BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION CLAIM NO. H600442

MICHAEL MOORE, EMPLOYEE	**CLAIMANT**
UNIVERSITY OF ARKANSAS, EMPLOYER	**RESPONDENT**
PUBLIC EMPLOYEE CLAIMS DIVISION, CARRIER/TPA	**RESPONDENT**

OPINION FILED SEPTEMBER 2, 2026

Hearing before Administrative Law Judge, James D. Kennedy, on the 5TH day of August 2026, in Springdale, Arkansas.

Claimant is represented by Andy L. Caldwell, Attorney at Law, Little Rock, Arkansas.

Respondents are represented by Charles McLemore, Attorney at Law, Little Rock, Arkansas.

STATEMENT OF THE CASE

A hearing was conducted on the 5th day of August 2026, and the issues before the Commission are whether the claimant suffered a work-related injury to his right ankle on or about January 26th, 2026, is the claimant entitled to medical treatment for his injury, TTD benefits from January 26th, 2026, to a date to be determined, and attorney fees.

The claimant contended that he sustained a compensable right ankle injury on January 26th, 2026, and is entitled to reasonable medical treatment, TTD from January 27, 2026, to a date to be determined, mileage reimbursement, and attorney fees.

The respondents contended that the claimant reported having an injury to his right ankle on January 26th, 2026, at a time when he was on the premises, but not performing employment services. Respondents contended that the claimant cannot meet his burden of proving that he sustained a compensable injury that arose out of and in the course of

his employment, while he was advancing the interests of his employer, on the day of the alleged injury. The respondents did pay the initial charges on the day of the alleged injury, including ambulance and emergency room, but contend that they are not liable for any additional medical treatment on the controverted claim.

A copy of the Pre-Hearing Order was filed on May 27, 2026, and the Pre-hearing Questionnaires of both parties were made part of the record. The parties stipulated that the Arkansas Workers' Compensation Commission has jurisdiction of the claim, the relationship of employee-employer-carrier existed between the parties on January 26th, 2026, and that the respondents have controverted the claim in its entirety. At the time of the hearing the parties were able to stipulate that the claimant earned $717.00 per week, sufficient for a TTD/PPD rate of $478.00 and $359.00 respectively. The respondents controverted the claim in its entirety.

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 observe the testimony and demeanor of the witness, the following findings of fact and conclusions of law are made in accordance with Ark. Code Ann. §11-9-704.

FINDINGS OF FACT AND CONCLUSSIONS OF LAW

1. The Arkansas Workers' Compensation Commission has jurisdiction over this claim.
2. That the relationship of employee-employer-carrier existed between the parties on January 26th, 2026.

3. That the claimant earned $717.00 per week, sufficient for a TTD/PPD rate of $478.00 and $359.00 respectively.
4. That the claimant has satisfied the required burden of proof to prove by a preponderance of the evidence that he was performing employment services at the time of his injury and that consequently he suffered a compensable work-related injury to his right ankle and is entitled to reasonable and necessary medical treatment for his injury.
5. That the claimant has satisfied the required burden of proof to prove by a preponderance of the evidence that he is entitled to TTD from January 27, 2026, up to and including March 25, 2026.
6. That claimant is entitled to attorney fees.
7. If not already paid, the respondents are ordered to pay for the cost of the transcript forthwith.

REVIEW OF TESTIMONY AND EVIDENCE

The Pre-hearing Order along with the Pre-hearing questionnaires of the parties were admitted into the record without objection. The clamant submitted two exhibits which were both admitted into the record without objection. The respondents submitted one exhibit that was admitted into the record without objection.

The claimant, Michael Moore, testified that he was born on January 5, 1952, and is currently employed by the University of Arkansas as a commercial groundskeeper, heavy equipment, and had been in that position since January 26, 2026. He started working there back in April of 2023, and was placed in his current position in May of 2025. He was injured on January 26, 2026, after parking his vehicle and walking toward the

shop when he slipped on some ice at about 5:30 in the morning. His normal shift was 6:00 a.m. to 2:30 p.m. However, when there was a weather event he had different duties. He was required to go to the city of Fayetteville to pick up brine to spread around the college on the streets, so everybody was safe. “I follow the salt truck and a plow sometimes and spread the brine, you know” with a piece of equipment. On the date of January 26th, he was instructed to come in early by his supervisor, Rodney Prince due to the incoming weather event. (Tr. 6 - 8)

“I am on call 24/7 during inclement weather. I can get called at two o’clock in the morning. One o’clock in the morning, and I am automatically on the clock from that time on.” He went on to state that if he gets the call, he goes and starts working, and that he lives about five minutes from his office on the campus. He is given the option to stay on campus or go home during an inclement weather event. He went on to state that on January 26, 2026, he slipped on some ice and twisted something in his right ankle and heard his ankle pop, and was then taken to the Washington Regional emergency room, arriving at 6:37 a.m. (Tr. 9, 10)

The claimant was asked about a document in his non-medical that provided that the incident occurred at 5:30 p.m. and he testified that the time was incorrect and was actually 5:30 a.m. and he reported it right after it happened, and the respondent sent him to Washington Regional immediately after it had been reported. He was treated at the emergency room and was referred to Ozark Orthopedics and Dr. Heinzelman and received around February 2nd. The claimant testified that he was off work the day following his injury and returned around March 14th and received no workers’ compensation benefits during that time. His understanding was that his claim was denied due to not

performing employment services at the time. He returned to work on March 14th and was working there now. He also admitted hardware, or an implant was placed in his ankle. (Tr. 11 – 14)

Under cross examination, the claimant testified that his usual job was cutting grass, unless he needed to trim trees, lay sod, or going to get mulch with the trucks and trailer. He would show up for work at the grounds keeping building on the other side of Maple from the law school and his usual time to start time was 6:00 am, unless there was inclement weather and then his shift could start from midnight on, after being instructed by his supervisor. (Tr. 15, 16) The claimant was asked when his supervisor instructed him to show up at 5:30, if he recalled and he responded, “It was - - I went home after my shift and everything got cleaned up, had my supper. Then I was going to go back and stay at the shop so it would be easier to go get the brine, and everything, he told me to come back. And I went back about - - I was in the parking lot by 5:00 getting my stuff gathered in my truck and I started going to the shop about 5:30.” (Tr. 17)

In regard to a normal day when the claimant’s shift began at 6:00 a.m. when mulching leaves or hauling brush, the claimant stated that he reported to the same building on Maple Street, parked in the same big parking lot, and that he does not use his personal vehicle from that point forward. He may get a lawnmower or if he was going to haul brine from the city, he would go and obtain a truck from the carpenters’ shop and place a tank on the back and then go down to the city and load the truck with about 350 gallons of brine and return to the campus. The truck would be used for the streets on campus, and he would also fill up two Kubota UTV’s for use on the sidewalks. The truck was obtained from the FAMA parking lot off Mitchell and Razorback and was retrieved

before going for the brine. The truck was parked at the groundskeeping building with the tank set up and ready to go. The claimant admitted that he had been told a day or two before to arrive at the building at 5:30 in the morning on January 26, due to the inclement weather coming in. He also had the option of staying on campus the night before and they had done that in the past. (Tr. 18 – 21)

The claimant admitted he was in the parking lot at the time of his fall near the groundskeeping building, with his rubber boots and bibs which he wears while working with the brine, and also with the cookies that his wife had made for him, that were never eaten. Claimant thought he made it about 25 feet from his truck when he slipped on some ice. He also testified that on a normal day, he would clock in on a computer once in the building or clock in using his personal phone. (Tr. 22-25) The claimant also admitted that he had to get inside the building to get to the pickup truck with the brine tank. (Tr. 27)

The Commission questioned the claimant, who testified that he believed classes were cancelled on January 26. On redirect, the claimant testified that the inclement weather emergency was ongoing at the time of his injury, and he was on call at the time. On recross, the claimant agreed that page 36 of his nonmedical exhibit that provided 12 approved on January 25, 2026, meant he that was approved and expected to work 12 hours the following day. (Tr. 28 -30) In regard to inclement weather, the claimant testified that he had been called in before because he lived so close. (Tr. 33)

The claimant's medical exhibits included an index and 46 pages of medical records. The records provided that the claimant presented to Dr. John Frank on January 26, 2026, at the Washington Regional Emergency Department due to a fall with the report providing that specialty services were required. The report provided for concern in regard

to a right malleolus fracture. Claimant underwent conscious sedation and a closed reduction and was discharged with instructions to be non-weight bearing on his right lower extremity. X-rays provided for displaced fractures of the right medial and lateral malleoli. Cl. Ex. 1, P. 1 – 25)

On January 30, 2026, the claimant was seen by Jason Pleiman, MD, with a chief complaint of right ankle pain. The claimant's right ankle was viewed in three radiographs which provided claimant had some recurrent subluxation of the ankle and some compromised skin medially. His old splint was removed. (Cl. Ex. 1, P. 26-32) Claimant returned to Dr. Pleimann on February 3, 2026, for surgery at the Surgery Center of Fayetteville and the operative report provided that an open reduction and internal fixation of the right ankle were performed. (Cl. Ex. 1, P 33 -37)

On February 11, 2026, the claimant was seen by Hannah Penzo, APRN, NP-C. for a dressing change regarding his right ankle surgery. (Cl. Ex. 1, P. 38 -40) On February 20, 2026, the claimant returned to Hannah Penzo, APRN, NP-C. A fiberglass cast was applied and appropriately molded and staples were removed from the surgical wound. A knee scooter was ordered. A return-to-work form provided claimant should not return to work until after a follow up in four weeks. (Cl. Ex. 1. P. 41 - 46)

Claimant's Non-medical exhibit consisted of 50 pages. A Reported Time Block provided on January 25, 2026, that 12 hours were approved the following day due to an inclement weather/emergency situation. The time records also provided that the claimant did not return to work until March 26, 2026. (Cl. Ex. 2, P. 35, 36) Time off requests starting on January 16, 2026, a Tuesday, with the last two requests made apparently on March 13, and March 27, 2026, which was a Friday, per the record. (Cl. Ex. 2, P. 37 – 44)

The First Report of Injury dated January 27, 2026, provided that the claimant was injured on January 26, 2026, while walking across a parking lot with packed ice. (Cl. Ex. 1, P. 45) The claimant's accident report provided he was injured on January 26, 2026, when walking across the parking lot and he slipped on a pack of ice. (Cl. Ex. 2, P. 46) The respondents incident report provided that the claimant employee was walking across the parking lot and slipped on a pack of ice, and he needed surgery on his right ankle due to the severity of the injury. (Cl. Ex. 2, P. 47 – 50)

The respondents submitted 31 pages of documents that were admitted without objection. The claimant was offered a job as a heavy equipment operator on the date of April 24, 2025. (Resp. Ex. P. 1 -2) On January 27, 2026, a letter was mailed to the claimant from Angie West, PECD, denying the claimant's workers' compensation claim stating that after an investigation, it appeared that the claimant's claim did not arise out of or during the course and scope of employment services. (Resp. Ex., P. 3) All remaining documentation was relevant to the average weekly wage which was stipulated to at the start of the hearing and also provided time that the claimant worked.

DISCUSSION AND ADJUDICATION OF ISSUES

The claimant has the burden of proving by a preponderance of the evidence that he is entitled to compensation benefits for his injury under the Arkansas Workers' Compensation Law. In determining whether the claimant has sustained his burden of proof, the Commission shall weigh the evidence impartially, without giving the benefit of the doubt to either party. A.C.A. 11-9-704. *Wade v. Mr. Cavenaugh'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).

In the present matter, there appears to be no significant issue as to the facts of the matter or the actions of the claimant. The claimant worked for the ground maintenance department of the University of Arkansas at Fayetteville as a heavy equipment operator, mowing lawns on the campus in the spring and summer and hauling mulch and performing other jobs in the fall and winter. One of his jobs in winter consisted of going and obtaining a pickup, placing a brine tank on the back of it at a different location, and then driving the truck to the place where he reported everyday when he arrived at work. This made the truck available early the following morning so he could arrive at his work-place and drive the truck to a location operated by the city of Fayetteville and fill the brine tank. He would then return and apply the brine to the roads on campus when inclement weather occurred, a not unusual occurrence in north-west Arkansas in the winter, in order to make the roads and passage-ways safer for people moving about on campus. Brine was also dispensed with smaller Kubota side by sides, in an attempt to make the campus safer to navigate during cold weather events. He was on call when inclement weather was expected, but on the day prior to this particular inclement weather event, he had been instructed to return to work the following morning at 5:30 am, thirty minutes earlier than his normal start time, so he could go and obtain the brine at the city of Fayetteville and then apply it around the campus in an attempt to make the campus navigable and safer. His testimony, which is found to be believable, provided that he got to the parking lot at around 5:00 am the morning of his injury in his personal vehicle, gathered items that he needed or wanted for his duties of the upcoming day, and then headed across the parking lot at 5:30 carrying rubber boots and bibs that he always brought with him, when working

with the brine, and also carrying some cookies his wife made for him that he never got to eat due to his slip and fall on the ice covered parking lot. This was the very same parking lot that he always or nearly always parked in when arriving at work. The fall on the ice-covered parking lot resulted in broken bones in his right ankle, which eventually required surgery. He was promptly taken to Washington Regional Medical Center Emergency Room. The claimant also testified that he could have spent the night on campus but opted to go home and sleep in his own bed due to only living about five minutes from campus and preferred sleeping in his bed at home. The claimant later received surgery on his right ankle at the Surgery Center of Fayetteville and was off work until March 26, 2026, when he returned to his same job.

The critical issue here is whether the claimant was performing employment services when the injury occurred. See *Parker v. Comcast Cable Corp*, 100 Ark. App. 400, 269 S.W.3d 268 (2010). The Commission is bound to examine the activity the claimant was engaged in at the time of the accident in determining whether or not he was performing employment services. *Hill v. LDA Leasing*, 2010 Ark. App. 271, 374 S.W.3d 268 (2010). 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). A compensable injury does not include an injury inflicted on an employee at a time when employment services were not being performed. Ark. Code Ann. §11-9-102(4)(B)(iii). An employee is performing employment services when he or she is doing something that is generally required by his or her employer. *Cont'l Constr. Co. v. Nabors*, 2015 Ark. App. 60, 454 S.W.3d 762. 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. *Pifer v. Single Source Transportation*, 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 or advancing the employer's interest, either directly or indirectly. Even if the alleged injury took place outside the time or 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. *Hudak-Lee v. Baxter County Reg. Hosp.*, 2011 Ark. 31, 378 S.W.3d 77. Moreover, whether an employee was performing employment services depends on the particular facts and circumstances of each case. *Ctrs. For Youth & Families v. Wood*, 2015 Ark. App. 380, 466 S.W.3d 422.

Here, with no real dispute as to the facts, we are faced with the application of the applicable law and the facts to determine if the injury occurred while performing work-related services and whether the interests of the respondent were being advanced, either directly or indirectly at the time of the injury. Based upon the clear and believable testimony of the claimant, it is found that he was clearly advancing the interests of his employer in getting to the campus at an early hour on a morning where the roads, sidewalks, and parking lots, were treacherous due to the inclement weather in order to obtain brine from the city of Fayetteville and apply it on campus in an attempt to make the campus safer for students and faculty. The claimant thought that classes had been canceled on campus the day of his injury, but even if that were the case, there were still probably thousands of students who lived in on-campus dorms and residences and obtained their meals in on campus facilities and needed safe or safer methods to travel around the campus. Based upon the campus environment and the situation faced by the

University of Arkansas, it is found claimant was directly or indirectly advancing the interests of the respondent employer, as well as the students and faculty of the University of Arkansas at the time of his injury on January 26th, 2026, when claimant fell on an ice covered parking lot at 5:30 am, and suffered a work related injury to his right ankle. See *Williams v. Malvern School District and Arkansas School Boards Association,* 2025 Ark. App. 208, 712 S.W.3d 739.

Since the injury was in fact compensable, the claimant is entitled to reasonable and necessary medical treatment. When an employee is determined to have a compensable injury, the employee is entitled to medical and temporary disability. A.C.A. §11-9-102 (4) (F) (i). The law is clear that employers must promptly provide medical services which are reasonably necessary for treatment of compensable injuries. A.C.A §11-9-508 (a).

In regard to temporary total disability, an employee who suffers a compensable scheduled injury is entitled to temporary total disability compensation "during the healing period or until the employee returned to work, whichever occurs first …." A.C.A. §11-9-521(a). Conspicuously absent from the statute is any indication that the injured employee shows an incapacity to earn wages as a requirement for receiving temporary benefits. See *Wheeler Const. Co. v. Armstrong*, 73 Ark. App.146, 41 S.W.3d 822 (2001). Here, the claimant suffered a scheduled injury when he damaged his right ankle, which required surgery and an internal fixation for repair. The healing period ends when the underlying condition causing the disability has become stable and nothing further in the way of treatment will improve the condition. *Mad Butcher Inc. v. Parker*, 4 Ark. App. 124, 628 S.W.2d 582 (1982). The time records, of both the claimant and respondent, although in

some conflict, are determined to show that the claimant returned to his work and his pay on March 26, 2026, and consequently, claimant is entitled to temporary total disability from the date following the injury up and through March 25, 2026.

The claimant's attorney is entitled to fees for legal services in accordance with Ark. Code Ann. §11-9-715(a).

After reviewing the evidence impartially, and without giving the benefit of the doubt to either party, it is found that the claimant has satisfied the required burden of proof to prove by a preponderance of the evidence that he was performing employment services at the time of the injury and consequently the claim is compensable. In addition, the claimant is found to be entitled to reasonable and necessary medical treatment and temporary total disability from the date following the injury up to and including March 25, 2026, plus attorney fees. If not already paid, the respondents are ordered to pay for the cost of the transcript forthwith.

IT IS SO ORDERED.

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JAMES D. KENNEDY
Administrative Law Judge