

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. H305182

ANDREA EWTON, Employee	CLAIMANT
DARDANELLE PUBLIC SCHOOLS, Employer	RESPONDENT
ARKANSAS SCHOOL BOARDS ASSOCIATION WCT, Carrier	RESPONDENT

OPINION FILED AUGUST 12, 2024

Hearing before ADMINISTRATIVE LAW JUDGE GREGORY K. STEWART in Russellville, Pope County, Arkansas.

Claimant represented by ANDY L. CALDWELL, Attorney, Little Rock, Arkansas.

Respondents represented by MELISSA WOOD, Attorney, Little Rock, Arkansas.

STATEMENT OF THE CASE

On August 1, 2024, the above captioned claim came on for hearing at Russellville, Arkansas. A pre-hearing conference was conducted on May 29, 2024 and a pre-hearing order was filed on that same date. A copy of the pre-hearing order has been marked as Commission's Exhibit #1 and made a part of the record without objection.

At the pre-hearing conference the parties agreed to the following stipulations:

1. The Arkansas Workers' Compensation Commission has jurisdiction of the within claim.
2. The employee/employer/carrier relationship existed among the parties on August 15, 2023.
3. Claimant was earning an average weekly wage of \$132.64 which would entitle her to compensation at the rate of \$88.00 per week.

At the pre-hearing conference the parties agreed to litigate the following issues:

1. Compensability of injury to claimant's left knee and right ankle on August 15, 2023.
2. Related medical.
3. Temporary total disability benefits from August 16, 2023 through a date yet to be determined.
4. Attorney's fee.

At the time of the hearing claimant clarified that she is requesting temporary total disability benefits beginning August 16, 2023 and continuing through June 22, 2024.

The claimant contends she sustained injuries to her right ankle and left knee in the course and scope of her employment which resulted in the need for treatment beginning on or about August 15, 2023. Respondents have controverted the claim. Claimant contends she is entitled to temporary total disability from August 16, 2023 through June 22, 2024, reasonable and necessary medical treatment, and attorney's fees. All other issues are reserved.

The respondents contend that claimant did not suffer a compensable injury on August 15, 2023. She was not in the course and scope of her employment when she injured her left knee and right ankle.

From a review of the record as a whole, to include medical reports, documents, and other matters properly before the Commission, and having had an opportunity to hear the testimony of the witnesses and to observe their demeanor, the following findings of fact and conclusions of law are made in accordance with A.C.A. §11-9-704:

### FINDINGS OF FACT & CONCLUSIONS OF LAW

1. The stipulations agreed to by the parties at a pre-hearing conference conducted on May 29, 2024 and contained in a pre-hearing order filed that same date are hereby accepted as fact.

2. Claimant has failed to prove by a preponderance of the evidence that she suffered a compensable injury to her left knee and right ankle on August 15, 2023. Specifically, claimant was not performing “employment services” at the time of her injury.

### FACTUAL BACKGROUND

The claimant is a 41-year-old woman who periodically worked for respondent as a substitute custodian at multiple school buildings in Dardanelle. On August 14, 2023 claimant was contacted by Rebecca (“Becca”) Manatt to work the next day.

Claimant testified that on August 15, 2023, she reported for work at respondent’s Central Office where she talked to Susie Howell, received keys, and did some cleaning at the Central Office building. Claimant then drove to the Intermediate School office to fill out a time sheet and get keys for the gym and a tech lab building. Claimant testified that she received the keys from Manatt and then drove her car across campus to those buildings. She then testified as follows:

Q And what did you do once you parked?

A Once I parked, I got to - - I went up to the gym to see if anybody was in there to let me in and there wasn’t because I didn’t have the right set of keys.

Q So then what did you do?

A I went back to my car to get my bottle of water and get the other set of keys that I needed to go start the agra building and the electronics building.

Q So did you make it to your car?

A No, sir, I did not. I stepped off of the sidewalk and twisted my ankle and broke it.

Claimant then got back in her car and drove to the Intermediate School office to report the injury. In the office claimant was seen by April McGuire, the school nurse. McGuire gave claimant workers' compensation paperwork to complete and they called Misty Thompson, claim supervisor at the Arkansas School Boards Association, to report the injury.

During that conversation Thompson informed claimant that respondent would not accept the claim as compensable and that any treatment would be at her expense.

Claimant has filed this claim contending that she suffered a compensable injury to her left knee and right ankle on August 15, 2023. She seeks payment of related medical treatment as well as temporary total disability benefits, and a controverted attorney fee.

### ADJUDICATION

Claimant contends that she suffered a compensable injury to her left knee and right ankle when she stepped off a curb while working for respondent on August 15, 2023. Claimant's claim is for a specific injury. In order to prove a compensable injury as the result of a specific incident that is identifiable by time and place of occurrence, a claimant must establish by a preponderance of the evidence (1) an injury arising out of and in the course of employment; (2) the injury caused internal or external harm to the body which

required medical services or resulted in disability or death; (3) medical evidence supported by objective findings establishing an injury; and (4) the injury was caused by a specific incident identifiable by time and place of occurrence. *Odd Jobs and More v. Reid*, 2011 Ark. App. 450, 384 S.W. 3d 630.

A compensable injury does not include an “injury which was inflicted upon the employee at a time when employment services were not being performed.” A.C.A. §11-9-102(4)(B)(iii). An employee is performing employment services when she is doing something generally required by her employer. *White v. Georgia-Pacific Corporation*, 339 Ark. 474, 6 S.W. 3d 98 (1999). The same test is used to determine whether an employee is performing employment services as is used when determining whether an employee was acting in 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. *Id.*

After reviewing the evidence in this case impartially, without giving the benefit of the doubt to either party, I find that claimant has failed to prove by a preponderance of the evidence that she suffered a compensable injury to her left knee and right ankle on August 15, 2023. Specifically, I find that claimant was not performing employment services at the time of her injury.

Claimant testified at the hearing that she was returning to her car when she stepped off the curb and twisted her ankle in order to get a set of keys. Clearly, this would constitute the performance of employment services. However, I do not find this testimony to be credible.

First, I note that claimant testified at her deposition that when she initially went to the Intermediate Office she received keys to the gym and tech lab from April McGuire, the school nurse. However, testimony from McGuire and Mannatt established that McGuire does not have any keys to respondent's buildings other than the keys to her own office. Even claimant at the time of the hearing had changed her testimony to indicate that she had received the keys from Mannatt.

Furthermore, immediately after this accident, claimant did not give a history of going to her car to obtain keys to a building, but instead indicated that she was going to her car to get her own personal drink. As previously noted, immediately after this accident claimant returned to the Intermediate School office to report the injury where she was seen by April McGuire, respondent's school nurse. McGuire testified that claimant indicated that she was walking to her car to get a drink.

Q Did she tell you what she was doing at the time of the fall?

A If I remember correctly, she told us that she had been walking out to her car to get a drink and slipped off the curb.

Q Did she mention anything at all about going to her car to get a set of keys?

A No, ma'am.

Furthermore, as previously noted, McGuire telephoned Misty Thompson, the workers' compensation claims supervisor, to report the injury. Thompson also testified that claimant indicated that she was going to her car to get a drink and that no other purpose was mentioned.

Q What did Mrs. Ewton tell you she was doing at the

time of the fall?

A She was going back to her vehicle to get a drink.

Q Did she mention anything else that she would have been doing as far as why she was going back to her car?

A No. And can I reference that?

Q Yes.

A And I do recall when I went back and looked when this was going into litigation to verify if she was going out there for any other purpose or if that was her sole purpose for going back out to the vehicle was to get the drink.

Q You even asked her, “Was there any other purpose for you going back to your car?” What was her response?

A Her response was, “No.”

Claimant’s statement that she was going to her car to get a drink is further reflected in the recorded statement which was submitted into evidence by the respondent. That statement contains the following:

Q And how were you injured, or what happened?

A I stepped off a curb and twisted my ankle and fell in the parking lot.

Q And what were you doing at that time, I mean like taking trash out, going to another building?

A I was getting ready. I was going to my car to get something to drink that I had left in there, and when I stepped off of the curb I twisted my ankle and its all swollen.

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A Yes.

Q And it was to get a drink for yourself?

A Yes.

Q Okay. And that was something you had left in your car?

A Yes, and I was going back out, I was going to go back in after I got my drink, but then I -

Q Okay.

A - couldn't make it back in because I fell and messed up my ankle.

Q Was there any other purpose for you going out there, other than to get your drink?

A No, ma'am.

Perhaps the most damaging evidence with regard to claimant's credibility is her application for unemployment insurance benefits on April 22, 2024. At the hearing claimant testified that she had not worked since the date of the accident on April 15, 2023.

Q Have you been back to work since the date of this incident?

A No, sir.

First, I note that claimant initially filed for unemployment compensation benefits on September 12, 2023, and when listing her last employer did not list the respondent but instead listed Northport Health Services of Arkansas with her last date of work as August 15, 2023. According to this claim, claimant was working for respondent on August 15, 2023. More importantly, claimant refiled for unemployment compensation benefits on April 22, 2024. Despite testifying that she had not worked since August 15, 2023, claimant



listed her last employer as Dardanelle Nursing & Rehab. Claimant indicated that she was working fulltime for that employer and that her first day to work for Dardanelle Nursing was October 5, 2023, and her last date of work was February 22, 2024. Claimant was subsequently disqualified for unemployment compensation benefits for making false statements or misrepresenting a material fact on her application. Documentation from the Division of Work Force Services submitted on Page 13 of Respondent's Exhibit #1 indicates that there was some discrepancy between claimant and Dardanelle Nursing regarding her employment and her missing work for that employer. The relevant evidence in this case is that despite claimant's testimony that she did not work after August 15, 2023, the claimant did in fact return to work for another employer.

Based upon the foregoing, I do not find claimant's testimony that she was going to her car to get keys to be credible. Instead, I find that claimant was returning to her car in order to get her own personal drink. The Commission is bound to examine the activity the claimant was engaged in at the time of the accident in determining whether or not they were performing employment services. *Texarkana School District v. Conner*, 383 Ark. 372, 284 S.W. 3d 57 (2008); *Javan v. Econ. Inn & Suites*, 370 Ark. 414, 260 S.W. 3d 281 (2007).

Here, the activity claimant was engaged in at the time of her accident was not going to her car to get keys in to a building to clean, but instead was her going to her car to get her own personal drink. While claimant may have been on the clock at the time she was engaging in that activity, claimant was not carrying out the employer's purpose or advancing the employer's interest either directly or indirectly. Therefore, she was not performing employment services at the time of her accident and her injury is not

compensable under Arkansas workers' compensation law.

ORDER

Claimant has failed to prove by a preponderance of the evidence that she suffered a compensable injury to her left knee and right ankle while employed by respondent on August 15, 2023. Claimant was not performing employment services at the time of her accident. Therefore, her claim for compensation benefits is hereby denied and dismissed.

Respondent is liable for payment of the court reporter's charges for preparation of the hearing transcript in the amount of \$528.10.

IT IS SO ORDERED.

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GREGORY K. STEWART  
ADMINISTRATIVE LAW JUDGE