

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. H305182

ANDREA EWTON,
EMPLOYEE

CLAIMANT

DARDANELLE PUBLIC SCHOOLS,
EMPLOYER

RESPONDENT

ARKANSAS SCHOOL BOARDS ASSOCIATION
WCT, INSURANCE CARRIER/TPA

RESPONDENT

OPINION FILED JANUARY 16, 2025

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

Claimant represented by the HONORABLE ANDY L. CALDWELL, Attorney at Law, Little Rock, Arkansas.

Respondents represented by the HONORABLE MELISSA WOOD, Attorney at Law, Little Rock, Arkansas.

Decision of Administrative Law Judge: Reversed.

OPINION AND ORDER

The claimant appeals an administrative law judge's opinion filed August 12, 2024. The administrative law judge found that the claimant failed to prove she sustained a compensable injury. After reviewing the entire record *de novo*, the Full Commission reverses the administrative law judge's opinion. The Full Commission finds that the claimant proved she sustained a compensable injury. We find that the claimant proved she was entitled to reasonably necessary medical treatment and temporary total disability benefits.

I. HISTORY

Andrea Ewton, now age 41, testified that she became employed with the respondents, Dardanelle Public Schools, in 2022. The parties stipulated that the employee-employer-carrier relationship existed on August 15, 2023. The claimant testified on direct examination:

Q. And you were an employee of the Dardanelle Public Schools on or about August 15, 2023?

A. Yes, sir.

Q. And how were you employed? What was your job title?

A. Substitute custodial.

Q. As a substitute custodial person for the Dardanelle Public Schools, what did you do on a day-to-day basis?

A. We – I cleaned bathrooms, the gym, Central Office, cafeteria, whatever we needed to clean....

Q. How would you get your assignments?

A. They would call me and let me know ahead of time that they needed me to work.

Q. So were you called in the night before August 15th to come into work?

A. Yes.

Q. Do you remember who called you?

A. Becca.

Q. And is that Becca Manatt, the person who is here?

A. Yes.

Q. Okay. And what was your shift as a part-time custodial?

A. We worked usually about four hours, from 6:00 in the morning until after lunch or until school was let out, however long they needed us....

Q. On this particular instance when you were called in to come in on August 15th, what were you given in terms of your instructions on what your time would be?

A. Just however long they needed and to be there at 6 o'clock in the morning.

Q. So you were to report on August 15th at 6:00 a.m.?

A. Yes.

Q. Did you do that?

A. Yes, sir.

Q. Where did you go?

A. Central Office....

Q. Are there multiple campuses and buildings that you would have to go to?

A. Yes.

Q. So when you reported to Central Office, what did you do when you got there?

A. I talked to Susie Howell for a minute and then I got the keys and went and finished doing the rest of the offices in Central....

Q. About how long did you clean there?

A. It was an hour, maybe and hour and a half.

Q. Okay. And where did you go next?

A. To Intermediate across town on 2nd Street.

Q. Is that the Intermediate School?

A. Yes.

Q. And did you drive your vehicle from Central Office to Intermediate School?

A. Yes.

Q. And what did you do when you got to the Intermediate School?

A. I pulled in my parking spot and went in the building and got the keys from Becca Moffitt.

Q. You said Becca Moffitt. It is my understanding her name is Becca Manatt?

A. Manatt, Moffitt, it sounded the same, Andy. But I got the keys from Becca and went back out to my car and drove down to the gym to start cleaning it and it wasn't the right set of keys....

Q. And did you have to fill out any paperwork at that time?

A. When I got to the office to talk to Becca, I had to fill out a time sheet....

Q. And where were you going to?

A. I was going to the gym and the agra building to clean....

Q. And what did you do once you parked?

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

Q. So then what did you do?

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

Q. So did you make it to your car?

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

Q. So you stepped off the sidewalk walking from one of the buildings back to your car?

A. Back to my car, yes.

Q. And what happened when you stepped off the curb?

A. I twisted my ankle....

Q. At the time you stepped off the curb and injured your ankle

—

A. Yes, sir.

Q. You were on the clock?

A. Yes.

Q. You were on the premises?

A. Yes, sir,

Q. Were you supposed to be working?

A. Yes, sir.

Q. If a member of the administration had come by and asked you to take some sort of action, would you have been required to do so?

A. Yes, sir.

The respondents' attorney cross-examined the claimant:

Q. When you got out of the car, you testified in your deposition that you had your car keys and your personal phone with you. Is that right?

A. Yes.

Q. When your ankle twisted, did you trip on anything? Did you fall over anything?

A. No, ma'am. I just stepped off the curb wrong and my ankle twisted.

Q. No one was around when that happened?

A. No, ma'am.

Q. So then you went back to the Intermediate Office. Is that right?

A. Yes, ma'am.

Q. That is when you reported it to April McGuire?

A. Yes, ma'am.

Q. At that time was a call made to Misty Thompson?

A. Yes.

Rebecca K. Manatt testified that she was employed as a secretary at Dardanelle Intermediate School. The claimant's attorney examined Ms.

Manatt:

Q. And did you talk to [the claimant] on August 14, 2023, about coming to the school as a substitute custodian the night before?

A. Well, I don't really recall the date, that is a long time ago, but, yes, I did call her to sub.

Q. And I know you may not recall the date, but do you recall the day she was injured?

A. Well, I do recall the day. I am just not real sure about the date....

Q. If [the claimant] testified that she came to the school, the Intermediate School that day, came to your office and had to sign in, do they typically have to sign in?

A. Yes....

Q. You don't remember it, but that is consistent with what they do?

A. Right. Yes.

Q. If that happened, would you give them keys as a substitute custodian to be able to get in and out of buildings?

A. Well, not really. I mean I keep keys, but I don't for – like if they go to the gym or those buildings, I don't have those keys. Normally the custodians have those.

Q. As you sit here today, do you have any recollection as to whether or not if you gave her any keys that morning?

A. I do not remember that, no.

Q. If she testified that you did, any reason to dispute that?

A. Well, I wouldn't have any reason to dispute it. This has been a long time ago and I don't remember.

Misty Thompson testified that she was the respondent-carrier's Claim Supervisor for Workers' Compensation. The record indicates that the claimant gave a recorded statement to Misty Thompson on August 15, 2023:

- Q. And what school district do you work for, Andrea?
A. Dardanelle.
Q. Which campus do you work at?
A. I'm a sub and I was working at the intermediate campus....
Q. Do you need medical treatment for your injuries?
A. Yes....
Q. Are you full time or part time?
A. Part time.
Q. And when were you injured?
A. Today.
Q. Today is August 15th, approximately what time, ma'am?
A. About 8:16, 8:15.
Q. What time did you start work this morning?
A. 6:00....
Q. Have you notified your supervisor of this injury?
A. I'm in the nurse's office now.
Q. Okay, and who did you notify and approximately what time?
A. I come straight to the nurse and I notified her as soon as it happened.
Q. And her name?
A. April McGuire....
Q. And how were you injured, or what happened?
A. I stepped off of the curb and twisted my ankle and fell in the parking lot.
Q. And what were you doing at the time, I mean like taking trash out, going to another building?
A. I was getting ready – I was going to my car to get something to drink that I had left in there, and when I stepped off of the curb I twisted my ankle and it's all swollen.
Q. Okay.
A. It looks like it might be broke or whatever.
Q. And you were going to your personal vehicle?
A. Yes.
Q. And it was to get a drink for yourself?
A. Yes.
Q. Okay. And that was something you had left in your car?
A. Yes, and I was going back out, I was going to go back in after I got my drink, but then I –
Q. Okay.
A. – couldn't make it back in because I fell and messed up my ankle.

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

A. No ma'am.

Q. Okay. Alright, and what body parts did you injure?

A. My right ankle.

Q. Any other body parts injured?

A. No. Well, my left knee is skinned up, but it's –

Q. Okay.

A. My left knee is skinned, but it's not as bad as what my ankle is.

Q. Okay. Alright. And where were you at when this occurred?

A. Dardanelle Intermediate School.

Q. Were you like in the parking lot, or?

A. I was at the gym.

Q. Okay. And you were outside in the parking lot, is that correct?

A. Yes.

Q. Okay. Any witnesses?

A. No.

Q. Okay. Have you completed the Form N yet, the Employee's Notice of Injury?

A. Yes, April has filled out the Employee's Notice of Injury.

Q. That needs to be filled out by you, not by April, and so if you will have her to give you a blank one, that's supposed to be filled out by the injured employee, if they're able. Alright, and Andrea, I do have to tell you, since you were going to your vehicle to get your personal drink, that's not something that would be considered in the course and scope of employment, so we would not be able to authorize treatment under workers' comp, because you have to be performing employment services at the time an injury occurs, and if you were going to your vehicle for the sole purpose of getting your personal, you know, a drink for yourself, that's not something that would be considered in the course and scope of your employment. So if you do need to go to the doctor, that would need to be under your personal insurance.

A. Okay, thank you.

Q. Okay, and can I speak to April, and I'll let her know also.

April: This is April.

Q. Hey April, it's Misty at Arkansas School Boards. Hey, since Ms. Ewton was going to her personal vehicle to get a

drink for herself at the time the injury occurred, that's not something that would be covered under workers' comp, so I did let her know that we would not be able to authorize any treatment under workers' comp.

April: Okay, we weren't sure, and we were just going to you know, fill it out and all that.

Q. Oh, absolutely. And yeah, that is the correct thing to do, but I did just want to let you know, since she was sitting there with you and I didn't know if you would be, you know, are you usually the one that schedules the appointment?

April: No, this is the first time I've ever had to even fill out the form, so we were just – Carla, the school nurse at the intermediate told me to just fill out the form, call the number, and then you guys would guide us from there.

Q. Yeah, yeah. And the Form N is to be completed, she said that you had completed it. That's to be completed by the injured employee, so if you'll just give her a blank one and let her fill it out, and then if you ever have a situation where an employee is not able to fill it out, if you will just give them the blank one and tell them to get it back to you as soon as they're able....

April: Okay, and even though you guys aren't covering anything, you still want us to fill it out, right?

A. Yes ma'am, on every incident it needs to be filled out, yes ma'am....

The claimant's attorney cross-examined Misty Thompson at hearing:

Q. Any doubt that Ms. Ewton was on the clock at the time of her injury?

A. No, sir.

Q. Any doubt that she was in the time and space boundaries of her employment? She was actually on the premises where she was supposed to be. Correct?

A. That is my understanding, yes.

Q. Do you contend that she was on a break at the time of her injury?

A. No, sir.

The claimant signed a Form AR-N, EMPLOYEE'S NOTICE OF INJURY, on August 15, 2023. The ACCIDENT INFORMATION section of

the Form AR-C indicated that an accident occurred at 8:15 a.m. on August 15, 2023. It was written on the Form AR-N that the claimant injured her "Right ankle & Left knee," "Stepped off the curb in the gym parking lot, rolled right ankle and heard it pop."

The claimant received emergency medical treatment on August 15, 2023:

PATIENT IS A 40 YO WHITE FEMALE WHO TWISTED HER RIGHT ANKLE AT WORK ABOUT 1 HOUR PTA. PATIENT C/O SWELLING AND TENDERNESS OVER LATERAL ASPECT OF RIGHT ANKLE....
Method of Injury: Other (TWISTED ANKLE WHILE STEPPING OFF CURB)...
RIGHT ANKLE XRAY: SOFT TISSUE SWELLING, NO FX OR DISLOCATION....

The Differential Diagnosis on August 15, 2023 was "FX,ANKLE SPRAIN." The claimant was instructed, "COLD COMPRESSES FOR NEXT 3 DAYS, CONTINUE CURRENT PAIN MEDICATIONS, AVOID WEIGHT BEARING, WEAR SPLINT UNTIL HEALED, EXCUSE FROM WORK FOR NEXT 48 HOURS, FOLLOW UP WITH YOUR PCP."

An x-ray of the claimant's right foot was taken on August 18, 2023 with the following impression:

1. Small suspected avulsion fragment distal to lateral malleolus with overlying soft tissue thickening.
2. No abnormality in the right foot.

An APRN noted on August 18, 2023, "Refer to ortho for suspected avulsion fragment of the ankle. Nonweightbearing until she [sees] them."

Shawna Mott, LPN messaged the claimant on August 18, 2023:

Hey Andrea,
Jessica said that you need to be off from work until you can be seen and cleared by Orthopedics. We've already placed that referral and their office will be contacting you to set up an appointment. We have a letter printed for you that will be at the front desk. You should also be able to access the letter through your mymercy.

Jessica M. Russell, APRN-CNP provided a Work/School Excuse on August 18, 2023:

To Whom it May Concern:
Andrea Ewton was seen in my clinic on 8/18/2023. Please excuse Andrea from work until she can be seen and cleared by Orthopedics....

The record indicates that the claimant applied for unemployment insurance benefits on September 12, 2023. The APPLICATION FOR UNEMPLOYMENT INSURANCE BENEFITS indicated, "Last Date worked at your last job: 08/15/2023."

A pre-hearing order was filed on May 29, 2024. The claimant contended, "The claimant sustained injuries to her right ankle and left knee in the course and scope of her employment which resulted in the need for treatment beginning on or about August 15, 2023. Respondents have controverted the claim. Claimant contends she is entitled to temporary total disability from August 16, 2023 to a date yet to be determined, reasonable and necessary medical treatment and attorney's fees, and all other issues are reserved."

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

The parties agreed to litigate the following issues:

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

After a hearing, an administrative law judge filed an opinion on August 12, 2024. The administrative law judge found that the claimant failed to prove she sustained a compensable injury. The administrative law judge denied and dismissed the claim. The claimant appeals to the Full Commission.

II. ADJUDICATION

Ark. Code Ann. §11-9-102(4)(Repl. 2012) provides, in pertinent part:

- (A) “Compensable injury” means:
- (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[.]...
- (B) “Compensable injury” does not include:
- (iii) Injury which was inflicted upon the employee at a time when employment services were not being performed[.]

A compensable injury must also be established by medical evidence supported by objective findings. Ark. Code Ann. §11-9-102(4)(D)(Repl. 2012). “Objective findings” are those findings which cannot come under the voluntary control of the patient. Ark. Code Ann. §11-9-102(16)(A)(i)(Repl. 2012).

The employee has the burden of proving by a preponderance of the evidence that she sustained a compensable injury. Ark. Code Ann. §11-9-102(4)(E)(i)(Repl. 2012). Preponderance of the evidence means the evidence having greater weight or convincing force. *Metropolitan Nat'l Bank v. La Sher Oil Co.*, 81 Ark. App. 269, 101 S.W.3d 252 (2003).

An administrative law judge found in the present matter, “2. Claimant has failed to prove by a preponderance of the evidence that she suffered a compensable injury to her left knee and right ankle on August 15, 2023. Specifically, claimant was not performing ‘employment services’ at the time of her injury.” The Full Commission finds that the claimant proved by a preponderance of the evidence that she sustained a compensable injury.

The claimant was employed with the respondents as a part-time custodian. The parties stipulated that the employment relationship existed on August 15, 2023. The claimant testified that Becca Manatt, secretary at Dardanelle Intermediate School, had contacted her the previous day and

informed the claimant that her employment services were needed on August 15, 2023. The claimant testified that she reported for work at 6:00 a.m. on August 15, 2023. The claimant began cleaning at the respondent-employer's Central Office before driving to the Intermediate School to work at that facility. The claimant testified that she filled out a time sheet provided by Ms. Manatt upon arriving at Intermediate School. The claimant testified that she proceeded to the respondent-employer's gymnasium and "agra building" before realizing that she did not have the proper keys for access into the buildings. The claimant testified, "I went back to my car to get my bottle of water and get the other set of keys that I needed to start the agra building and the electronics building." On the way to her personal vehicle which was parked on the respondents' premises, the claimant tripped and twisted her ankle. The claimant sustained a right ankle sprain as a result of the accident.

The Full Commission finds that the claimant proved by a preponderance of the evidence that she was performing employment services at the time of the accidental injury on August 15, 2023. An employee is performing employment services when she is doing something that is generally required by her employer. *Dairy Farmers of America v. Coker*, 98 Ark. App. 400, 255 S.W.3d 905 (2007). The Arkansas Court of Appeals uses the same test to determine whether an employee is

performing employment services as it does 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 directly or indirectly. *Id.* The Commission is bound to examine the activity the claimant was engaged in *at the time of the accident* in determining whether or not she was performing employment services. *Hill v. LDA Leasing*, 2010 Ark. App. 271, 374 S.W.3d 268 (2010).

In the present matter, the Full Commission finds that the injury on August 15, 2023 occurred within the time and space boundaries of the claimant's employment, and that the claimant was at least indirectly advancing her employer's interests. *See Hudak-Lee v. Baxter County Reg. Hosp.*, 2011 Ark. 31, 378 S.W.3d 77. The claimant was on the respondent-employer's premises at the time of the accident and was "on the clock." The claimant had signed in with the respondent-employer at the Intermediate School. Whether or not the claimant had keys to the buildings at the time of the injury, she was getting a bottle of water from her personal vehicle in order to continue her work duties for the respondents in their facilities. Misty Thompson, a Claims Supervisor for the respondents, agreed that the claimant was "on the clock" at the time of the accidental

injury, that the claimant was “within the time and space boundaries” of her employment, and that the claimant was “not on a break.”

The Full Commission finds that the claimant was within the time and space boundaries of her employment at the time of the accidental injury. *See Arkansas Methodist Hospital v. Hampton*, 90 Ark. App. 288, 205 S.W.3d 848 (2005). The claimant remained on the respondent-employer’s premises, was available to resume her duties as a custodian, had clocked in, and was available to work. *UAMS v. Hines*, 2019 Ark. App. 557, 590 S.W.3d 183 (Ark. App. 2019). *See also Mineral Springs – Saratoga Sch. Dist. v. Bell*, 2023 Ark. App. 458 (Ark. App. Oct. 18, 2023). The claimant still had job duties to complete at the time of her accident. *Wal-Mart Associates, Inc. v. Anderson*, 2022 Ark. App. 12, 640 S.W.3d 4.

The Full Commission finds that the claimant proved by a preponderance of the evidence that she sustained a compensable injury. The claimant proved that she sustained an accidental injury causing physical harm to the body. The injury arose out of and in the course of employment, required medical services, and resulted in disability. The injury was caused by a specific incident and was identifiable by time and place of occurrence on August 15, 2023. The claimant established a compensable injury by medical evidence supported by objective findings, to

include soft tissue swelling in the right ankle, and “suspected avulsion fragment distal to lateral malleolus” shown on August 18, 2023.

After reviewing the entire record *de novo*, the Full Commission finds that the claimant proved she sustained a compensable injury. The claimant proved that the medical treatment of record provided on and after August 15, 2023 was reasonably necessary in accordance with Ark. Code Ann. §11-9-508(a)(Repl. 2012). The evidence demonstrates that the claimant remained within a healing period and did not return to work beginning August 16, 2023 and continuing through June 22, 2024. The claimant therefore proved that she was entitled to temporary total disability benefits beginning August 16, 2023 and continuing through June 22, 2024. See Ark. Code Ann. §11-9-521(Repl. 2012); *Wheeler Constr. Co. v. Armstrong*, 73 Ark. App. 146, 41 S.W.3d 822 (2001). 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, 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 Mayton dissents.

DISSENTING OPINION

I must respectfully dissent from the majority opinion finding the claimant suffered a compensable injury on August 15, 2023.

The claimant was injured on the respondent employer's premises on August 15, 2023, when she fell in the parking lot while going to her car to get a drink. At that time, the claimant was not performing employment services and provided a recorded statement to the respondent carrier stating she had no reason to go to her car other than to get something to drink. This story would later change after the claimant obtained an attorney. The claimant's lack of credibility is clear throughout her testimony.

In his August 12, 2024 opinion, the administrative law judge found the claimant was not a credible witness, and she failed to meet her burden of proving she sustained a compensable injury. I agree.

Our rules define a compensable injury as "[a]n accidental injury . . . arising out of and in the course of employment." Ark. Code Ann. § 11-9-102(4)(A)(i). A compensable injury does not include an "[i]njury which was inflicted upon the employee at a time when employment services were not being performed." Ark. Code Ann. § 11-9-102(4)(B)(iii). The Act, however, fails to define the phrase "in the course of employment" or the term

"employment services." *Wood v. Wendy's Old Fashioned Hamburgers*, 2010 Ark. App. 307, 374 S.W.3d 785 (2010).

Our Supreme Court has held an employee is performing "employment services" when he or she "is doing something that is generally required by his or her employer." *Texarkana Sch. Dist. v. Conner*, 373 Ark. 372, 284 S.W.3d 57 (2008).

The Commission uses the same test to determine whether an employee was performing employment services as it does when determining whether an employee was acting within the course of employment. *Id.* Specifically, it has been held 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.* 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. *Id.*

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.* In short, an employee is performing employment services when engaged in the primary activity he or she was hired to perform, or in incidental activities that are inherently necessary for the performance of the primary activity, or when an employee is performing

employment services when he or she is engaging in an activity that carries out the employer's purpose or advances the employer's interests. *Olsten Kimberly Quality Care v. Pettey*, 328 Ark. 381, 944 S.W.2d 524 (1997); *Hightower v. Newark Pub. Sch. Sys.*, 57 Ark. App. 159, 943 S.W.2d 608 (1997).

In the present case, the claimant's initial statements regarding her injury conflict with her later deposition and hearing testimony. This is, at its core, an issue of the claimant's credibility.

In workers' compensation cases, a decision often rests solely on the credibility of the claimant as a witness. A determination of the weight and credibility of a witness's testimony is exclusively within the province of the Commission. *Wade v. Mr. C. Cavanaugh's*, 298 Ark. 363, 768 S.W.2d 521 (1989).

The Commission has the right to believe or disbelieve the testimony of any witness, and the Commission's decision is entitled to the weight we give a jury verdict. *Tyson Foods, Inc. v. Disheroon*, 26 Ark. App. 145, 761 S.W.2d 617 (1988). Importantly, a claimant's testimony is never uncontroverted. *Nix v. Wilson World Hotel*, 46 Ark. App. 303, 879 S.W.2d 457 (1994).

In a recorded statement to the respondent carrier on August 15, 2023, the claimant stated she was "going to my car to get something to

drink that I had left in there, and when I stepped off the curb, I twisted my ankle and it's all swollen." When asked if there was any other purpose for going to her car, the claimant responded, "no ma'am."

Claims Adjuster Misty Thompson recalls offering the claimant ample opportunity to address any additional, work-related reasons why she may have been going to her car.

By the time of the August 1, 2024 hearing, the claimant's testimony had changed. At the hearing, the claimant testified she went to her car "to get my bottle of water and get the other set of keys that I needed to go start the agra building and the electronics building," The claimant also testified she obtained those keys from Rebecca Manatt, the school secretary, that morning.

She previously testified at her deposition she was given the keys by the school nurse, April. Ms. Manatt testified she has no recollection of talking to the claimant about a set of building keys or providing the claimant with a set of keys, stating, "[n]ormally the custodians have those."

While the claimant's case hinges on the question of the "time and space boundaries" of her employment, our Courts have consistently held evidence of an employee being injured on their employer's premises is insufficient to warrant a finding employment services were being performed. *CV's Family Foods v. Caverly*, 2009 Ark. App. 114, 304 S.W.3d 671 (2009)

(citing *Hightower v. Newark Pub. Sch. Sys.*, 57 Ark. App. 159, 943 S.W.2d 608 (1997)). Therefore, 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. *Texarkana Sch. Dist. v. Conner*, 373 Ark. 372, 284 S.W.3d 57 (2008).

In this case, it is obvious the claimant is seeking some way in which she may have been furthering her employer's interest by going to her car to get a drink. Her testimony regarding why or how she had building keys in her vehicle has changed three times since her initial injury.

Her first statement is the most clear: The claimant was going to her car for no other reason than to get her drink. She was in no way furthering her employer's interest in doing so. This claim relies only on the claimant's self-serving and unreliable testimony that has clearly evolved to suit the claimant's agenda.

Accordingly, for the reasons set forth above, I must dissent.

MICHAEL R. MAYTON, Commissioner