

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. H105700

DEBRA MAXWELL, Employee

CLAIMANT

PAM TRANSPORT, INC., Self-Insured Employer

RESPONDENT

OPINION FILED JANUARY 21, 2022

Hearing before ADMINISTRATIVE LAW JUDGE GREGORY K. STEWART in Springdale, Washington County, Arkansas.

Claimant represented by EVELYN E. BROOKS, Attorney, Fayetteville, Arkansas.

Respondent represented by DAVID C. JONES, Attorney, Little Rock, Arkansas.

STATEMENT OF THE CASE

On December 8, 2021, the above captioned claim came on for hearing at Springdale, Arkansas. A pre-hearing conference was conducted on September 22, 2021 and a pre-hearing order was filed on September 23, 2021. A copy of the pre-hearing order has been marked as Commission's Exhibit #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 the within claim.
2. The employee/employer relationship existed between the parties on July 12, 2021.
3. The respondent has controverted this claim in its entirety.

Subsequent to the hearing the parties agreed to stipulate that claimant earned an

average weekly wage of \$1,046.88 which would entitle her to compensation at the rates of \$698.00 for total disability benefits and \$524.00 for permanent partial disability benefits.

At the pre-hearing conference the parties agreed to litigate the following issues:

1. Compensability of injury to claimant's left knee on July 12, 2021.
2. Medical treatment.
3. Temporary total disability benefits from July 13, 2021 through a date yet to be determined.
4. Attorney's fee.

At the time of the hearing claimant clarified that she is requesting temporary total disability benefits from July 13, 2021 through October 5, 2021.

The claimant contends she sustained a compensable injury on July 12, 2021 and is entitled to medical treatment and temporary total disability benefits. The claimant reserves all other issues.

The respondent contends the claimant was not within the course and scope of her employment nor performing any type of employment services, incidental or otherwise, when the injury arose. Specifically, the respondent contends that the claimant was "off duty" and was performing an action totally personal in nature at the moment the injury arose. The respondent contends that it would be entitled to an offset for any group health carrier, disability carrier, and/or unemployment benefits paid to or on behalf of the claimant, should the claimant have applied for and received said benefits.

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 a pre-hearing conference conducted on September 22, 2021 and contained in a pre-hearing order filed September 23, 2021 are hereby accepted as fact.

2. The parties' stipulation that claimant was earning an average weekly wage of \$1,046.88 which would entitle her to compensation at the weekly rates of \$698.00 for total disability benefits and \$524.00 for permanent partial disability benefits is also hereby accepted as fact.

3. Claimant has failed to prove by a preponderance of the evidence that she suffered a compensable injury to her left knee on July 12, 2021. Specifically, claimant was not performing employment services at the time of her injury.

FACTUAL BACKGROUND

The claimant is a 56-year-old woman who worked for respondent as an over-the-road truck driver for 12 years and drove with her husband as a team for over 10 years. On the night of July 11, 2021, claimant and her husband stopped at a Love's Truck Stop in Ottawa, Kansas. Claimant testified that they had a load to deliver and a load to pick up the next day and they stopped at the truck stop because they could not arrive to pick up the load early.

Claimant testified that just after midnight on July 12, 2021, she suffered an injury to her left knee:

I walked and took the trash to the dumpster, which was behind the trailers in a grassy area, kind of on a downhill slope. And I got out and I decided to stretch my legs for a while, walk a little ways to just walk and then turn around and come back, but I had jumped - - hopped over a ditch, a drainage ditch that was there and when I did I - - the ground was wet and my weight came down on my leg that had caught my weight first. It slipped. My leg twisted, my knee twisted and I heard it pop, and I just went down and I knew that something was wrong.

Claimant was taken by ambulance to an emergency room in Ottawa where x-rays were initially interpreted as showing no fracture and claimant was diagnosed with a sprain of her left knee and discharged. Later that morning, claimant's x-rays were reviewed by another physician which he interpreted as showing a lateral tibial plateau fracture. Claimant was instructed to return to the emergency room for a CT scan which verified a compression fracture of the lateral tibial plateau. Claimant underwent surgery to repair the fracture and was discharged from the hospital on July 14, 2021.

After her surgery, the claimant was released to return to Arkansas where she underwent physical therapy and was treated by a physician until she was released to return to work as of October 4, 2021.

Claimant has filed this claim contending that she suffered a compensable injury to her left leg on July 12, 2021. She seeks payment of related medical treatment as well as temporary total disability benefits and an attorney fee.

### ADJUDICATION

Arkansas workers' compensation law defines compensable injury in part as "an accidental injury ... arising out of and in the course of employment...." A.C.A. §11-9-

102(4)(A)(i). A compensable injury does not include an injury inflicted upon an employee at a time when employment services are not being performed. A.C.A. §11-9-102(4)(B)(iii). The test to determine whether an employee was performing “employment services” is the same test used to determine whether an employee was acting within “the course of employment”. *Collins v. Excell Specialty Products*, 347 Ark. 811, 69 S.W. 3d 14 (2002). The test is whether the injury occurred within the time and space boundaries of the employment, when the employee was carrying out the employer’s purpose or advancing the employer’s interest, either directly or indirectly. *Collins, supra; Pifer v. Single Source Transportation*, 347 Ark. 851, 69 S.W. 3d 1 (2002).

After reviewing the evidence in this case impartially, without giving the benefit of the doubt to either party, I find that claimant has failed to meet her burden of proving by a preponderance of the evidence that she was performing employment services at the time of her injury on July 12, 2021.

First, I note that claimant’s driver’s log of July 11, 2021 indicates that she went off duty at 7:23 p.m. and that her husband went off duty at 7:16 p.m. that same night. Claimant testified that just after midnight on July 12, she got out of the truck and took trash to the dumpster. She also testified that she was stretching her legs. Significantly, claimant testified that she and her husband normally travel with their dog and that when she got out of her truck the dog also got out of the truck.

Medical records from the hospital indicate that claimant was walking her dog at the time of her accident.

July 12, 2021  
Emergency Room Record  
Pt is brought in by EMS because she fell at Loves

station. She was walking her dog and tripped and hit her knee and crawled to her big rig truck and [is] unable to stand. (Emphasis added.)

Likewise, the discharge summary of July 14, 2021 contains the following notation:

This patient is a 55-year-old female who drives a truck alongside her husband. Her dog travels with them. She was walking her dog and jumped over a drainage ditch. She heard a pop and could not walk on her knee or straight out. She presented to the emergency room. (Emphasis added.)

At the hearing, claimant testified that she was not walking her dog.

Q And your dog, you were out exercising with your dog; is that correct?

A No. I was just out with my dog. I wasn't exercising with her.

Q You were walking the dog. The medical records talk about you walking the dog.

A No. I was just out walking and my dog was walking with me.

Testifying at the hearing for respondent was Andrew Christensen. Christensen has worked for respondent for 21 years and is currently the Vice-President of Safety. He is responsible for overseeing truckers and safety as well as DOT compliance, hours of service, logs, driver training, and accident recertification. Christensen testified that claimant and her husband had a load message that they were not to pick up a load the next day until 10:00 a.m. He further testified that according to claimant's log she went off duty on July 11 at 7:16 p.m. and never went back on duty. Christensen testified that when a driver is off duty they are free to pursue their own activities and can go eat, go to the

grocery store, or perform any other activities.

Based on the evidence presented, I find that claimant has failed to prove that she was carrying out her employer's purpose or advancing her employer's interest, either directly or indirectly, at the time of her injury on July 12, 2021. Claimant was off duty at that time and was not performing any work-related activities at the time of her fall. Claimant specifically testified that she was not performing a pre-trip inspection when she got out of the truck. Instead, claimant had placed some trash in a trash can and was walking in a grassy area with her dog when she jumped over a drainage ditch and injured her left knee. I do not find that claimant was performing employment services at the time of her injury. Therefore, claimant has failed to meet her burden of proving by a preponderance of the evidence that she suffered a compensable injury to her left knee on July 12, 2021.

ORDER

Claimant has failed to prove by a preponderance of the evidence that she suffered a compensable injury to her left knee on July 12, 2021. Specifically, claimant was not performing employment services at the time of her injury on that date. Therefore, her claim for compensation benefits is hereby denied and dismissed.

Respondents are responsible for payment of the court reporter's charges for preparation of the hearing transcript in the amount of \$405.15.

IT IS SO ORDERED.

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GREGORY K. STEWART  
ADMINISTRATIVE LAW JUDGE