

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

WCC NO. H304951

ROBERT HERDISON, Employee	CLAIMANT
DRIVERS SELECT, INC., Employer	RESPONDENT
SEDWICK CLAIMS MANAGEMENT, Carrier	RESPONDENT

OPINION FILED OCTOBER 2, 2024

Hearing before ADMINISTRATIVE LAW JUDGE ERIC PAUL WELLS in Fort Smith, Sebastian County, Arkansas.

Claimant represented by LAURA BETH YORK, Attorney at Law, Little Rock, Arkansas.

Respondents represented by KAREN H. MCKINNEY, Attorney at Law, Little Rock, Arkansas.

STATEMENT OF THE CASE

On July 25, 2024, the above captioned claim came on for a hearing at Fort Smith, Arkansas. A pre-hearing conference was conducted on April 29, 2024, and a Pre-hearing Order was filed on April 30, 2024. A copy of the Pre-hearing Order has been marked Commission's Exhibit No. 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 this claim.
2. The relationship of employee-employer-carrier existed between the parties on June 22, 2023.
3. The respondents have controverted the claim in its entirety.

4. The claimant was earning sufficient wages to entitle him to compensation at the weekly rates of \$371.00 for temporary total disability benefits and \$278.00 for permanent partial disability benefits.

By agreement of the parties the issues to litigate are limited to the following:

1. Whether Claimant sustained a compensable injury to his cervical, thoracic, and lumbar spine on or about June 22, 2023.

2. Whether Claimant is entitled to medical treatment for his compensable cervical, thoracic, and lumbar spine injuries.

3. Whether Claimant is entitled to temporary total disability benefits from June 23, 2024, to a date yet to be determined.

4. Whether Claimant's attorney is entitled to an attorney fee.

The claimant's contentions are as follows:

“On or about 6/22/2023, the claimant was involved in a motor vehicle accident in the scope and course of employment. As a result of the accident, the claimant sustained injuries to multiple body parts, including his head, neck, back, left leg, left foot and right arm. Respondents denied the claim in its entirety. The Claimant sought treatment on his own. An MRI to the thoracic spine revealed disk protrusions to T8, 9, and 10. And MRI to the lumbar spine revealed protrusions at L3-4 and L4-5. An MRI to the cervical spine revealed bulging at C4-5 and C5-6 and a protrusion at C6-7. As a result, claimant underwent a cervical spine disectomy and fusion surgery from C5 to C7 on November 18, 2023.

Claimant contends that he sustained compensable injuries to his neck and back in the scope and course of employment and that he is entitled to TTD, medical benefits, and that his attorney is entitled to an attorney fee. All other issues are reserved.”

The respondents' contentions are as follows:

“Respondents contend that the claimant was not performing employment services at the time of his injury on June 22, 2023. The claimant had completed his job responsibilities for the day and was no longer driving for Drivers Select, he was not performing employment services, and he was not earning wages when he was the passenger in a co-worker’s vehicle that was involved in a motor vehicle accident.”

The claimant in this matter is a 53-year-old male who alleges to have sustained compensable injuries to his cervical, thoracic, and lumbar spine on or about June 22, 2023. The claimant has also requested medical treatment for those injuries as well as temporary total disability benefits. However, upon my review of the evidence in this matter, it is certain that the central issue is compensability of those alleged injuries. More specifically, whether the claimant was performing employment services at the time of a June 22, 2023, motor vehicle accident in which the claimant was involved. The respondent/employer in this matter is somewhat of a unique type of employer, in that the respondent/employer is much like a temporary employment agency but deals specifically with the moving of semi tractor trailers. The respondent’s business model is to bid on jobs to move semi tractor trailers from one location to another. They use temporary employees as their labor source. These movements of semi tractor trailers could be across the country movements or just movements from 10 to 80 miles.

The claimant in this matter gave testimony about his employment with the respondent which began roughly one month before his June 22, 2023, motor vehicle accident. The claimant was asked on direct examination about the job he had accepted with the respondent before the job in which he alleges to have sustained a compensable injury on June 22, 2023. That job required the claimant and several other employees to go to Colorado Springs, Colorado. In that job the claimant and other employees were transported to Mobile, Alabama. At that point they picked up and drove several semi tractor trailers to Colorado Springs, Colorado. When they

reached their destination some of the men, including the claimant, drove semi tractor trailers back to Mobile, Alabama. At that point the claimant got into a “chase car” that brought him back to Arkansas. It appears from testimony that a chase car is used to move the semi tractor trailer drivers between locations when needed. The claimant concluded this engagement with the respondent without any incident.

It is the claimant’s next employment with the respondent that he alleges to have sustained compensable injuries to his cervical, thoracic and lumbar spine.

On that day the claimant was contacted by Abigail Robertson, who is the driver dispatcher manager for the respondent and has been since December 2020. Abigail Robertson goes by the name of Abby, and I will refer to her as such. On June 22, 2023, Abby contacted the claimant and at least one other temporary employee to provide employment services to move semi tractor trailers from Van Buren to Rogers, Arkansas. However, after her initial contact to the temporary employees including the claimant a change in the job status had occurred. Initially, there was a need for a chase car; however, the new instructions did not include that chase car need. Abby testified that she was unable to reach the temporary employees before they arrived at the respondent’s Fort Smith office. However, after they arrived, they were informed of the change. The respondent informed them that there would be no need for a chase car and that they should go to a well-known place in Van Buren called MHC to pick up the semi tractor trailers and move them to Rogers. At which point, a second vehicle would retrieve them and take them to a location in Springdale to pick up a semi tractor trailer and return it to their starting point in Van Buren known as MHC.

The claimant had issue with this new development in that he was lacking in gasoline in his personal vehicle in order to get to the job site in Van Buren to pick up the semi tractor trailer

and begin the job. The respondent did specifically recommend that he ride with another temporary employee named Jody, who was assigned to the same job. I note that throughout the course of testimony Jody is identified no further than Jody. The claimant associated or named him as Joe; however, according to the respondent his name was Jody. No one at the time of the hearing was aware of his last name. Apparently, Jody agreed to give the claimant a ride to the Van Buren MHC facility to pick up the semi tractor trailers and as such begin working that day. As previously stated, the men completed the run and returned to the MHC facility in Van Buren. At that time, they sent photos via text message to the respondent to show the arrival of the semi tractor trailers. However, the claimant still needed to return to his gasoline deficient personal automobile. It is during that return that the claimant and Jody, who gave him a ride, were involved in a motor vehicle accident in which they were hit by another driver from behind in a separate vehicle.

The central question is whether the claimant was performing employment services at the time of his motor vehicle accident.

A compensable injury is defined, in part, as an accidental injury which arises out of an in the course of employment. A.C.A. § 11-9-102(4)(A)(I). However, a compensable injury does not include an injury “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 they are doing something that is generally required by his or her employer. *Continental Construction Co. v. Nabors*, 2015 Ark. App. 60, 454 S.W.3d 762; *White v. Georgia-Pacific Corp.*, 339 Ark. 474, 478, 6 S.W.3d 98, 100 (1999). The same test is used to determine whether an employee is performing employment services as is used when determining whether an employee is acting within the course and scope of employment. 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. *Pifer v. Single Source Transportation*, 347 Ark. 851, 69 S.W.3d 1 (2002).

The Arkansas Court of Appeals determined in *Linton v. Ark. Dep't of Corrections*, 87 Ark App. 263, 190 S.W. 3d 275 (2004) that an employee who was injured while traveling to a required meeting at a normal place of work on the claimant's day off was properly denied workers' compensation benefits. The Court stated, "merely traveling to and from the workplace was not a covered activity under the workers' compensation statutes."

In the present matter it is clear that the claimant was traveling to retrieve his personal vehicle that he would have driven to the Van Buren MHC location had he not been unable to because of a lack of gasoline in his personal vehicle.

The claimant did provide testimony that it was his belief that he had to return to the Fort Smith office of the respondent to complete his work duties. I note that this is the same location that the claimant's personal vehicle was located with a lack of gasoline. Testimony provided by both Jennifer Powell, the respondent's assistant manager of operations, who also served as the human resources manager, along with Abby, the driver dispatch manager, showed the claimant had no reason to return to the Fort Smith office of the respondent. It was pointed out that the job of the claimant was a bid job and that no timesheets were required to be completed. Essentially the claimant's job was completed when he sent the photographs of the truck being returned to the MHC facility to the respondent.

Given the testimony and evidence before the Commission I find that the claimant was not performing employment services at the time of his June 22, 2023, motor vehicle accident, but was instead retrieving his personal vehicle that was low on gasoline. Given that the claimant is

unable to prove that he was providing employment services at the time of the motor vehicle accident, the claimant is unable to prove by a preponderance of the evidence that he sustained compensable injuries to his cervical, thoracic and lumbar spine as he has alleged on June 22, 2023, in a motor vehicle accident.

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 the pre-hearing conference conducted on April 29, 2024, and contained in a Pre-hearing Order filed April 30, 2024, are hereby accepted as fact.

2. The claimant has failed to prove by a preponderance of the evidence that he sustained compensable injuries to his cervical, thoracic and lumbar spine on or about June 22, 2023.

3. The claimant has failed to prove by a preponderance of the evidence that he is entitled to medical treatment for his alleged compensable cervical, thoracic and lumbar spine injuries.

4. The claimant has failed to prove by a preponderance of the evidence that he is entitled to temporary total disability benefits from June 23, 2023, to a date yet to be determined.

5. The claimant has failed to prove by a preponderance of the evidence that his attorney is entitled to an attorney's fee in this matter.

ORDER

Pursuant to the above findings and conclusions, I have no alternative but to deny this claim in its entirety.

If they have not already done so, the respondents are directed to pay the court reporter, Veronica Lane, fees and expenses within thirty (30) days of receipt of the invoice.

IT IS SO ORDERED.

HONORABLE ERIC PAUL WELLS
ADMINISTRATIVE LAW JUDGE