

NOT DESIGNATED FOR PUBLICATION

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION
CLAIM NO. G006042

ELSIE JOHNSON, EMPLOYEE	CLAIMANT
SOUTHWEST ARKANSAS DEVELOPMENT COUNCIL, EMPLOYER	RESPONDENT
AGING SERVICES FUND C/O RISK MANAGEMENT RESOURCES, CARRIER/TPA	RESPONDENT

OPINION FILED AUGUST 10, 2011

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

Claimant represented by the HONORABLE THOMAS W. MICKEL, Attorney at Law, Conway, Arkansas.

Respondents represented by the HONORABLE MICHAEL J. DENNIS, Attorney at Law, Pine Bluff, Arkansas.

Decision of Administrative Law Judge: Affirmed and Adopted.

OPINION AND ORDER

Claimant appeals from a decision of the Administrative Law Judge filed April 14, 2011.

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

1. The employee-employer-carrier relationship existed on July 9, 2010, and at all pertinent times.
2. The claimant's average weekly wage of \$143.63 entitles her to a temporary total disability compensation rate of \$96.00 per week.
3. The respondent controverts this claim in its entirety.

4. The claimant's injury occurred at a time that employment services were not being performed.

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.

A. WATSON BELL, Chairman

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 was performing employment services when she fell.

FACTS

The 83-year-old claimant had worked for the Southwest Arkansas Development Council in Camden, Arkansas, for 14 years. The claimant seeks workers' compensation benefits for injuries that she sustained in a fall at work on July 9, 2010, at approximately 8:15 a.m. The respondents contend that the claimant's injury is not compensable under the Arkansas Workers' Compensation Law because it occurred before 8:30 a.m. when the claimant's shift was scheduled to start, indicated by her signing in on a sign-in sheet.

The claimant worked four hours per day, Monday through Thursday, before her fall. On the day she fell, she was scheduled to work from 8:30 a.m. to 12:30 p.m. The claimant performed such duties as making coffee and tea, putting out napkins and cups, and listening to patrons. The claimant also helped with activities, helped patrons sign in if patrons needed help, took coffee to patrons, and sometimes, was herself the entertainment, by telling jokes, singing, reading, or doing something to make the patrons laugh. The claimant's job is best described as a "hostess."

On July 9, 2010, the claimant arrived at work at approximately 8:15 a.m. The facility has three doors to the outside. The claimant entered through the kitchen door, so she could greet the cooks on her way in. The claimant walked through

the kitchen into the dining room in the direction of the copier office, where she intended to place her purse in the drawer where purses were kept.

After greeting the cooks in the kitchen, the claimant also greeted a patron in the dining room before her fall. The claimant testified that she stumped her toe and fell, and she hit a dining table on the way down. At the time of her fall, the claimant had not yet signed in. But the claimant testified that she often performed her job duties before signing the sign-in sheet. The claimant testified that she would sign in clients before signing her own time sheet. The claimant testified that she would often make coffee before signing the sign-in sheet. In short, the claimant testified that she would often perform employment services before her shift was scheduled to start or before she had signed the sign-in sheet.

LEGAL ANALYSIS

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 Sch. Dist. v. Conner, 373 Ark. at 376, 284 S.W. 3d at 61. 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. *Id.*, 284 S.W. 3d at 61. 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.* at 376-377, 284 S.W. 3d at 61. 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.* at 377, 284 S.W. 3d at 61. 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.*, 284 S.W. 3d at 61.

The respondent's defense to this claim is essentially: "The claimant performed employment services in violation of policy." Unfortunately, that is not a defense under Arkansas workers compensation law, which looks only to whether or not the claimant was performing employment services, and does not probe the question of whether or not the employment services were performed according to policy. The employer's policy may have been that no employment services were to be performed before an employee signed in. But, the fact is that the claimant did perform employment services before she signed in. She entered the premises, and on the way to putting up her purse, she greeted the cooks and a patron in the dining room. Interacting with the staff and patrons was the essential function of her rather unique "hostess" job at the center. Perhaps another claimant with

different facts would not be found to be performing employment services for simply saying "hello" but here, saying "hello" is the entire point of the claimant's job.

As for the respondent's defense, it seems to apply to the time boundaries of the claimant's employment. While it could be said that she was not within the time boundaries of her employment because her shift did not start until 8:30, I would note that the center opened at 7 a.m., and there was, in fact, a patron present, with whom the claimant interacted.

CONCLUSION

The majority is wrong. I find that, due to the unique circumstances of her job as a "hostess", this 83-year-old woman, who had worked at the center for 14 years, by being on the premises and interacting with the staff and patrons of the center was performing employment services at the time of her fall. For the aforementioned reasons, I must respectfully dissent.

PHILIP A. HOOD, Commissioner