on 3/24/10. The wound blistered and the blisters sloughed. She has been caring for the wound with silver sulfadiazine cream and gauze dressing changes. There are portions of the wound that are yellow and appear necrotic. She does have pain but it is well managed with prescription pain

medications....on the distal left forearm there is a burn wound."

Dr. Epperson's impression was "Hot water burn of left distal forearm with resulting second and third degree burns. PLAN: The nonviable, loose, necrotic tissue in the wound base was sharply excised using a curette today and a burn dressing was applied....The patient was instructed to return to the wound healing center in one week for follow-up evaluation and possible scheduling for excisional debridement in the operating room."

Dr. Epperson noted on April 21, 2010, "The patient returns to the Wound Healing Center after a two-week absence for evaluation of the burn injury to her left distal arm. Examination of the wound site today reveals that the burn completely epithelialized and has healed. The patient was advised on general scar management and was instructed to call back should exuberant scar tissue develop over the healed wound. Otherwise the patient was advised that the scar should become less pink, less firm, and less tender over the course of the next year or so. The patient was discharged from the Wound Healing Center in stable condition."

A pre-hearing order was filed on June 14, 2010. The claimant contended that "in furtherance of the employer's interest, Linda Cobb remained on the clock and either as a result of the personal comfort doctrine or what amounts to an injury arising out of and during the course of employment, Linda Cobb spilled hot water on her hand, wrist, and forearm preparing oatmeal for a breakfast snack. Ms. Cobb contends that any treatment, past and future, as a result of the burn injury should be held as compensable and paid for by the respondent-employer."

The respondents contended that the claimant was not performing employment services at the time of the alleged injury and that the claimant did not sustain a compensable injury on March 24, 2010.

The parties agreed to litigate the issues of "compensability (medical benefits) and controverted attorney fees."

After a hearing, an administrative law judge filed an opinion on September 22, 2010. The administrative law judge found, "On March 24, 2010, the claimant sustained an injury to her left hand/wrist within the course and scope of her employment and while performing employment services."

The respondents appeal to the Full Commission.

## II. ADJUDICATION

Act 796 of 1993, as codified at Ark. Code Ann. §11-9-102(4) (Repl. 2002), provides:

(A) "Compensable injury" means:

(i) An accidental injury causing internal or external physical harm to the body ... arising out of and in the course of employment and which requires medical services or results in disability or death. An injury is "accidental" only if it is caused by a specific incident and is identifiable by time and place of occurrence[.]

(B) "Compensable injury" does not include:

(iii) Injury which 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 was terminated[.]

An employee is performing employment services when she is doing something that is generally required by her employer. *Dairy Farmers of Am., Inc. v. Coker*, 98 Ark. App. 400, 255 S.W.3d 905 (2007). The Court of Appeals uses the same test to determine whether an employee is performing employment services as the Court does when determining whether an employee is acting within the course and scope of employment. *Parker v. Comcast Cable Corp.*, 100 Ark. App. 400, 269 S.W.3d 391 (2007). 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. *Id.* The issue of whether an employee was performing employment services within the course of employment depends on the particular facts and circumstances of each case. *Texarkana Sch. Dist. v. Conner*, 373 Ark. 372, 284 S.W.3d 57 (2008).

A compensable injury must be established by medical evidence supported by objective findings. Ark. Code Ann. §11-9-102(4) (D) (Repl. 2002). "Objective findings" are those findings which cannot come under the voluntary control of the patient. Ark. Code Ann. §11-9-102(16) (A) (i).

The employee must prove by a preponderance of the evidence that she sustained a compensable injury. Ark. Code Ann. §11-9-102(4) (E) (i). Preponderance of the evidence means the evidence having greater weight or convincing force. *Smith v. Magnet Cove Barium Corp.*, 212 Ark. 491, 206 S.W.2d 442 (1947).

An administrative law judge found in the present matter, "3. On March 24, 2010, the claimant sustained an injury to her left hand/wrist within the course and scope of her employment and while performing employment services."

The Full Commission finds that the claimant proved she sustained a compensable injury. The claimant began working as a "transfer coordinator" for the respondents in February 2009. The claimant's employment duties involved taking telephone calls to assist in transferring hospital patients. The parties stipulated that the employment relationship existed on March 24, 2010. The claimant testified that she had "clocked in" for the day and had begun her work duties. The claimant testified that she left her desk and walked to the doctor's lounge in order to obtain hot water for the claimant's oatmeal. The record indicates that the claimant remained "on the clock" during this activity and was being paid. The claimant testified that she got hot water from the tap in the lounge and was about to enter the hallway to return to her office, when the hot water spilled and burned her left arm.

The Court of Appeals has held that an injury sustained while an employee is "coming off break" to return to work is an activity that directly advances an employee's interests and constitutes employment services. See *Wallace v. West Fraser South, Inc.*, 90 Ark. App. 38, 203 S.W.3d 646 (2005). The Supreme Court of Arkansas has also held that an injury

sustained while an employee is returning to work from a break can be compensable. See *Hudak-Lee v. Baxter County Regional Hospital*, 2011 Ark. 31. The Full Commission finds in the present matter that the claimant was returning to work after her paid morning break and was therefore directly advancing her employer's interests at the time that the hot water spilled and burned the claimant's arm. We therefore affirm the administrative law judge's finding that the claimant proved she sustained a compensable injury.

Based on our *de novo* review of the entire record, the Full Commission finds that the claimant proved by a preponderance of the evidence that she sustained a compensable injury. The claimant proved that she sustained an accidental injury causing physical harm to her left wrist and forearm. The claimant proved that the injury arose out of and in the course of employment, and that the injury required medical services. The injury was caused by a specific incident and was identifiable by time and place of occurrence on March 24, 2010. The claimant established a compensable injury by medical evidence supported by objective findings. The claimant proved that she was performing employment services at the time of the accidental

injury. The claimant proved that the medical treatment of record she received for her left wrist and forearm was reasonably necessary in accordance with Ark. Code Ann. §11-9-508(a) (Repl. 2002). For prevailing on appeal to the Full Commission, the claimant's attorney is entitled to a fee of five hundred dollars (\$500), pursuant to Ark. Code Ann. §11-9-715(b) (Repl. 2002).

IT IS SO ORDERED.

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A. WATSON BELL, Chairman

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PHILIP A. HOOD, Commissioner

Commissioner McKinney dissents.

**DISSENTING OPINION**

I respectfully dissent from the majority's opinion finding that the claimant proved by a preponderance of the evidence that she sustained a compensable injury.

Specifically, I find that the claimant was not performing employment services at the time she burned her arm.

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, 216 S.W.3d 648 (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 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 he/she was hired to perform, or in incidental activities that are inherently necessary for the performance of the primary activity.

In my opinion, a review of the evidence demonstrates that the claimant was not performing employment services at the time that she sustained the burn to her arm. Specifically, the claimant was not carrying out the respondent employer's purpose or advancing the employer's interest directly or indirectly.

The claimant testified that she was not doing anything that was required of her at the time she injured herself. At the time of the injury, the claimant had gone down the hall to the physician's lounge to get hot water for instant oatmeal she had brought from home. The claimant was not sitting at her desk by the phone as she was required to do as a patient coordinator. She did not have any work-related materials in her hand, nor was she carrying a company cell phone. At the time she injured her hand, she was not in a position to answer the patient transfer hotline or to be notified of an incoming call. Although the claimant's co-worker would have possibly answered the phone for the claimant, the claimant could not hear the phone, nor could she hear her co-worker call her to the phone.

In my opinion, this case is distinguishable from the case of Arkansas Methodist Hospital v. Hampton, 90 Ark. App. 288, 205 S.W.3d 848 (2005). In the Hampton case, the claimant was injured when she was going to get breakfast for the entire unit from the hospital cafeteria. The claimant in Hampton worked as a nurse in the intensive care unit. The claimant and her co-workers worked a 12-hour shift starting at 6:45 without any breaks during the day because it was

necessary to monitor the patients. The nurses in the unit took turns going downstairs to get breakfast. The claimant was injured when she tripped on a metal transport cart that was left in front of the stairway door. In the Hampton case, the nurses were not allowed to leave to go get food. The courts stated that it was not reasonable to expect that the ICU nurses would not eat for 12 hours. In this case, the claimant was given a lunch hour and she was also given breaks. She had a co-worker that would answer the phone for her when she was on break. The claimant and her own self-serving interest was the only one who was benefitted by the claimant getting oatmeal. The employer was not benefitted whatsoever.

In Hampton, the claimant's act of procuring breakfast for the rest of the staff left the ICU fully manned for a long period of time. In contrast, the claimant's actions in this case had no beneficial effect on the hospital or her co-workers. The claimant was not doing anything to assist any member of the hospital staff at the time she suffered her burn. She was obtaining water for her own personal use and admitted that she was not in the

position to be able to discharge any of her employment duties if tasks had arisen.

This case is akin to the case of George Hill v. LDA Leasing, 2010 Ark. App. 271, \_\_\_ S.W.3d \_\_\_ (2010). In the Hill case, the claimant suffered a shoulder injury after falling in a break room while attempting purchase snack crackers. The testimony at the hearing revealed that the claimant had backed his tractor-trailer into a shipping bay so that his truck could be unloaded before entering the respondents' facility to use the bathroom and purchase a snack. The claimant was charged with the duty of monitoring his trucks and the contents during the unloading process. The Court found that the act of purchasing snack crackers in a place at a time where the claimant could not have discharged his job duties required of him by his employer did not fall within the course and scope of his employment. The case presently before us is no different. The claimant was obtaining water to fix oatmeal for her own personal consumption at a time and place where she could not have discharged the few job duties she was paid to perform. The claimant was not required to take a break at any certain

time, and the act of preparing her breakfast was certainly of absolutely no benefit to her employer.

Further, the claimant conceded that the sole reason that she even pursued any type of workers' compensation claim was because she did not want to pay her \$500 deductible and 10% copay for a treatment. It was not until expensive skin grafts were mentioned by her doctors that the claimant reported the problem as work related.

Therefore, after conducting a de novo of the record, I find that the claimant has failed to meet her burden of proof. Accordingly, for all the reasons set forth herein, I must respectfully dissent from the majority's award of benefits.

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KAREN H. MCKINNEY, COMMISSIONER