

NOT DESIGNATED FOR PUBLICATION

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F806337

PRISCILLA S. TAULBEE,
EMPLOYEE

CLAIMANT

HOMEBOUND MEDICAL,
EMPLOYER

RESPONDENT

CHARTIS CLAIMS, INC.,
INSURANCE CARRIER

RESPONDENT

OPINION FILED MAY 20, 2011

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

Claimant represented by the HONORABLE FREDERICK S.
"RICK" SPENCER, Attorney at Law, Mountain Home,
Arkansas.

Respondents represented by the HONORABLE MELISSA WOOD,
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 December 9, 2010. In
said order, the Administrative Law Judge made the
following findings of fact and conclusions of law:

1. The Arkansas Workers' Compensation Commission has jurisdiction of the within claim.
2. The employee-employer-insurance carrier relationship existed June 24, 2008.
3. This claim has been controverted in its entirety.

4. The claimant's Motion to Recuse is hereby denied. I find the Act to be constitutional.
5. The claimant notified the respondent-employer on June 26, 2008 of her injury.
6. The claimant has failed to prove by a preponderance of the evidence that she was engaged in employment services at the time of her injury.
7. All other issues not litigated herein are reserved under the Arkansas Workers' Compensation Act.

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.

The claimant alleges that she sustained compensable injuries that are governed by the Arkansas Workers' Compensation Act, A.C.A. § 11-9-101 et seq. The claimant's alleged injuries are, indeed, injuries that are covered by the Act; however, the claimant has failed to establish the elements necessary to prove these compensable injuries by a preponderance of the evidence.

Therefore we affirm and adopt the December 9, 2010 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 on the steps at a home care client's house after completing her shift. As such, I would award workers' compensation benefits associated with her injuries.

A compensable injury is "[a]n accidental injury ... arising out of and in the course of employment." 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). The phrase “in the course of employment” or the term “employment services” are not defined in the Workers’ Compensation Act. Texarkana School Dist. v. Conner, 373 Ark. 372, 284 S.W. 3d 57. Thus, it falls to the Court to define these terms in a manner that neither broadens nor narrows the scope of the Act. Id.

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” Id. 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. 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 facts and circumstances of each case. Id.

Here, the claimant is an LPN working with a disabled toddler in the client's home. She was injured while she was leaving the client's premises after her shift; specifically, she fell down the client's stairs. The claimant testified that it was the employer's policy that she leave the premises immediately after her shift and to not contact the client again until her next shift. In fact, the claimant was so concerned about this policy that, rather than notify the client that she was lying injured in their front yard, she first called her mother for assistance. The claimant's testimony about the employer's policy was corroborated by Ms. Gayla Gray, who testified that the employer did not want the claimant to remain on the client's premises. For this reason, it benefits the respondent for the claimant to leave the client's premises. In this fact situation, a claimant is performing employment services when she is on the claimant's premises attempting to exit. As such, the claimant here was performing employment services, and I would award benefits accordingly.

For the aforementioned reasons I must respectfully dissent.

PHILIP A. HOOD, Commissioner