BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. H004765

HOLLY McCAULEY, EMPLOYEE	CLAIMANT
CHI ST. VINCENT INFIRMARY, EMPLOYER	RESPONDENT
INDEMNITY INSURANCE CO. OF NORTH AMERICA/SEDGWICK CLAIMS SERVICES, INC., INSURANCE CARRIER/TPA	RESPONDENT

OPINION FILED APRIL 27, 2022

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

Claimant represented by the HONORABLE LAURA BETH YORK, Attorney at Law, Little Rock, Arkansas.

Respondents represented by the HONORABLE MICHAEL E. RYBURN, Attorney at Law, Little Rock, Arkansas.

Decision of Administrative Law Judge: Reversed.

OPINION AND ORDER

The claimant appeals an administrative law judge's opinion filed December 6, 2021. The administrative law judge found that the claimant failed to prove she sustained a compensable injury. After reviewing the entire record *de novo*, the Full Commission reverses the administrative law judge's opinion. The Full Commission finds that the claimant proved she sustained a compensable injury. We find that the claimant proved she was entitled to reasonably necessary medical treatment and temporary total disability benefits.

I. HISTORY

Holly McCauley, now age 41, testified that she underwent low back surgery in 2013. An MRI of the claimant's lumbar spine was taken on January 21, 2020 with the impression, "Postop right hemilaminectomy at L5-S1. There is a residual diffuse osteophyte disc complex at L5-S1 with bilateral neural foraminal narrowing, right worse than left." An MRI of the claimant's pelvis was taken on February 19, 2020 with the impression, "Neural foraminal stenosis right greater than left L5-S1."

Dr. Alyson M. Fish saw the claimant on March 25, 2020: "Patient presents via telemedicine for chronic back pain that has worsened. She stated that she is having more difficulty at work because of her chronic back pain and is starting to make mistakes because she cannot focus as needed for work. She is asking for paperwork to be filled out for reasonable accommodations for work. I advised the patient that I will look at the paperwork and will follow up with her. Patient agreeable."

The claimant testified that she became a salaried employee of the respondents, CHI St. Vincent Infirmary, on June 1, 2020. The claimant testified that she was hired as a nursing supervisor for the respondent-employer. The parties stipulated that the employee relationship existed at all pertinent times, including June 9, 2020. The claimant testified on direct examination:

Q. Tell me, where is your office at CHI St. Vincent?

A. It's on the third floor. Um, it's on the west end of the building next to the west elevators.
Q. Okay. And when you work in that particular location, do you have a place where you have to park?
A. Um, so there was two areas for parking available for employees. There is a, um, car garage off the main entrance and then there's parking, um, on the east end of the building that's part of, like, the H.R. side of the building, so there's employee parking there and in the car garage.
Q. Okay. Where do you park?
A. I was parking in the H.R. parking….
Q. And that was a designated place for employees to park?
A. Yes, ma'am….
Q. Did you have any supplies provided to you by CHI St. Vincent?
A. No, not when I arrived, no….
Q. So, how did you go about obtaining the items that you needed for work?
A. Um, I purchased them and brought them from home….
Q. And how did you get those items from your vehicle to your office?
A. I had a rolling, um, suitcase that I was using and packin' up in the mornin', and then packin' up my car and just kinda haulin' 'em in and out of the hospital when I had opportunities to get out to the parkin' lot.
Q. Okay. So walk me through what happened around June 9th of 2020. What happened that day?
A. Um, that morning I loaded up my car. Some of those things I was able to get into my suitcase and take up with me when I went to, you know, check in at my office first thing in the morning. Um, got direction from Miss Phyllis first thing in the morning of, you know, what my agenda was for the day, what I was supposed to be workin' on. I got those things knocked out by lunchtime and tried to find Phyllis. I wasn't real sure where she was so I took that opportunity to go out to my car again, um, and get a few more things to carry back up to my office, um, and set up, and bring back more materials in a little bit at a time….
Q. Okay. So you decided to go obtain these – obtain some more office supplies from your vehicle. Is that correct?
A. Yes, ma'am….so I head out the main entrance. Um, the parking lot is kinda to your left when you come out the main

entrance. It's a downhill sidewalk that stretches the extent of the building at the hospital. Um, it's sidewalk all the way down to the parking lot and, um, at some point towards the end of the downhill area, um, I stepped with my right foot and I thought I had a solid landing because, like, my toe and my heel, you know, grasped something. When I picked up my left foot to take the next step, my right ankle rolled, because there was a section of the sidewalk that was, like, sunk in, you know, significantly lower and it was – I had managed to – to straddle that sunken-in spot, that insert spot. Um, so when that right ankle rolled, my left leg, you know, kinda jumped into catch me and I went into kinda a half splits thing. Um, my left knee took the impact into that left hip. Um, I basically had, like, my suitcase up here [indicating] holdin' myself up as much as I could, um, to get myself back up. And, um, I wasn't – at that point I was at the very, um, end of that part of the sidewalk before it rounds the building and my car was right there in that parkin' lot, so I got up and went to my car, um, finished grabbin' a few things and getting my back loaded back up, and sat for a few minutes on my heated seats….I went back into the office, um, and unloaded. I mean, it wasn't just supplies, like, for the office, it was also, like, stocking my bathroom, 'cause I had to have a, like – I had a private bathroom in the office and part of my job role is to be prepared to have to stay overnight if somethin' were to happen and they were short-staffed. So, um, so I just went back to my office and sort of workin' on unpackin' the stuff for my bathroom and for my supplies for the office….

Q. What parts of your body were injured when you fell?

A. I twisted my right ankle. Um, and then I – I actually – this left hip, um, was the extent of the – the injuries, I guess, so – my hands never hit the ground because I was hanging on for dear life to my suitcase, so I was fortunate that I didn't end up, like, you know, catchin' myself with my wrists or anything.

Q. Okay. And did you notify anyone at your employer's that you had been injured that day?

A. Um, I didn't see Phyllis the rest of that day. Um, I know that I had spoke about it with one of the education nurses who came in just to check in on me that afternoon. I talked to her about it a little bit, um, but I didn't see Phyllis the rest of that day….

> Q. And I believe you had given a written statement that the respondents have submitted into evidence, and it was noted that you were on a lunch break. Is that correct?
> A. I thought I was taking a lunch break, yeah. It was lunchtime, I was done with all my work. I was goin' on a break, so….
> Q. At St. Vincent you are a registered nurse. Is that correct?
> A. Yes, ma'am.
> Q. Okay. And you are salaried. Is that correct?
> A. Yes, ma'am….
> Q. If you are walking out to your vehicle and you see someone with a medical emergency, does St. Vincent require you to assist them?
> A. Yes, ma'am….
> Q. So even though you are, what you're saying on a lunch break, you are still technically at work. Is that correct?
> A. Yes, ma'am.

According to the record, the claimant treated at UAMS on June 20, 2020:

> Ms. McCauley is a 39 y.o. female RN PMHx notable for fibromyalgia who presents with pain in her left groin. Ms. McCauley states that she was walking to her car 1-2 weeks ago when she stepped in a hole with her RLE, causing her to strain the left groin. She presents now for further evaluation because she "can't take the pain." She has no other injuries….
> EXAM DESCRIPTION: XR HIP LEFT AP LATERAL WITH PELVIS WHEN PERFORMED HISTORY: fall left hip pain FINDINGS: Two views show no malalignment about the left femur. Left hip joint is relatively well maintained. No obvious trabecular disruption. SI joints and pubic symphysis show no widening. No marked soft tissue deformity noted. Impression: No acute bony deformity noted however the patient cannot weight bear or persistent pain persists, follow-up cross-sectional imaging can be obtained to assess for occult fracture.

An emergency physician diagnosed "Left hip pain (Primary)."

The patient treated with Dr. Victor Vargas on June 24, 2020: "The patient presented today for an evaluation of pain in the left hip. She said that the pain started 2 weeks ago after she rolled her right ankle in a split her legs (sic)….She has been limping because of severe pain." Dr. Vargas arranged for an MRI of the claimant's left hip, which was taken on June 24, 2020 with the following findings:

> There is marrow edema involving the left femoral neck.
> Stress fracture is seen medial cortex left femoral neck. This is horizontal in orientation measuring 1 cm.
> Tiny reactive joint effusion is seen on the left. No labral abnormality or paralabral cyst.
> No other marrow edema. The hamstring attachments are within normal limits. There is mild tendinosis gluteal tendons. This is symmetric and of doubtful significance.
> No muscle edema or atrophy.
> IMPRESSION: Stress fracture medial left femoral neck. Degenerative disc disease L5-S1.

Dr. Vargas' assessment was "Left hip pain that happened after trauma….The MRI was done and reported with any (sic) stress fracture of the medial left femoral neck. I have recommended this patient to see Dr. Schock. For surgical consideration in a stabilization of the fracture."

Dr. Ethan J. Schock performed surgery on June 26, 2020: "Percutaneous screw fixation, left femoral neck fracture." The pre- and post-operative diagnosis was "Left femoral neck fracture." Dr. Schock provided follow-up treatment after surgery. The claimant testified that Dr. Schock released her to light-duty work on July 14, 2020, and that she

returned to light-duty work for the respondents. (Claimant – TTD through July 14, 2020.)

The claimant treated at OrthoArkansas on July 16, 2020:

> This is a 39-year-old female presents follow-up chronic low back pain….
> History of foraminotomy on the right by Dr. Mason performed in 2013 at L5-S1. She reports that she did well after surgery and her pain increased 3 years ago. She has been told that she has scarring along the sacral region and she had trauma after childbirth.
> In January I evaluated her and ordered [an] MRI and follow-up with Dr. McCarthy. Since that time she saw Dr. Vargas for tailbone, coccyx pain. He ordered a dedicated pelvic MRI to evaluate this region.
> She fell on June 10, fractured her left femoral neck and she underwent left hip pinning for femoral neck stress fracture June 26, 2020 by Dr. Schock.
> She continues to have lower back pain, sacral region that radiates across her pelvis/lower abdomen, bilateral hips. Pain radiates into the right buttock and posterior leg with numbness, tingling. Pain is moderate to severe in intensity and getting worse especially since the recent fall….
> ASSESSMENT/PLAN: MRI pelvis 2/19/2020 at Conway Regional showed foraminal stenosis L5-S1, prior hysterectomy otherwise unremarkable.
> Prior lumbar MRI available in PACS performed in January 2020 reviewed, post-operative changes L5-S1. Degenerative changes L5-S1 with disc space narrowing L5-S1.

The assessment on July 16, 2020 was "1. Degenerative disc disease, L5-S1 with severe foraminal stenosis, right radiating leg pain, numbness, tingling. 2. History of foraminotomy on the right by Dr. Mason performed in 2013 at L5-S1."

An MRI of the claimant's lumbar spine was taken on August 11, 2020 with the following impression: "1. Lumbar spondylosis as above, most prominent at L5/S1 where there is worsened disc height loss, likely recurrent posterior disc bulge contributing to moderate bilateral foraminal narrowing."

The claimant testified that the respondents terminated her employment on August 19, 2020.

Dr. Kathryn McCarthy corresponded with Dr. Fish on August 19, 2020:

> Thank you very much for referring Holly McCauley to me for consultation. Holly McCauley was seen in the office on 08/19/2020….
> This is a 39-year-old woman who has a longstanding history of problems with her low back. Specifically and recently she has developed severe back pain and right leg pain. This correlates with changes visible on her imaging at L5-S1 with decreased to space height (sic). Modic endplate changes, and right foraminal stenosis. She has had a lumbar decompression several years ago by Dr. Mason and done well following this….
> X-rays of her low back show decreased to space height at L5-S1 but generally well-maintained lumbar lordosis. An MRI shows Modic endplate changes at L5-S1 with right neural foraminal narrowing secondary to disc osteophyte complex. Previous decompression is visualized on the imaging.
> This is a 39-year-old woman who has symptoms consistent with changes visible at L5-S1 with right neural foraminal narrowing….
> I recommend an L5-S1 posterior spinal fusion with right-sided revision decompression and interbody work with either iliac crest bone graft or aspirate. I told her very clearly that she will need to stop smoking prior to surgery and we will nicotine test her prior to surgery.

Dr. McCarthy performed an L5-S1 fusion, instrumentation, and decompression on October 22, 2020. The pre- and post-operative diagnosis was "1. Recurrent stenosis, L5/S1 status post decompression performed in 2015. 2. Degenerative disc disease with Modic endplate changes L5-S1."

Dr. McCarthy noted on or about January 8, 2021, "This is a 40-year-old woman who underwent a posterior spinal fusion at L5-S1 on October 22 of this year. She was found to have a conjoined nerve root on the right side. She tells me that she has minimal amounts of pain at this point but is still taking pain medication routinely. She is working with her pain management doctor to consider reduction of these medications. She has not found a job yet but is still looking. She is maintaining her restrictions as instructed….She is to maintain restrictions for another month. I will see her back in October of next year."

A pre-hearing order was filed on June 29, 2021. According to the text of the pre-hearing order, the claimant contended, "The claimant contends that on June 9, 2020, she was moving items from her vehicle into her office when she tripped on the sidewalk, which caused her to fall and break her left hip and injure her back. She has treated with Dr. Schock, who performed hip reconstructive surgery and Dr. McCarthy, who performed a fusion surgery to her lumbar spine. The claimant contends she

was injured and thus sustained a compensable injury and is entitled to medical benefits, and TTD and her attorney is entitled to an attorney fee. The claimant specifically reserves any and all other issues for future litigation and/or determination."

The parties stipulated that the respondents "have controverted this claim in its entirety." The respondents contended, "The respondents contend the claimant was on her lunch break when she decided to remove some personal items from her personal vehicle to put into her office. She was not performing 'employment services' at the time of the accident, therefore, she cannot meet her burden of proof pursuant to the Act. The respondents specifically reserve any and all other issues for future litigation and/or determination."

The parties agreed to litigate the following issues:

> 1. Whether the claimant [has] sustained a "compensable injury" within the meaning of the Arkansas Workers' Compensation Act (the Act) to her left hip and lower back on June 9, 2020. Specifically, whether the claimant was performing "employment services" at the time of the subject work incident.
> 2. If the claimant's injury(ies) is (are) deemed compensable, the extent to which she is entitled to medical and TTD benefits.
> 3. Whether the claimant's attorney is entitled to a controverted fee on these facts.
> 4. The parties specifically reserve any and all other issues for future litigation and/or determination.

A hearing was held on September 14, 2021. The respondents' attorney examined Phyllis Phelps, the claimant's supervisor:

> Q. What's your job title [at St. Vincent Infirmary]?
> A. I'm the Nurse Manager over the staffing office, over the float pools in all of our hospitals, and over the travelers in all of our hospitals in Arkansas….
> Q. When [the claimant] became an employee of CHI, did CHI give her an office?
> A. Yes, we did.
> Q. Is she free to decorate that office however she wants to?
> A. Yes….
> Q. Do the people in your department get to take a break?
> A. Yes.
> Q. And when they take a break, can it be any time they want to?
> A. Yes.
> Q. Is that when Ms. McCauley says she was on a break, or on a lunch break she says, going to her car, is that a period of time when she could go anywhere she wanted to?
> A. Yes.
> Q. Could she go to McDonald's, or IHOP, or anywhere?
> A. Yes….
> Q. Now, she testified that she had to be on call all the time. How could she be on call if she was at McDonald's or somewhere like that?
> A. She's not – we're not typically on call but we do communicate with our staff by cell phone if they need to talk with us about something, so sometimes they do call us….
> Q. Did she have any job duties on the sidewalk between her office and the parking lot?
> A. No, sir….
> Q. When did you learn about this incident ever happening?
> A. I don't recall the exact date but I do recall it was after the time that she said she fell. I don't remember exactly when….

The claimant's attorney cross-examined Phyllis Phelps:

> Q. And you instructed Ms. McCauley to go to the secretary to obtain what she needed for her office?
> A. Correct.

Q. Okay. But she did have what she needed in her office. Is that correct?
A. If I recall correctly, there were some pens and some small notepads in the desk in that office. There were also hanging file folders in the filing cabinet for files to be placed in, but other than that I don't recall that there were additional supplies….
Q. Okay. But she obviously needed to go to obtain some other supplies, which is why she asked you where to go. Is that correct?
A. I instructed her before she asked.
Q. Okay. And – so you were aware that she would need some supplies.
A. I was aware that she might need more than what was in the office, correct.
Q. Okay. Now, who was the person that she would speak to about ordering supplies?
A. It was an administrative assistant whose office was across the hall from Holly's office and my office….
Q. Okay. Now, if you're on your lunch break as a nurse, would you be able to go have a glass of alcohol?
A. No, ma'am.
Q. And why is that?
A. Because if you're working, you should not be consuming alcohol when you're on duty.
Q. Okay. So she was still technically on duty?
A. She was at work taking a lunch break….
Q. She would not be able to go do some of the things she might want to go do during that time because she was technically still on duty –
A. Yes.
Q. – is that correct?
A. Yes….
Q. If you're on lunch break, are you still technically on duty?
A. Yes.

An administrative law judge examined Phyllis Phelps:

Q. What's your definition of on duty?
A. The expectation for the position that Holly was in that she is there primarily during the hours of 8:00 to 4:30 or 5:00, and we do expect our employees to take a lunch break. They

> need to be able to step away from their job responsibilities and go get lunch, and if – the position that Holly was in, if they wanted to go to McDonald's and pick up lunch, they could certainly do that.
> Q. But if you called her for some reason, or somebody else called her, she needed to be available to take that call?
> A. Yes….
> Q. But if there would be an occasion where she would have to come back, she might be required to come back to the hospital –
> A. From lunch?
> Q. – from lunch?
> A. She might….
> Q. But that didn't happen in this case?
> A. That's very unusual for an employee in Holly's position, or my position, to be out at lunch and be called back for some type of emergency.

An administrative law judge filed an opinion on December 6, 2021. The administrative law judge found that the claimant failed to prove she sustained a compensable injury. The administrative law judge therefore denied and dismissed the claim. The claimant appeals to the Full Commission.

II. ADJUDICATION

A. Compensability

Ark. Code Ann. §11-9-102(4)(Repl. 2012) provides, in pertinent part:

> (A) "Compensable injury" means:
> (i) An accidental injury causing internal or external physical harm to the body …
> arising out of and in the course of employment and which requires medical services or results in disability or death. An injury is "accidental" only if it is caused by a specific incident and is identifiable by time and place of occurrence[.]…
> (B) "Compensable injury" does not include:

> (iii) Injury which was inflicted upon the employee at a time when employment services were not being performed[.]

A compensable injury must be established by medical evidence supported by objective findings. Ark. Code Ann. §11-9-102(4)(D)(Repl. 2012). "Objective findings" are those findings which cannot come under the voluntary control of the patient. Ark. Code Ann. §11-9-102(16)(A)(i)(Repl. 2012).

The employee has the burden of proving by a preponderance of the evidence that she sustained a compensable injury. Ark. Code Ann. §11-9-102(4)(E)(i)(Repl. 2012). Preponderance of the evidence means the evidence having greater weight or convincing force. *Metropolitan Nat'l Bank v. La Sher Oil Co.*, 81 Ark. App. 269, 101 S.W.3d 252 (2003).

An administrative law judge found in the present matter, "3. The claimant has failed to meet her burden of proof in demonstrating by a preponderance of the credible evidence of record that she was engaged in 'employment services' when she allegedly fell *on her lunch break while walking on the sidewalk outside St. Vincent and away from her office in the hospital, pulling her own personal, empty, rolling suitcase to her car, moving personal items to be used for her own personal reasons and convenience*. The alleged work incident, assuming it even occurred at all on St. Vincent's sidewalk, most assuredly did not occur when the claimant was acting within the course and scope of her employment at St. Vincent, nor may it

reasonably be deemed to convey any conceivable benefit, either directly or indirectly, on her new employer."

It is the duty of the Full Commission to enter findings in accordance with the preponderance of the evidence and not on whether there is substantial evidence to support the administrative law judge's findings. *Roberts v. Leo Levi Hospital*, 8 Ark. App. 184, 649 S.W.2d 402 (1983). The Full Commission enters its own findings in accordance with the preponderance of the evidence. *Tyson Foods, Inc. v. Watkins*, 31 Ark. App. 230, 792 S.W.2d 348. The credibility of witnesses and the weight to be given their testimony are matters exclusively within the province of the Commission. *Johnson v. Democrat Printing & Lithograph*, 57 Ark. App. 274, 944 S.W.2d 138 (1997). The Commission is not required to believe the testimony of the claimant or any other witness but may accept and translate into findings of fact only those portions of the testimony it deems worthy of belief. *Jackson v. Circle T. Express*, 49 Ark. App. 94, 896 S.W.2d 602 (1995). An administrative law judge's findings with regard to credibility are not binding on the Full Commission. *Roberts, supra*.

An employee is performing employment services when she is doing something that is generally required by her employer. *Texarkana Sch. Dist. v. Conner*, 373 Ark. 372, 284 S.W.3d 57 (2008). 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 interest, directly or indirectly. *Jivan v. Econ. Inn & Suites*, 370 Ark. 414, 260 S.W.3d 281 (2007). The issue of whether an employee was performing employment services within the course of employment depends on the particular facts and circumstances of each case. *Conner, supra*. The Commission is bound to examine the activity the claimant was engaged in *at the time of the accident* in determining whether or not she was performing employment services. *Id*.

In the present matter, the Full Commission finds that the claimant proved she was performing employment services at the time of her accidental injury. The claimant became a salaried employee of the respondents, CHI St. Vincent Infirmary, on June 1, 2020. The respondents hired the claimant to be a nursing supervisor. The claimant testified that her work office was not fully furnished when she became employed with the respondents. Therefore, the claimant began bringing items from home such as office supplies and toiletries for use in her office, on the respondents' premises, during working hours. The parties stipulated that the employment relationship existed on June 9, 2020. The claimant, who the Full Commission finds was a credible witness, testified that she walked to her personal vehicle during lunch break in order to obtain additional items for her work office. As the claimant walked to her vehicle in order to

retrieve additional work-related office supplies, she tripped and fell. The accident resulted in injuries to the claimant's hip and back.

The claimant's supervisor, Phyllis Phelps, testified that the claimant was still "technically on duty" at the time of her fall on June 9, 2020, even though the accident occurred during a "lunch break." The Full Commission notes that the claimant was not eating lunch at the time of her fall but was performing duties which at least indirectly benefitted the employer, that is, obtaining items for use in the claimant's office. The Full Commission reiterates that we are bound to examine the activity the claimant was engaged in *at the time of the accident* in determining whether or not she was performing employment services. *Conner, supra*. Moreover, the claimant's supervisor agreed that the claimant was subject to being called to return to work even during the claimant's lunch break. When an employer requires an employer to be available for work duties, the employee is performing employment services. *Ray v. University of Arkansas*, 66 Ark. App. 177, 990 S.W.2d 558 (1999). An injury suffered by an employee while on break is compensable if the employer has imposed some duty or requirement on the employee to be fulfilled during break. *Moncus v. Billingsley Logging*, 366 Ark. 383, 235 S.W.3d 877 (2006).

The Full Commission finds that the claimant proved by a preponderance of the evidence that she sustained a "compensable injury."

The claimant proved that she sustained an accidental injury causing physical harm to the claimant's body, that is, the claimant's left hip. The injury arose out of and in the course of employment, required medical services, and resulted in disability. The injury was caused by a specific incident and was identifiable by time and place of occurrence on or about June 9, 2020. The claimant was performing "employment services" at the time of the accidental injury. The claimant established a compensable injury by medical evidence supported by objective medical findings, namely the "Stress fracture medial left femoral neck" reported by Dr. Vargas on June 24, 2020. The "Stress fracture medial left femoral neck" was an objective medical finding establishing a compensable unscheduled injury to the claimant's left hip.

B. Natural consequence

If an injury is compensable, then every natural consequence of that injury is also compensable. *Hubley v. Best Western Governor's Inn*, 52 Ark. App. 226, 916 S.W.2d 143 (1996). The basic test is whether there is a causal connection between the two episodes. *Jeter v. B.R. McGinty Mechanical*, 62 Ark. App. 53, 968 S.W.2d 645 (1998).

In the present matter, the claimant proved by a preponderance of the evidence that she sustained a compensable injury to her left hip on or about June 9, 2020. Dr. Schock subsequently performed surgery to repair a left

femoral neck fracture in the claimant's left hip, and he returned the claimant to light-duty work on July 14, 2020. The claimant returned to work for the respondents but began suffering from renewed pain in her lower back. Nevertheless, the respondents terminated the claimant's employment as of August 19, 2020. Dr. McCarthy performed a lumbar fusion and related procedures on October 22, 2020. The last treatment of record from Dr. McCarthy took place on January 8, 2021. Dr. McCarthy advised the claimant to "maintain restrictions for another month. I will see her back in October of next year."

The Full Commission recognizes that the claimant suffered from a pre-existing condition in her low back and an underwent surgery in 2013, several years before the claimant's employment with the respondents beginning in 2020. However, the evidence demonstrates that the June 9, 2020 compensable injury to the hip resulted in additional symptoms and treatment required for the claimant's low back. We find that treatment provided for the claimant's back following the June 9, 2020 compensable injury was a natural consequence and was causally related to the compensable injury.

After reviewing the entire record *de novo*, the Full Commission finds that the claimant proved she sustained a compensable injury to her left hip on or about June 9, 2020. Treatment provided for the claimant's low back

was a natural consequence of the compensable injury. The claimant proved that the medical treatment of record provided on and after June 20, 2020 was reasonably necessary in accordance with Ark. Code Ann. §11-9-508(a)(Repl. 2012). We find that the claimant remained within a healing period and was totally incapacitated from earning wages for the period beginning June 20, 2020 and continuing through July 14, 2020. The claimant therefore proved she was entitled to temporary total disability benefits beginning June 20, 2020 and continuing through July 14, 2020. *See Ark. State Hwy. Dept. v. Breshears*, 272 Ark. 244, 613 S.W.2d 392 (1981). The claimant also proved that she remained within a healing period and was totally incapacitated from earning wages for the period beginning August 19, 2020 and continuing until January 8, 2021, the date of the claimant's last treatment of record with Dr. McCarthy. The claimant therefore proved that she was also entitled to temporary total disability benefits for the period beginning August 19, 2020 and continuing until January 8, 2021.

The claimant's attorney is entitled to fees for legal services in accordance with Ark. Code Ann. §11-9-715(a)(Repl. 2012). For prevailing on appeal, the claimant's attorney is entitled to an additional fee of five hundred dollars ($500), pursuant to Ark. Code Ann. §11-9-715(b)(Repl. 2012).

IT IS SO ORDERED.

SCOTTY DALE DOUTHIT, Chairman

M. SCOTT WILLHITE, Commissioner

Commissioner Palmer dissents.

DISSENTING OPINION

As set out more fully below, I respectfully dissent from the majority. Injuries sustained at a time when the employee is not performing employment services are specifically excluded from the definition of "compensable injury." Ark. Code Ann. § 11-9-102(4)(B)(iii). An employee is performing employment services when the employee is doing something that the employer generally requires. *Dairy Farmers of America, Inc. v. Coker*, 98 Ark. App. 400, 255 S.W.3d 905 (2007); *Cont'l Constr. Co. v. Nabors*, 2015 Ark. App. 60, at 3-4, 454 S.W.3d 762, 765-66. 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, directly or indirectly. *Pifer v. Single Source Transp.*, 347 Ark. 851, 857, 69 S.W.3d 1, 4 (2002); *Collins v. Excel Specialty Prods.*, 347 Ark. 811, 817, 69 S.W.3d 14, 18 (2002).

Whether a worker was performing employment services within the course of employment depends on the particular facts and circumstances of each case. *Matlock v. Ark. Blue Cross Blue Shield*, 74 Ark. App. 322, 339, 49 S.W.3d 126, 138 (2001). Generally, an employee is not performing employment services while on break from his or her regular employment activities. *McKinney v. Trane Co.*, 84 Ark. App. 424, 426, 143 S.W.3d 581, 583 (2004) (holding employee on way to smoke break was involved in "nothing generally required by his employer and was doing nothing to carry out the employer's purpose."). "[M]erely walking to and from one's car, even on the employer's premises, does not qualify as performing employment services." *Hightower v. Newark Pub. Sch. Sys.*, 57 Ark. App. 159, 164, 943 S.W.2d 608, 610 (1997); *Matlock v. Ark. Blue Cross Blue Shield*, 74 Ark. App. 322, 326, 49 S.W.3d 126, 129 (2001).

In *Harding v. City of Texarkana*, 62 Ark. App. 137, 138-39, 970 S.W.2d 303, 303-04 (1998), an employee took a break to go down to a designated smoking area. As she exited the elevator, she tripped over a rolled-up carpet and was injured. The Commission found that she was not performing employment services at the time of her injury and thus, her injury was not compensable. The employee appealed and the Court of Appeals of Arkansas affirmed the Commission's findings. The following is the Court of Appeals' analysis in *Harding* – which is particularly useful here:

> Appellant argues, on public policy grounds, that her break advanced her employer's interest by allowing her to relax, which in turn helped her to work more efficiently throughout the rest of her work shift. We are not unsympathetic to this argument. Under former law, the definition of compensable injury did not include a strict requirement that the injury occur while the worker was performing employment services, and a claimant's activities at the moment of injury were relevant only to the separate and broader question of whether the injury arose out of and in the course of the employment. It is clear that, under former law, appellant's injury while *en route* to the break area would have been in the course of her employment pursuant to the personal comfort doctrine. *See Lytle v. Arkansas Trucking Services*, 54 Ark. App. 73, 923 S.W.2d 292 (1996). It may be true that the interests of both workers and employers would be better served by a more uniform application of an administrative remedy than they would be by the uncertainty inherent in a tort claim based on premises liability. Nevertheless, the legislature, rather than the courts, is empowered to declare public policy, *Teague v. State*, 328 Ark. 724, 946 S.W.2d 670 (1997), and whether a law is good or bad, wise or unwise, is a question for the legislature, rather than the courts. *Longstreth v. Cook*, 215 Ark. 72, 220 S.W.2d 433 (1949). In the present case, Act 796 of 1993 applies and, although appellant's break may have indirectly advanced her employer's interests, it was not inherently necessary for the performance of the job she was hired to do. Consequently, we hold that the Commission did not err in finding that appellant was not performing employment services when she was injured.
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> *Harding*, 62 Ark. App. at 138-39, 970 S.W.2d at 303-04.

In *Fulbright v. St. Bernard's Med. Ctr. Risk Mgmt. Res.*, 2016 Ark. App. 417, 502 S.W.3d 540, the Arkansas Court of Appeals held that the claimant was not performing employment services when, returning from a smoke break, the claimant was heading to the cafeteria to get something to eat when she tripped over some carpet on her way back into the hospital.

The court held that the claimant was injured while she was performing a personal errand unrelated to her employment and, thus, her injury was not compensable.

In *Hill v. LDA Leasing, Inc.*, 2010 Ark. App. 271 374 S.W.3d 268, the claimant was returning from the restroom when he stopped at a vending machine to buy a snack. The claimant was injured when he fell while pushing the vending-machine button. The court noted that, while at the snack machine, the claimant was incapable of carrying out his sole employment responsibility (watching his truck to ensure it was not damaged while being unloaded). The court held that the claimant's injury did not arise out of and in the course of his employment and, thus, his injury was not compensable. *Id.*

Here, Claimant testified that she was on her lunch break when she was injured. She was not doing her normal job duties because she did not even know what her job duties were yet. She had completed the assigned tasks and was unable to find her supervisor to ask what assignment she should work on next. According to Claimant, she decided that while she did not have any tasks to complete, she would go out to her car on her lunch break and retrieve some stuff she had brought from home for her office. These items were family photos, pencil holders, a wax warmer to make her office have a more comforting aroma. These items were for Claimant's

personal comfort and Claimant's injuries were incurred while she was on a personal errand that did not further her employer's interest. Accordingly, I respectfully dissent.

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CHRISTOPHER L. PALMER, Commissioner