

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. G901750

WILLIE W. ANDERSON, EMPLOYEE	CLAIMANT
WALMART ASSOCIATES, INC., EMPLOYER	RESPONDENT NO. 1
CLAIMS MANAGEMENT, INC., INSURANCE CARRIER/TPA	RESPONDENT NO. 1
DEATH AND PERMANENT TOTAL DISABILITY TRUST FUND	RESPONDENT NO. 2

OPINION FILED FEBRUARY 9, 2021

Upon review before the FULL COMMISSION, Little Rock, Pulaski County, Arkansas.

Claimant represented by the HONORABLE KOLTON JONES, Attorney at Law, Little Rock, Arkansas.

Respondents No. 1 represented by the HONORABLE CURTIS NEBBEN, Attorney at Law, Fayetteville, Arkansas.

Respondent No. 2 represented by the HONORABLE CHRISTY KING, Attorney at Law, Little Rock, Arkansas.

Decision of Administrative Law Judge: Reversed.

OPINION AND ORDER

The claimant appeals a decision of the Administrative Law Judge filed on August 5, 2020. The Administrative Law Judge found that the claimant failed to satisfy the required burden of proof by a preponderance of the evidence that he was performing employment services at the time of the injury and consequently the claim is not compensable. After our *de novo*

review of the entire record, the Full Commission finds that the claimant has proven by a preponderance of the evidence that he sustained compensable left leg, hip and pelvis injuries while performing employment services on March 9, 2019.

I. HISTORY

The claimant, now 67 years old, worked for the respondent-employer as a truck driver for approximately 27 years. The claimant testified that his shift usually began Tuesday mornings at 8:00 a.m. and ended on Saturday evenings when he would return to the base in Searcy. The claimant offered the following testimony regarding his typical work duties upon returning to Searcy:

Q Okay. So when you're out for the week and you come back and you pull into the yard at Searcy, what kinds of things, what's your routine once you get back into the yard before you can leave to go home?

A Okay. You've got to drop the trailer in the spot where you're told to take it, you're supposed to fuel up your truck, you're supposed to either hand wash it or run it through the wash machine. They have an electric machine there.

And then you've got to clean all your stuff out, all your own personal stuff, and before you do that, you always go in and turn in your paperwork for the day to make sure that they don't need you for the next day if you have any time left.

...

Q Was it a requirement of Walmart's that you wash and clean the inside and outside of your truck before you leave for the day?

A Yes.

Q And you say there's a car wash area in the distribution center?

A Yes, sir. One that they have brushes that washes it, or if it's a long line there, you can go over to the one where you use, like you do at a regular car wash and you wash it yourself.

Q Okay. And how are you supposed to clean the inside of your tractor?

A After you get all your personal items out that you're taking home they want the floors swept out and they want them cleaned out with chemicals and the bedding sprayed you know, because there was a rash of bedbugs at one time, and so they want the drivers to use Lysol on their truck and on the floors and everything.

Q Okay. So your truck in particular, whenever you would leave to go home on Saturday night, would it just sit there until the Tuesday that you got back to it, or would somebody else drive it?

A Occasionally somebody else would drive it.

Q And is that why you have to clean it out, in case somebody else has your –

A Yes.

The claimant testified that on March 9, 2019, his workplace accident occurred in the following manner:

Q Okay. Now, tell me what you were doing then that led up to your actual fall.

A Okay. Well, I was cleaning stuff out of the truck, setting some on the floorboard on the passenger side and I had some stuff piled up on the passenger's seat there, and I was climbing down and I missed the step.

Because people think that the steps on the truck go straight down. They incline just a little bit, so it's not a straight step down, you've gotta go in. And I missed the step and I fell.

The step was probably three foot off the ground, which put my hip like 5 ½ foot off the ground when I fell and landed on it.

Q Okay. And now the real issue I think that we're sitting here today, had you clocked out before this happened?

A Yes, I had clocked out just a few minutes before it happened.

Q And why did you clock out?

A Because of the 14-hour rule, if you do not clock out after that 14 hours you could, you would be in trouble. ...

The claimant testified that he could be on duty for fourteen hours – ten of which could be spent driving. According to the claimant, even if his fourteen hours had been used for the day, he was expected to complete the task of cleaning the truck. The claimant testified further that failing to clean his truck could lead to various disciplinary measures.

After the claimant fell, he reported the accident to the employer's night manager. The claimant was initially transported to OSH; but was later transferred to UAMS.

A CT performed at UAMS on March 10, 2019 revealed the following Impression:

1. Comminuted fracture of the left acetabulum including the anterior and posterior columns with protrusio deformity of left femoral head[.]
2. Nondisplaced fractures of the left inferior pubic ramus[.]
3. Hematoma surrounding the extraperitoneal spaces of the bladder[.] There is layering hyperdense material within the bladder[.] Findings may be related to hematoma versus extraperitoneal bladder rupture. If there is further concern for bladder abnormality, a CT cystogram could be obtained.
4. Intramuscular hematoma within the muscles surrounding the left hip fractures. If there is concern of active bleed, a CT angiogram should be considered[.]

The claimant also underwent several x-rays on March 10, 2019. An x-ray of the claimant's left femur showed acetabular fracture but

no definite femoral fracture. An x-ray of the claimant's left knee revealed no acute skeletal injury.

The claimant was admitted to UAMS and underwent an examination under general anesthesia (EUA) on March 13, 2019. At that time, Dr. Robert Garrison performed a closed treatment on the claimant's left hip.

On April 10, 2019, the claimant saw Dr. Gary Gehrki for a follow-up visit from the hospital. Dr. Gehrki resumed the claimant's blood pressure medication and continued him on the same pain medication.

The claimant returned for a follow-up visit with Dr. Garrison on April 11, 2019. Dr. Garrison noted that the claimant had some post mobilization subluxation. A review of the claimant's x-rays showed that stable alignment had not changed, but that there were some degenerative changes in both hips. Dr. Garrison noted the following plan:

I told Mr. Anderson again nonweightbearing on the left side. He does not need a knee immobilizer. I will see him back in 4 weeks. At that time, we will get AP pelvis with Judet views of the left hip. He will call [in] the interim if there is a question, problem, or concern.

The claimant saw Dr. Gehrki on May 8, 2019 for a follow-up visit. Dr. Gehrki noted that the claimant has a fractured hip that is still causing pain. Dr. Gehrki also indicated that the claimant uses hydrocodone for the pain three times a day. Dr. Gehrki refilled the claimant's prescription

for hydrocodone but noted a plan to “try other meds and methods of pain control”.

In Dr. Garrison’s June 13, 2019 medical record, he noted, “I told Mr. Anderson he can do a sit-down job. I do not want him driving at this time.” During the claimant’s July 25, 2019 follow-up visit, Dr. Garrison noted the following Plan:

I told Mr. Anderson, I still do not think he is able to climb up in a truck with this kind of injury. At this point, I would keep him off work. I will continue to weight bear as tolerated, cane for stability, walking as much as possible at this point. I would like to see him back in 2 months. At that time, if x-rays continue to show further consolidation and he is having pain, I will refer him to our partner, Dr. Mears for consideration of a total hip for the injury to his left acetabulum. He understands this at this time.

The claimant was referred to Dr. Simon Mears and was first seen by Dr. Timothy Hereford (a resident) and Dr. Mears on October 21, 2019. The claimant presented with left hip pain that had increased over recent months. Dr. Mears noted, “[h]e is now having extraordinary difficulty ambulating. He uses a cane or a walker. He also now notices his left knee has been giving out at times.” As a result of this visit, the claimant was assessed for a total hip replacement. On December 18, 2019, Dr. Mears performed a left total hip arthroplasty on the claimant.

The record from the claimant's January 27, 2020 visit with Dr. Mears contained the notation, "Willie Williams Anderson will continue home hip exercises and return to the office in 1 year for follow up."

A pre-hearing order was filed on February 18, 2020. The claimant contends that "on 3/16/2019, claimant fell out of his work truck and injured his leg and pelvis in the scope and course of employment. Respondents denied the claim in its entirety. Claimant fractured his left hip and ultimately had to undergo a total hip replacement. Claimant contends that he sustained injuries to his hip, and he is entitled to medical benefits, TTD benefits, and that his attorney is entitled to attorney fees. All other issues are reserved."

Respondents No. 1 contend that "the claimant did not sustain an injury arising out of and in the course of his employment as defined by the Arkansas Workers' Compensation Act. This defense includes, but is not limited to the fact that the claimant was not performing 'employment services' at the time of the accident."

After a hearing, an Administrative Law Judge filed an opinion on August 5, 2020. The Administrative Law Judge found that the claimant failed to satisfy the required burden of proof by a preponderance of the evidence that he was performing employment services at the time of the injury and consequently the claim is not compensable. The claimant appeals this finding to the Full Commission.

II. ADJUDICATION

A. Compensability

For the claimant to establish a compensable injury as a result of a specific incident, the following requirements of Ark. Code Ann. §11-9-102(4)(A)(i) (Repl. 2012), must be established: (1) proof by a preponderance of the evidence of an injury arising out of and in the course of employment; (2) proof by a preponderance of the evidence that the injury caused internal or external physical harm to the body which required medical services or resulted in disability or death; (3) medical evidence supported by objective findings, as defined in Ark. Code Ann. §11-9-102(4)(D), establishing the injury; and (4) proof by a preponderance of the evidence that the injury was caused by a specific incident and is identifiable by time and place of occurrence. *Mikel v. Engineered Specialty Plastics*, 56 Ark. App. 126, 938 S.W.2d 876 (1997).

Employment services may be defined as an activity which benefits the employer. *CV's Family Foods v. Caverly*, 2009 Ark. App. 114, 304 S.W.3d 671 (2009) (citing *Wallace v. West Fraser South, Inc.*, 365 Ark. 68, 225 S.W.3d 361 (2006)); *Texarkana v. Conner*, 373 Ark. 372, 284 S.W.3d 57 (2008). The test for "employment services" is "the same as that used to determine whether an employee was acting within the course of employment, i.e., 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.* The Supreme Court in *Texarkana v. Conner, supra*, stated that 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,” and that the issue depends on the particular facts and circumstances of each case.

The evidence preponderates that the claimant’s pelvis, left leg, and left hip injuries satisfy the requirements of compensability. It is undisputed that the claimant was involved in an accident on March 9, 2019 while on the premises of the respondent-employer. As the result of this accident the claimant sustained an injury to his pelvis, left leg, and left hip. This injury is supported by objective findings in the form of a comminuted fracture of the left acetabulum; nondisplaced fractures of the left inferior pubic ramus; a hematoma surrounding the extraperitoneal spaces of the bladder; and intramuscular hematoma within the muscles surrounding the left hip fractures as shown on a CT taken on March 10, 2019. Additionally, this injury required medical treatment in the form of a left total hip arthroplasty. At issue here is whether the accident occurred while the claimant was performing employment services. The Full Commission finds that the claimant was performing employment services at the time that the work accident occurred.

The claimant testified that the work accident occurred as he was removing his personal items from his work vehicle so that he could sweep and sanitize the tractor. The claimant offered undisputed testimony that the respondent-employer required its drivers to clean and sanitize their tractors at the end of their work week in case another driver was placed in the truck. The claimant also testified that he was subject to discipline if he failed to comply with this requirement. By complying with the respondent-employer's directive, the claimant was advancing the interests of the employer. See *Ray v. Univ. of Ark.*, 66 Ark. App. 177, 990 S.W.2d 558(1999) (When a claimant is doing something that is generally required by his or her employer, the claimant is performing employment services.) The fact that this accident happened after he clocked out is not dispositive of whether he was performing employment services. See *Conner, supra*. (The fact that an injury occurs outside time and space boundaries of the employment does not bar a finding that an employee was engaged in employment services at the time of the injury.)

Therefore, for the foregoing reasons, the Full Commission finds that the claimant proved by a preponderance of the evidence that he sustained compensable injuries to his pelvis, left leg, and left hip and is entitled to reasonable and necessary medical treatment. The Full Commission also finds that all the claimant's related medical treatment was reasonably necessary.

B. Temporary Disability

Temporary total disability for unscheduled injuries is that period within the healing period in which claimant suffers a total incapacity to earn wages. *Ark. State Highway & Transportation Dept. v. Breshears*, 272 Ark. 244, 613 S.W.2d 392 (1981). The healing period ends when the underlying condition causing the disability has become stable and nothing further in the way of treatment will improve that condition. *Mad Butcher, Inc. v. Parker*, 4 Ark. App. 124, 628 S.W.2d 582 (1982). The healing period has not ended so long as treatment is administered for the healing and alleviation of the condition. *Breshears, supra*; *J.A. Riggs Tractor Co. v. Etkorn*, 30 Ark. App. 200, 785 S.W.2d 51 (1990).

In the present matter, the Full Commission has found that the claimant proved he sustained compensable injuries on March 9, 2019. These compensable injuries rendered the claimant incapable of performing his primary job duty, i.e., driving a truck. The claimant was initially treated without surgical intervention and was eventually released to perform a “sit-down job”¹ on June 13, 2019. However, the claimant was never placed in any position by the respondent-employer.

The claimant was again taken off work by Dr. Garrison on July 25, 2019 because he “still [did] not think he is able to climb up in a truck

¹ The claimant was not released to resume his driving duties.

with this kind of injury". The claimant underwent a left total hip arthroplasty on December 18, 2019 and has not been released to return to work. Based on the foregoing, the Full Commission finds that the claimant remained within a healing period for his compensable hip injury and was totally incapacitated from earning wages from March 9, 2019 until a date yet to be determined.

III. Conclusion

Based on our *de novo* review of the entire record, the Full Commission finds that the claimant proved by the preponderance of the evidence that he sustained compensable pelvis, left leg, and left hip injuries and is entitled to reasonable and necessary medical treatment; that all related medical treatment was reasonably necessary; and that the claimant is entitled to temporary total disability benefits from March 9, 2019 until a date yet to be determined. The claimant's attorney is entitled to fees for legal services in accordance with Ark. Code Ann. §11-9-715 (a) (Repl. 2012). For prevailing on appeal to the Full Commission, the claimant's attorney is entitled to an additional fee of five hundred dollars (\$500), pursuant to Ark. Code Ann. §11-9-715(b) (Repl. 2012).

IT IS SO ORDERED.

SCOTTY DALE DOUTHIT, Chairman

M. SCOTT WILLHITE, Commissioner

Commissioner Palmer dissents.

DISSENTING OPINION

I respectfully dissent from the majority's finding that Claimant was performing employment services when he was injured. As noted by the ALJ, Claimant was moving his personal items from his work truck (a semi) to his personal vehicle, when he was injured. Those items were in the work truck for Claimant's personal benefit – not that of his employer.

The test for whether an injury arises out of or during employment, 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. *Pifer v. Single Source Transp.*, 347 Ark. 851, 857, 69 S.W.3d 1, 4 (2002). Generally, an employee is not performing employment services while off duty. *McKinney v. Trane Co.*, 84 Ark. App. 424, 426, 143 S.W.3d 581, 583 (2004) (holding employee on way to smoke break was involved in "nothing generally

required by his employer and was doing nothing to carry out the employer's purpose."); *Shelton v. Qualserv*, 2013 Ark. App. 469 (finding an injury was not compensable when employee, who was on a lunch break, was doing nothing to further his employer's interest).

Kinnebrew v. Little John's Trucks Inc., 66 Ark. App. 90, 989 S.W.2d 541 (1999), which was cited by the ALJ, is factually analogous to this case. In *Kinnebrew*, a truckdriver (Allan Kinnebrew) was off duty when he was injured. During a mandatory break, Kinnebrew did a little shopping, cleaned the glass in his truck, had his truck cleaned, did some laundry, and was walking into the shower when he slipped and fell. The ALJ found that Kinnebrew's injuries were compensable. The Full Commission reversed, finding that Kinnebrew's injuries were not compensable because he was not performing employment services at when he sustained the injuries. The Court of Appeals of Arkansas affirmed, noting that it "has affirmed on a number of occasions the Commission's factual findings that a claimant injured while performing a personal task, even while on the employer's premises, was not performing 'employment services' for the purposes of compensability under Act 796 of 1993." *Id.*

Here, Claimant was off duty. He clocked out and even washed his personal vehicle before returning to his work truck to retrieve his personal items. Because Claimant was neither on duty nor performing an activity which benefitted his employer, I would find that Claimant was not

performing employment services when he was injured. Accordingly, I respectfully dissent from the majority on this point.

CHRISTOPHER L. PALMER, Commissioner