

**BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION
AWCC FILE № H305274**

BREAUNNA DAVIS, EMPLOYEE	CLAIMANT
JEFFERSON REGIONAL MEDICAL CENTER, EMPLOYER	RESPONDENT
JEFFERSON HOSPITAL ASSOCIATION, INC./ RISK MANAGEMENT RESOURCES, CARRIER/TPA	RESPONDENT

OPINION FILED 11 SEPTEMBER 2024

Heard before Arkansas Workers' Compensation Commission (AWCC) Administrative Law Judge JayO. Howe on 13 June 2024 in Pine Bluff, Arkansas.

Mr. Mark Alan Peoples for the claimant.

Worley, Wood & Parrish, PA, Ms. Melissa Wood, for the respondents.

I. STATEMENT OF THE CASE

The above-captioned case was heard on 13 June 2024 in Pine Bluff, Arkansas. The parties participated in a pre-hearing telephone conference on 23 April 2024. A Prehearing Order, admitted to the record without objection as Commission's Exhibit № 1, was entered on 24 April 2024.

The Order stated that the following STIPULATIONS:

1. The AWCC has jurisdiction over this claim.
2. The employee/employer/carrier-TPA relationship existed at all relevant times, including 10 August 2023, the date of the allegedly compensable injury to the claimant's ankle.
3. The claimant's average weekly wage at the time was \$567.21, which would entitle her to Temporary Total Disability (TTD) and Permanent Partial Disability (PPD) benefits in the amounts of \$378 per week and \$284 per week, respectively.
4. The respondents have controverted this claim in its entirety.

The parties' CONTENTIONS, as set forth in their Prehearing Questionnaire Responses, were incorporated into the Prehearing Order.

Per the claimant's CONTENTIONS, she sustained a compensable work injury to her left ankle on 10 August 2023, she is entitled to TTD benefits from that date until November of 2023, she is entitled to medical treatment, and her attorney is entitled to the maximum statutory fees.

Per the respondents' CONTENTIONS, the claimant did not sustain a compensable injury on 10 August 2023 or at any other time during the working relationship. The claimant was engaged in horseplay and was not in the course and scope of her employment on 10 August 2023 when she injured her left ankle.

The Order also set forth the following ISSUES TO BE LITIGATED:

1. Whether the claimant suffered a compensable injury.
2. Whether the claimant is entitled to TTD benefits.
3. Whether the claimant is entitled to reasonable and necessary medical treatment and payment/reimbursement for medical expenses and mileage.
4. Whether the claimant is entitled to an attorney's fee.

All other issues were reserved.

The following WITNESSES testified at the hearing: the claimant testified on her own behalf, while the respondents called Mr. Ed Jones, the claimant's former supervisor, and Ms. Zoey Harris, the claimant's former coworker.

The EVIDENCE presented consisted of the testimony along with Commission's Exhibit No 1 (the 24 April 2024 Prehearing Order), Claimant's Exhibit No 1 (thirteen pages of medical records), and Respondents' Exhibit Nos 1 (six pages of medical records) and 2 (ten pages of non-medical records, including a disc with security footage of the incident). The documents in Respondents' Exhibit No. 2 are detailed below.

II. FINDINGS OF FACT AND CONCLUSIONS OF LAW

Having reviewed the record as a whole and having heard testimony from the witnesses, observing their demeanor, I make the following findings of fact and conclusions of law under ACA § 11-9-704:

1. The AWCC has jurisdiction over this claim.
2. The previously-noted stipulations are accepted as fact.
3. The claimant failed to prove by a preponderance of the evidence that she suffered a compensable injury.
4. The claimant failed to prove by a preponderance of the evidence that she is entitled to an attorney's fee.

III. HEARING TESTIMONY & MEDICAL EVIDENCE

Claimant Breanna Davis

The claimant testified that she had been working in materials management at Respondent Jefferson Regional Medical Center (JRMC) for about two years before her workplace incident. Her responsibilities included taking supplies to various patient care areas and other duties as assigned. The central supply area was located in the hospital's basement, where she would start her shifts, receive area assignments, and collect supplies before delivering them to her assigned area.

On 10 August 2023, the claimant was working a shift that ran from 6:00 AM to 3:00 PM. She recalled hurting her ankle around 9:00 AM. After finishing with delivering the supplies from one of her carts and then getting some breakfast, the claimant went looking for a coworker on the second floor. According to the claimant, she hurt her ankle shortly after helping the coworker with her supply cart.

Q: All right. And did you help Pam?

A: Yes, sir.

Q: All right. What happened next?

A: And then, I saw somebody I knew. I stopped to say hi and to see how they were doing. And then, as I was walking away my left ankle twisted inward and I heard a loud pop.

Q: And this was on the second floor?

A: Yes, sir.

Q: Okay. Who did you see that you said hi to?

A: Zoey.

[TR at 17.]

The claimant said that about 15 minutes passed between helping Pam with her cart and then hurting her ankle on the way back to the basement to return to her work duties. About an hour later someone noticed that she'd taken her left shoe off and asked if she was okay. She then presented to the hospital's emergency department and reported the injury to her supervisors. The claimant was diagnosed with a small broken bone and received some additional treatment after the emergency department visit and before her claim was denied for any further benefits. She continued seeking treatment on her own for some time, but surgery was not required.

The claimant's examination continued:

Q: You don't work at Jefferson Regional anymore, do you?

A: No, sir.

Q: Why not?

A: I do not recall.

Q: Did they fire you or did you quit?

A: I believe they fired me.

Q: Do you know why?

A: No, sir.

[TR at 23.] She went on to say that after separating from the respondent's employment, she began working as a paid caretaker for her grandmother in November of 2023, making \$350 every two weeks. She did not experience difficulty working with her grandmother because of her injury, and she stated that if she were able to return to JRMC, she could perform the necessary job duties.

On cross examination the claimant testified that she was at the nurse's station to ask Zoey about a note behind the nurse's desk; but she could not recall what the note was about. Testifying about her deposition, the claimant stated:

Q: I, then, asked you in the deposition, "Did you ask Zoey about the note," and your response was, "Not that I recall," is that correct?

A: Yes, ma'am.

Q: I said, "Why not?" You said, "I don't remember. I do not recall." Is that correct?

A: Yes, ma'am.

Q: You, then, went on to say that you didn't recall if you had any conversations with any nurses or nurse's aides at the station about the note, is that right?

A: Yes, ma'am.

Q: You indicated that you had a question about some item that was located on your phone, is that right?

A: Yes, ma'am.

...

Q: I asked you what else you talked with her about; you said you didn't remember, is that correct?

A: Yes, ma'am.

Q: But you've told us that you were there in that area talking with Zoey for about 15 minutes, is that right?

A: Yes, ma'am.

Q: I asked you in your deposition, "Did you touch Zoey?" you replied, "Yes, ma'am." Is that correct?

A: Yes, ma'am.

Q: I said, "What did you touch her for?" you said, "I gave her a hug." Is that right?

A: Yes, ma'am.

Q: I said, "Did you touch her breast?" You responded, "No, ma'am." Is that correct?

A: Yes, ma'am.

...

Q: I asked you in the deposition, "If we have a statement from Ed Jones indicating that you were not supposed to be on the ICU floor, what would you say in response?" And you indicated, "I would say that was, probably, correct," end quote. Is that right?

A: Yes, ma'am.

[TR at 29-31.]

Discussing her treatment after the injury, the claimant stated that she participated in physical therapy and wore a boot for approximately three months. She confirmed that surgical repair was not indicated and that she was released to full duty on 5 January 2024.

Returning to her earlier testimony, the claimant reiterated:

Q: And it's your testimony that you don't know whether or not you were terminated?

A: Yes, ma'am.

Q: You don't know?

A: Yes, ma'am.

...

Q: I asked you on page 36 of your [5 February 2024] deposition, "Are you being paid to help her?" Your response was, "No, ma'am." Is that correct?

A: Yes, ma'am.

Q: But today you've told us you, actually, started getting paid in November?

A: Yes, ma'am. They pre – they had looked over her care and approved her for a home care nurse.

Q: So when did you receive payments and for how long?

A: I received payments for two months and I don't recall the date that it started.

Q: And again, how much were you paid?

A: Every two weeks, 350.

[TR at 33-35.]

The claimant's cross examination went on to cover the Form N entered into the record with Respondent's Exhibit No. 2.

Q: ... Do you recognize this document?

A: Yes, ma'am.

Q: Is that something that you filled out?

A: Yes, ma'am.

Q: Okay. In this middle section here it says, "What part of your body was injured?" And that says, "Left ankle."?

A: Yes, ma'am.

Q: And right below it, tell us what that says.

A: Lady ran over my toes.

Q: Is that something that, actually, happened? Did someone run over your toes?

A: Yes, ma'am.

Q: This is how you hurt yourself?

A: That was a portion of it.

[TR at 36.]

Respondents' Witness Ed Jones

Mr. Jones testified that he works as the manager of central supply and inventory controls at Jefferson Regional Medical Center and in that role, the claimant's direct supervisor reported to him. He acknowledged that a written statement introduced in Respondent's Exhibit No. 2 was a writing that he provided to JRMC in response to a request from their human resources department. According to the statement, the claimant was outside of her assigned work area when she was injured. Mr. Jones confirmed in his testimony that the claimant was not supposed to have been in the work area where her injury occurred.

Mr. Jones also relayed his recollection of the video footage of the nursing area where the claimant hurt herself. He stated that he provided the footage to JRMC's HR department. Mr. Jones testified that the video did not show the claimant performing any work activities, but that he was not involved in the decision to terminate the claimant's employment.

On cross examination, Mr. Jones stated that it was not prohibited or uncommon for employees to assist each other in carrying out work duties.

On redirect examination, Mr. Jones testified that Pam was not present in the area where the claimant was hurt. He further testified that the claimant should have returned to the central supply area for further work assignments after completing her supply deliveries.

Respondents' Witness Zoey Harris

Ms. Harris testified that she works as a patient care technician at JRMC and that it would be fair to say that she and the claimant were friends or acquaintances during the time that they worked together. Relaying what she recalled of August 10th, she explained:

A: Okay. So I was charting on my computer, and then, I felt somebody come up behind me and put me in a kind of like a choke hold, but not hard. She put her arm around my neck, and then, like I felt my – I got groped. Okay. And then, I turned around and I saw it was her, but I was still kind of uncomfortable, 'cause I don't like being touched no way. And then, she kind of pointed like a gun kind of with her fingers and pointed it up to, like, to my head, and then, swiped my head.

Q: So not a real gun?

A: Oh, no, no.

Q: Just her fingers?

A: Yeah, just her fingers.

Q: Okay were you uncomfortable with this?

A: Yes.

[TR at 46-47.]

Ms. Harris then confirmed that she authored a statement made part of the record in Respondents' Exhibit No. 2. She testified that the claimant did not speak to her about anything work related.

Q: At one point she seems to show you her phone, do you remember that?

A: Yes.

Q: Do you—

A: It was like a song. It was like a song that she was trying to show me.

Q: During the conversation that you had with her, after she hugged you, did she ask you anything or talk about anything work related?

A: No.

[TR at 48.]

On cross examination, Ms. Harris testified that she was not made aware of the claimant's injury until she was contacted about the matter by HR a few days later.

Records and Video Evidence

Respondents' Exhibit No. 2 included the following: (1) video footage of the incident; (2) the Form AR-N signed by the claimant; (3) the written statement of Zoey Harris; (4) the written statement of Ed Jones; (5) a termination letter signed by Employee Relations Specialist Robin Munn; and (6) an HR document packet noting the claimant's termination.

(1) Having reviewed the video, I note the following:

- a. The video displays a runtime of 3:23 (three minutes, twenty-three seconds).
- b. The foreground of the video shows the desk of the nurse's station extending from the bottom to the top of the frame. Patient rooms wrap around the exterior of the space and the nurse's station. The nurse's station area extends through the middle and background of the frame, with work stations, an enclosed office space, and a corridor in the middle of the nurse's station that leads "away" from the area towards the interior of the building.
- c. Zoey Harris is seated at the nurse's station, eating in front of a computer. Another employee is seated to her right.
- d. 00:10- the claimant enters the frame through the corridor and puts Ms. Harris in a headlock.
- e. 00:14- claimant releases the headlock and leans over Ms. Harris' shoulders, resting her right arm across Ms. Harris' chest and her right hand over Ms. Harris' left breast.
- f. 00:26- the claimant stands up from leaning across Ms. Harris and moves her hand away from Ms. Harris' breast, while talking and gesturing with her hands out, as if asking a question to the room.
- g. 00:56- Ms. Harris continues eating while the claimant stands beside her, both looking at something on Ms. Harris' phone, which is on the desk to the left of her food.
- h. 01:09- the claimant puts her phone on the desk beside Ms. Harris' while something appears to be playing on the screen. The claimant appears to sing and dance along with whatever is playing on her phone.

- i. 01:45- another employee enters the frame, and the claimant begins to pick up her phone when she sees him, but then puts it back down and leans over it, tapping at the screen.
 - j. 02:05- the claimant slides her phone in front of Ms. Harris, who watches while they discuss something and tap at both phones.
 - k. 02:19- the claimant points her fingers like a gun against Ms. Harris' head for a moment before pulling her hand away.
 - l. 02:29- the claimant is holding her phone and standing beside Ms. Harris as another employee enters the area from the top of the frame and walks around the nurse's station.
 - m. 03:09- the claimant is still standing by Ms. Harris, and they are looking at their phones, when another employee enters the middle of the nurse's station via the corridor.
 - n. 03:17- the claimant abruptly stands back and walks away from Ms. Harris while saying something, with her hands on her hips, towards the employee who just arrived.
 - o. 03:19- the claimant appears to stumble while turning and walking through the corridor. She then exits the frame.
- (2) As noted on cross examination, the claimant stated on the Form N that, "[A] lady ran over my toes[.] Almost fell and then heard a pop."
- (3) Ms. Harris wrote that, "I was sitting at the nurses deck when someone came up behind me and placed her hands around my neck and grabbed my boob and when I looked to see who it was Bri from CSR and I felt uncomfortable and it was unwanted." [sic]

- (4) Mr. Jones wrote that, "... Her assignment **DID NOT INLCUDE** SICU [emphasis in original]... Breanna was in SICU when injured, but had not been assigned there nor sent there by her direct supervisor or myself at any time that morning. At the time, she should have been attending to her assigned areas or back in CSR working on whatever her direct supervisor needed her to do." SICU is the intensive care unit where the claimant was not assigned, but where she injured herself.
- (5) The 26 September 2023 termination letter advised the claimant of "termination as Distribution Technician at Jefferson Regional. Disciplinary reason 'Unprofessional Behavior/Conduct.'"
- (6) The HR documents indicate "termination" for "Unacceptable Behavior/Conduct," providing that, "The employee was found on video outside of her work without a business reason displaying unprofessional conduct/behavior." The final page has a space for comments that appears to be signed by the same Robin Munn who signed the termination letter and noted, "Was a no call no show for meeting to term. Sent cert[ified] letter."

IV. ADJUDICATION

The stipulated facts are outlined above and accepted as fact. It is settled that the Commission, with the benefit of being in the presence of the witnesses and observing their demeanor, determines a witness' credibility and the appropriate weight to accord their statements. See *Wal-Mart Stores, Inc. v. VanWagner*, 337 Ark. 443, 448, 990 S.W.2d 522 (1999).

A. THE CLAIMANT FAILED TO PROVE BY A PREPONDERANCE OF THE EVIDENCE THAT SHE SUFFERED A COMPENSABLE INJURY.

The claimant is not entitled to the benefits sought in relation to the injury she experienced while at work on 10 August 2023. At the time she injured her ankle, the claimant had been engaging in horseplay outside of her work assignment area.

The claimant alleges that she sustained a compensable injury under the Arkansas Workers' Compensation Act. ACA § 11-9-101, et seq. Under the Act, a respondent is generally required to provide certain benefits associated with a compensable injury suffered by a worker in the course and scope of their employment. However, "injuries caused by horseplay shall not be considered to be compensable injuries." ACA § 11-9-102(4)(B)(i). In *Mize v. Res. Power, Inc.*, 99 Ark. App. 415, 261 S.W.3d 477, 2007 Ark. App. LEXIS 583, our Court of Appeals addressed horseplay and found an earlier citation to *Ringier Am. v. Combs*, 41 Ark. App. 47, 849 S.W.2d 1 (1993), to be instructive, though not controlling (as "the statutory provision [above] was enacted after the *Ringier* case was decided and is controlling"):

Whether initiation of horseplay is a deviation from one's course of employment depends on: (1) the extent and seriousness of the deviation; (2) the completeness of the deviation, *i.e.*, whether it was co-mingled with the performance of duty or involved in abandonment of duty; (3) the extent to which the practice of horseplay had been an accepted part of the employment; and (4) the extent to which the nature of the employment may be expected to include some such horseplay.

Mize, supra, at *420, **480, ***8.

The available video shows the three minutes preceding the claimant's injury. Applying the considerations from *Ringier*, I find that she did not appear at all to be furthering any work duty. Ms. Harris, who I find to be credible, testified that the claimant did not engage in any work-related discussion but, instead, was showing her some music video on her phone. That is consistent with the video footage (Factors (1) and (2)). From the

claimant's guarding behavior when one employee enters the frame and then her hasty departure when another arrives, I find it more likely than not that she was aware that her being out of her place of assignment was not acceptable (Factor (3)). Finally, there was no testimony to support the notion that laughing and dancing in an intensive care unit, and while out of one's place of assignment, might be behavior of an expected nature in a healthcare setting (Factor (4)). All of these factors weigh in favor of finding that the claimant's behavior was a significant deviation from the course of her employment and that she was engaging in horseplay at the time she was injured.

The claimant attempted to argue that she was acting for her employer's benefit while being out of her place of assignment. I do not find that argument, or her testimony as-a-whole, to be credible. First, nothing in the video supports her story of investigating a note about some needed supplies. Second, Ms. Harris credibly states that the claimant was not there to discuss job-related business. Third, Mr. Jones credibly testified that the claimant was outside of her assigned work area at the time she was hurt and that she should have returned to her supervisor for further assignments after finishing her supply deliveries. Lastly, the claimant was terminated for the behavior that immediately preceded hurting her ankle. In the span of about three minutes, the claimant grabbed Ms. Harris in a chokehold, groped Ms. Harris' breast (which she denied in her testimony, but is in plain view in the video), motioned against Ms. Harris' head with her hand in the shape of a gun, and danced along with some kind of internet videos—all while outside of her assigned work area. The evidence preponderates a finding that she was engaged in horseplay and not in any efforts in furtherance of her employer's interest.

The claimant incredulously testified that she did not recall why she no longer worked for the respondent-employer. Then she said that she *believed* she was terminated, but that she was unsure why. The respondents' evidence, however, show that she was

terminated for being “found on video outside of her work without a business reason displaying unprofessional conduct/behavior.” Her credibility was further damaged by the respondents’ counsel noting on cross examination that the claimant filled out a Form N stating that a “lady ran over my toes.” The video shows nothing of the sort happening. Yet on cross examination, the claimant insisted that the incident actually happened and that it was “a portion” of how she injured herself. The claimant was, in short, not a credible witness.

Because the evidence preponderates a finding that the claimant was engaged in horseplay at the time of her injury, the benefits she requests are barred by ACA § 11-9-102(4)(B)(i).

B. THE CLAIMANT IS NOT ENTITLED TO A CONTROVERTED ATTORNEY’S FEE.

Because the claimant fails to establish by a preponderance of the evidence that she suffered a compensable injury, her claim for an attorney’s fees must fail.

V. ORDER

Consistent with the Findings of Fact and Conclusions of Law stated above, this claim for is DENIED and DISMSSED.

SO ORDERED.

JAYO. HOWE
ADMINISTRATIVE LAW JUDGE