BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION
CLAIM NO. G902942

MISTY L. LINDSEY, EMPLOYEE	**CLAIMANT**
CEDAR RIDGE SCHOOL DISTRICT, EMPLOYER	**RESPONDENT**
ARKANSAS SCHOOL BOARDS ASSOCIATION, INSURANCE CARRIER/TPA	**RESPONDENT**

OPINION FILED JANUARY 6, 2021

Hearing before Administrative Law Judge, James D. Kennedy, on the 17th day of November 2020, in Little Rock, Arkansas.

Claimant is represented by Kolton Jones, Attorney at Law, Little Rock, Arkansas.

Respondents are represented by Karen McKinney, Attorney at Law, Little Rock, Arkansas.

STATEMENT OF THE CASE

A hearing was conducted on the 17th day of November, 2020, to determine the issues of compensability, temporary total disability, medical, and attorney fees, with all additional issues being reserved. The claimant contended that she was in the scope of her employment when she slipped and fell on a wet floor, causing her to suffer a torn meniscus and MCL. The respondents contended that the claimant was not performing employment services at the time of her injury and was walking out the door to her vehicle at the time of the injury; consequently, the claim was not compensable. A copy of the Pre-hearing Order was marked "Commission Exhibit 1" and made part of the record without objection. The Order provided that the parties stipulated that the Arkansas Workers' Compensation Commission has jurisdiction of the claim; that an employer-employee relationship existed on May 7, 2019, the date of the claimed injury; and that the claimant earned sufficient wages to entitle her to a temporary total disability

(TTD)/permanent partial disability (PPD) rate of $500.00/$375.00. The claimant's and respondents' contentions are set out in their respective responses to the Pre-hearing Questionnaire and made a part of the record without objection. Additionally, the parties were instructed to file short briefs in regard to their positions on compensability; the briefs are blue-backed and attached to this opinion.

Claimant's Exhibit One, which consisted of seventy-four (74) pages of medical exhibits, was admitted into the record without objection. Respondents' Exhibit One was proffered over the objection of the claimant, with the admission taken under advisement. It consisted of six (6) pages and regarded a recorded phone conversation between the claimant and what appeared to be an adjuster. Respondents' Exhibit Two, which consisted of a transcript consisting of forty-nine (49) pages of an oral deposition of the claimant, with the legal representatives of both the claimant and respondent present at the time of the deposition, was also proffered over the objection of the claimant, again with the admission taken under advisement. The sole witness to testify was the claimant. From a review of the record as a whole, to include medical reports and other matters properly before the Commission and having had an opportunity to hear the arguments of opposing counsel, the following findings of fact and conclusions of law are made in accordance with Ark. Code Ann. § 11-9-704.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. The Arkansas Workers' Compensation Commission has sole and exclusive original jurisdiction to determine whether the claimant's injuries are covered by the Workers' Compensation Act.

2. An employer/employee relationship existed on May 7, 2019, the date of the claimed injury.

3. The claimant was earning sufficient wages to entitle her to a TTD/PPD rate of $500.00/$375.00.

4. It is determined that the objection by the claimant as to the admissibility of respondents' Exhibit One is sustained and the exhibit is not admitted.

5. The respondents' Exhibit Two is admitted into evidence.

6. It is found that the claimant has failed to satisfy her burden of proof that she was performing employment services at the time of her fall and consequently there is no alternative but to find that the claim is not compensable.

7. All other issues are moot.

8. If not already paid, the respondents are ordered to pay for the cost of the transcript forthwith.

REVIEW OF EVIDENCE

The Pre-hearing Order, along with the Pre-hearing Questionnaires of the parties, were admitted into the record without objection. Claimant's Exhibit One, which consisted of seventy-four (74) pages of medical exhibits, was admitted into the record without objection. Additionally, the respondents proffered Exhibit One, which consisted of a six-(6) page transcript of a recorded telephone call between who appeared to be the adjuster and the claimant and was determined to not be admissible. However, Respondents' Exhibit Two, which consisted of the transcript of the deposition of the claimant, while the attorneys for both parties were present, was determined to be admissible.

The claimant was the sole witness to testify. She testified that she was born on September 24, 1976, was forty-four (44) years old at the time of the hearing and had obtained her Master's in Special Education from Harding University. (Tr. 6) The claimant testified that she had been working at Cedar Ridge School District as a Special Education Teacher for elementary school, grades K through 5. (Tr. 7) Her job consisted of teaching

kindergarten, first, and second grade students, based upon their individual education plans, which included preparing individual education plans (IEPs). The plans included goals and information about the students, with the students being taught based upon their goals and IEP levels. All teachers did not have to deal with the IEPs, just teachers in special education. (Tr.8) Additionally, the claimant testified that she had to schedule meetings with parents and set up evaluations. "If I have a student who has been referred for my classroom, I have to set up those referrals with parents and get paperwork ready for any evaluations or any type of meeting with parents." The claimant also provided that at the end of school year, she had what was called annual reviews, where IEPs were developed for the following year, and that she had meetings with the parents to determine what was a good plan for the following year. (Tr. 9) The claimant stated that she could not do the paperwork while the students were present, so she usually prepared them during her prep time, after school, and at home.

On the date of the injury, the claimant testified that she stayed late after school due to the after-school program being over, and she had started preparing the annual reviews. At 4:30 p.m., she decided to go home and get some things done.

> So I started preparing, getting my stuff ready to go home, and I walked out my classroom door and there's - - as soon as I walk out my classroom door I'm in the hallway, and then there is another door, with a short hallway that leads outside. I was between the hallway and the short, the outside door, and when I - - as soon as I opened the door, I slipped and fell. (Tr. 10)

School typically gets out at 3:30 p.m. for teachers, and it was around 4:30 p.m. at the time of the fall. When asked why she fell, the claimant stated, "I'm thinking that the floor was wet, because whenever I slipped, it was kind of like sliding on a wet floor. And when I started to get up, I noticed that my pants were a little bit wet from the floor." She

reiterated that she had stayed late preparing for the annual reviews. The claimant also testified that the respondent does not require her to work from home, but that if she wants to work from home, she can. (Tr. 11) All teachers were given laptops or Chromebooks to take home due to the amount of paperwork they have along with a box to place the paperwork in. The claimant testified that, during the annual review time, she takes the paperwork home along with her laptop, and she had her laptop in a bag when she fell. The box was in my room and, "I think that could be what I was coming back to get, because I was gonna take some stuff to my vehicle and then come back in the building to get something. I don't remember exactly if that's what it was." (Tr. 12) The claimant stated that typically when working from home, she was attempting to complete the special education paperwork for her students. Additionally, she would sometimes use an app on her laptop or Chromebook to contact her students' parents, and that this would sometimes take place outside of the regular school day. (Tr. 13)

Again, the claimant stated that she was going to her vehicle and then returning into the school. She further testified that it was her understanding that she suffered a torn meniscus and two (2) tears of her MCL from the fall, which were both repaired, and it was her understanding that she would have some permanent damage to her right knee due to the injury. She reported her fall the following morning after she woke up and knew something was seriously wrong with her knee. (Tr. 14) Upon returning to school, the claimant told the secretary about her injury and was given a number to contact "workmen's comp", which the claimant proceeded to do with her cell phone. The respondents and the workers' compensation insurance carrier failed to provide any treatment or benefits related to the claim, so she treated on her own. (Tr. 15) The claimant

stated that on the day that she called “workmen’s comp” and they denied her claim, she then talked to her supervisor and presented to the Rock River Medical Center Emergency Room, ultimately treating with Doctor James Allen, who performed surgery. Later, she treated with Doctor Wesley Green, who also performed surgery. The claimant testified that she missed work the day that she went to the emergency room and a couple of days more, but that she could not exactly remember. She remembered that the first surgery was on May 23rd, 2019, when school was out. (Tr. 16) The second surgery by Doctor Green was on November 8, 2019, which was during school, and she did not return to school until January following the 2020 New Year’s holiday when school started. (Tr. 17, 18) It was also noted that the claimant admitted to using her school laptop for appropriate personal use. (Tr. 19)

Under cross examination, the claimant admitted that she typically takes her laptop home every day and that she does not leave it at school. (Tr. 20) The claimant also admitted that on May 7th, she was not performing after-school care or work with the students. The claimant also admitted that it was her practice to attempt to get her paperwork done at school and at about 4:30 p.m., she decided to go home. She then picked up her stuff and was taking it to her car. (Tr. 21) The claimant admitted that at the time of her deposition which was on October 26th, about three (3) weeks earlier, she was not sure what she had in her hands when she fell. She also admitted that at the time of the deposition, she had stated that she wanted to take whatever she had out to her car and then return and get some more stuff. (Tr. 22) She admitted that when she was leaving school with her laptop, no students were around and she was not responsible for any school care. (Tr. 24) Additionally, she was not responsible for locking up the school or

making the school secure. (Tr. 25) She admitted that she had agreed in her deposition that she was doing her annual reviews and end-of-the-year paperwork and she typically tried to leave school about 4:30 p.m. (Tr. 27) The claimant also agreed that her home wi-fi was spotty and consequently frustrating; therefore, if the claimant's internet was not working, the best plan of action was to stay after school and perform the work there, since her home internet was unreliable. The claimant also admitted that she did not recall that when she finished at school for the day whether she was going to save the rest of the work for tomorrow or try to get it done that night. (Tr. 28, 29) Additionally, the claimant admitted that Doctor Greer released her to full duty on January 28, 2020, and that she had not been seen by any doctor in regard to her knee, but that she had received physical therapy until February or March. (Tr. 30)

Under further cross examination in regard to the claimant's earlier deposition, the claimant admitted that three (3) weeks ago she could not remember what she was returning back into the school to obtain, but she did mention going back for her lunch. The claimant also admitted that she did not state in her deposition that she was returning for a box of paperwork or anything like that which she needed to take home. (Tr. 31, 32)

On redirect, the claimant testified that the annual paperwork was required by the respondent and that she does work at home, whether with a pencil on paper, or with her computer while using her available internet. The claimant also admitted that she returned into the school to get her lunch and something else. (Tr. 34, 35)

Under further recross examination, the claimant admitted that she did not have the box of papers in her hand when she fell, stating, "Not when I fell, no, not that I know of." The following questioning then occurred:

> Q. And we don't know for certain that you were actually going back to get that box, do we?
>
> A. I mean, I know that I was going back to get something, but I mean, you wouldn't know that, I don't think. (Tr. 36)

Under further redirect, the claimant's attorney asked about a recorded statement that the claimant had given where she stated that she had a laptop in her bag when she fell. At that point, the respondent's attorney moved to admit the transcript of the recorded statement and the attorney for the claimant objected. The admissibility of the recorded statement was taken under advisement, and the respondent was allowed to proffer the statement as well as the deposition of the claimant, again over the objection by the claimant's attorney. (Tr. 37)

In regard to the medical that was admitted into the record without objection, the records provided that the claimant presented to the White River Health System ER on May 8, 2019, with the report providing that the claimant slipped and fell at work yesterday around 4:30 p.m. (16:30), landing on the right knee. The report went on to provide that the pain had gotten worse and x-ray images of the right knee were taken. (Cl. Ex. 1, P. 1 - 5) The radiology report of the right knee, under impression, provided normal. (Cl. Ex. 1, P. 6) On May 21, 2019, the claimant presented to Doctor Allen James. An MRI of the right knee was ordered. (Cl. Ex. 1, P. 7 - 10) The radiology report for the MRI of the right knee provided that the claimant had suffered an acute grade 2 proximal MCL sprain with a medial meniscal tear and with mild to moderate chondral thinning of the medial patellar facet extending to the medium ridge. (Cl. Ex. 1, P. 11 - 12) The report by Doctor Allen dated May 23, 2019, provided that there was a tear of the medial collateral ligament and also a degenerative tear of the posterior horn of the medial meniscus of the right knee,

and surgery was scheduled. (Cl. Ex. 1, P. 13 - 15) Surgery of the right knee occurred on May 29, 2019, with the procedure performed by Doctor Allen. An arthroscopy with arthroscopic debridement was performed, along with chondroplasty of the medical femoral condyle and of the patella. An addendum of the report provided that no tears of the medial or lateral menisci were found. (Cl. Ex. 1, P. 16 - 24) A follow-up with Doctor Allen occurred on June 11, 2019. The report provided there were no unusual complaints, with the range of motion within normal limits and with the claimant recovering at home. (Cl. Ex. 1, P. 25, 26) The claimant returned to Doctor Allen on July 18, 2019; August 13, 2019; and September 3, 2019. The September report provided that there was diffuse tenderness and mild diffuse swelling with a mild decrease in strength. An MRI was scheduled to recheck for meniscus tears. (Cl. Ex. 1, P. 27 - 34) The MRI report dated September 6, 2019, provided that there was no significant interval change in appearance of the medial/lateral meniscus. (Cl. Ex. 1, P. 35 - 36) The claimant again returned to Doctor Allen on August 19, 2019, with the report providing under assessment, Hoffa's syndrome, flexion contracture of the knee, and primary arthritis of the right knee. The claimant was referred to Doctor Greer for a second opinion. (Cl. Ex. 1, P. 37 - 41)

The claimant presented to Doctor Wesley Greer on September 23, 2019, and a right knee injection was ordered with A-Depomedral. (Cl. Ex. 1, P. 42 - 45) The claimant returned to Doctor Greer on October 23, 2019, with an assessment of a right acute medial meniscal tear, chondromalacia of the knee, and a sprain of the medial collateral ligament. After consulting with the claimant, surgery was scheduled. (C. Ex. 1, P. 47 - 50) Surgery by Doctor Greer occurred on November 8, 2019, with a right medial collateral ligament repair with right knee chondroplasty. The claimant then returned to Doctor Greer on

November 18, 2019, for a follow-up, and the report provided that the claimant was healing well. (Cl. Ex. 1, P. 51 - 55) The claimant then followed up with Doctor Greer on December 18, 2019, and January 29, 2020. The final report provided that the claimant was doing very well with some swelling but no pain, and that she could return to work on January 29, 2020, with no restrictions. (Cl. Ex. 1, P. 56 - 60)

DISCUSSION AND ADJUDICATION OF ISSUES

The initial issue to be faced is the admissibility of the respondents' proffered exhibits. Exhibit One consists of the transcript of a taped phone call between the claimant and what is assumed to be the adjuster. No legal representative of either party was present during the taped conversation. A question was asked about the conversation during the direct examination of the claimant. The law is clear that the Workers' Compensation Commission has broad discretion with reference to the admission of evidence, and the decision will not be reversed absent a showing of abuse of discretion. Brown v. Alabama Elec. Co. 60 Ark. App. 138, 959 S.W. 2d 753 (1998). Ark. Code Ann. § 11-9-705(a) states that the Commission "shall not be bound by technical or statutory rules of evidence or by technical or formal rules of procedure." See Clark v. Peabody Testing Service, 265 Ark. 489, 579 S.W. 2d 360 (1979). It is found that, due to the fact that the claimant was dealing with a party of the respondent who probably was well-trained and versed in the handling of matters such as a workers' compensation claim, and since the claimant did not have a representative versed in these matters during the taped phone conversation, that the transcript of the phone conversation is not admissible. It is also noted that the transcript never clarifies who the person is that is questioning the claimant.

However, based upon the law, the fact that both parties were represented by able counsel at the time of the deposition, and the fact that the deposition could not be considered a surprise, the respondents' Exhibit Two is found to be admissible.

The claimant has the burden of proving by a preponderance of the evidence that she is entitled to compensation benefits for her injury under the Arkansas Workers' Compensation Law. In determining whether the claimant has sustained her burden of proof, the Commission shall weigh the evidence impartially, without giving the benefit of the doubt to either party. Ark. Code Ann. § 11-9-704. Wade v. Mr. Cavanaugh's, 298 Ark. 364, 768 S.W. 2d 521 (1989). Further, the Commission has the duty to translate evidence on all issues before it into findings of fact. Weldon v. Pierce Brothers Construction Co., 54 Ark. App. 344, 925 S.W.2d 179 (1996).

The parties agreed and stipulated that an employer/employee relationship existed on May 7, 2019. It was also unrebutted that the claimant, who works as a Special Education teacher for the respondents, was in the process of leaving the building and heading home at or about 4:30 p.m. Additionally, it is undisputed that she fell as she was leaving work to go home, injuring her right knee. The claimant testified that school lets out at 3:30 p.m., and at the time of the incident involving the fall and injury, she was neither responsible for the care of any students nor was she responsible for securing the school. She also testified that she worked in her room on required reports (IEPs) until 4:30 p.m., when she decided to go home. She was taking a load to her car with the intention to return for another load, when she slipped and fell, injuring her right knee. The claimant admitted that she regularly took the school laptop home nearly every night and was allowed to use the laptop for appropriate personal matters. In addition, the claimant

admitted that it was her practice to attempt to get her paperwork finished at school, although she did sometimes bring it home. She also admitted that she did not recall when she finished for the day at school whether she was going to save the rest of the work for the next day or attempt to get it done at home.

It is noted that the process of coming and going from work is generally not considered to be work related. The Arkansas Court of Appeals held that the employment services provision of Act 796 eliminated the premises exception to the going and coming rule. Thus, walking out the door from work, even while on the employer's premises does not qualify as performing employment services. Hightower v. Newark Public School Systems, 57 Ark. App. 159, 943 S.W.2d 608 (1997). The test for determining whether an employee was acting within the course of employment at the time of the injury requires proof that the injury "occur within the time and space boundaries of the employment, when the employee is carrying out the employer's purpose or advancing the employer's interests directly or indirectly." Olsten Kimberly Quality Care v. Pettey, 328 Ark. 381, 944 S.W.2d 524 (1997) The "going and coming" rule ordinarily precludes recovery for an injury sustained while the employee is going to or returning from his place of employment. Lepard v. West Memphis Mach. & Welding, 51 Ark. App. 53, 908 S.W.2d 666 (1995). The rationale behind the rule is that an employee is not within the scope of employment while traveling to or from his job.

The claimant relies on White v. Georgia-Pacific Corp., 339 Ark. 474, 6 S.W.3d 98 (1999) for the proposition that the claimant was performing employment services when she was doing something "generally required by his or her employer." Here, the claimant admitted that she was leaving the school to go home for the evening, that she typically

takes her laptop home everyday and does not leave it at school, and that she was not performing after-school care or work with the students at the time of the fall. She additionally admitted that she did not recall when she finished for the day whether she was going to save the rest of the work for the next day or to try to get it done that night.

Here, the claimant is found to be a dedicated teacher. However, after weighing the evidence impartially and without giving the benefit of the doubt to either party, it is found that the claimant has failed to satisfy her burden of proof that she was performing employment services at the time of her fall, and that consequently there is no alternative but to find that the claim is not compensable. Consequently, all other issues are moot. If not already paid, the respondents are ordered to pay the cost of the transcript forthwith.

IT IS SO ORDERED.

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JAMES D. KENNEDY
Administrative Law Judge