

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. H308141

RACHEL BOYCE, EMPLOYEE

CLAIMANT

BALD KNOB SCHOOL DISTRICT, EMPLOYER

RESPONDENT

**ARKANSAS SCHOOL BOARDS ASSOCIATION,
INSURANCE CARRIER/TPA**

RESPONDENT

AMENDED OPINION FILED APRIL 29, 2025

Hearing before Administrative Law Judge, James D. Kennedy, on the 11TH day of February 2025, in Little Rock, Arkansas.

Claimant is represented by C. Michael White, Attorney at Law, North Little Rock, Arkansas.

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

STATEMENT OF THE CASE

A hearing was conducted on the 11th day of February 2025, where the claimant contended that she suffered a work-related injury to her right foot on December 18, 2023, when she broke her 5th metatarsal while in the process of turning on the lights to the building. She further contended that she was entitled to reasonable and necessary medical treatment for her injuries on that date, plus temporary total disability from the day following the injury up to the date of March 6, 2024, and attorney fees. The respondents contend that the injury was not work related and that the claimant was not performing employment services at the time of her fall on December 18, 2023. The parties stipulated that the Arkansas Workers' Compensation Commission has jurisdiction of the matter, that an employer/employee relationship existed on December 18, 2023, and that the claimant earned an average weekly wage of \$666.48 sufficient for TTD/PPD rates of

\$444.00/\$333.00. A copy of the Pre-hearing Order was marked “Commission Exhibit 1” and made part of the record without objection.

The sole witness to testify was Rachel Boyce, the claimant. From a review of the record as a whole, to include medical reports and other matters properly before the Commission, and having had an opportunity to observe the testimony and demeanor of the witness, the following findings of fact and conclusions of law are made in accordance with Ark. Code Ann. 11-9-704.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. The Arkansas Workers’ Compensation Commission has jurisdiction over this claim.
2. The stipulations set out above are reasonable and are hereby accepted.
3. That the claimant satisfied the required burden of proof to prove by a preponderance of the evidence that she suffered a compensable injury to her right foot by specific incident.
4. That the claimant is entitled to reasonable and necessary medical benefits in regard to her compensable right foot injury.
5. That the claimant is entitled to Temporary Total Disability benefits from the day following her injury up to the day of March 6, 2024.
6. That the claimant is entitled to attorney fees.
7. If not already paid, the respondents are ordered to pay for the cost of the transcript forthwith.

REVIEW OF TESTIMONY AND EVIDENCE

The Pre-hearing Order along with the Pre-hearing questionnaires of the parties were admitted into the record without objection. The claimant submitted one exhibit that was admitted into the record without objection consisting of 24 pages along with an index.

The claimant, Rachel Boyce, was the sole witness to testify and was 36 years old at the time of the hearing. She testified that she had earned an associate's degree, would be awarded her bachelor's degree in May, and worked for the Bald Knob School District as a lead preschool teacher, working under another teacher. She had a paraprofessional teacher that worked for her. Her job requirements required her to perform assessments on her students and teach from a curriculum, in an attempt to get them ready for kindergarten. She was responsible for education activities in the classroom and supervising the paraprofessional who worked with her. She had worked as a lead teacher in the classroom since 2020. (Tr. 6, 7)

She sustained her injury on December 18, 2023. "I was walking in the building. The lights were off and, as I walked in the building, the rug rolled up and I tripped and fell and broke my fifth metatarsal." She testified that she normally arrived early at 6:30 a.m. which was at least 15 minutes before the other teachers arrived. She immediately reported the injury to her supervisor. After the fall, she proceeded to her classroom and prepared for the day. Normally, she would start unstacking the chairs from the tables because they were stacked onto the tables the afternoon before, when the custodian mopped the floors in the afternoon. She also would set up learning centers for the children and prepare for the day. She stated that it was standard practice for her to prepare for the day when arriving at her classroom every morning. She additionally stated

that the lights were not on when she entered the building and they were never on, so she turned them on every morning. (Tr. 8, 9) There was no one else in the building so she was the one that turned the lights on. Her foot was hurting and felt swollen and her director instructed that she seek medical care and she consequently went to ARCare in Bald Knob, where they x-rayed her foot which appeared to be broken and referred her to Dr. Franz in Searcy, an orthopedic surgeon. (Tr. 10) Dr. Franz determined that she had broken her fifth metatarsal and placed her in a boot and off work, until Dr. Franz returned her to full duty work on March 6, 2024. She was not fully released until April 26. She still works for the Bald Knob School District in the same job and still gets to work at 6:30. (Tr. 11) She has never been told not to get to work at 6:30, either before or after the accident. Although her scheduled eight-hour day is between 7:30 to 4:00 to get her eight hours in, the school district has never told her that she could not come in early or stay late. She admitted that she was not required to stay late at work but at times it was necessary. (Tr. 12)

In regard to entering the building in the morning, she testified she had to step across a four-foot hall to turn the light on. She then would walk straight to her classroom. She felt that she would not be prepared for her children to teach them if she did not get to school early. The staff children started arriving at 7:15 and all the others started arriving at 7:30. Her supervisor was aware that she arrived early every morning and had never said anything about it. She was not required to clock in but did have a badge which she scanned in. She would not have been able to perform her preparation for her children if she arrived at 7:30. (Tr. 13 - 14)

Under cross examination, the claimant stated that she had about 20 preschool kids at a time, and taught them the basics, such as ABC's, letters, number, colors, and things like that. She had five children at the time of the accident. She also admitted she didn't have any drop-off or pick-up duties. When the parents dropped their kids off at school, they signed the children in before leaving them. After the children were dropped off, someone would bring the children to her classroom or on a nice day, they would be dropped off at the playground. At the time of the accident, she admitted that she had not done anything that morning except turn on the lights, with no students, teachers, or aides present, and she had not performed any lesson planning that morning. (Tr. 17 – 19)

The claimant's medical exhibits provided that the claimant presented to Dr. Kiihnl at Unity Health on December 19, 2023, due to a foot fracture and injury that occurred the day before when she walked into work at Bald Knob School. She was diagnosed with a nondisplaced fracture at the 5th metatarsal and was placed in a boot walker and it was recommended that she be non-weight bearing with crutches/walker. She should elevate her foot and use ice for her pain and suffering. (Cl. Ex. 1, P. 1, 2) The claimant returned to Dr. Kiihnl on January 9, 2024. The report provided that since the claimant was struggling to be non-weight bearing, outpatient surgery was recommended. Even with conservative treatment, the fracture might not completely heal. (Cl. Ex. 1, P. 3 – 5)

On January 12, 2024, the claimant was seen by Dr. Jason Franz, also of Unity Health. The report provided there was no change in symptoms, and she was currently using a short boot walker and ambulating with a limp. He recommended the placement of an intramedullary screw for the 5th metatarsal fracture. (Cl. Ex. 1, P. 6 – 8) The claimant then returned to Dr. Kiihnl on January 25, 2024, for a review of the open reduction of the

internal fixation of her right 5th metatarsal fracture with an intramedullary screw on January 16, 2024. She was instructed to remain non–weight bearing using crutches or a knee scooter. (Cl. Ex. 1, P. 9 – 11) The claimant returned again to Dr. Kiihnl on February 13, 2024. The radiology interpretation provided for a stable screw fixation and healing of a Jones Fracture. She was to remain non– weight bearing. (Cl. Ex. 1, P 12 – 14) On March 5, 2024, the claimant was again seen by Dr. Kiihnl who examined her foot and injury and opined that she could begin weight bearing on the right foot with a boot walker and could advance as long as not suffering from increased pain. (Cl. Ex. 1, P. 15 – 17) The claimant again returned to Dr. Kiihnl on March 26, 2024, and the radiology interpretation provided for a stable intramedullary screw fixation, which was healing well, and he stated that she could progress to full weight bearing with regular shoes. (Cl. Ex. 1, P. 18 – 20) The final visit of record to Dr. Kiihnl occurred on April 7, 2024, and he opined that she could resume normal activity as tolerated. (Cl. Ex. 1, P. 21 – 23)

DISCUSSION AND ADJUDICATION OF ISSUES

The claimant has the burden of proving by a preponderance of the evidence that she is entitled to compensation benefits for her injury under the Arkansas Workers' Compensation Law. In determining whether the claimant has sustained her burden of proof, the Commission shall weigh the evidence impartially, without giving the benefit of the doubt to either party. A.C.A. 11-9-704. Wade v. Mr. Cavananugh's, 298 Ark. 364, 768 S.W. 2d 521 (1989). Further, the Commission has the duty to translate evidence on all issues before it into findings of fact. Weldon v. Pierce Brothers Construction Co., 54 Ark. App. 344, 925 S.W.2d 179 (1996).

In the present matter, there appears to be no significant issue as to the facts of the matter or the actions of the claimant. The claimant came to work at 6:30 a.m. in the morning, just as she always did, walked approximately four feet down a hallway to turn on the lights, and with the rug rolled up, tripped and fell, breaking the fifth metatarsal of her right foot on December 18, 2023, while employed as a teacher of prekindergarten children for the respondent. She eventually had surgery on her right foot, which required her to be non-weight bearing from the day following the injury, until she returned to the same job for the respondent on March 6, 2024, where she continued to arrive for work at 6:30 a.m. It appears that it was not a secret that she arrived for work at that time, and no one ever instructed her to arrive later. The official work hours were 7:30 a.m. to 4:00 p.m., but staff children started arriving at 7:15 a.m., with non-staff children starting to arrive at 7:30 a.m. Other teachers started arriving at 6:45. The claimant testified that besides coming early, she at times stayed after 4:00 p.m., if needed. She was always the first teacher present and felt she needed to get there early to prepare for what she was going to do that day in regard to her students. She admitted that on the day of the accident, she did not prepare a presentation that morning and there were no students or teachers present when the injury occurred. She also admitted she never had pick up or drop off duty.

The critical issue here 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 268 (2010). The Commission is bound to examine the activity the claimant was engaged in at the time of the accident in determining whether or not she was performing employment services. Hill v. LDA Leasing, 2010 Ark. App. 271, 374

S.W.3d 268 (2010). In order for an accidental injury to be compensable, it must arise out of and in the course of employment. Ark. Code Ann. 11-9-102 (4) (A) (i). A compensable injury does not include an injury inflicted on an employee at a time when employment services were not being performed. Ark. Code Ann. 11-9-102(4)(B)(iii). An employee is performing employment services when he or she is doing something that is generally required by his or her employer. Cont'l Constr. Co. v. Nabors, 2015 Ark. App. 60, 454 S.W.3d 762. We use the same test to determine whether an employee is performing employment services as we do when determining whether an employee is acting within the course and scope of employment. Pifer v. Single Source Transportation, 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, either directly or indirectly. Even if the alleged injury took place outside the time or space boundaries of employment, "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. Hudak-Lee v. Baxter County Reg. Hosp., 2011 Ark. 31, 378 S.W.3d 77. Moreover, whether an employee was performing employment services depends on the particular facts and circumstances of each case. Ctrs. For Youth & Families v. Wood, 2015 Ark. App. 380, 466 S.W.3d 422.

Here, with no real dispute as to the facts, we are faced with the application of the applicable law and the facts to determine if the injury occurred while performing work-related services. The claimant always arrived early, both before and after her injury date, arriving at 6:30 a.m., turning on the lights, which would be beneficial for the students and employees of the respondent, either directly or indirectly, in the middle of December when

the days were the shortest, and then going to her classroom to prepare for the day. The official start time for the school is 7:30 a.m. With that said, it is clear students of the school staff start arriving by 7:15 a.m. and other staff members start arriving as early as 6:45 a.m. It was the claimant's normal practice to come early and prepare for the day. She would come in, turn on the lights to the school or at least to the hallway, and prepare for a day with preschoolers, which was clearly a benefit to the respondent, her co-workers, and the students. This dedication of the claimant and her actions were clearly carrying out the respondent employer's purposes and advancing the respondent employer's interests for preparing a safe learning environment for the children and employees of the school. It is apparent that the respondent employer, as well as the students, clearly benefitted from the dedication of the claimant. Additionally, there is clearly no question that someone had to turn on the lights. See Williams v. Malvern School District and Arkansas School Boards Association, 2025 Ark. App. 208, __ S.W.3d __. Based upon the facts of record, the preponderance of the evidence in the present matter demonstrates that the claimant was directly or indirectly advancing the interests of the respondent employer when she came in and turned on the lights that dark December morning on December 18, 2022, at about 6:30 a.m. Thus, while the claimant may have been outside the time boundaries of her employment, this is not fatal to her claim under Hudak-Lee, supra. Consequently, the claimant suffered a compensable work-related injury. The evidence shows that the injury is identifiable by time and place of occurrence, that its existence is supported by objective medical findings, and that it caused internal physical harm to the claimant's body which required medical services.

Since the injury was in fact compensable, the claimant is entitled to reasonable and necessary medical treatment and temporary disability. A.C.A. 11-9-102 (4) (F) (i). The law is clear that employers must promptly provide medical services which are reasonably necessary for treatment of compensable injuries. A.C.A 11-9-508 (a). All of the treatment of her compensable foot injury that is in evidence is reasonable and necessary.

In regard to temporary total disability, an employee who suffers a compensable scheduled injury is entitled to temporary total disability compensation “during the healing period or until the employee returned to work, whichever occurs first” A.C.A. 11-9-521(a). Conspicuously absent from the statute is any indication that the injured employee show an incapacity to earn wages as a requirement for receiving temporary benefits. See Wheeler Const. Co. v. Armstrong, 73 Ark. App.146, 41 S.W.3d 822 (2001). Here, the claimant suffered a scheduled injury when she broke the fifth metatarsal of her right foot, which required surgery and the placement of a screw for its repair. The healing period ends when the underlying condition causing the disability has become stable and nothing further in the way of treatment will improve the condition. Mad Butcher Inc. v. Parker, 4 Ark. App. 124, 628 S.W.2d 582 (1982). Because of her foot condition, the claimant did not return to work during this period and consequently, the claimant is entitled to temporary total disability from the day after the injury until the day of March 6, 2024.

After reviewing the evidence impartially, and without giving the benefit of the doubt to either party, it is found that the claimant has satisfied the required burden of proof to prove by a preponderance of the evidence that she was performing employment services at the time of the injury and consequently the claim is compensable. In addition, the

claimant is found to be entitled to reasonable and necessary medical and temporary total disability from the date following the injury up to March 6, 2024, and attorney fees. If not already paid, the respondents are ordered to pay for the cost of the transcript forthwith.

IT IS SO ORDERED.

JAMES D. KENNEDY
Administrative Law Judge