

**BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION  
CLAIM NO. G701584**

**MARIE R. BAUCOM, EMPLOYEE**

**CLAIMANT**

**WEST HAVEN, INC., UNINSURED EMPLOYER**

**RESPONDENT**

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**OPINION FILED 7 JANUARY 2026**

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Heard before Arkansas Workers' Compensation Commission Administrative Law Judge JayO. Howe on 9 October 2025 in Pine Bluff, Arkansas.

Mr. Terence C. Jensen, Jensen, Young & Butler, PLLC, appeared on behalf of the claimant.

Mr. Joseph H. Purvis, Wright, Lindsey & Jennings, LLP, appeared on behalf of the respondent.

**I. STATEMENT OF THE CASE**

A Prehearing Order was filed on 18 September 2025 and admitted to the record as Commission's Exhibit No 1. For this litigation, and consistent with that Order, the parties agreed to the following at the hearing:

STIPULATIONS

1. The Arkansas Workers' Compensation Commission (the Commission) has jurisdiction over this claim.
2. The Employee/Employer relationship existed at all relevant times.
3. The claimant's average weekly wage would entitle her to temporary total disability (TTD) benefits of \$237 per week and permanent partial disability (PPD) benefits of \$170 per week.
4. The respondent has controverted this claim in its entirety.

ISSUES TO BE LITIGATED

1. Whether this claim should be dismissed under Ark. Code Ann. § 11-9-702(a)(4) for want of prosecution.
2. Whether the claimant sustained compensable injuries by specific incident on 8 February 2017.

3. Whether the claimant is entitled to temporary total disability benefits from the date of the injury to a date yet to be determined.
4. Whether the claimant is entitled to medical benefits, including past and future treatment and reimbursable expenses.
5. Whether the claimant is entitled to an attorney's fee.

All other issues are reserved.

### CONTENTIONS

The parties' Contentions are set out in their respective Prehearing Questionnaire responses:

**Claimant:**

The claimant contends that she sustained a compensable injury on February 8, 2017. Claimant contends that this injury occurred on the employer's premises and at a time when the claimant was in furtherance of her duties with the employer and in furtherance of the necessary business activities of the respondent. Claimant incurred significant burn injuries and was hospitalized at Arkansas Children's Hospital for approximately twenty-two days wherein she received extensive treatment for 2<sup>nd</sup> degree burn injuries which covered approximately 19% of her body. Claimant has incurred significant medical expenses of approximately \$109,000 which are the responsibility of the respondent. Claimant was within her healing period from February 8, 2017, until June 22, 2017, and entitled to appropriate temporary total disability benefits. Claimant will stipulate that the The respondent is entitled to a credit for any medical bills paid and any temporary total disability benefits voluntarily paid; however, approximately \$109,000 of medical bills are currently owed by the respondent.

The claimant reserves all other issues.

**Respondent:**

The respondent contends that the claimant had signed off the clock and was not working at the time that she was injured. The claimant did not sustain a compensable injury within the meaning of the Workers' Compensation Act. She was not injured in the course and scope of her employment.

Respondent also contends that claimant was injured doing something that she knew was specifically prohibited from doing and had been admonished several times about doing the act that she did. In addition to other matters, she was in a place and position in the kitchen where she knew she was prohibited by institution rules and regulations as well as those of the state health department and had specifically been told not to do it.

The respondent reserves the right to raise additional contentions, or to modify those stated herein, pending the completion of discovery.

## II. FINDINGS OF FACT AND CONCLUSIONS OF LAW

Having reviewed the record as a whole, including the evidence summarized below, and having heard testimony from the witnesses, observing their demeanor, I make the following findings of fact and conclusions of law under Ark. Code Ann. § 11-9-704:

1. The Commission has jurisdiction over this claim.
2. The Stipulations as set forth above are reasonable and are hereby accepted.
3. The claimant has failed to prove by a preponderance of the evidence that she suffered any compensable injuries by specific incident. Specifically, she has failed to prove that she was acting in the course and scope of her employment when she was injured.
4. Because the claimant has failed to prove a compensable injury, the remaining issues are moot and will not be addressed in this Opinion.

## III. ADJUDICATION

The stipulated facts as outlined above are reasonable and accepted. It is settled that the Commission, with the benefit of being in the presence of a witness and observing their demeanor, determines a witness' credibility and the appropriate weight to accord their statements. *Wal-Mart Stores, Inc. v. VanWagner*, 337 Ark. 443, 990 S.W.2d 522 (1999). A claimant's testimony is never considered uncontroverted. *Nix v. Wilson World Hotel*, 46 Ark. App. 303, 879 S.W.2d 457 (1994). 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.*

SUMMARY OF THE EVIDENCE

The claimant and Charlene West testified at the hearing. Christine Cupples and Bailey O'Dell testified via deposition. The respondent also called Ms. Karen Golden, a co-worker who was present on the day of the workplace accident, to testify at the hearing. The record consists of the hearing transcript and the following exhibits: Commission's Exhibit No 1 (the 18 September 2025 Prehearing Order); Claimant's Exhibit No 1 (one index page and 19 pages of medical records); Claimant's Exhibit No 2 (one index page and two pages of non-medical records); Claimant's Exhibit No 3 (two pages of correspondence from the Commission); Joint Exhibit No 1 (the deposition transcript of Cupples); Respondent's Exhibit No 1 (one page of an attendance record for the claimant); and Respondent's Exhibit No 2 (the deposition transcript of O'Dell).

A. CLAIMANT MARIE R. BAUCUM'S TESTIMONY

Respondent West Haven, Inc., ("West Haven") is a residential care facility that was purchased by Charlene West on 12 January 2017. The facility had been in operation under different ownership for some time preceding Ms. West's purchase of the property.

The claimant testified that she was employed by West Haven as a CNA (Certified Nursing Assistant) Supervisor on the date of her accident. Her duties included "a little bit of everything; helping cook, helping clean, passing meds, all the things." Residents at the facility had "their own little houses," while meal services and support with daily activities like medication management were provided by facility staff.

According to the claimant, she had been on-site for breakfast and dispensing medicines on the morning of her accident. She then left to attend a morning class at the local community college campus before returning to the facility before lunchtime. She corroborated her time sheet showing that she had been at work between 6:30 AM and 7:45

AM and that she had signed back in at 10:00 AM. [Resp. Ex. № 1.] She denied signing back out at “12p” on the day of the accident, as reflected on the sheet:

Q: That is not your writing?

A: It is not.

Q: Okay. And tell me why you say that is not your writing.

A: Well because the 2 doesn't match my other 2's, and I put everything with “p.m.,” not just a “p.”

Q: Okay. And it looks as if you're talking about the dates of 2-7 and 2-8, --

A: Yes.

Q: -- and you clearly make a loop on your 2.

A: Yes, sir.

Q: Okay. And there's no loop on this 2 at all, correct?

A: Correct.

[TR at 28.] She went on to testify that she was on the clock and working at the time of her accident.

Q: Okay. And even besides being on the clock, were you performing duties or performing work for your employer, West Haven?

A: I was.

Q: Okay. And tell me, if you will, what were you doing at the time of this accident?

A: So, I went into the kitchen to help serve. Bailey O'Dell was in there. She said that she couldn't get the lid [of the pressure cooker] off the top and so, you know, I went in to help her, 'cause we had pat- -- residents, not patient -- residents in there that were ready to eat 'cause it was lunchtime, and so I helped her—well, I attempted to help her get the lid off.

[TR at 29-30.]

She explained that the residents benefitted from maintaining regular schedules and that scheduling disruptions, like a late meal service, could cause anxiety or other behavioral problems with some residents. According to her testimony, the claimant went into the kitchen to help because the lunch service was running behind. She said that Ms. O'Dell was the day's cook and that Ms. O'Dell asked her for help with getting the lid off of the pressure cooker that contained the day's lunch. “The pressure release valve was releasing like it was—there was no more pressure inside of it, so we thought it was stuck.

Neither of us had ever used a pressure cooker before, so I did not know that there was pressure behind it.” [TR at 34.] Her testimony continued:

Q: Okay. Now tell me what happened when you’re trying to get the lid off.

A: It exploded.

Q: Okay. And when it exploded, what happened?

A: It covered me and got on Bailey’s leg. It covered the front side of my body and got on my face...

Q: Okay. And then after that, did you seek medical attention?

A: I did. I—I threw off all my clothes and was running around. Christine had came in the door, and she was taking me to the hospital, and she drove me to the [Dewitt] hospital.

[...] I was treated as [best as] they could at the smaller facility, and then was sent by ambulance to Arkansas Children's Hospital Burn Unit.

Q: Okay. And I understand you spent quite some substantial period of time in the Burn Unit at Arkansas Children's Hospital?

A: Yes, sir, almost a month.

...

Q: ... And tell me, did you have any conversations about your injury with Charlene West?

A: Yes, sir. When I was at the hospital [...] she had asked me to say that I was not on the clock and that she would just pay me for the time that I was off.

Q: Okay. And did you agree to do that?

A: I did not.

Q: Okay. Did you ever understand why Ms. West wanted you to say that you were off the clock?

A: I did not.

Q: Did you find out later that Ms. West didn’t carry insurance?

A: I did later on.

Q: And she was, in fact, an uninsured employer?

A: Yes, sir.

Q: And that she didn’t have any insurance to cover for your medical bills or for your treatment of your time off, is that right?

A: Yes.

...

Q: Okay. All right. And were you off work for at least a while?

A: I was.

Q: Okay. And were you paid compensation by anyone while you were off work?

A: I received one check the week after I got burned, from Charlene.

[TR at 35-37.] She clarified that the check she received was only for the time she had actually worked. She denied receiving any payment related to the time that she was unable to work due to her injuries. Her employment was apparently terminated at some time after the accident.

On cross-examination, the claimant denied that she was assigned to work housekeeping the day of the accident. She also denied that she was trying to open the pressure cooker to feed only herself. She reiterated that after returning from her morning class, consistent with her class schedule [Cl. Ex. № 2], she planned to remain at the facility and on-duty through the remainder of the work day, until she had class again that evening.

#### B. CHARLENE WEST'S TESTIMONY

Charlene West testified that she was the owner of West Haven and that she had taken control and responsibility for the facility in the several weeks preceding the claimant's accident. She acknowledged not having workers' compensation insurance in place at the time of the accident. She explained that that she mistakenly believed coverage had been secured along with the other insurance products that she had in place since taking over.

Ms. West testified that employees were not supposed to handle housekeeping and food service duties at the same time due to state regulations. Ordinarily, one person was assigned to do the meal preparation and cooking and one or two other people would be assigned to assist outside of the kitchen with serving the residents. Meals were passed from the kitchen via a Dutch door that had shelf on its lower half where plates and bowls could be placed. "It's explicitly written in the state regs. If you did housekeeping, it's 'cause there's cross-contamination. You cannot be cleaning rooms and then serve food or go in the kitchen." [TR at 62.] She testified with certainty that the claimant was assigned to housekeeping duties on the day of the accident. Another employee, Christine Cupples, was

responsible for cooking on the day of the accident. According to the respondent, Ms. Cupples complained to her immediately before the accident about the claimant and Ms. O'Dell trying to get the lid off the pressure cooker: "Ms. Cupples, she said, 'They won't listen to me. They're trying to get...' And then boom." [TR at 67.]

Immediately after the accident, the respondent told Ms. Cupples to take the claimant to the emergency department. The local hospital provided care before transferring the claimant to Arkansas Children's Hospital. Ms. West believed that the claimant was off the clock at the time of the accident.

According to Ms. West, she paid the claimant her normal weekly wages during that time that she was in the hospital. Copies of the checks she testified about were not offered into evidence.

On cross-examination, Ms. West confirmed that during meal service, one employee would usually be responsible for cooking, while another employee or two would be responsible for actually serving the food to the residents. All employees, however, were being cross-trained to help cover all of the facility's staffing needs, as might be required for scheduling. Staff coverage and scheduling needs had to conform with state regulations. She said that on the day of the accident, Ms. O'Dell would have been the only employee assigned to serve food. She acknowledged that the day's lunch was inside of the pressure cooker and that the cooker would need to be opened in order for the residents to be fed.

Lastly, Ms. West acknowledged that the time sheet purporting to show the claimant's hours on the day of the accident appeared to have different-looking entries for the claimant's sign-out; but she denied forging the record.

#### C. MS. KAREN GOLDEN'S TESTIMONY

Ms. Golden testified that she is an employee of the respondent, and that had worked at the facility before it was acquired by Ms. West. At around the time of the accident, she

was working as a Personal Care Assistant and was responsible for helping residents with everything from their medication management to their dressing and laundry. She was working at the front office with Ms. O'Dell on the day of the accident.

She recalled that she was planning to cover the claimant's shift during the afternoon of the accident so that the claimant could attend a school event. She testified that she saw the claimant sign out before the accident and that the claimant was going to the kitchen to get some lunch with Ms. O'Dell before leaving for the day. She also testified that staff were not allowed to eat until after all of the residents were served their meals.

#### D. MEDICAL AND DOCUMENTARY EVIDENCE

Records from Arkansas Children's Hospital show that the claimant underwent surgery on 14 February 2017. According to the Operative Note:

**POSTOPERATIVE DIAGNOSIS:** 19% total body surface area scald burns bilateral upper extremities, anterior torso, bilateral lower extremities.

**OPERATION PERFORMED:** Excisional debridement, wound bed preparation to 3% total body surface area, left arm 570 sq cm and 5% total body surface area anterior chest, 960 sq cm.

A Discharge Report shows that the claimant was admitted on 8 February 2017 and discharged on 24 February 2017. In pertinent part, that report includes:

**CONDITION:** Good

**DISCHARGE DISPOSITION:** Home

**PROBLEMS:** ... Onset Acute pain due to trauma, Acute Impaired activities of daily living, Acute Neuropathic pain, Acute second degree burn of chest wall, Acute second degree burn of face, Acute second degree burn of left arm, Acute second degree burn of left arm, Acute second degree burn of left leg, Acute second degree burn of neck, Acute second degree burn of right arm, Acute second degree burn of right leg.

**PROCEDURES:** Excisional debridement and autograft of left arm 3% TBSA and anterior chest 5% TBSA.

**HOSPITAL COURSE:** Ms. Baucom is a 31 years of age Caucasian female who presented to ACH burn unit from the referring facility after sustaining 8.5%

TBSA Second degree burns to her anterior chest and upper extremities from a pressure cooker. The patient works at an assisted living facility where she was helping prepare lunch for her tenants. The pressure cooker was on for about 30 minutes whenever she tried to release the pressure. The cooker then broke open causing the patient and another worker to suffer scald burns. The patient went to her local ED where double antibiotic and xenofom gauze was placed over her burns, a tetanus toxoid shot was given, a foley catheter was placed, and she was sent to ACH burn unit for further care.

...

On 2/9/17, pt underwent deep sedation procedure for further evaluation and disposition of burn wounds. Pt tolerated the procedure well, without any significant adverse events. Initially, Pt was going to [be] placed in Santyl and monitored until her next deep sedation before the decision was made for conservative treatment vs surgery. Her pain medication doses were adjusted over the next few days to provide relief. On 2/13, she underwent another deep sedation, and at that time, it was decided that she would need an operation.

On 2/14/17, she went to the OR for excisional debridement, wound bed preparation, and autografting to BUE and shoulders. She tolerated the operation well without any adverse events. She did have difficulty with pain control during the postoperative period, but her medications were adjusted to provide relief. She underwent another deep sedation 2/19 for staple removal and dressing change. At this point, her pain medications were slowly weaned to a point where she could tolerate dressing changes with home medications. She was ambulating the hallways and meeting nutritional requirements. She was able to tolerate yesterday's dressing changes with PO medications. Her roommate has been at bedside and has agreed to assist with wound care at home. Also of note, she states that she has a large church family that includes some nurses who can help with wound care as well. She will be discharged home today and will follow up in ACH burn clinic in 7-10 days.

A Burn Reconstruction Clinic Note dated 23 June 2017 includes, in pertinent part, the following:

HPI: ... At her last clinic visit on 3/23/2017, she had healed and was fitted for custom garments. We prescribed her gabapentin 600 mg morning and noon and 900 at night to see if this would help with her neuropathic pain. She was also given outpatient occupational therapy referral due to decreased range of motion. She also had a band noted to her left axilla for which she was given neoprene to use at night. The patient called last week and stated that she would like to be weaned off her gabapentin. So we began to have her decrease her dosage down to 600 three times a day. We did evaluate her today in our clinic. She states that she has had some increased pain to her left upper arm since decreasing her gabapentin down. She is not sure if this is due to the change of her dosing. At this time she has been going to occupational therapy and feels she has increased range of motion back to normal.

...

PLAN: We will continue with the gabapentin 600 mg 3 times a day. I have instructed the patient if in 1 week the pain to her arm has not decreased, we can go back up on her gabapentin to 900 mg at night and 600 mg in the a.m. and at noon time. The patient was instructed at this time I do not think she has to continue with occupational therapy and can be discharged per their recommendations. I consulted our physical therapist today to remeasure her for her custom garments and we discussed the use of neoprene over the hypertrophic scarring to her chest. The therapist indicated that when she returns to be fitted for custom garments they will at that time fit the neoprene as well. She was reminded about scar massage and SPF use greater than 50 when out in the sun. I do think at this time since her range of motion has improved she could return back to work. She was given a note for this. We will have her return back to our plastic clinic to be evaluated again in 3 months.

[Cl. Ex. № 1.]

The claimant also introduced a copy of the schedule of college courses she was enrolled in at the time of her accident [Cl. Ex. № 2]; and the respondents introduced a copy of a time sheet for the claimant on the day of her accident [Resp. Ex. № 1].

In response to the respondent's assertion that the claim was filed after the expiration of the statute of limitations, the claimant introduced copies of correspondence from the Commission, dated 8 March 2017, indicating that she had filed a Form AR-C relating to an 8 February 2017 workplace injury. The claim number indicated in the correspondence (G701584) is the same as the claim number in the present matter. [Cl. Ex. № 3.]

*Deposition of Christine Cupples*

The witness testified that she was working as the facility's cook on the date of the claimant's accident. She recalled the lunch service running late because the lid would not release on the pressure cooker. She stated that over her objections, the claimant and Ms. O'Dell entered the kitchen and put the cooker on the floor. "So, then, that's when I stepped out of the room to go find Charlene, and it just so happened that she was coming in the back door. She was right there, and just in that little period of time of me stepping away

and seeing Charlene coming in the back door, and I'm explaining to her, "Hey, you need to come here. You know, they're trying to get in this pressure cooker, and I don't know how to get it open." [Joint Ex. № 1 at 15-16.] She testified further:

Q: Had—had you—you'd specifically told them not to open—

A: I told them not to open it. I told them just to leave it alone, and they just wouldn't listen to me.

Q: Now, were you cooking that day, or was Bailey cooking?

A: I was cooking that day. [...]

Q: All right. All right. And you had told both Bailey and Maire to leave it alone, do not try to open it?

A: Yes.

[*Id.* at 17-18.]

*Deposition of Bailey O'Dell*

The witness stated that she was working as a CNA at the respondent's facility on the date of the claimant's accident. She testified that assisting with food service was one of her job duties. According to her testimony, the claimant signed out before they went to the kitchen together to get some lunch. She explained that Ms. Cupples was assigned to the kitchen that day and that over the objection of Ms. Cupples, she and the claimant moved the pressure cooker to the floor to try to force off the lid before it burst open. Ms. O'Dell was also burned in the accident, but not as badly as the claimant.

She explained that according to the facility rules, access to the kitchen was restricted:

A: You cannot go into the kitchen at all. We could only be on the other side of the door where the residents were to serve. That's the only place we were supposed to be. You can't go from the floor to the kitchen or the kitchen to the floor.

Q: Was that, like, a health regulation or whatever?

A: Yeah, I'm assuming. It's by the nursing board all over the state that they don't allow you—you can't go from the floor to the kitchen. It's like—I don't know what the word is I'm looking for. It's a health hazard, moral of the story.

Q: But if you were out on the floor, you did not go to the kitchen?

A: You are not allowed to be in the kitchen.

Q: I see.

A: If you're scheduled for the kitchen, that's the only person who is to be in the kitchen at all times.

...

Q: Did you encounter [Ms. Cupples] that day?

A: Yes. She was the cook for the day. And she told us we couldn't be in there. She told us we could not be operating on the pressure cooker because it was not done.

[Joint Ex. No 1 at 10-12.]

On cross-examination, the witness said that the respondent paid her full wages during the time that she was out with her own burn injuries. She also stated that the respondent paid the claimant similarly for her time out.

According to Ms. O'Dell, the claimant was assigned to work housekeeping on the day of the accident. She went on to explain that she and the claimant went into the kitchen even though they knew that they were not supposed to be there.

Q: Why were you in the kitchen?

A: To get us something to eat. Me and Marie were hungry and Marie was leaving. And then, I was going to go ahead and eat before we served the residents, which is wrong, as well, because the residents are to be served before anybody else.

Q: Had you ever done that before?

A: Never.

...

Q: And after this accident, did you ever eat West Haven's food before the residents were served?

A: No.

Q: Do you know of anybody that ever did that, eat before the residents were served?

A: Not that I can recall.

Q: Just something that you wouldn't do?

A: No, we're not allowed to do by law, by state law...

...

Q: Although you hadn't done it before, you've never done it after?

A: No.

Q: And you knew at the time it wasn't right?

A: Correct.

Q: Would you intentionally violate a rule of the nursing home?

A: I did that day.

Q: Have you ever violated a rule before?

A: No.

Q: Or after?

A: No.

...

Q: But your idea was to open up the pressure cooker and then help serve the meal?

A: Our idea was to open the pressure cooker and then I [would] help serve because Maria was to leave.

Q: That's exactly—your idea was to open the pressure cooker and then serve the residents after that?

A: Correct, after we got a bowl of food.

[*Id.* at 30-34.]

### DISCUSSION

The claimant alleges that she suffered compensable burn injuries to multiple body parts by specific incident on 8 February 2017. To prove a compensable injury by specific incident, she must establish four (4) factors by a preponderance of the evidence: (1) the injuries arose out of and in the course of her employment; (2) the injuries caused internal or external harm to the body that required medical services or resulted in disability or death; (3) the injuries are established by medical evidence supported by objective findings, which are those findings which cannot come under the voluntary control of the patient; and (4) the injuries were caused by a specific incident identifiable by time and place of occurrence. *Mikel v. Engineered Specialty Plastics*, 56 Ark. App. 126, 938 S.W.2d 876 (1997). If the claimant fails to establish by a preponderance of the evidence *any* of these elements, then compensation must be denied. *Id.* As explained below, the claimant has failed to prove by a preponderance of the evidence that she was injured in the course and scope of her employment.

A compensable injury is defined, in part, as an accidental injury which arises out of and in the course of employment. Ark. Code Ann. § 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.” *Id.* §11-9-102(4)(B)(iii).

In *Williams v. Malvern Sch. Dist. Ark. Sch. Bds. Ass'n.*, 2025 Ark. App. 208, the Court of Appeals recently explained:

An employee is performing employment services when he or she is doing something that is generally required by his or her employer. *Cont'l Constr. Co. v. Nabors*, 2015 Ark. App. 60, 454 S.W.3d 762. 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. *Pifer v. Single Source Transp.*, 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.* Moreover, whether an employee was performing employment services within the course of employment depends on the particular facts and circumstances of each case. *Ctrs. for Youth & Families v. Wood*, 2015 Ark. App. 380, 466 S.W.3d 422.

Here, the claimant was certainly at her workplace when the accident occurred. And her burns were no doubt caused by the pressure cooker exploding (at her apparent instigation) that day. But there is a factual dispute as to whether the claimant was acting in the course and scope of her employment at the time of the accident that caused her injuries. The claimant, for her part, claims that she was working on the clock at the time of the accident, trying to help with preparing a lunch that was running behind schedule and, thus, advancing her employer's interests. The respondent, on the other hand, argues that the injuries are not compensable because she had signed out of work for the day and because she was violating workplace policy and direct instructions at the time of the accident. Because she was acting in violation of workplace rules, they argue, she was acting outside of the course and scope of her employment at the time of the accident.

In *Arkansas State Police v. Davis*, 45 Ark. App. 40, 870 S.W. 2d 408, 1994 Ark. App. LEXIS 81, our Court of Appeals reviewed the facts around an employee who was injured while working in violation of workplace policy. In that case, the Court stated:

Section 31.00 of 1A A. Larson, *The Law of Workmen's Compensation* (1993) provides that "when the misconduct involves a prohibited overstepping

of the boundaries defining the ultimate work to be done by the claimant, the prohibited act is outside the course of employment." Likewise, § 31.14(a) provides that:

It has already been observed that the modern tendency is to bring within the course of employment services outside regular duties performed in good faith to advance the employer's interests, even if this involves doing an unrelated job falling within the province of a co-employee. This, of course, assumes that no prohibition is thereby infringed. But if the unrelated job is positively forbidden, all connection with the course of the claimant's own employment disappears, for he has stepped outside the boundaries defining, not his method of working, but the ultimate work for which he is employed.

Larson's discusses the case of *Fowler v. Baalman*, 361 Mo. 204, 234 S.W.2d 11 (1950), which applies the principles above. We find the case of *Fowler* illustrative. In that case, the decedent, James Fowler, a flight instructor for Baalman, Inc., was forbidden to fly on a particular night of bad weather by his superior and was aware that the flight had been canceled. However, the decedent proceeded with the flight which resulted in his death. In denying benefits the Missouri Supreme Court observed:

Mere disobedience of an order as to the detail of the work in hand or the mere breach of a rule as to the manner of performing the work are not generally sufficient to deprive an employee of his right to compensation so long as he does not go out of the sphere of his employment. But compensation cannot be allowed when the employee goes outside of the sphere and scope of his employment and is injured in connection with an activity he has been expressly forbidden to undertake.

...

An employer has the unqualified right to limit the scope of a servant's employment and activity and to determine what an employee shall or shall not do. The employer likewise has the unqualified right to determine when an employee shall do a certain thing. The prohibition which the employer laid down in this case (the direct order expressly canceling the flight) goes deeper into the relationship of the parties than any mere rule, for it severed utterly and terminated completely the employer-employee relationship for the day.

I find *Davis* to be instructive. In that case, the Court reversed a finding of a compensable injury for a police officer shot during a drug bust when the evidence showed that he was suspended from duty and should not have been performing any police work at the time he was injured.

Similarly, in *Pratt v. Landers McLarty Bentonville*, 2021 Ark. App. 184, 2021 Ark. App. LEXIS 182, the Court of Appeals affirmed a finding that an employee was not performing employment services when he was injured while walking across a culvert in violation of a workplace policy prohibiting the same. Because the claimant was “in direct violation of the respondents’ policy,” he was not performing employment services at the time of his injury. *Id.*

Here, the credible evidence shows that West Haven’s rules limited who could be working in the kitchen during the day. Employees assisting with meal service had to remain outside of the kitchen. The testimony reflected that State health and safety rules required compliance with that rule.

The claimant’s assertion the Bailey O’Dell was the cook that day is not credible and stands against the testimony of the other witnesses. Ms. West, Ms. Cupples, and even Ms. O’Dell (whom the claimant testified was cooking that day) testified that Ms. Cupples was the cook assigned for that day, and that facility rules prohibited the claimant from being in the kitchen at the time. Additionally, Ms. Cupples testified that at the very moment the accident occurred, she had stepped out of the kitchen to bring in Ms. West because the claimant was refusing to follow directives that she leave the cooker alone. To put it another way, Ms. Cupples was attempting to report that the claimant’s behavior was not only dangerous, but in violation of the facility’s rules. And according to the testimony of Ms. O’Dell, she and the claimant knew that they were in violation of the facility’s rules at the time of their actions. Employers clearly have an interest in promulgating rules for the safety of their employees and the clients they serve; and they certainly have an interest in promulgating rules to comply with statutory and regulatory requirements related to their business functions. The respondent’s rules around restricting access to the kitchen are consistent with those interests, and the evidence shows that those rules were known to the

respondent's employees at the time of this workplace accident. I, therefore, find that the credible evidence establishes that the claimant was in violation of workplace rules by being in the kitchen and acting against the directions of the day's cook when she pried the lid off the cooker and caused the accident that resulted in her burns.

Because the claimant was acting in violation of the facility's rules at the time of the accident, her conduct was outside of the course and scope of her employment. *See Davis, supra*. Having failed to satisfy that element proving a compensable injury by specific incident, her claim must fail. In the absence of a finding of a compensable injury, the other issues are moot and will not be addressed in this Opinion.

#### **IV. CONCLUSION**

The claimant has failed to prove by a preponderance of the evidence that she suffered compensable injuries by specific incident. Accordingly, this claim for initial benefits is DENIED and DISMISSED.

**SO ORDERED.**

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JAYO. HOWE  
ADMINISTRATIVE LAW JUDGE