

**NOT DESIGNATED FOR PUBLICATION**

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION  
CLAIM NO. G009411

CHARLES GIST, EMPLOYEE	CLAIMANT
ARKANSAS LIME CO., EMPLOYER	RESPONDENT
LIBERTY MUTUAL GROUP, CARRIER/TPA	RESPONDENT

OPINION FILED NOVEMBER 17, 2011

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

Claimant represented by the HONORABLE BILL H. WALMSLEY, Attorney at Law, Batesville, Arkansas.

Respondents represented by the HONORABLE MICHAEL RYBURN, Attorney at Law, Little Rock, Arkansas.

Decision of Administrative Law Judge: Affirmed and Adopted.

OPINION AND ORDER

Claimant appeals from a decision of the Administrative Law Judge filed June 28, 2011.

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. The stipulations set forth above are reasonable and are hereby accepted.
3. Claimant has not proven by a preponderance of the evidence that he sustained compensable injuries to his left shoulder, ribs, collar bone or lung.

4. Because of the above finding, the balance of the issues are moot and will not be addressed.

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.

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A. WATSON BELL, Chairman

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KAREN H. MCKINNEY, Commissioner

Commissioner Hood dissents.

**DISSENTING OPINION**

I must respectfully dissent from the majority opinion. After a de novo review of the record, I find that the claimant

did sustain compensable injuries as he was performing employment services while he was returning from an on-call assignment at the respondent's plant.

On Saturday, October 16, 2010, the claimant was called in for production disruptions or emergencies on four occasions. The claimant came in every time he was called and returned home after he completed each call. Thus, he made four round trips from his home in Melbourne to his workplace on Saturday, October 16, 2010. On a normal workday, he would only make one trip in and one trip home. On his fourth and last trip home on that Saturday, he hit a deer and was injured. It was about 9:30 p.m. that Saturday night. He would not have been on the road at 9:30 p.m. on Saturday night but for the specific on-call trip.

The employer chose to have on-call versus staff electricians during the weekends. It benefitted the employer to have the claimant travel to and from the workplace versus coming in for a full shift. Our Supreme Court has held that an employee is performing "employment services" when he or she is doing something that is generally required by his or her employer. Texarkana School District v. Conner, 373 Ark. 372, 284 S.W. 3d 57. The same test is used to determine whether an employee was performing employment services as when determining whether an employee was acting within the course of employment. Id. Specifically, it has been 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." Id. The critical inquiry is whether the interests of the employer were being directly or indirectly advanced by the employee at the time of the injury. Id. Moreover, 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. Id.

Here, the claimant restricting his activities and being readily available and responding to requests to perform emergency jobs were activities required by the respondent. It benefitted the employer to have the claimant travel to and from the workplace as an on-call worker versus staffing the plant with a full-time electrician on the weekends. Therefore, the claimant was performing employment services when he was traveling home from his on-call assignment.

Furthermore, the sole reason for the claimant being on the road at the time of the incident was for the benefit of the employer. But for the claimant doing a specific job required by the employer, he would not have been injured. Although this claim is properly analyzed solely by answering the question of whether or not the claimant was performing employment services at the time of his injury, I would note that a trip such as the

claimant was on is compensable as an exception to the "going and coming rule". Fisher v. Poole Truck Line, 57 Ark. App. 268, 944 S.W.2d 853 (1997). The "going and coming rule" has long been recognized in Arkansas. Olsten Kimberly Quality Care v. Pettey, 328 Ark. 381, 944 S.W.2d 524 (1997). However, Arkansas has also recognized that there are exceptions to that rule. Jane Traylor, Inc. v. Cooksey, 31 Ark. App. 245, 792 S.W.2d 351 (1990). One of those exceptions is when an employee is on a special mission or errand for his employer. On October 16, 2010, the claimant was on a special mission or errand for the respondent. He was responding to a request from his employer to come to work on his day off in order to make a specific repair or handle a specific emergency that was adversely affecting production at the employer's facility.

In conclusion, I find that the claimant sustained compensable injuries as he was performing employment services by returning home from an on-call assignment. It benefitted the employer to have the claimant travel to and from the plant versus staffing the plant with a full time electrician on the weekends.

For the aforementioned reasons, I must respectfully dissent.

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PHILIP A. HOOD, Commissioner