

NOT DESIGNATED FOR PUBLICATION

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. G005903

DEE ANN MILLER, CLAIMANT
DENNIS ENDERS, RESPONDENT

CLAIM NO. G005904

CLAYTON BRATT, CLAIMANT
DENNIS ENDERS RESPONDENT

OPINION FILED JULY 6, 2011

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

Claimant represented by the HONORABLE H. DAVID BLAIR, Attorney at Law, Batesville, Arkansas.

Respondents represented by the HONORABLE DONALD BACON, 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 April 4, 2011. In said order, the Administrative Law Judge made the following findings of fact and conclusions of law:

1. Claimant Dee Ann Miller was, on February 21, 2005, a registered nurse duly licensed by and in good standing with the Arkansas State Board of Nursing and who was, on that date, employed by Air Evac EMS, Inc. as a flight nurse for an air ambulance.
2. Claimant Clayton Bratt was, on February 21, 2005, an EMT-paramedic, duly certified and in good standing with the Oklahoma State

Department of Health and was on that date employed by Air Evac EMS, Inc. as an EMT-paramedic for an air ambulance.

3. Respondent Dennis C. Enders, on February 21, 2005, held a commercial pilot's certificate for a rotorcraft-helicopter, issued by the Federal Aviation Administration, which certificate authorized him to pilot a helicopter in accordance with the rules and regulations of the Federal Aviation Administration. On February 21, 2005, respondent Enders was employed by Air Evac EMS, Inc. as a pilot of an air ambulance helicopter.
4. Air Evac EMS, Inc. was, on February 21, 2005, engaged in the business of providing air ambulance medical transport services to and from health care facilities by means of helicopters appropriately equipped and configured to provide these services.
5. On February 21, 2005, Air Evac EMS, Inc. dispatched one of its air ambulance helicopters to the scene of a motor vehicle accident on Highway 43 near Cherokee in Benton County, Arkansas. Claimants Dee Ann Miller and Clayton Bratt and respondent Enders were, by Air Evac EMS, Inc., assigned to this helicopter as flight nurse, EMT paramedic, and pilot, respectively.
6. Upon arrival at the assigned destination, the injured patient was loaded onto the air ambulance helicopter. After the patient was secured for flight and given appropriate medical attention by claimants Miller and Bratt, respondent Enders commenced a flight with the intended destination being the hospital in Springdale, Arkansas. Shortly after takeoff, the helicopter went into a spin which resulted in a hard impact with the ground. Claimants Dee Ann Miller and Clayton Bratt and respondent Enders received personal injuries as a consequence of the crash.

7. Claimants have brought suit against Enders in the Civil Division of the Circuit Court of Benton County, Arkansas tort action, in which they seek damages for personal injuries of Miller and Bratt which are alleged to have been proximately caused by respondent Enders' negligent failure to exercise ordinary care while piloting the helicopter.
8. Respondent Enders, in the tort action, moved to dismiss upon the basis that he is entitled to immunity from tort liability pursuant to the exclusive remedy provisions of the Arkansas Workers' Compensation Act, Ark. Code Ann. §11-9-105.
9. The Benton County Circuit Court, in the tort action, entered an order dismissing claimant's claim against respondent Enders upon the basis of A.C.A. §11-9-105, from which order claimants prosecuted an appeal to the Arkansas Supreme Court. By opinion entered February 25, 2010, the Arkansas Supreme Court ruled that the Benton County Circuit Court was without jurisdiction to determine the applicability of the Workers' Compensation Act, including A.C.A. §11-9-105, to claimants' tort claim against respondent Enders upon the basis that the Arkansas Workers' Compensation Commission had exclusive jurisdiction to make that determination. Claimants' appeal was dismissed with leave to claimants to pursue the question in a proceeding before the Commission.
10. Respondent Enders, as of February 21, 2005, had no medical training nor did he hold any license or certification authorizing him to render patient care services.
11. The air ambulance helicopter involved in the occurrence on February 21, 2005 was owned by an entity affiliated with Air Evac EMS, Inc. All medical equipment, drugs, medical instruments and supplies on board of the air ambulance helicopter were owned and furnished

by Air Evac EMS, Inc. with the exception of the medical instruments owned by claimants Miller and Bratt.

12. Claimants Miller and Bratt and respondent Enders were each paid directly by Air Evac EMS, Inc. which had sole liability for their compensation.
13. Respondent Enders was not, on February 21, 2005, an employer of claimants Dee Ann Miller and Clayton Bratt, or either of them.
14. Claimants were responsible for all matters concerning the care of the patient during transport including the responsibility for securing the patient for flight, conducting the appropriate examination of the patient to determine his status, and providing appropriate therapy and treatment according to their evaluation of the patient's status and the exercise of their skill, care, and judgement within the scope of their training and respective licenses. All matters pertaining to the care and treatment of the patient were exclusively the responsibility of the claimants.
15. Enders was employed by Air Evac EMS, Inc. to pilot the helicopter. Enders in his operation of the helicopter was not subject to any right of direction, control, or supervision by the claimants with the exception that they had the right to direct an alteration of the flight plan if, in their judgement, the patient's condition so required.
16. The claimants each received workers' compensation benefits from the workers' compensation insurance carrier for Air Evac EMS, Inc. in connection with the injuries received in the February 21, 2005 accident.
17. Enders had no duty to furnish workers' compensation benefits to the claimants.

18. At the time of the accident on February 21, 2005 Enders was performing his employer's duty to provide a safe place to work for the claimants.
19. By performing his employer's duty to provide a safe place to work for the claimants, Enders is entitled to immunity from an action in tort pursuant to A.C.A. §11-9-105.
20. At the time of the accident on February 21, 2005 Enders was not a third party within the meaning of A.C.A. §11-9-410.
21. The Commission is bound by the doctrine of *stare decisis* and the decisions in *Brown v. Finney*, 326 Ark. 691, 932 S.W. 2d 769 (1996) and *Rea v. Fletcher*, 39 Ark. App. 9, 832 S.W. 2d 513 (1992).
22. Immunity from action in tort to non-supervisory coemployees (sic) who are fulfilling the employer's duty to provide a safe place to work does not violate Article 5, Section 32, Amendment 26, of the Arkansas Constitution.

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.

Miller - G005903
Bratt - G005904

6

Therefore we affirm and adopt the April 4, 2011 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

PHILIP A. HOOD, Commissioner
