

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

WCC NO. H307140

ANGEL LINDSEY, Employee	CLAIMANT
CADDO HILLS SCHOOL DISTRICT, Employer	RESPONDENT
ARKANSAS SCHOOL BOARDS ASSN., Carrier	RESPONDENT

OPINION FILED JULY 31, 2024

Hearing before ADMINISTRATIVE LAW JUDGE ERIC PAUL WELLS in Russellville, Pope County, Arkansas.

Claimant represented by KENNETH A. OLSEN, Attorney at Law, Bryant, Arkansas.

Respondents represented by JARROD S. PARRISH, Attorney at Law, Little Rock, Arkansas.

STATEMENT OF THE CASE

On May 2, 2024, the above captioned claim came on for a hearing at Russellville, Arkansas. A pre-hearing conference was conducted on March 11, 2024, and a Pre-hearing Order was filed on March 12, 2024. A copy of the Pre-hearing Order has been marked Commission's Exhibit No. 1 and made a part of the record without objection.

At the pre-hearing conference the parties agreed to the following stipulations:

1. The Arkansas Workers' Compensation Commission has jurisdiction of this claim.
2. The relationship of employee-employer-carrier existed between the parties on October 31, 2023.
3. The respondents have controverted the claim in its entirety.
4. The claimant was earning sufficient wages to entitle her to compensation at the weekly rates of \$813.00 for temporary total disability benefits and \$610.00 for permanent partial disability benefits.

5. The claimant reserves the issue of temporary total disability benefits.

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

1. Whether Claimant sustained a compensable injury to her right leg on or about October 31, 2024.

2. Whether Claimant is entitled to medical treatment for her compensable right leg injury.

The claimant's contentions are as follows:

“Claimant contends that she sustained a compensable injury to her right lower extremity in the course and scope of her employment on October 31, 2023, is entitled to medical and indemnity benefits, that Respondents controverted the claim in its entirety, and she is also entitled to attorney’s fee.”

The respondents’ contentions are as follows:

“Respondents contend that Claimant did not suffer a compensable injury under the Arkansas Workers’ Compensation Act. Respondents contend that in the event compensability is found, the claimant has only missed 13 days of work and would only be entitled to temporary disability benefits for a one-week period based on the waiting period under the Arkansas Workers' Compensation Act.”

The claimant in this matter is a 35-year-old female who was employed by the respondent as a fourth grade teacher. The claimant alleges that she sustained a compensable right leg injury on or about October 31, 2023, when she fell. As a result of that fall the claimant sustained fractures to her right ankle. In direct examination testimony the claimant described going to work on October 31, 2023, and her activities before she fell as follows:

Q Okay. On October 31st of 2023, what time did you get to work?

A 7:20.

Q What did you do once you got there?

A I gathered my material, got my children out of the car after I parked on top of that little hill and I noticed that we had our first frost. The stairs were iced over with frost. The grass had a little bit of frost on it. I thought it would be safer to ascend down or descend down the hill on the grass versus the stairs because they were slippery. They had nothing on them except the ice, so I chose to go down the hill with my youngest son. My oldest had already made it down the hill into the building when I fell with my youngest son beside me.

In hearing testimony, the claimant described the area she parked in as a parking lot on top of a hill. The claimant further testified that while parking in the lower lot in the past, her car was hit on two different occasions. The claimant gave direct examination testimony about why she parked on top of the hill as follows:

Q Had you previously parked on the lower level?

A Before I was told to park up on the hill, yes.

Q By whom were you told to park –

A Deborah Stephens.

Q Let me finish my question.

A Oh, I'm sorry.

Q By whom were you directed to park on the upper level?

A Deborah Stephens.

Q And who is that person?

A She was my principal at the time.

Q Is she currently the principal?

A She is not.

Q Were you told why you needed to park on the upper level rather than the lower level?

A She didn't go into detail, but she informed me that it was a good idea for me to park up at the top.

Q Were you given an explanation of why your vehicle being hit twice required that you park somewhere else?

A I was told it was a better idea for me to park at the top.

Q From that point on did you park on the upper level?

A Yes, sir.

Q And how long, approximately, before October the 31st of '23 did that occur?

A At least a year.

The claimant also gave direct examination testimony about the fall itself and the aftermath shortly thereafter:

Q All right. Do you know what caused you to fall?

A The ice on the grass and the hill having to descend down the hill. There was no handrail to get down the steps, so I couldn't descend the steps. I didn't feel like that was a safe option for me.

Q Can you kind of go through – I know this happened pretty quickly – the exact manner in which you fell?

A All right. I started to go down the hill and I took three or four steps, maybe, and I felt my foot slide out from underneath me and everything – it was really disorienting and everything kind of happened very quickly. I felt my foot slide. I feel like I probably sat down on my leg and my ankle. And then I was at the bottom of the little hill where I kind of came aware of what was happening and I was in a lot of pain.

Q Did you try to get up and go into the school?

A I tried to stand or I tried to move where I could stand and I couldn't. It was a lot of pain. It was a lot of – I couldn't figure out why everything hurt so bad, so they had to call – they had to call the nurse to come bring me a wheelchair.

Sometime during all of that, another teacher came up to me. Ms. Hanson came up to me and was kind of helping. Jason Caldwell, our maintenance person, he does maintenance for the school, he had come up to me. He had actually fallen behind me. After I fell, he came up to me sometime just a little bit later and had fallen as well in the same spot I fell. Lucky he didn't fall on me and he was okay, but he fell as well.

Q And who was that?

A Jason Caldwell.

Q And what is his position?

A He does maintenance. I don't know if he is over maintenance or not.

Q Did more than one person come to your aid?

A Yes, sir. I remember Hartwick being there with Ms. Tandy with the wheelchair. And I don't remember who else helped me up, but I know it was him and someone else helped me get into the wheelchair.

I note that Brad Hartwick was present at the hearing and called as a witness by the respondent. Mr. Hartwick is the current elementary school principal and also served in that capacity on October 31, 2023, when the claimant fell.

The claimant was taken by a family member to Chi St. Vincent's Hospital in Hot Springs, Arkansas, that same day. Medical records from the claimant's ER visit, in part, state:

CHIEF COMPLAINT: Displaced trimalleolar ankle fracture right ankle.

PROCEDURE SCHEDULED: Open reduction internal fixation right ankle.

HPI: Angel Renee Lindsey is a 34 y.o. female who recently fell onto the right ankle. This was the result of a mechanical fall. Patient slipped on an "icy hill." The patient had the onset of pain and inability to bear full weight onto the involved side. Subsequent x-ray showed a displaced trimalleolar fracture dislocation of the

right ankle. This was reduced and splinted in the ED. She was admitted for pain control and surgical intervention. She denies any prior history on the right lower extremity.

I have discussed the situation with the patient at length. They understand their problems as well as the different operative options they have. They understand the potential for blood clots, infection, failure of hardware, incomplete resolution of pain, the possibility of revision surgery, and up to and including death. They understand these risks and accepts them. They have no further questions.

The claimant was admitted to the hospital at that time and underwent several diagnostic tests on her right ankle, including x-rays and a CT scan, both of which revealed right ankle fractures. Following is a portion of the report of the CT scan on the claimant's left ankle:

FINDINGS: A nondisplaced medial malleolar fracture is identified with both vertical and horizontal components extending to the tibiotalar joint. A nondisplaced vertically oriented posterior malleolar fracture is identified with extension to the tibiotalar joint. A nondisplaced spiral oblique fracture is present of the distal fibular diaphysis above the level of the ankle mortise. No evidence of talar or calcaneal fracture. Small heel spurs noted. No significant degenerative changes of the tibiotalar subtalar joints. Small tibiotalar joint effusion. Soft tissue swelling and subcutaneous edema throughout the ankle joint. No subcutaneous emphysema or radiopaque foreign bodies.

IMPRESSION:

1. Nondisplaced trimalleolar fractures as described.

On November 2, 2023, the claimant underwent surgical intervention at the hands of Dr. Christopher Young at Chi St. Vincent's Hospital. Following is a portion of that operative report:

Pre-operative Diagnosis: right trimalleolar ankle fracture

Post-operative Diagnosis: Same

Procedure Performed: Open reduction internal fixation of right trimalleolar ankle fracture

It is the claimant's burden to prove that she sustained a compensable injury to her right leg, more specifically, her right ankle, on October 31, 2023, as she alleges. It is without doubt that the claimant fell on that day as she was going into her workplace. Clearly, there is evidence through x-rays, the CT scan, and surgical records of objective medical findings. However, the claimant also has to prove her fall occurred while she was performing employment services for the respondent.

A compensable injury is defined, in part, as an accidental injury which arises out of an in the course of employment. A.C.A. § 11-9-102(4)(A)(I). However, a compensable injury does not include an injury "inflicted upon the employee at a time when employment services were not being performed." A.C.A. § 11-9-102(4)(B)(iii). An employee is performing employment services when they are doing something that is generally required by his or her employer. *Continental Construction Co. v. Nabors*, 2015 Ark. App. 60, 454 S.W.3d 762; *White v. Georgia-Pacific Corp.*, 339 Ark. 474, 478, 6 S.W.3d 98, 100 (1999). The same test is used to determine whether an employee is performing employment services as is used when determining whether an employee is acting within the course and scope of employment. The test is whether the injury occurred within the time and space boundaries of the employment, when the employee was carrying out the employer's purpose or advancing the employer's interest either directly or indirectly. *Pifer v. Single Source Transportation*, 347 Ark. 851, 69 S.W.3d 1 (2002).

On cross examination the claimant was asked about her assigned classroom and her duty assignment as follows:

Q Ms. Lindsey, we have established your position at Caddo Hills as an ELA and social studies teacher; right?

A Yes, sir.

Q Still fourth grade?

A Yes.

Q And you have your own assigned classroom, correct?

A Yes, sir.

Q And the duty that you talked about is done on your hallway outside of your classroom between your classroom and another classroom, right?

A Yes, sir. Between fourth grade, third grade, second grade, and first.

Q All right. And the tardy bell for your first class rings at 7:45 a.m.?

A Yes, sir.

The claimant was also asked on cross examination about where her classroom and duty station were in relation to where she had parked her automobile:

Q Okay. The place where you parked was maybe half a football field from your classroom; correct?

A Total distance.

Q Yes. And that is half a football field away from where your duty would have been as well; correct?

A Sure.

Q To get to your classroom, you told me you had to go down the hill, across the lower parking lot, through the middle doors into the building, turn right, go all the way down the hall, and then your classroom was on the left at the last stretch of hallway; is that right?

A Yes, sir.

Q And then the office is pretty much on the opposite side of the building?

A Yes.

Q Okay. There is no security checkpoint or guard check or anything that you have to check into to come to school?

A No, sir.

Q And there is no gate or barrier you have to open or unlock to get to school?

A No, sir.

Q All right. At the time you fell, you were coming into work?

A Yes, sir.

Q Would you agree with that?

A Yes, sir.

On cross examination the claimant was asked about performing job duties on the day of her fall prior to its occurrence as follows:

Q You pulled your vehicle in, got out, and went down the hill and fell, but you had not discharged any job duties at that point in time; correct?

A When I am on campus, I am expected to provide assistance whenever needed.

Q I didn't ask you what was expected. I asked about what happened that day. That day you had not discharged any job duties; had you?

A I had stepped out of my car and was coming down the hill and that is when I fell.

Q And that day you had not discharged any job duties; had you?

A There were no duties performed while I was walking in that short amount of time between my car and the hill.

Q Okay. That is what I am getting at. You had not encountered any job tasks needed to be done for the school before you fell; had you?

A If I had, I might not have fallen.

Q Okay. But you didn't; right?

A No, I did not.

Q And the video is going to show there is no children present that need to be supervised or helped our guided –

A Other than my youngest son who is a student at Caddo Hills.

Q Well, that is your son in your vehicle; right?

A He was walking beside me.

Q Right. You bring him to school every day; right?

A I do.

Q Okay. So there are no students that aren't related to you in the area that might need your assistance as a teacher?

A I don't know who was around me at the time whenever I fell because it happened so fast.

Q [BY MR. PARRISH]: You hadn't interacted with any bosses or supervisors to receive any special instructions or assignments at that point; correct?

A No, sir.

Q And the stuff you were carrying in your arms was not special, unique or urgent in any way compared to what you bring in every day; right?

A No, sir.

Q Okay. And you agree if there are no students there to assist and there were no teachers there to assist, then there would be no

job duties to discharge at that point in time. Do you agree with that?

A It depends. If there is no one present, then there is no one for me to assist, but

Q So you wouldn't be discharged in a job duty; correct?

A Not at that particular moment in time.

I will note that Mr. Hartwick, who was present shortly after the claimant's fall, testified that there were no children in the area at the time. His testimony is supported by the surveillance video that was placed into evidence.

After a review of the testimony and evidence in this matter it does not appear that the claimant was performing employment services at the time of her fall. Certainly, she was going from her automobile to her work, but was not performing job duties at the time of her fall or advancing her employer's interests either directly or indirectly. There were no children in the area at the time of the claimant's fall nor any other peer or supervisor to interact with the claimant at that time. She was, at the exact time of her fall, only accompanied by her child, who is a student at that school, as she brought him daily with her. The claimant is unable to prove that she sustained a compensable injury to her right leg on October 31, 2023.

From a review of the record as a whole, to include medical reports, documents, and other matters properly before the Commission, and having had an opportunity to hear the testimony of the witnesses and to observe their demeanor, the following findings of fact and conclusions of law are made in accordance with A.C.A. §11-9-704:

FINDINGS OF FACT & CONCLUSIONS OF LAW

1. The stipulations agreed to by the parties at the pre-hearing conference conducted on March 11, 2024, and contained in a Pre-hearing Order filed March 12, 2024, are hereby accepted as fact.

2. The claimant failed to prove by a preponderance of the evidence that she sustained a compensable injury to her right leg on or about October 31, 2023.

3. The claimant has failed to prove by a preponderance of the evidence her entitlement to medical treatment for her compensable right leg injury.

ORDER

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

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

IT IS SO ORDERED.

**HONORABLE ERIC PAUL WELLS
ADMINISTRATIVE LAW JUDGE**