

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO.: H207041

KENNETH WILLIAMS (DEC'D), EMPLOYEE

CLAIMANT

MALVERN SCHOOL DISTRICT, EMPLOYER

RESPONDENT

**ARKANSAS SCHOOL BOARDS ASSOCIATION,
INSURANCE CARRIER/ THIRD PARTY
ADMINISTRATOR(TPA)**

RESPONDENT

OPINION FILED JUNE 29, 2023

Hearing held before ADMINISTRATIVE LAW JUDGE CHANDRA L. BLACK in Hot Springs, Garland County, Arkansas.

Claimant represented by the Honorable Andy L. Caldwell, Attorney at Law, Little Rock, Arkansas.

Respondents represented by the Honorable Melissa Wood, Attorney at Law, Little Rock, Arkansas.

Statement of the Case

On March 31, 2023, the above-captioned claim came on for a hearing in Hot Springs, Arkansas. A pre-hearing telephone conference was conducted on December 14, 2022, from which a Pre-hearing Order was filed on that same day. A copy of the said order and the parties' responsive filings have been marked as Commission's Exhibit No. 1 and made a part of the record without objection.

Stipulations

During the pre-hearing telephone conference, and/or during the hearing the parties agreed to the following stipulations:

1. The Arkansas Workers' Compensation Commission has jurisdiction of the within claim.

2. That the employee-employer-carrier relationship existed at all relevant times including on or about April 26, 2022, when the Claimant sustained injuries that resulted in his death.
3. The Claimant's average weekly wage was \$1,562.29, which amounts to \$547.00 for weekly widow benefits.
4. All issues not litigated herein are reserved under the Arkansas Workers' Compensation Act.
5. The Respondents have controverted this claim in its entirety.
6. The parties stipulated to the identification of Mr. Gary Burton, Jr., a news anchor, who testified telephonically/FaceTime.

Issues

By agreement of the parties the issues to be litigated at the hearing are as follows:

1. Whether the Claimant sustained "compensable injury(ies)" that resulted in death at a time when he was performing employment services.
2. If the Claimant's alleged injury is deemed compensable, the extent to which his widow is entitled to medical expenses incurred, spousal benefits, and funeral expenses.¹
3. Whether the Claimant's attorney is entitled to a controverted fee.

Contentions

The respective contentions of the parties are as follows:

Respondents:

Respondents contend that Claimant did not suffer compensable injuries under the Arkansas Workers' Compensation Act.

¹ At the beginning of the hearing, the Respondents' attorney withdrew Issue # 2.

Claimant:

The Claimant's average weekly wage (AWW) will be determined by the contract of hire, wage records and Arkansas law. On April 26, 2022, the Claimant was tragically killed while on a school field trip. The Respondents should be responsible for all medical expenses incurred therewith and death and spousal benefits pursuant to the Act. The Claimant is also entitled to reasonable and necessary attorney's fees. All other issues are reserved.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Based on my review of the record as a whole, to include the aforementioned documentary evidence, other matters properly before the Commission, and after having had an opportunity to hear the testimony of the witnesses and observe their demeanor, I hereby make the following findings of fact and conclusions of law in accordance with Ark. Code Ann. §11-9-704 (Repl. 2012):

1. The Arkansas Workers' Compensation Commission has jurisdiction over this claim.
2. I hereby accept the above-mentioned proposed stipulations as fact.
3. The Claimant was performing employment services at the time of his fatal death.
4. The remaining issues in this matter have been reserved.

Summary of Evidence

During the hearing, the following witnesses testified: Mrs. Cynthia Williams (Claimant's widow); Mr. Grant Williams (Claimant's son); Mr. Jon Stevenson (Malvern Middle School Band Director); Gary Burton, Jr. (news anchor), the news reporter; and Ms. Jennifer Shnaekel, the Malvern High School Principal.

The record consists of the March 31, 2023 hearing transcript, comprising the following exhibits: Specifically, Commission’s Exhibit No. 1 includes the Commission’s Prehearing Order filed on December 14, 2022 and the parties’ responsive filings; Claimant’s Exhibit No. 1 is a Non-Medical Exhibit and encompasses thirty-five numbered pages; Claimant’s Exhibit 2 is an Online Article by Mr. Gary Burton consisting of three pages; and Respondents’ Exhibit No. 1 is a Non-Medical Exhibit, consisting of twenty-five numbered pages.

Testimony

Mrs. Cynthia Williams

Mrs. Williams confirmed that she had been married to Mr. Kenneth Williams (she referred to him as Ken), the deceased Claimant, since 1988. The couple has two adult children, Grant and Grace Ann, their ages are 29 and 26, respectively. She confirmed that neither of their children was dependent on the Claimant. However, Mrs. Williams verified that she was dependent on her husband and his income at the time of his death. She verified that during the marriage, she never separated from Mr. Williams. They lived together at the time of his death as spouses. The couple lived in Malvern at the time of the Claimant’s fatal accident. Mrs. Williams confirmed she worked for the Maumelle Middle School. She retired in 2016 but had gone back to work. However, Mrs. Williams has since retired again.

On the early evening of April 26, 2022, around 6:00 p.m., Mrs. Williams testified that she received a call from her phone, which indicated he had dialed 911. She tried calling her husband back multiple times but was unable to reach him. As a result, Mrs. Williams, sent him a text asking what was going on and he responded, “Not sure,” or “I don’t know.” She was aware her husband was returning home from a band meeting in Arkadelphia. At the time of Mr. Williams’ death, he worked at Malvern High School, and was the band director. She confirmed that Mr. Williams’

accident occurred on I-30, somewhere between Friendship and Malvern. Mrs. Williams agreed that her husband routinely traveled for work, and that he routinely used his truck for work travel.

According to Mrs. Williams, the Claimant would go to meetings and rehearsals, and sometimes he would follow the bus if he had to carry something such as stands. However, Mrs. Williams testified that most of the time, if Mr. Williams was traveling with the students, he would ride the bus with them.

Mrs. Williams testified that occasionally Williams' meetings would be within the confines of the of the 8:00 a.m. to 3:00 p.m., school day. She testified that his meetings were in the evenings and on Saturdays. Mrs. Williams confirmed that she is familiar with the Arkansas State Band and Orchestra Association/ASBOA.

She confirmed that she previously worked at the high school campus for eighteen years, where her husband worked at the time of his death. Mrs. Williams agreed that she has extensive personal and direct personal knowledge of what her husband did on a day-to-day basis. Mrs. Williams agreed that her husband also traveled with the band to football games.

Mrs. Williams confirmed her husband attended the ASBOA meetings. She confirmed that at the time of Mr. Williams' death, he was on his way back home from a Region II ASBOA meeting, when his fatal accident occurred. Mrs. Williams agreed that the Claimant would often times judge events, choir/band events, either all region or otherwise around the state. She agreed that the Claimant would travel to those events on his own, and use his personal vehicle, as this was a fairly common occurrence. Mrs. Williams agreed that her husband would routinely have Malvern School District band items in his truck. She testified that he always had music, CDs with recordings, his laptop, marching charts, and a music stand or two in the back. According to Mrs.

Williams, he would use his personal vehicle to travel from the high school to the middle school to take instruments back and forth.

She confirmed that she has not been reimbursed by the carrier for any of the expenses introduced into evidence. Nor has Mrs. Williams received any benefits from the workers' compensation carrier as a result of her husband's death. She testified that at the time of Mr. Williams' death, he was traveling back to Malvern from a band meeting, but she does not know where he was directly going once, he got to Malvern.

On cross-examination, Mrs. Williams confirmed that her deposition was taken on January 13, 2023. She confirmed that her husband had been the band director for thirty-two to thirty-three years at the Malvern High School. Mrs. Williams testified that she found out about her husband's band meeting the morning of April 26. She confirmed that it was her understanding that it was just a day trip, and he would not be spending the night. Mrs. Williams confirmed that he took his pickup truck to attend the band meeting. She agreed that he sometimes took a van/school vehicle, if he transported students. Mrs. Williams confirmed that the school has a Suburban available if teachers or band directors wanted to use it to go to different events.

Mrs. Williams confirmed that she read the police report from the accident that happened on April 26. However, she verified that she does not know any of the individuals named in the report. Nor does she have any reason to believe that her husband knew any of them.

Mr. Grant Williams

Mr. Williams testified that he is a police officer for Ouachita Baptist University. He confirmed that Kenneth Williams was his father. Mr. Williams further confirmed that his dad would routinely transport items for the band (such as drums, instruments, music stands, and chairs) in his personal vehicle, as band director for Malvern High School. He confirmed that he was

familiar with the day-to-day activities of his dad as band director. Mr. Williams confirmed that he participated in the band while in school.

With respect to the accident, Mr. Williams testified that he was notified of the accident by Trooper Daniels, with the Arkansas State Police. He confirmed that the Claimant had been to a meeting before his accident. However, Mr. Williams admitted that he did not know where his dad was headed at the time of his accident.

Mr. Williams confirmed that he after the accident, he picked his dad's truck up. He confirmed that he observed what was in his dad's truck. Mr. Williams was shown photos of evidence that depicted the contents of the vehicle when he picked it up after his father's death. He confirmed that at page 29 of Claimant's Non-Medical Exhibit, the photo reflects what he saw when he picked up the vehicle. He confirmed that there was an orange Malvern High School jacket, which was something his father wore. Mr. Williams also observed his dad's backpack, computer, a Bible, a journal notebook, a band instrument, and sheet music. He confirmed that he returned all Malvern High School property to the high school.

Jon Stevenson

Mr. Stevenson is the Band Director at Malvern Middle School and the Assistant Band Director at Malvern High School. He confirmed that he worked with Mr. Williams during the last school year. At the time of Mr. Williams' death, he worked in this position. Mr. Stevenson confirmed that they worked together cohesively between the high school and middle school. He confirmed that he is familiar with Arkansas School Band and Orchestra Association. Mr. Stevenson verified that he is a member and that his dues are paid out of the band budget. He explained that the organization allows other band directors and orchestra directors to get together to help their students with performing activities such as all region band or concert assessments.

Mr. Stevenson explained that it is an organization that provides a way for them to collaborate with each other and get together to figure out ways to continue to teach their students band and music in general. He confirmed that they have to be a member of ASBOA for their students to be eligible to participate different performances during all-region and all-state band competitions.

He confirmed that Mr. Williams was a member of ASBOA. Mr. Stevenson confirmed that there was a meeting scheduled for April 26, 2022. He admitted that he was at that meeting. Mr. Stevenson confirmed the agenda of record for the spring meeting of that year. He verified that the meeting was mandatory for band director. Per Mr. Stevenson, normally the region chair would notify their principals or the school if they failed to attend the meeting. Therefore, it was important for them to attend those meetings.

Mr. Stevenson was shown a copy of the agenda for the meeting, which stated the meeting started at 5:12 p.m., and was held at the Goza Middle School. He confirmed that under the Region Event and Dates there was a motion to accept the events and dates, which was one of the purposes of the meeting. Mr. Stevenson confirmed that the document shows that the Claimant made the motion. He further confirmed that Mr. Williams attended the meeting.

Under further questioning, Mr. Stevenson testified that he used his own personal vehicle to get to the meeting. He confirmed that Mr. Williams also used his own vehicle. Mr. Stevenson denied that he had to get permission from Ms. Shnaekel or anyone to attend the meeting. He agreed that there was an email sent to them (which included Mr. Williams) about payment for some patches, so their students could participate in the all-region band. He testified that the patches were paid for out of the band budget. Mr. Stevenson denied having any knowledge of where the Claimant was headed after the meeting, or if the Claimant was going back to Malvern High School.

Mr. Stevenson agreed that there are invitational competitions, such as marching assessment for regional and state competitions, football games and auditions they must participate in. He confirmed that Mr. Williams has judged the competitions, many of which were outside the normal school hours.

On cross-examination, Mr. Stevenson admitted that the school did not reimburse him for his travel to Arkadelphia.

Gary Burton, Jr.

Mr. Burton testified that he authored, Claimant's Exhibit 2. He confirmed that on April 26, 2022, he worked as a reporter and anchor for KARK 4 News and Fox 16. Mr. Burton admitted that he did an article about the fatal death of the Malvern High School Band Director's passing, which has been introduced into evidence. He confirmed that he investigated the incident and wrote the article after speaking with folks from the Malvern School District. Mr. Burton agreed that he received information that Mr. Williams was headed back to Malvern after having attended a regional band directors' meeting in Arkadelphia. He confirmed that he received the information from someone with the school district, Manuel Bulhoes, the Assistant Principal of Malvern High School.

Jennifer West Shnaekel

Ms. Shnaekel testified on behalf of the Respondents. She is the principal for the Malvern School District. She has worked in that capacity for nine years. Ms. Shnaekel gave an overview of her employment duties as principal. She confirmed that she was Mr. Williams' direct supervisor. Ms. Shnaekel also explained Mr. Williams' employment duties, band director.

She confirmed that Mr. Williams had to complete sixty hours of professional development training. Ms. Shnaekel admitted that she is familiar with ASBOA. She denied that his attendance

at ASBOA was in any way part of his professional development hours. Ms. Shnaekel denied she was aware that Mr. Williams was traveling to Arkadelphia to any type of meeting. Nor was there any paperwork presented to her office for the trip to the meeting. She testified that she is not a member of ASBOA, she could not state the meeting was mandatory. Ms. Shnaekel testified that not being a member of ASBOA, or familiar with the organization, she cannot say attendance at the meeting was mandatory. She denied that it benefitted the school for Mr. Williams to stop and help someone on the side of the road. She denied that the Claimant was required to act as a firefighter, police officer or EMT as part of his job duties as a band director.

On cross-examination, Ms. Shnaekel confirmed that she does not dispute Mr. Stevenson's testimony that he did not obtain anybody's permission to attend the meeting. She again confirmed that it was her position that the meeting was an informal meeting of some band friends. Ms. Shnaekel admitted that Mr. Williams would sometimes stop by her office, and mention to her that he had gone to dinner with other band directors.

The documentary evidence shows that the Claimant was killed on I-30 while assisting individuals involved in a car accident on April 26, 2022. Another vehicle came along and lost a tire, which stuck and killed the Claimant.

Adjudication

Employment Services

For the Claimant to establish a compensable injury as a result of a specific incident, the following requirements of Ark. Code Ann. §11-9- 102(4)(A)(i) (Repl. 2002), must be established: (1) proof by a preponderance of the evidence of an injury arising out of and in the course of employment; (2) proof by a preponderance of the evidence that the injury caused internal or external physical harm to the body which required medical services or resulted in disability or

death; (3) medical evidence supported by objective findings, as defined in Ark. Code Ann. §11-9-102 (4)(D), establishing the injury; and (4) proof by a preponderance of the evidence that the injury was caused by a specific incident and is identifiable by time and place of occurrence. *Mikel v. Engineered Specialty Plastics*, 56 Ark. App. 126, 938 S.W.2d 876 (1997).

Employment services may be defined as an activity which benefits the employer. *CV's Family Foods v. Caverly*, 2009 Ark. App. 114, 304 S.W.3d 671 (2009). The test for whether an employee's injuries resulted from work-related services is whether the injury occurred within the time and space boundaries of employment when the employee was carrying out the employer's purpose or advancing the employer's interest either directly or indirectly. *White v. Georgia-Pacific Corp.*, 339 Ark. 474, 6 S.W.3d 98 (1999).

At issue is whether the accident occurred while the Claimant was performing employment services the time of his fatal accidental injury of April 26, 2022. The Claimant's accident occurred while he was helping the occupants involved in a previous accident when a tire blow from another car, striking the Claimant.

Here, the Claimant was the Band Director for Malvern High School for over three decades. He was required to routinely travel as part of his duties as a band director. This is established by the testimony of all of the witnesses. Therefore, I find that the Claimant was required to travel as an integral part of his job. Although the Claimant often times used his personal vehicle to travel, he did not request reimbursement from the school district. The evidence shows that the Claimant was returning home from a mandatory regional band meeting that benefitted the students and the school district. I did not find his supervisor's testimony credible in this regard. Nevertheless, the meeting that the Claimant attended related to his job as band directed and advanced the interests of the students as well as the school. I find that the Claimant was performing employment services

at the time that his fatal work accident occurred because he had not yet returned home. His accident occurred while returning home, although he had gotten out of his car along the path home to help other motorists.

To summarize, the evidence demonstrates that, because travel was an essential part of the Claimant's work for the school district as band director on April 26, 2022 when his accidental death arose out of and in the course of the Claimant's employment. The record shows that the accident occurred within the time and space boundaries of the employment, when the Claimant was directly carrying out the employer's purpose by returning home from his trip. Whether or not the Claimant was assisting other individuals on the road or in his vehicle, the record indicates in was attempting to return home at the time of his accident. He had not veered of the beam at the time of his accident.

AWARD

The Claimant was performing employment services at the time of his fatal accident on April 26, 2022.

IT IS SO ORDERED.

HON. CHANDRA L. BLACK
ADMINISTRATIVE LAW JUDGE

