BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION
WCC NO. H400463

JIMMY D. BRUCE, EMPLOYEE	**CLAIMANT**
CITY OF MARMADUKE, SELF-INSURED EMPLOYER	**RESPONDENT**
ARK. MUN. LEAGUE, THIRD-PARTY ADM'R	**RESPONDENT**

OPINION FILED AUGUST 2, 2024

Hearing before Chief Administrative Law O. Milton Fine II on June 21, 2024, in Jonesboro, Craighead County, Arkansas.

Claimant represented by Mr. Scott Hunter, Jr., Attorney at Law, Little Rock, Arkansas.

Respondents represented by Ms. Mary K. Edwards, Attorney at Law, North Little Rock, Arkansas.

STATEMENT OF THE CASE

On June 21, 2024, the above-captioned claim was heard in Jonesboro, Arkansas. A pre-hearing conference took place on April 1, 2024. The Prehearing Order entered on that date pursuant to the conference was admitted without objection as Commission Exhibit 1. At the hearing, the parties confirmed that the stipulations and issues, and respective contentions, as amended, were properly set forth in the order.

Stipulations

At the hearing, the parties discussed the stipulations set forth in Commission Exhibit 1. With the amendment of Stipulation No. 4, they are the following, which I accept:

1. The Arkansas Workers' Compensation Commission has jurisdiction over this claim.
2. The employee/self-insured employer/third-party administrator relationship existed among the parties on January 14, 2024, and at all other relevant times.
3. Respondents have controverted this claim in its entirety.
4. Claimant's average weekly wage of $256.00 entitles him to compensation rates of $171.00/$154.00.

Issues

At the hearing, the parties discussed the issues set forth in Commission Exhibit 1. After an amendment of Issue No. 1 to correct a typographical error, the following were litigated:

1. Whether Claimant sustained a compensable injury to his right lower extremity by specific incident.
2. Whether Claimant is entitled to reasonable and necessary medical treatment.
3. Whether Claimant is entitled to temporary total disability benefits.
4. Whether Claimant is entitled to a controverted attorney's fee.

All other issues have been reserved.

Contentions

The respective contentions of the parties are as follows:

Claimant:

1. Claimant contends that he was in the process of transferring his medical bag, clipboard, and body armor into his personal vehicle before going inside to download his body camera footage and file end-of-the-day paperwork when he slipped on ice, falling and breaking his right fibula.

Respondents:

1. Respondents contend that Claimant cannot prove by a preponderance of the evidence that he sustained a compensable injury within the meaning of the Arkansas Workers' Compensation Act. On January 14, 2024, he had clocked out of work, and while he was walking from the building to his personal vehicle, he slipped and fell on ice.
2. Respondents contend that Claimant was not performing employment services at the time the incident occurred.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the record as a whole, including medical reports, documents, deposition transcripts, and other matters properly before the Commission, and having had an opportunity to hear the testimony of the witnesses and to 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. The stipulations set forth above are reasonable and are hereby accepted.
3. Claimant has not proven by a preponderance of the evidence that he sustained a compensable injury to his right lower extremity by specific incident.
4. Because of the above finding, the remaining issues—whether Claimant is entitled to reasonable and necessary medical treatment, temporary total disability benefits and a controverted attorney's fee—are moot and will not be addressed.

CASE IN CHIEF

Summary of Evidence

The witnesses at the hearing were Claimant and Captain Scott Chambers.

In addition to the Prehearing Order discussed above, admitted into evidence in this case were Claimant's Exhibit 1, non-medical records, consisting of one index page and 12 numbered pages thereafter; Respondents' Exhibit 1, non-medical records, consisting of one index page and 17 numbered pages thereafter; Respondents' Exhibit 2, the transcript of the deposition of Claimant taken on April 1, 2024, consisting of 46 numbered pages plus an eight-page index; and Respondents' Exhibit 3, a thumb drive containing body cam footage of Claimant taken on January 14, 2024.

In addition, I have blue-backed to the record the post-hearing letter briefs of Claimant and Respondents, filed on July 12, 2024, and consisting of two and three pages, respectively.

Adjudication

A. Compensability

Introduction. In this action, Claimant has alleged that he suffered a compensable injury by specific incident to his right lower extremity on January 14, 2024, when he fell in the parking lot outside the entrance of his employer, the Police Department of the City of Marmaduke. Respondents, in turn, have argued that at the time of his fall, he was not performing employment services–rendering said injury non-compensable.

Discussion. Arkansas Code Annotated § 11-9-102(4)(A)(i) (Repl. 2012), which I find applies to the analysis of Claimant's alleged injury, defines "compensable injury":

> 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[.]

A compensable injury must be established by medical evidence supported by objective findings. Ark. Code Ann. § 11-9-102(4)(D) (Repl. 2012). "Objective findings" are those findings that cannot come under the voluntary control of the patient. Id. § 11-9-102(16). The element "arising out of . . . [the] employment" relates to the causal connection between the claimant's injury and his employment. *City of El Dorado v. Sartor*, 21 Ark. App. 143, 729 S.W.2d 430 (1987). An injury arises out of a claimant's employment

"when a causal connection between work conditions and the injury is apparent to the rational mind." *Id.*

If the party seeking to prove compensability fails to establish by a preponderance of the evidence <u>any</u> of the requirements for establishing such, compensation must be denied. *Mikel v. Engineered Specialty Plastics*, 56 Ark. App. 126, 938 S.W.2d 876 (1997). This standard means the evidence having greater weight or convincing force. *Barre v. Hoffman*, 2009 Ark. 373, 326 S.W.3d 415; *Smith v. Magnet Cove Barium Corp.*, 212 Ark. 491, 206 S.W.2d 442 (1947).

The determination of a witness' credibility and how much weight to accord to that person's testimony are solely up to the Commission. *White v. Gregg Agricultural Ent.*, 72 Ark. App. 309, 37 S.W.3d 649 (2001). The Commission must sort through conflicting evidence and determine the true facts. *Id.* In so doing, the Commission is not required to believe the testimony of the claimant or any other witness, but may accept and translate into findings of fact only those portions of the testimony that it deems worthy of belief. *Id.*

In this case, the evidence shows that as a result of his January 14, 2024, fall in the parking lot at the Marmaduke Police Department, Claimant suffered an injury to his right lower extremity. As Respondents in their post-hearing brief point out, Claimant did not offer into evidence a compilation of the medical records pertaining to the treatment that he described undergoing—including placement in a boot—in connection with his alleged leg injury.

But Respondents are incorrect in asserting that the evidence at bar is devoid of objective findings. The Marmaduke Fire/Rescue report of their response to Claimant's fall, authored by Marcus Vowell, reads in pertinent part:

> Called to city hall for ankle fx [fracture]. Pt fell on ice and thinks ankle is broken. **Swelling noted[.]** Splint applied. CMS intact[.]

(Emphasis added) Captain Scott Chambers of the Marmaduke Police Department, Claimant's supervisor, testified that Vowell "is a fireman and—he's a volunteer fireman for the fire department and a paramedic. He was a full-time paramedic." Vowell is a licensed paramedic, according to Chambers. I credit this testimony.

The report by the paramedic is clearly a medical record, prepared by treating personnel who dealt with Claimant in the aftermath of his fall, and contains an objective finding in the form of swelling of the right lower extremity. *See Ellis v. J.D. & Billy Hines Trucking, Inc.*, 104 Ark. App. 118, 289 S.W.3d 497 (2008).

The incident that caused the lower extremity injury is identifiable by time and place of occurrence: Claimant's slipping/falling on the snow-covered gravel parking lot of the police department at approximately 4:35 p.m. on January 14, 2024. Claimant's testimony as to the time and location of this fall was corroborated by (1) Officer C.J. Isom, whom Claimant telephoned for help and whose report thereon was written that same day and is part of the documentary evidence; and (2) the reports in evidence that are related to the ambulance that was dispatched to Claimant's location. Moreover, the lower extremity injury clearly caused internal or external physical harm to Claimant's body and required medical services.

The only element of compensability remaining is whether the injury at issue arose out of and in the course of Claimant's employment; i.e., while he was performing employment services for the City of Marmaduke. In *Hudak-Lee v. Baxter County Reg. Hosp.*, 2011 Ark. 31, 378 S.W.3d 77, the Arkansas Supreme Court stated:

> 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) (Supp. 2009). A compensable injury does not include an injury that is inflicted upon the employee at a time when employment services are not being performed. Ark. Code Ann. § 11-9-102(4)(B)(iii) (Supp. 2009). The phrase "in the course of employment" and the term "employment services" are not defined in the Workers' Compensation Act. *Texarkana Sch. Dist. v. Conner*, 373 Ark. 372, 284 S.W.3d 57 (2008). Thus, it falls to the court to define these terms in a manner that neither broadens nor narrows the scope of the Act. *Id.*
>
> An employee is performing employment services when he or she is doing something that is generally required by his or her employer. *Id.*; *Pifer v. Single Source Transp.*, 347 Ark. 851, 69 S.W.3d 1 (2002). 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. *Jivan v. Econ. Inn & Suites*, 370 Ark. 414, 260 S.W.3d 281 (2007). 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.* In *Conner*, 373 Ark. 372, 284 S.W.3d 57, we stated that where it was clear that the injury occurred outside the time and 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. 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.*

In analyzing this issue under *Hudak-Lee*, *supra*, Claimant's injury arguably occurred outside the time boundaries of his employment. The fall took place at approximately 4:35 p.m. Per the Command Log for Claimant that is in evidence, his

status on January 14, 2024, was "Off Duty" as of 4:25:49 that day.

The fall also arguably took place outside the space boundaries of his employment: in the parking lot of the police station. The evidence does not show that he had any duties to perform out there. Claimant fell next to his own pickup truck, not near his patrol vehicle.

But as the *Hudak-Lee* Court noted, even if injury did occur outside the time and/or space boundaries of the claimant's 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**." (Emphasis added) *See also Wood v. Wendy's Old Fashioned Hamburgers*, 2010 Ark. App. 307, 374 S.W.3d 785.

Claimant has alleged that at the time of his fall, he was attempting to retrieve from his vehicle the body cam that he used as part of his law enforcement work for the city, in order to download its footage. In Claimant's post-hearing brief, his counsel wrote:

> After logging "off duty," Mr. Bruce took his body armor vest, body cam included, to his personal vehicle and was returning into the building to finish the paperwork and upload the footage from the day. During this process, he realized that he had left his body cam on his vest and he began to return to his vehicle to obtain it. It was at this time, approximately 4:35 p.m., that he slipped on the snow and injured himself.

But unfortunately, this version of the events of that afternoon does not line up with the three versions Claimant himself has given that are in evidence: (1) his unsworn report; (2) his April 1, 2024, deposition; and (3) his hearing testimony. In each of these recounts, Claimant stated that at approximately 4:25 p.m., he parked his patrol vehicle

and took his gear (including his body armor) to his personal vehicle. In each of these retellings, he related that he then went inside the police station to do his paperwork and to transfer his body cam videos, but returned to his vehicle around 4:35 p.m. to retrieve the body cam—slipping and falling as he neared his truck. Moreover, Claimant acknowledged that he had completed any paperwork by this point. Consequently, the brief cannot be given serious consideration.

Further complicating this matter is the fact that while Claimant was consistent in recounting this incident, which normally would bolster his credibility, his version of what happened late in the afternoon of January 14, 2024, is contradicted by the body cam footage in evidence. The footage shows that after he parked his Chevrolet Tahoe patrol vehicle at 4:15 p.m., he exited it and began to pack up his gear and paperwork in the front passenger side of the vehicle. He paused from doing this to step outside the garage to deliver an insulator to a fellow officer who was in a Chevrolet Silverado police vehicle. Thereafter, he resumed packing up his gear. At 4:21, he took his gear and paperwork from the vehicle and again conversed with the other officer. He told the officer that he had to go inside the police station to turn in his time sheet. Claimant and the officer entered the station. At 4:23 p.m., Claimant began unloading his gear and paperwork at his workstation. As part of this, he removed his body armor—to which the still-running body cam was attached—and placed it in an adjacent chair. Because the camera was facing the back of the chair, the viewer cannot view his activities at this point. He notified the dispatcher at 4:25 p.m. that he was checking out. This is confirmed by the Command Log in evidence, which reflects that his status was “Off

Duty" as of 4:25:49. At 4:27, Claimant told the other officer that he forgot to get the ending mileage off his patrol vehicle; audio reflects that he left the room, supposedly to return to the vehicle to retrieve it. He returned with the odometer reading, 103,777, at 4:28. The other officer announced that he was leaving to go on patrol. Claimant replied to him at 4:29: "I'll come flying through there in a minute." After the officer finally left at 4:31, sounds of paper shuffling and of a copier/scanner can be heard on the recording. At 4:33, Claimant zipped up his satchel, and carried it, a Styrofoam container, and the body armor as he departed the police station. He exited a set of double doors at 4:34. When he did this, his personal truck came into view, sitting in the snow-covered parking lot. Claimant used his key fob to remote-start the vehicle. He stowed the items in the front passenger compartment. This includes the body armor. Because of its positioning, the windshield of the truck stayed in view for the remainder of the footage. Claimant closed the door at 4:34:57. According to the undisputed evidence, he slipped and fell shortly thereafter, at approximately 4:35 p.m. At 4:39 p.m. his vehicle automatically shuts off.[1]

Again, it must be determined whether Claimant was directly or indirectly advancing his employer's interests at the time the fall took place. He has stated repeatedly that at the time of his fall and resulting leg injury, he was returning to the

[1]It bears mentioning that I cannot find, based on the evidence, that Claimant's remote-starting his vehicle shows that he intended to allow it to warm up while he returned to the station to complete any work-related tasks. First, he did not testify that this was his purpose in doing this. Second, because the video footage does not show that Claimant locked his now-running vehicle, it is not logical to assume that his intent was anything other than to depart the station—which, again, is what he told the other office was his plan.

truck to retrieve the body cam in order to download the footage. Captain Chambers confirmed in his testimony that Claimant did not perform this function on January 14, 2024; he returned to the police station at a later time to do this. But I cannot find that this was his intent, in light of the footage. Just seconds prior to the fall, Claimant had deliberately placed the body armor and body cam into his vehicle; he did not, as he testified, place it there earlier, go into the police station, and then return to the truck to retrieve it. Based on the body cam footage that is in evidence, I am simply unable to credit Claimant's testimony.

Obviously trying to tie his theory of the case to that footage, Claimant's counsel has posited that Claimant basically turned on his heels after closing the truck door and returned to get the body cam. But again, this was not Claimant's testimony. There is no evidence before the Commission that this was what in fact happened. For me to accept that and find that this was what occurred at 4:35 p.m. on January 14, 2024, would require that I engage in speculation and conjecture. But I am not permitted to do this. *See Dena Construction Co. v. Herndon*, 264 Ark. 791, 796, 575 S.W.2d 155 (1979).

In making this ruling, I am mindful of the testimony of Captain Chambers that officers are supposed to download their body cam footage before leaving "in case there's a complaint for any reason . . . ." Nevertheless, the evidence as set forth above does not support the finding that Claimant intended to do this—which, again, he admitted was the only duty he had left to perform—after he closed the door of his vehicle at 4:35 p.m. that day.

In sum, the preponderance of the credible evidence does not show that Claimant was advancing the interests of the City of Marmaduke, directly or indirectly, at the time of his fall. The "going and coming rule" generally forecloses recovery for an injury sustained while the employee is going to or returning from his place of employment because an employee is generally not acting within the course of employment when traveling to and from the workplace. *Olsten Kimberly Quality Care v. Pettey*, 328 Ark. 381, 944 S.W.2d 524 (1997). Claimant has not shown that his right lower extremity injury arose out of and in the course of his employment. Thus, due to his failure to establish this particular element of compensability, he has not met his burden of proof and cannot prevail in this matter.

B. Remaining Issues

Because of the foregoing, the remaining issues—whether Claimant is entitled to reasonable and necessary medical treatment, temporary total disability benefits, and a controverted attorney's fee—are moot and will not be addressed.

CONCLUSION

In accordance with the Findings of Fact and Conclusions of Law set forth above, this claim for initial benefits is hereby denied and dismissed.

IT IS SO ORDERED.

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Hon. O. Milton Fine II
Chief Administrative Law Judge