BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. G806592

BRON BELL, EMPLOYEE — CLAIMANT

MINERAL SPRINGS SCHOOL DISTRICT,
EMPLOYER — RESPONDENT NO. 1

ARKANSAS SCHOOL BOARDS ASSOCIATION,
INSURANCE CARRIER/THIRD PARTY
ADMININSTATOR(TPA) — RESPONDENT NO. 1

DEATH AND PERMANENT TOTAL DISABILITY
TRUST FUND — RESPONDENT NO. 2

OPINION FILED DECEMBER 30, 2021

Hearing held before Administrative Law Judge Chandra L. Black, in Little Rock, Pulaski County, Arkansas.

Claimant represented by Ms. Laura Beth York, Attorney at Law, Little Rock, Arkansas.

Respondents No. 1 represented by Mr. Guy Alton Wade, Attorney at Law, Little Rock, Arkansas.

Respondent No. 2 represented by Ms. Christy L. King, Attorney at Law, Little Rock, Arkansas. Ms. King waived her appearance at the hearing.

Statement of the Case

On October 6, 2021, the above-captioned claim came on for a hearing in Little Rock, Arkansas. A Prehearing Telephone Conference was conducted on June 16, 2021, and a Prehearing Order was filed on that same day. A copy of the Prehearing Order has been marked as Commission's Exhibit No. 1 and made a part of the record without objection.

Stipulations

At the Prehearing Conference, the parties agreed to the following stipulations:

1. The Arkansas Workers' Compensation Commission has jurisdiction of the within claim.

2. The employee-employer-insurance carrier relationship existed at all relevant times, including on or about September 27, 2018.

3. The Claimant alleges that he sustained an injury to his right shoulder on that date. (Tr. 6)

4. All issues not litigated are reserved under the Arkansas Workers' Compensation Act.

5. Respondents No. l have controverted this claim in its entirety.

Issue

By agreement of the parties, the following issue was litigated at the hearing: whether the Claimant sustained a compensable injury to his right shoulder on September 28, 2018. (At the start of the hearing, the Claimant's attorney chose not to litigate issues relating to the Claimant's alleged head and neck injuries as well as his alleged entitlement to any associated benefits). (Tr. 6-7)

Contentions

The respective contentions of the parties are as follows:

Claimant:

On September 27, 2018, Claimant was returning back to his classroom from the cafeteria when he fell off of a landing and injured his right shoulder, neck and head. The Respondent (Respondent No. 1) denied the claim. The Claimant was forced to treat on his own, and he did not receive any benefits from the Respondent. All other issues are reserved.

Respondents No. 1:

Claimant did not sustain a compensable injury within the course and scope of her [*sic*] employment.

Respondent No. 2:

The Trust Fund deferred to the outcome of litigation.

Based on my review of the record as a whole, to include the aforementioned documentary evidence, and other matters properly before the Commission, and after having had an opportunity to hear the testimony of the witnesses and observe their demeanor, I hereby make the following findings of fact and conclusions of law in accordance with Ark. Code Ann. §11-9-704 (Repl. 2012):

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. The Arkansas Workers' Compensation Commission has jurisdiction over this claim.

2. I hereby accept the stipulations agreed to by the parties as fact.

3. The Claimant has failed to prove by a preponderance of the evidence that he sustained a compensable injury to his right shoulder while performing employment services at the time of his incident on September 27, 2018.

Summary of Evidence

The witnesses at the hearing were the Claimant, and Billy Lee, Superintendent of the Mineral Springs School District.

The record also consists of the October 6, 2021 hearing transcript, and the exhibits contained therein. Specifically, the following exhibits have been made a part of the record: Commission's Exhibit No. 1 includes the Commission's Prehearing Order dated June 16, 2021, and the parties' respective response to the Prehearing Questionnaire; Claimant's Medical Summary Report, consisting of 78 numbered pages was marked as Claimant's Exhibit 1. Respondents' (Respondents No. 1) Medical Index, consisting of 66 numbered pages was marked as Respondents' Exhibit 1. In addition, Respondents No. 1 introduced a Respondents' Non-

Medical Index, which included three pages. Said exhibit has been marked as Respondents' Exhibit 2. The Claimant's Oral Deposition was taken on January 25, 2021. It was made a Joint Exhibit and marked as Joint Exhibit 1. Said deposition has been retained in the Commission's file.

Hearing Testimony

Mr. Bron Bell/the Claimant

The Claimant, now age 61, works for Mineral Springs School District. He has a bachelor of science degree in marketing. The Claimant attended the University of Arkansas a couple of years and completed his degree at Henderson State University in 1986. He performed construction-type-work with the State of Arkansas. According to the Claimant, he started working for Mineral Springs School District in the summer of 2000. The Claimant initially taught junior high business. Subsequently, the Claimant became the technology person.

In 2018, the Claimant became the agri (agricultural) instructor, and he also started teaching shop. According to the Claimant, he became the facilities administrator of grounds and buildings. The Claimant agreed that he performs custodial duties in addition to making sure the district is in compliance with the requirements of the State of Arkansas for their facilities programs, which includes the upkeep of the grass, sidewalks, janitorial staffing, and maintenance of the school buses.

The Claimant's working hours in 2018 were from 7:00 a.m. until 4:00 or 4:30 p.m. He performed a combination of duties, which included both agriculture and facilities program administrator. During this period, the Claimant taught six classes and had one prep class. He confirmed that he was a salaried employee. The Claimant was not sure if he had to clock-in for work in 2018 or exactly when they started the process for clocking in. He denied having to clock out for lunch at any time. According to the Claimant, after the students cleared the classroom, he

had twenty-five minutes for lunch. The Claimant taught shop classes along with regular classes. Routinely, in 2018, the Claimant would take the roll and then go immediately to the shop to issue tools for the projects. According to the Claimant, during this period of time, his class did not end when the bell rang for lunch. Instead, the Claimant had to make sure the tools were put away, while maintaining the safety of the students.

On a typical day, at the start of his break for lunch, the Claimant would hurriedly get out of the building as fast as he could, sprint to the cafeteria and grab his lunch from his wife (his wife also works for the school district). The Claimant would sprint back and eat his lunch before his next class started. He denied sitting down to enjoying his lunch break. Per the Claimant, he had to prepare for the next class. According to the Claimant, students normally arrived early for class before their lunch ended.

The Claimant testified, "I believe at any point I'm on the campus I'm at work and I'm responsible." He confirmed that he considered himself at work during the trip between the agricultural building and the cafeteria; and when he went from the cafeteria, back to the agricultural building. He confirmed that if students are arguing or fighting during any of his trips between the buildings, he must become involved in the situation. The Claimant further confirmed that if a student or teacher had a question of him during these trips, he would answer their question. The Claimant testified that during the course of his workday, he is always an agri instructor, teacher, and mandatory reporter. As a result, he feels compelled to help at any time he is on campus.

Regarding his injury of September 27, 2018, the Claimant testified that after he put up everything and all the students had dismissed out of the building, he "hit" the front door of the building and made a "beeline" across the campus. The Claimant testified that he went in the back

door of the cafeteria, and Nicole (his wife), "handed off" his lunch. The Claimant testified that he does not know how the incident happened. According to the Claimant, he exited the cafeteria and ran into the maintenance building, which is a steel building. The Claimant essentially testified that he was trying to catch himself when the right side of his body fell against the building. According to the Claimant, he tried to protect his food as best he could, but he hit the building with his right shoulder, right face, and right neck. He denied falling to the ground.

The Claimant promptly reported the injury to his principal, the school nurse, and Ms. Marlow Williams, who handles their workers' compensation claims. They sent the Claimant to Dr. Agee. Per the Claimant, Dr. Agee looked at him and sent him back to work. The respondent-insurance-carrier paid for that one visit. However, the next day, the carrier denied the claim.

On cross examination, the Claimant confirmed that before going to work for the Mineral Springs School District, he worked in their family construction business for fourteen years, from 1986 until 2000. Then, the Claimant went into teaching through the "nontraditional route." The Claimant confirmed that he originally taught business and technology, at the Bright Star School District. After that, the Claimant went to work for Mineral Springs. He gave a full explanation of the timelines, and the positions he has taught throughout his employment with Mineral Springs. (Tr. 44-45)

Regarding the Claimant's employment duties in September 2018, he confirmed that he began teaching agri and shop classes in 2018. His day started at 7:00 a.m., but school did not start for the students until 8:00 a.m. The Claimant confirmed that he had a classroom in the building where he had an office and taught shop. He confirmed that he would take roll at 8:00 a.m., do whatever classroom instruction involved, and then he would transition to the shop depending on what he was going to teach that day. He had four classes in the morning, and his last morning

class ended at 11:40 a.m. Following that class, the Claimant would do whatever cleanup he needed to do and then he go to lunch once all the students had exited his office/classroom. The Claimant's next class started at 12:10 p.m., which allowed him thirty minutes for lunch. He basically reiterated the process of him getting his lunch from his wife and going back to his office to eat at his desk. (Tr. 49-50)

The Claimant confirmed that in 2018, he did not have any ground duty during lunch where he had to be at a certain position or certain location. He further confirmed that the students were not permitted to eat in the shop. The Claimant admitted that if he needed to, he could run home on his lunch break. Also, he could eat in his car, the teachers' lounge, or the cafeteria. The Claimant further admitted that he was not required to eat in his office, around the shop, or on campus.

With respect to his incident of September 2018, the Claimant admitted that he was exiting the cafeteria out the backdoor when he nearly slipped/tripped outside the building. He agreed that he hit the right side of his body against the maintenance building, but he did not fall to the ground. There were no witnesses to the incident. He further agreed there were no students changing classes or walking around the area. The Claimant essentially agreed that after this event, he went back to his office and cleaned up. Then, he went to the nurse and left to go see a doctor at that point.

The Claimant admitted that he does not have any scheduled visits with a doctor for his shoulder. He testified that he did not miss any extended period of time for his shoulder condition. The Claimant confirmed that he is not limited or restricted in any of his activities. He confirmed that currently, he is able to perform his job as an agri teacher.

Regarding his employment duties, the Claimant admitted that some kids may filter into the classroom a few minutes before the start of class. However, the Claimant admitted that he indicated during his deposition that he did not issue tools to the kids until class started. The Claimant verified

that he does not let kids come in early and start projects without his supervision. He admitted that his goal on September 27, 2018 was to get his lunch and go back to his office and eat it during his thirty-minute lunch time. The Claimant further admitted that he did not have any appointments scheduled during this period. Nor did the Claimant have any students coming in to ask questions, or to do any work.

Upon being questioned by the Commission, the Claimant admitted that at the time of his accident, he was not required to do anything for the students or school officials. He confirmed that his sole intent was to go and eat lunch.

On redirect examination, the Claimant agreed that while he did not have any duties or responsibilities at that moment, it was still his job to be vigilant. The Claimant went on to explain that whenever he is on campus, he is responsible for the students.

Mr. Billy Lee testified during the hearing on behalf of Respondents No. 1. He is the superintendent for the Mineral Springs School District. Mr. Lee has held that position since January 2019. According to Mr. Lee, the law requires that teachers have a thirty-minute, "duty free lunch." Per Mr. Lee, this means that they do not supervise students during this period. Also, during this period, teachers are not responsible for having to watch the cafeteria or guard the parking lot or work on the campus, unless they have duty. Mr. Lee confirmed that during the thirty-minute period, a teacher would not have any dedicated responsibilities. However, Mr. Lee was unable to confirm that this was the policy in 2018.

He confirmed that the teachers are not required to eat in their classroom, cafeteria, office, or the shop. Per Mr. Lee, teachers are free to go home or even to the bank during their lunch break. Specifically, Mr. Lee testified that the thirty minutes, which they call "duty-free lunch" would be the teacher's own time.

On cross-examination, Mr. Lee admitted that it is his testimony that he does not have any idea what the Claimant's duties were in 2018.

Adjudication

Employment Services

The crucial issue for determination in this matter is whether the Claimant was acting within the course and scope of his employment at the time of his alleged work-related incident of September 27, 2018. Specifically, the Claimant has alleged that on September 27, 2018 he suffered a compensable right shoulder injury while returning back to the classroom from the cafeteria when he fell off a landing. However, Respondents No. 1 have countered that the Claimant did not sustain a compensable injury within the course and scope of his employment.

Here, Arkansas Code Annotated §11-9-102(4)(A)(i) (Repl. 2012), applies to the analysis of Claimant's alleged right shoulder injury, which defines a "compensable injury":

> (i) An accidental injury causing internal or external physical harm to the body . . . arising out of and in the course of employment and which requires medical services or results in disability or death. An injury is "accidental" only if it is caused by a specific incident and is identifiable by time and place of occurrence[.]

A compensable injury must be established by medical evidence supported by objective findings. Ark. Code Ann. §11-9-102(4)(D) (Repl. 2012). "Objective findings" are those findings that cannot come under the voluntary control of the patient. *Id*. § 11-9-102(16). The element "arising out of . . . [the] employment" relates to the causal connection between the Claimant's injury and his or her employment. *City of El Dorado v. Sartor*, 21 Ark. App. 143, 729 S.W.2d 430 (1987). An injury arises out of a Claimant's employment "when a causal connection between work conditions and the injury is apparent to the rational mind." *Id*.

In *Hudak-Lee v. Baxter County Reg. Hosp.*, 2011 Ark. 31, 378 S.W.3d 77, the Arkansas Supreme Court stated:

> In order for an accidental injury to be compensable, it must arise out of and in the course of employment. Ark. Code Ann. § 11-9-102(4)(A)(i) (Supp. 2009). A compensable injury does not include an injury that is inflicted upon the employee at a time when employment services are not being performed. Ark. Code Ann. § 11-9-102(4)(B)(iii) (Supp. 2009). The phrase "in the course of employment" and the term "employment services" are not defined in the Workers' Compensation Act. *Texarkana Sch. Dist. v. Conner*, 373 Ark. 372, 284 S.W.3d 57 (2008). Thus, it falls to the court to define these terms in a manner that neither broadens nor narrows the scope of the Act. *Id.*
>
> An employee is performing employment services when he or she is doing something that is generally required by his or her employer. *Id.*; *Pifer v. Single Source Transp.*, 347 Ark. 851, 69 S.W.3d 1 (2002). 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. *Jivan v. Econ. Inn & Suites*, 370 Ark. 414, 260 S.W.3d 281 (2007). 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, directly or indirectly. *Id.* In *Conner*, 373 Ark. 372, 284 S.W.3d 57, we stated that where it was clear that the injury occurred outside the time and space boundaries of employment, 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. Moreover, the issue of whether an employee was performing employment services within the course of employment depends on the particular facts and circumstances of each case. *Id.*

If the Claimant does not establish by a preponderance of the evidence any of the requirements for establishing compensability, compensation must be denied. *Mikel v. Engineered Specialty Plastics*, 56 Ark. App. 126, 938 S.W.2d 876 (1997). This standard means the evidence having greater weight or convincing force. *Barre v. Hoffman*, 2009 Ark. 373, 326 S.W.3d 415; *Smith v. Magnet Cove Barium Corp*., 212 Ark. 491, 206 S.W.2d 442 (1947).

Here, on September 27, 2018, the Claimant worked as a teacher for the Mineral Springs School District. His other employment responsibilities included a combination of custodial-type duties and various other related programs.

The Claimant's working hours in 2018 were from 7:00 a.m. until 4:00 or 4:30 p.m., but school did not start for the students until 8:00 a.m. His testimony demonstrates that his lunch break was from 11:40 a.m. until 12:10 p.m., which amounted to a thirty-minute lunch break. (I realize that the Claimant testified on direct examination that his lunch break lasted twenty-five minutes, however, on cross examination the Claimant confirmed that his lunch break lasted for thirty minutes).

Nevertheless, on September 27, 2018, following the Claimant's 11:40 a.m. class, he put away all the tools, and once all the students had exited the building, the Claimant left his classroom and made a beeline across the campus to get his lunch from his wife. According to the Claimant, he entered the back door of the cafeteria, and his wife gave him his lunch. On his way back to his office, the Claimant ran into the adjacent building, hitting his right shoulder, and the right side of his face and neck. Per the Claimant, he does not know what happened. However, the Claimant admitted that he did not fall to the ground. The Claimant also admitted that he did not have any official appointments relating to his employment duties scheduled during this period. Nor did he have any students scheduled for a conference, or a session to do any schoolwork. The Claimant indicated that at the time of his accident, he was not required to perform a task for a student and/or staff member of the school. He truthfully confirmed that when his accident occurred his sole intent was to go to his office and eat lunch.

With respect to the Claimant's employment duties and responsibilities on September 27, 2018, the evidence demonstrates during the Claimant's thirty-minute lunch break, he was free to leave the campus to go home and/or run a personal errand. School policy did not mandate that the Claimant eat in his classroom or on campus. Hence, the Claimant could have eaten in his classroom, the cafeteria, or the teachers' lounge. Although Mr. Lee, the superintendent, was not

employed by the school district in 2018, he testified that the thirty-minute break is commonly referred to as a "duty-free lunch," which is the teacher's own time. However, the Claimant's testimony confirmed that this was the policy in 2018. Specifically, during this period, the Claimant did not have any dedicated employment duties or responsibilities to perform. The Claimant admitted that he was not required to watch the cafeteria, guard the parking lot, or perform any ground duty on the campus during his lunch break on the day of the alleged injury.

It is obvious from the credible testimony of the Claimant that he was not involved in any activity that would have directly or indirectly benefitted the interest of his employer at the time of his incident. The Claimant's own testimony clearly establishes that after retrieving his lunch from his wife, he was on a personal mission to return to his office for the single purpose to engage in a personal endeavor, which was to eat his lunch. In fact, while on his lunch break, the Claimant's employer did not ever require him to perform any dedicated employment duties. Hence, there is no probative evidence demonstrating the Claimant was subject to being called back to work during his lunch break. Under these circumstances, I am persuaded that the Claimant's lunch break was strictly personal in nature, and he could do whatever he wanted to during this time.

I realize that in *Dearman v. Deltic Timber Corp*., 2010 Ark. App. 87, 377 S.W. 3d 301, the Arkansas Court of Appeals determined that injuries sustained by employees during a required break which benefits the employer are compensable. This was not the case here. Instead, the instant Claimant was on his "duty-free lunch break," and headed to his office to eat lunch when his incident occurred. Under these circumstances, I find that at the time of the Claimant's alleged injury, he was not directly or indirectly advancing the interests of his employer. In other words, the Claimant was on a lunch break that was exclusively personal in nature, and he could do whatever he chose to do during his thirty-minute lunch break. It is the Claimant's burden to prove

that he was performing employment services at the time of his alleged incident. However, here the Claimant failed to prove he was performing employment services while on his way to eat lunch. Therefore, on the basis of the record as a whole, I find that the Claimant failed to establish by a preponderance of the credible evidence that he sustained a compensable injury arising out of and in the course of his employment, at a time when employment services were not being performed on September 27, 2018.

ORDER

In accordance with the findings of fact and conclusions of law set forth above, this claim is hereby denied and dismissed.

IT IS SO ORDERED.

_____

CHANDRA L. BLACK
Administrative Law Judge