

NOT DESIGNATED FOR PUBLICATION

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. H105700

DEBRA MAXWELL, EMPLOYEE

CLAIMANT

PAM TRANSPORT, SELF-INSURED EMPLOYER

RESPONDENT

OPINION FILED JULY 14, 2022

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

Claimant represented by the HONORABLE EVELYN BROOKS, Attorney at Law, Fayetteville, Arkansas.

Respondents represented by the HONORABLE DAVID C. JONES, Attorney at Law, Little Rock, Arkansas.

Decision of Administrative Law Judge: Affirmed and Adopted.

OPINION AND ORDER

Claimant appeals an opinion and order of the Administrative Law Judge filed January 21, 2022. In said order, the Administrative Law Judge made the following findings of fact and 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.

We have carefully conducted a *de novo* review of the entire record herein and it is our opinion that the Administrative Law Judge's decision is supported by a preponderance of the credible evidence, correctly applies the law, and should be affirmed. Specifically, we find from a preponderance of the evidence that the findings of fact made by the Administrative Law Judge are correct and they are, therefore, adopted by the Full Commission.

Therefore, we affirm and adopt the January 21, 2022 decision of the Administrative Law Judge, including all findings and conclusions therein, as the decision of the Full Commission on appeal.

IT IS SO ORDERED.

SCOTTY DALE DOUTHIT, Chairman

CHRISTOPHER L. PALMER, Commissioner

Commissioner Willhite dissents.

DISSENTING OPINION

After my de novo review of the record in this claim, I dissent from the majority opinion finding that the 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, because she was not performing employment services at the time of her injury.

The claimant testified that she and her husband, who were team drivers for the respondents, stopped at a Love's Truck Stop to wait to deliver their load at a time when they could also pick up their next load.

The claimant testified further that she exited her truck to throw away trash that was in her truck and to stretch her legs before continuing to drive for at least five (5) hours.

It appears that the claimant was advancing the interests of her employer by staying close to the vehicle where she could watch it and protect the cargo if the need arose. Also, the respondent-employer benefitted from the claimant taking a walk to ensure that she was refreshed and prepared to continue driving. The claimant's actions advanced the interest of the employer at least indirectly. Thus, I find that the claimant was performing employment services at the time of her accident.

For the foregoing reason, I dissent from the majority opinion.

M. Scott Willhite, Commissioner