

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/TPA	RESPONDENT

OPINION FILED MARCH 25, 2024

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

Decision of Administrative Law Judge: Reversed.

OPINION AND ORDER

The respondents appeal an administrative law judge's opinion filed June 29, 2023. The administrative law judge found that the claimant was performing employment services at the time of his fatal accident. After reviewing the entire record *de novo*, the Full Commission reverses the administrative law judge's opinion. The Full Commission finds that the claimant was not performing employment services at the time of the accidental injury.

I. HISTORY

The record shows that Kenneth Wayne Williams (d.o.b. 4-6-62) was married to Cynthia Cagle in Washington County, Arkansas on August 6, 1988. Cynthia Cagle Williams testified that she had remained married to Kenneth Williams since that time.

On April 30, 2021, Ken Williams signed a TEACHER'S CONTRACT with Malvern School District for the YEAR: 2021-2022. The period of time covered by the contract was 225 days, from July 19, 2021 through June 23, 2022. The TEACHER'S CONTRACT provided that the claimant would perform services as follows: "CLASSROOM TEACHING."

The parties stipulated that the employee-employer-carrier relationship existed at all pertinent times, including "on or about April 26, 2022." The record indicates that a Region II Spring Meeting was held at 5:12 p.m. on April 26, 2022. The meeting location was Goza Middle School, and Ken Williams participated in business conducted at the meeting.

Jon Stevenson testified that he was employed as band director at Malvern Middle School and assistant band director at Malvern High School. Jon Stevenson testified that he had regularly worked with Ken Williams in band-related activities. The claimant's attorney examined Mr. Stevenson:

Q. Are you familiar with the Arkansas School Band and Orchestra Association?

A. Yes....It is an organization that allows other band directors and orchestra directors to get together to help our students

with performing activities such as All-Region band or concert assessment or marching assessments, and it's a way for us to also collaborate with each other and get together to figure out ways to, you know, continue to teach our students band and music in general....

Q. Do you have to be a member of that organization for the kids who are in your program to be able to do certain things?

A. Yes.

Q. What sort of things?

A. As I mentioned before, marching assessment is one of the – you have to be a member of ASBOA to marching assessment (sic), as well as concert assessment or also solo and ensemble, which is another performance opportunity for our students as well.

Q. For the All-Region and All-State band?

A. Yes.

Q. So you have to be a member for the students to be eligible for the events?

A. Yes.

Q. All right. Do you know if Ken was a member?

A. Yes, he was.

Q. And are you aware that there was a meeting that was scheduled for April 26, 2022?

A. Yes. I believe I was at that meeting as well....

Q. Do you know what this is?

A. [The witness peruses the document]. This is the agenda for our spring meeting of that year.

Q. Was that meeting mandatory?

A. Yes.

Q. If you did not show up for that meeting what would happen?

A. Usually what would happen is our Region Chair would notify our principals or the school that we did not attend those meetings.

Q. So it was important that you be there.

A. Yes.

Q. And it was required that you be there.

A. Yes.

Q. Okay. And does this appear to be the agenda showing the start time of 5:12?

A. Yes.

Q. Okay. And it shows that it was at Goza Middle School. Do you know where that is?

A. That's in Arkadelphia....

Q. Did you have permission from Ms. Shnaekel to go to that meeting?

A. No....

Q. And just to reiterate, this was a mandatory meeting, was it not?

A. Yes.

Q. You had to go.

A. Yes.

Q. Okay. And if you didn't, they were gonna contact the administration and tell 'em you weren't there.

A. Yes....

Q. Do you know where Ken lived?

A. I know he lived in Malvern....

Q. Do you know if Ken was going back to Malvern High School after the meeting?

A. I do not know.

According to the record, an ARKANSAS MOTOR VEHICLE CRASH REPORT indicated that three Motor Vehicles and one Non-Motorist were involved in a crash at 6:10 p.m. on April 26, 2022. The CRASH LOCATION was Interstate 30, Hot Spring County. NON-MOTORIST INFORMATION indicated that Kenneth Wayne Williams was struck by Motor Vehicle #1 and suffered a Fatal Injury. A box indicating "No" was checked following the information, "Going to/from K-12 School." Mr. Williams' location at the time of the crash was "Median/crossing island." The following NARRATIVE was included with the ARKANSAS MOTOR VEHICLE CRASH REPORT:

On 4/26/2022 at approximately 6:12 pm, I responded to a multi-vehicle accident on I-30 East at the 86 mm. Upon my arrival on scene, Fire and Rescue was in the process of chest

compressions on a male subject that was struck in the median during the accident. LifeNet responded and pronounced the pedestrian deceased on scene. After speaking with the parties involved and looking at the evidence on scene, it was determined that V1 was traveling in the inside lane when he approached the previous accident scene. V1 rear ended V2 who was stopped in the inside traffic lane just prior to the previous accident. V2 was pushed into the center median before coming to rest. After rear ending V2, V1 continued east before rear ending a parked V3 that was involved in a previous accident. V3 was pushed forward in the inside lane and came to rest after being struck by V1. V1 then veered into the center median where it lost the front passenger side tire of the vehicle before coming to rest against the guard wire on the south side of I-30 West. The tire V1 lost, continued east in the median before striking the male pedestrian who was in the median helping occupants involved in the previous accident.

The parties stipulated that Kenneth Williams “sustained injuries that resulted in his death” on or about April 26, 2022. Cindy Williams testified on direct examination:

- Q. Do you know what happened to [Ken] on April 26th, 2022?
A. I've been told, yes.
Q. You weren't there?
A. No.
Q. Where were you at the time of the accident?
A. I was traveling back to Malvern from my job in Maumelle.
Q. Okay. And where were you working at the time?
A. Maumelle Middle School....
Q. And how did you learn about his incident to begin with?
A. I received a text message, and I don't really know how this works but apparently, when you have emergency contacts – Ken had it set up so that when he had emergency contacts in his phone, that when you dial – when he would dial 911, it would alert all the people who were his emergency contacts. So I got a message on my phone that he had dialed 911.
Q. Okay. And then, as I understand it, you tried to reach out to him?

- A. Yes, multiple times.
- Q. And you briefly spoke to him?
- A. No, I did not speak to him....There was a text.
- Q. And what was the content of that text?
- A. I had asked what's goin' on, and he said – he replied, “Not sure,” or “I don't know,” but one of those.
- Q. All right. And did you hear from him again?
- A. No.
- Q. Okay. Do you recall about what time of day on April 26, 2022, that was?
- A. Around 6:00, 5:30 or 6:00, 6:30. I – it's hard to remember. It was still daylight and it was the end of April.
- Q. And you didn't speak to him again?
- A. No.
- Q. Okay. And at the time, did you know where he was?
- A. I knew he was returning from a meeting in Arkadelphia. He was returning to Malvern.
- Q. And what was your understanding as to what that meeting was for?
- A. Band.
- Q. And what was Ken's occupation at the time of his passing?
- A. A band director.
- Q. Was he the high school band director for Malvern High School?
- A. Yes, he was.
- Q. And between your house and Malvern High School, if he were to travel from Malvern High School to your home, would he need to be on I-30?
- A. Absolutely not.
- Q. Do you know where the incident occurred?
- A. Yes, I do.
- Q. Where was it?
- A. It was on I-30. I can't remember mile marker but it was between Friendship and Malvern.
- Q. And that's also between Arkadelphia and Malvern.
- A. That is correct....
- Q. Do you know where Ken was going at the time of his incident?
- A. It's my knowledge that he was traveling back to Malvern.
- Q. Do you know where he was going in Malvern?
- A. Not directly, no.

Q. Okay. But he had not yet made it to Malvern.

A. No.

The respondents' attorney cross-examined Ms. Williams:

Q. Both of us have introduced today the police report from the accident that happened on April 26th, and you've reviewed that, correct?

A. Yes.

Q. And you'd stated in your deposition that you read the names of the individuals who were involved in the accident.

A. Yes, that is correct.

Q. And you did not know any of them?

A. No, I do not.

Q. And you had no reason to believe that your husband knew any of them. Is that right?

A. No, he did not.

On April 28, 2022, Gary Burton, Jr. posted a Local News story on

KARK.com:

The Malvern School District family is mourning the loss of their longtime band director, 60-year-old Kenneth Williams. Mr. Williams was hit and killed by a car Tuesday afternoon on interstate-30 near mile marker 86 in Hot Springs (sic) county. The Malvern school district tells us that Williams was heading back to Malvern from a regional band directors meeting in Arkadelphia when he stopped to assist the victims involved in a separate accident....

Jon Stevenson, Malvern Assistant Band Director says his mentor, leader and friend, Mr. William (sic) was "always willing to help someone no matter what."

Tragically, Williams left this earth by doing just that, helping others.

Another man was injured in this accident. No one is being charged....

An ARKANSAS DEPARTMENT OF HEALTH Vital Records

CERTIFICATE OF DEATH was filed on May 3, 2022. The CERTIFICATE

OF DEATH indicated that Kenneth Wayne Williams died on April 26, 2022 as the result of an ACCIDENT at I-30 Mile Marker, Donaldson, Arkansas: “DECEASED STOPPED TO ASSIST ON A (SIC) ACCIDENT SCENE AND WAS STRUCK BY ANOTHER VEHICLE.”

A pre-hearing order was filed on December 14, 2022. The claimant contended, “The Claimant’s 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.”

The parties stipulated that the claim “has been controverted in its entirety.” The respondents contended, “Respondents contend that Claimant did not suffer compensable injuries under the Arkansas Workers’ Compensation Act.”

The parties agreed to litigate the following issues:

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 he is entitled to medical expenses incurred, spousal benefits, and funeral expenses.
3. Whether the Claimant’s attorney is entitled to a controverted fee.

A hearing was held on March 31, 2023. At that time, the respondents' attorney examined Jennifer West Shnaekel:

Q. What do you do for a living, Ms. Shnaekel?

A. I'm the high school principal at Malvern School District....

Q. You were the direct supervisor of Ken Williams. Is that correct?

A. Yes, for the school day....

Q. Tell us what you would consider Mr. Williams' job duties to have been as band director there.

A. As band director he, of course, arrived early in the morning and had his band room open. Band students always had band class first period. The students would get there early, and some would go set up, and some would just visit. But when I say early, as early as 7:30 a.m. He had first period band there and then he would go to other campuses based on what that particular year's class work looked like. He attended football games. He did flag line leader, Winter Guard, the flags participated in competitions, they would go to regional assessments, state assessments, always had two band concerts a year, participated in the baccalaureate for seniors, graduation, many events....

Q. Did you know that Mr. Williams was going to Arkadelphia to attend any type of meeting?

A. Not that particular day. No, ma'am.

Q. Was there any paperwork presented to your office at all for that trip?

A. I did not locate it in my file.

Q. Was it mandatory for him to have attended?

A. I cannot say that. Not being a member of ASBOA I'm not familiar with a mandatory meeting. The educational events that I'm a member of are not required meetings, but I cannot say if this one was or not - not to my knowledge, but I cannot testify as solid.

Q. Mr. Caldwell took your deposition on January 13th of this year. Does that sound correct?

A. I do know that we spoke. I apologize I can't tell you the date, but yes, it's been recent.

Q. At that time you testified that you didn't know what the meeting was about or he met with. Is that true?

A. At that time I did not.

Q. In your opinion, Ms. Shnaekel, did it benefit the school in any way for him to have stopped and helped someone on the side of the road?

A. Did it benefit the school?

Q. Correct.

A. No, ma'am.

Q. As part of his job as band director, was he also required to be a police officer?

A. No, ma'am.

Q. Was he required to be a firefighter?

A. No, ma'am.

Q. What about an EMT?

A. No, ma'am.

The administrative law judge examined Jennifer Shnaekel:

JUDGE BLACK: Based on what you know about this organization and the testimony that you've heard, did it in any way benefit the Malvern School District for Mr. Williams to attend this meeting?

MS. SHNAEKEL: For the planning of students and their opportunity to grow and develop, yes, I do believe that the planning and all of the planning for our students to grow musically and academically, it was a benefit to students.

An administrative law judge filed an opinion on June 29, 2023. The administrative law judge found that the claimant was performing employment services at the time of his fatal accident. The administrative law judge filed an amended opinion on July 27, 2023 which included the stipulation that Cindy Williams was "wholly and actually dependent" upon Ken Williams in the event the Commission found that the accidental injury was compensable. The respondents appeal both opinions to the Full Commission.

II. ADJUDICATION

Act 796 of 1993, as codified at Ark. Code Ann. §11-9-102(4)(Repl. 2012), provides, in pertinent part:

(A) “Compensable injury” means:

(i) An accidental injury causing internal or external physical harm to the body ... arising out of and in the course of employment and which requires medical services or results in disability or death. An injury is “accidental” only if it is caused by a specific incident and is identifiable by time and place of occurrence[.]...

(B) “Compensable injury” does not include:

(iii) Injury which was inflicted upon the employee at a time when employment services were not being performed or before the employee was hired or after the employment relationship was terminated[.]

An employee is performing employment services when he is doing something that is generally required by his employer. *Dairy Farmers of America v. Coker*, 98 Ark. App. 400, 255 S.W.3d 905. The Arkansas Court of Appeals uses the same test to determine whether an employee is performing employment services as it does when determining whether an employee is acting within the course and scope of employment. *Pifer v. Single Source Transp.*, 347 Ark. 851, 69 S.W.3d 1 (2002). 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 employee has the burden of proving by a preponderance of the evidence that he sustained a compensable injury. Ark. Code Ann. §11-9-102(4)(E)(i)(Repl. 2012). Preponderance of the evidence means the

evidence having greater weight or convincing force. *Metropolitan Nat'l Bank v. La Sher Oil Co.*, 81 Ark. App. 269, 101 S.W.3d 252 (2003).

An administrative law judge found in the present matter, "3. The Claimant was performing employment services at the time of his fatal death." The Full Commission does not affirm this finding. The record indicates that Ken Williams had been employed for approximately 30 years as a band director for the respondents, Malvern School District. On April 30, 2021, Mr. Williams signed a TEACHER'S CONTRACT with the respondents wherein he agreed to provide the services, "CLASSROOM TEACHING." The period of time covered by the contract was July 19, 2021 through June 23, 2022.

As we have discussed, the record shows that a Region II Spring Meeting was held at 5:12 p.m. on April 26, 2022 at Goza Middle School in Arkadelphia, Arkansas. The Region II Spring Meeting was apparently affiliated with the Arkansas School Band and Orchestra Association. The record shows that Ken Williams attended the Region II Spring Meeting in Arkadelphia and participated in the business conducted there. Jon Stevenson testified that the Region II Spring Meeting was a "mandatory" event for band directors. Jennifer Shnaekel, Malvern High School Principal, testified that she was unsure with regard to whether or not the April 26, 2022 event was indeed mandatory. Upon questioning by the administrative

law judge, Ms. Shnaekel agreed that the Malvern School District benefitted from Ken Williams' attendance and participation in the Region II Spring Meeting.

An ARKANSAS MOTOR VEHICLE CRASH REPORT indicates that Ken Williams tragically suffered a fatal injury at approximately 6:10 p.m. on April 26, 2022. An Arkansas State Police NARRATIVE showed that Ken Williams had exited his personal vehicle to assist other motorists involved in a motor vehicle accident on Interstate 30 in Hot Spring County. Mr. Williams' location at the time of the pedestrian accident in which he was involved was Median/crossing island" and a box indicating "No" was checked following the information, "Going to/from K-12 School." The NARRATIVE stated that Ken Williams was struck by a tire which had been lost from a vehicle.

The relevant question in the present matter is not whether the respondents benefitted from Kenneth Williams' attendance at the Region II Spring Meeting on April 26, 2022. Instead, the critical inquiry in accordance with Act 796 is whether the claimant was performing employment services *when the injury occurred*. See *Parker v. Comcast Cable Corp.*, 100 Ark. App. 400, 269 S.W.3d 391 (2007), citing *Moncus v. Billingsley Logging*, 366 Ark. 383, 235 S.W.3d 877 (2006). The Commission must strictly construe the provisions of Act 796 of 1993. See Ark. Code Ann. §11-9-

704(c)(3)(Repl. 2012). The doctrine of strict construction requires use of the plain meaning of the statutory language. *Edens v. Superior Marble & Glass*, 346 Ark. 487, 58 S.W.3d 369 (2001). The Commission is bound to examine the activity the claimant was engaged in *at the time of the accident* in determining whether or not he was performing employment services. *Hill v. LDA Leasing*, 2010 Ark. App. 271, 374 S.W.3d 268 (2010). The preponderance of evidence in the present matter demonstrates that the claimant was not directly or indirectly benefitting his employer when he exited his vehicle and entered the median on Interstate 30 on the evening of April 26, 2022. The Full Commission finds credible Jennifer Shnaekel's testimony that the claimant's actions following the motor vehicle accident on April 26, 2022 did not benefit the Malvern School District. Again, the critical inquiry is whether the claimant was performing employment services *when the injury occurred*. See *Parker, supra*.

An employee is performing employment services when he is doing something that is generally required by his employer. *Coker, supra*. The record in the present matter shows that Ken Williams was acting nobly and generously when offered assistance to other individuals following a motor vehicle accident on April 26, 2022, while the claimant was returning to Malvern from Arkadelphia. Nevertheless, the evidence does not

demonstrate that Mr. Williams was performing employment services at the time of his tragic fatality.

After reviewing the entire record *de novo*, the Full Commission finds that the claimant was not performing employment services when he sustained a fatal accidental injury on April 26, 2022. The Full Commission therefore reverses the administrative law judge's opinion, and this claim is respectfully denied and dismissed.

IT IS SO ORDERED.

SCOTTY DALE DOUTHIT, Chairman

MICHAEL R. MAYTON, Commissioner

Commissioner Willhite concurs and dissents.

DISSENTING OPINION

After a *de novo* review of the record in this claim, I dissent from the majority opinion finding that the Claimant was not performing employment services at the time of his death.

The Claimant was employed as a band director for the Malvern School District for approximately 30 years. On April 26, 2022, Claimant attended an Arkansas State Band and Orchestra Association (hereinafter "ASBOA") meeting in Arkadelphia to discuss dates and hosts of regional

events for the students of ASBOA. During the trip home, the Claimant encountered an accident on I-30 near the 86-mile marker. The credible proof suggests that the inside eastbound lane of I-30 was blocked and traffic in that lane, including the Claimant's vehicle, came to a halt. Before traffic was cleared, another vehicle heading eastbound struck multiple vehicles and lost the front passenger-side tire which struck the Claimant who was outside his vehicle assisting accident victims. The Claimant succumbed to his injuries and was pronounced deceased on scene. The primary issue is whether the Claimant was performing employment services at the time of his injury and death.

The Arkansas 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. 372, 284 S.W.3d 57 (2008). 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.* Lastly, the issue of whether an employee is performing employment services within

the course of employment depends on the particular facts and circumstances of each case. *Id.*

The trial testimony indicates that the ASBOA meeting was a work-related event. John Stevenson was a co-worker of the Claimant and testified that the ASBOA meeting was mandatory for band directors. The agenda for the ASBOA meeting demonstrates a direct connection to school related business. The meeting included discussions relating to electing new officers as well as dates and events for ASBOA. Mr. Stevenson further clarified the direct benefit to the Malvern School District in that it outlined events for the students. Therefore, the Claimant was performing employment services by attending the ASBOA meeting. The remaining issue is whether the Claimant deviated from the course and scope of his employment on his journey back to Malvern by exiting his vehicle to provide assistance to other stranded motorists.

As stated in 2 Larson's Workers' Compensation Law, § 17:

An identifiable deviation from a business trip for personal reasons takes the employee out of the course of employment until the employee returns to the route of the business trip, unless the deviation is so small as to be disregarded as insubstantial.

At the time of this tragic accident the Claimant was attempting to return home from a work-related event. He would not have been in this

location if not for the fact that he attended the ASBOA work-related conference. Up to the time that the Claimant stopped his vehicle in response to the other traffic which had come to a halt on I-30, there appears to be no serious dispute that Claimant was performing employment services. The record then suggests that the Claimant exited his vehicle to assist three occupants of a Nissan Sentra that was stopped in front of his vehicle. During the Claimant's attempt to provide assistance he was struck and killed. Additionally, there is no credible proof in the record that the Respondent prohibited the Claimant from providing such assistance under these circumstances. It is my opinion that the Claimant's actions were not a significant deviation from the course and scope of his employment, and that he was performing employment services for the Respondent at the time of this accident. The Claimant's trip back to Malvern was a necessary part of his work-related conference. The Claimant could have sustained injuries whether he remained in his vehicle or not, and it does not seem reasonable to conclude that his attempt to provide assistance to the stranded motorists is such a deviation from the course and scope of his employment duties to find the claim is not compensable.

Therefore, I dissent from the majority and find that the Claimant was performing employment services at the time of his fatal injury.

M. SCOTT WILLHITE, Commissioner