

**NOT DESIGNATED FOR PUBLICATION**

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION  
CLAIM NO. G003563 & G007161

JUDY WILLIAMS, EMPLOYEE	CLAIMANT
BOSTON SCIENTIFIC CORPORATION, EMPLOYER	RESPONDENT
LIBERTY MUTUAL INSURANCE COMPANY, CARRIER/TPA	RESPONDENT

OPINION FILED JUNE 2, 2011

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

Claimant represented by the HONORABLE JOE BYARS, Attorney at Law, Fort Smith, Arkansas.

Respondents represented by the HONORABLE DAVID C. JONES, 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 December 7, 2010.

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

1. The stipulations agreed to by the parties at the pre-hearing conference conducted on September 30, 2010, and contained in a pre-hearing order filed that same date, are hereby accepted as fact.
2. Claimant has met her burden of proving by a preponderance of the evidence that she suffered a compensable injury to her back while employed by respondent on September 17, 2009.

3. Claimant failed to provide respondent notice of the September 17, 2009 injury until after April 23, 2010; therefore, pursuant to A.C.A. §11-9-701 respondent is not liable for benefits prior to that time.
4. Claimant did not suffer a compensable injury on April 23, 2010, because she was not engaged in employment services at the time of her injury.

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 was performing employment services at the time of her injury.

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. 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. 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 376-77, 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.

Here, the testimony was clear from all sources that the claimant's job required her to travel from place to place in

connection with her field representative job with the respondent. Prior to her fall on April 23, 2010, the claimant had been to the offices of Dr. Jagger for a "clinic", and made a short stop at St. Edward Mercy to check on Jahama Williams, a patient of the respondent (who also happened to be her mother-in-law from her first marriage), and to pick up a purchase order related to Mrs. Williams' procedure. It is undisputed that the claimant's mother-in-law was, in fact, a patient of the respondent, and that the purchase order from her procedure was needed by the respondent. It is further undisputed that the claimant was asked to obtain or check on the purchase order by her co-worker, Pat Talbot, while she was on the premises of St. Edward Mercy, which she did, in fact, complete while on the premises of St. Edward Mercy. At the precise time of her injury, the claimant was on her way back to her vehicle, headed to her next job assignment at Sparks Hospital, when she fell on the asphalt and injured her back on April 23, 2010.

Due to the above facts, I find the claimant was performing employment services at the time she was injured on April 23, 2010 and I must respectfully dissent from the majority opinion.

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PHILIP A. HOOD, Commissioner