

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. H004995

JANIE L. NORKS,
EMPLOYEE

CLAIMANT

BALD KNOB SCHOOL DISTRICT,
EMPLOYER

RESPONDENT

ARKANSAS SCHOOL BOARDS ASSOCIATION
WORKERS' COMPENSATION TRUST,
INSURANCE CARRIER/TPA

RESPONDENT

OPINION FILE JUNE 2, 2022

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

Claimant represented by the HONORABLE GEORGE BAILEY, Attorney at Law, Little Rock, Arkansas.

Respondents represented by the HONORABLE JARROD S. PARRISH, Attorney at Law, Little Rock, Arkansas.

Decision of Administrative Law Judge: Affirmed as Modified.

OPINION AND ORDER

The respondents appeal and the claimant cross-appeals an administrative law judge's opinion filed December 16, 2021. The administrative law judge found that the claimant proved she sustained a compensable injury. The administrative law judge awarded medical treatment and temporary total disability benefits. After reviewing the entire record *de novo*, the Full Commission finds that the claimant proved she sustained a compensable scheduled injury on July 23, 2020. The Full Commission finds that the claimant proved she was entitled to temporary total disability benefits beginning July 23, 2020 until November 19, 2020.

I. HISTORY

The record indicates that Janie Lynn Norks, now age 51, became employed with the respondents, Bald Knob School District, on November 1, 2019. Ms. Norks testified that she was employed with the respondents as a “Sub Custodian.” The parties stipulated that the employment relationship existed on July 23, 2020. The claimant testified that she was mopping floors on the respondents’ premises that day. The claimant testified on direct examination:

Q. So you fell in the afternoon of July 23, 2020, is that correct?

A. Yes.

Q. Okay. Where were you five or 10 minutes before you fell?

A. I was in the back classroom. I don’t exactly know whose classroom because I don’t go in that building. That wasn’t my regular job....

Q. So where were the rugs in the building?

A. That day?

Q. That day.

A. They were, you know, piled by the light switch.

Q. How would you describe the pile?

A. Crumpled up, just thrown in a corner....

Q. Were they right under the light switch?

A. Yes.

Q. Okay. If you’re facing the front door, was the light switch on a wall to the left?

A. Yes....

Q. What happened right before you started walking towards the front door?

A. I was turning lights off out of the rooms that I was coming out of and making sure the lights were off as I was leaving that part of the building.

Q. And as you were walking, what was the reason you were headed out?

A. We were – after break we were supposed to go to a different building. I didn't know exactly where we were gonna go, so I wanted to make sure everything was locked up, because we were throwing – putting water out the back door of that classroom that I had been in. So I'd make sure all the lights – the door was shut and locked and the lights were off in my room that I was in and I was going towards the front of the building.

Q. Okay. Was anybody else still in the building at that point in time?

A. Donna was standing at the door....

Q. Why did you proceed toward the light switches?

A. Because I knew we were going to break, and I know that the lights needed to be turned off because we were not coming back to that building that day.

Q. Did you consider that to be your responsibility as a crew member?

A. Yes. I did, because I was the last one in, or the last one out of the building.

Q. Okay. And just describe how you proceeded to get to the light switch or reach for the light switch?

A. I'd gathered up my belongings, and I had to take a step onto the rugs because they were underneath the light switch.

Q. Could you reach the light switch without stepping on the rugs?

A. No, there's no way.

Q. Did you put your foot up on top or in the folds of the rug?

A. I just stepped on it. I don't remember. I mean, I wasn't looking at my feet as I went, I was just looking at the light switch.

Q. Did you feel your foot sinking into the rug?

A. Yes.

Q. All right. So then how were you turning it off? What were your maneuvers as you were turning the light switches off?

A. It was on the left side, so I turned off the switches and I had looked across my right shoulder to make sure that the lights were out, because I'd never been in this building, so I don't know what lights were gonna go off, and if it was going to turn one on, because not all of them worked the same. So I looked back to see – to make sure the light had gone off as I turned, and that's it. That's all I did....

Q. Before you fell, had you taken a step toward the door?

A. No.

Q. Did you fall just as soon as you were turning the lights off?

A. I'm gonna say yes, because it had to, as I turned, I – it was like one motion. It wasn't like I was gonna stop, turn one off, and then turn around. I turned as I looked like this (demonstrating), and that's when I went down....It was like I got tangled in something and I fell....I was on the ground and I was in agony.

The claimant's attorney examined Donna Laire, the claimant's supervisor:

Q. Were you a witness to the fall of Janie Lynn Norks?

A. I was....

Q. And so on that particular day, what was your position?

A. I was called Lead Custodian....

Q. Now, do you refer to the claimant, Janie Lynn Norks, as Lynn?

A. Yes, sir....

Q. And what was Ms. Norks' job?

A. She was mopping that day....Lynn was in – I believe it was Ms. Ahellen's room, and she was finishing up her mopping. The other ones had already finished their jobs, because it's kinda like one thing's gotta be done, and then the other. We were all waiting to go to break. None of us leave unless we're all ready to go, and none of us come back until we all come back. That's the way – the job has to work that way. So I called for break. The other girls come up. We were waiting for Lynn at the door, and I went back and told Lynn it was break. She laid her mop down and we come through, and the other girl –

Q. How far was she from the front door at that point?

A. She had come up the hall. There was a little hallway that comes up and she was coming up towards toward me.

Q. Okay.

A. And I had went to the other side of the building to check those lights. As we go to turn the lights off. So we both met basically right in front of the hall of the door on the way out.

Q. Okay. Let me stop you just a minute. Tell me, if you would, please, about the rugs that are placed in various parts of that building. Where were they that day?

A. They were placed up underneath the light switch and at the front door, and it's really not at the light switch, there is a double door, then there's an adjoining wall....

Q. So how were those [rugs] placed or piled –

A. They were piled.

Q. Well, just describe the pile they were in.

A. There was just a pile of rugs....

Q. With regard to Ms. Norks if you were going to turn those lights out, in other words use those light switches to turn the rest of the lights out, would you have to step on that pile of rugs to get to the light switch?

A. Yes, sir, you probably would have.

Q. Will you please describe how Ms. Norks proceeded to the place where the light switch is?

A. She started to the light switch as I started to the door, and as I hit the door, she went to the light switch and went down like a ton of bricks in front of me.

Q. Okay. Now, what is the trailing crew member or the last mopper, what is their responsibility before leaving the building?

A. It's all of our responsibilities, and when we leave the building, whoever's last in the building will turn the lights off.

Q. Was Ms. Norks the last one –

A. Yes, she was.

Q. – to go out that day?

A. Yes, because I was just in front of her. She would have been the last one out of the building.

Q. Was it her responsibility –

A. Yes,

Q. – as a crew member at that time on that day to turn those lights off?

A. It's everybody's responsibility at any day to make sure that the lights are turned off before we vacate a building.

Q. Under the circumstances, who did that duty fall on that day?

A. That day it was Lynn....I called Becky Green, Becky Green called the ambulance. The ambulance was there within two minutes.

According to the record, the claimant treated at White County

Medical Center on July 23, 2020:

Patient presents for evaluation of fall, while walking or running....

Patient presents for left hip and knee pain following a fall. She says that she was walking just prior to admission and fell on her left side and had intense pain to her left knee, hip, back. She was not able to move her leg after that. Of note she does have complex regional pain syndrome, which mostly affects her left side....

An x-ray of the claimant's left hip and pelvis was taken on July 23, 2020:

No displaced fracture is identified. Left greater trochanter benign bone island is stable compared to prior CT from February 2019. Very minimal degenerative changes of the hips bilaterally with mild joint space narrowing. No acute abnormality.

A CT of the claimant's pelvis was taken on July 23, 2020 with the following findings:

Bony pelvis, sacrum/coccyx, and hips are intact. Soft tissue densities are seen in medial/inferior to left ischial tuberosity and could indicate strain or partial tear of the hamstring tendons at their origin.
IMPRESSION: No fracture. Questionable tear of left hamstring tendons at the origin from the left ischial tuberosity. This could be followed nonemergently with MRI, if clinically indicated.

A physician noted on July 23, 2020, "X-ray of pelvis does not show any fracture or dislocation. X-ray of knee does not show any fracture or dislocation. Patient is still unable to, able to slightly move hip. CT showed possible hamstring injury."

The diagnosis on July 23, 2020 was “Hamstring tear,” “With bony avulsion.” It was noted that the claimant was suffering from pain “secondary to tripping over a rug at school....CT showed abnormality at the left ischial tuberosity, concerning for left hamstring tendon tear. Spoke with Dr. Blickenstaff and he recommended weight-bearing as tolerated and we will give her crutches fall precautions. She has pain medicine at home. Will have her follow up with orthopedist in the next 2-3 days.”

Misty Thompson, a claims adjuster, interviewed the claimant on July 24, 2020:

Q. And you were injured yesterday, which was Thursday, July 23rd, is that right?

A. Yes.

Q. Okay. About what time were you injured?

A. To be honest with you, I don't remember. I'm guessing it was close to 2 o'clock.

Q. Okay. Okay, what time did you start working yesterday morning?

A. At 6.

Q. What are your work hours or what were your work hours yesterday?

A. Yesterday's was 6 until I crashed and burned.

Q. About what time should you have gotten off yesterday?

A. 4:30....

Q. Where were you at when you were injured?

A. What they call A-L-E.

Q. Okay, is that a building?

A. It's a building, yes....

Q. And where were you at, or tell me exactly what happened.

A. I was ... I had just got done cleaning my equipment and the girls that I work with told me that I was ... they were leaving to go on break, and I said, “Okay.” Well, I was carrying Lysol and I had picked up my glass and my belongings, and I turned and turned off the light, and when I

did, I started to walk to the door and I tripped over a pile of rugs that were on the floor....And I hit very hard.

Q. Okay, and where were y'all going for break?

A. We were just going back to our break room that we have.

Q. Is that there in the A-L-E building?

A. No, it's in a building next to the A-L-E.

Q. Okay. And do y'all ... Are you ... Do you have to clock out for your breaks?

A. No.

Q. And do you ... Can you leave campus if you want to for your break?

A. Oh, yes.

Q. Uh huh. Okay. How long is your break?

A. About 20 minutes.

Q. Okay. But if you needed to run to the store or something, you could?

A. Oh, yeah.

Q. Okay. Okay. And you were walking out of the room that you had been working in?

A. Out of the building. Yes.

Q. Okay. Okay. Exactly where were you at in the building?

A. I was standing by the front door to turn the lights off, so I was standing by the main front door.

Q. So had you turned the lights off yet?

A. Yes....

Q. And were there any witnesses to your fall?

A. Yes.

Q. Okay, and who would that be?

A. Donna, I think her last name is Nier....

Q. And what body parts did you injure or what injury did you sustain from that fall?

A. Um, I pulled my hamstring from the bone.

Q. Okay. On which leg?

A. My left hip, left leg.

The respondents submitted a Form 2, "Employer's Intent To Accept Or Controvert Claim" on July 24, 2020 and stated, "Denied claim – did not arise out of or within course/scope of employment."

An MRI of the claimant's left hip was taken on September 29, 2020 with the following impression:

1. Degeneration/tear of the anterior/anterolateral left acetabular labrum with high-grade chondromalacia of the adjacent acetabular roof.
2. Tendinopathy and partial tear of the left hamstring tendon in the left gluteus medius tendon.
3. Tendinopathy and small partial tear of the right hamstring tendon and right gluteus medius tendon.
4. Abnormal intramuscular edema signal in the quadratus femoris may represent strain or may be reactive to adjacent hamstring pathology. No significant narrowing of the ischiofemoral interval.

The claimant testified that the respondents terminated her employment effective September 29, 2020.

Dr. Justin O. Franz saw the claimant on October 22, 2020:

50 year old female presents for pain in her left thigh. The patient reports that on 7/23/20 she tripped over a rug at work and landed on her right knee. She went to ER and had a CT and they told her that her hamstring was torn at the attachment. She reports that she has pain in her left buttock that radiates to her mid thigh. The pain is sharp....She is ambulating with a walker....
X-ray of hip was performed. Small IM density at the greater troch that appears benign, no hip pathology noted, remainder of femur is normal.

Dr. Franz assessed "Sprained left hamstring insertion." Dr. Franz planned "Cease offending physical activity. Weightbearing as tolerated. Knee scooter or walker recommended." Dr. Franz stated, "Plan for left hip proximal hamstring repair on 10/27/20."

Dr. Franz performed surgery on October 27, 2020: “Left hip proximal hamstring repair[.]” The pre- and post-operative diagnosis was “Left hip proximal hamstring rupture.”

A pre-hearing order was filed on July 1, 2021. The claimant contended, “Claimant contends that she sustained a compensable injury on or about July 23, 2020, during the course of and within the scope of her employment with Respondent Employer. Claimant contends that she is entitled to reasonable and necessary medical treatment and unpaid medically related travel expenses. Claimant contends that she is entitled [to] TTD from July 23, 2020, to a date yet to be determined. Claimant contends that she is entitled to benefits in the form [of] Anatomical Physical Impairment, which is yet to be assessed, wage loss disability, Permanent Partial Disability. This case is controverted in the entirety. Statutory attorney fees based upon all controverted amounts are claimed.” The respondents contended, “Respondents contend that Claimant was not performing employment related activity at the time of her injury. Respondents further contend that the medical documentation does not support an off-work status associated with an alleged injury in the event compensability is found.”

The text of the pre-hearing order indicated that the parties agreed to litigate the following issues:

1. Compensability.
2. TTD.
3. 505 benefits.
4. Medical treatment.
5. Wage loss.
6. Attorney's fees.
7. All other issues are reserved.

After a hearing, an administrative law judge filed an opinion on December 16, 2021. The administrative law judge found that the claimant proved she sustained a compensable injury. The administrative law judge awarded reasonably necessary medical treatment and temporary total disability benefits. The respondents appeal those findings to the Full Commission. The administrative law judge found that the claimant did not prove she was entitled to additional compensation in accordance with Ark. Code Ann. §11-9-505(Repl. 2012). The claimant initially cross-appealed the administrative law judge's finding with regard to Ark. Code Ann. §11-9-505(Repl. 2012) but now states in her brief, "That was appropriately denied, based on the findings." The claimant cross-appeals the administrative law judge's finding that the claimant failed to prove she was entitled to wage-loss disability.

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[.]

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.* Whether an employer requires an employee to do something has been dispositive of whether the activity constituted employment services. *Barrett v. C.L. Swanson Corp.*, 2010 Ark. App. 91, citing *Ray v. University of Ark.*, 66 Ark. App. 177, 990 S.W.2d 558 (1999).

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. That the claimant has satisfied the required burden of proof to show that she sustained a compensable work-related injury to the hamstring on the left-lower extremity on July 23, 2020.” The Full Commission finds that the claimant proved by a preponderance of the evidence that she sustained a compensable scheduled injury on July 23, 2020.

The claimant became employed as a “Sub-Custodian” for the respondents on November 1, 2019. The parties stipulated that the employment relationship existed on July 23, 2020. The claimant testified that she was mopping floors on the respondents’ premises that day. The claimant testified that she finished mopping and began walking toward the

entrance of the building she was in to begin a scheduled break. The claimant was preparing for break at the direction of her supervisor. The claimant testified that a pile of rugs was stacked underneath a light switch in the hallway. As the claimant walked toward the light switch to turn off the lights, she stepped on the pile of rugs and fell. The claimant's supervisor, Donna Laire, witnessed the accident. Donna Laire testified that she had informed the other employees on premises that afternoon that they would be taking a group break. Ms. Laire testified that the claimant "started to the light switch as I started to the door, and as I hit the door, she went to the light switch and went down like a ton of bricks in front of me." Ms. Laire testified that it was the claimant's responsibility to turn off the lights before vacating the building. The claimant received emergency medical treatment on July 23, 2020 and was diagnosed as suffering a "Hamstring tear" in her left lower extremity.

The Full Commission finds that the claimant proved she was performing "employment services" when she fell on the respondents' premises on July 23, 2020. The Full Commission finds that the claimant was "doing something generally required" by her employer at the time she fell, that is, turning the lights off in a building before she began a break with other employees. *See Conner and Barrett, supra.* We find that the claimant was at least indirectly advancing the employer's interest at the

time she fell. We recognize that the claimant's July 24, 2020 recorded statement to the insurance adjuster differed somewhat with the claimant's hearing testimony. The claimant appeared to state on July 24, 2020 that she had already turned off the lights at the time of her fall. It is the Commission's duty to make determinations of credibility, to weigh the evidence, and to resolve conflicts in medical testimony and evidence. *Martin Charcoal, Inc. v. Britt*, 102 Ark. App. 252, 284 S.W.3d 91 (2008). 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).

In the present matter, the Full Commission finds that the claimant's supervisor Donna Laire was a credible witness who corroborated the claimant's testimony. Ms. Laire personally observed the July 23, 2020 accident and testified that the claimant was reaching for a light switch, performing employment services for the respondents, when the claimant tripped over a pile of rugs and fell. 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). Donna Laire testified that "It's all of our responsibilities, and when we leave the building,

whoever's last in the building will turn the lights off." We find that the claimant in the present matter was fulfilling an employer-imposed duty in turning off the lights before she began her break on July 23, 2020. An employee is performing employment services when she is doing something that is generally required by her employer. *Pifer v. Single Source Transp.*, 347 Ark. 851, 69 S.W.3d 1 (2002). The Full Commission finds that, at the time of the claimant's accident, she was doing something that was generally required by her employer. The claimant still had job duties to attend to at the time she slipped and fell. *See Wal-Mart Associates, Inc. v. Anderson*, 2022 Ark. App. 12. We find that, at the time of the accident, the claimant was doing something that was inherently necessary for the performance of the claimant's primary job. *See White v. Georgia-Pacific Corp.*, 339 Ark. 474, 6 S.W.3d 98 (1999).

The claimant therefore 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 body. 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 July 23, 2020. In addition, the claimant established a compensable injury by medical evidence supported by objective findings, namely, the left

“hamstring tear” shown on post-accident diagnostic testing. The Full Commission finds that the left hamstring tear was caused by the July 23, 2020 accidental injury and was not the result of a prior injury or pre-existing condition.

B. Temporary Disability

A person who sustains a compensable scheduled injury is entitled to temporary total disability benefits during the healing period or until she returns to work, whichever occurs first. Ark. Code Ann. §11-9-521(a)(Repl. 2012); *Wheeler Constr. Co. v. Armstrong*, 73 Ark. App. 146, 41 S.W.3d 822 (2001). The healing period is that period for healing of the injury which continues until the employee is as far restored as the permanent character of the injury will permit. *Nix v. Wilson World Hotel*, 46 Ark. App. 303, 879 S.W.2d 457 (1994). Whether an employee’s healing period has ended is a question of fact for the Commission. *Ketcher Roofing Co. v. Johnson*, 50 Ark. App. 63, 901 S.W.2d 25 (1995).

An administrative law judge found in the present matter, “5. That the claimant has also satisfied the burden of proof to show that she is entitled to TTD from July 23, 2020, up to the week of November 21, 2020.” The Full Commission finds that the claimant proved she was entitled to temporary total disability benefits beginning July 23, 2020 and continuing until November 19, 2020. The claimant proved that she sustained a

compensable scheduled injury to her left lower extremity on July 23, 2020. The accidental injury resulted in a left hamstring tear. Although the respondents assert that the claimant voluntarily quit her job, the medical evidence demonstrates that, because of the claimant's compensable injury, she was physically unable to perform her duties as a "Sub-Custodian." The record therefore shows that the claimant proved she was entitled to temporary total disability benefits beginning July 23, 2020.

The claimant testified that the respondents terminated her employment effective September 29, 2020. Dr. Franz performed a "Left hip proximal hamstring repair" on October 27, 2020. There were no subsequent reports of record from Dr. Franz indicating that the claimant had reached the end of her healing period following the compensable injury and surgery. However, the respondents' exhibits indicate that the claimant applied for unemployment insurance benefits on November 19, 2020. On her Application For Unemployment Insurance Benefits, the claimant checked boxes indicating that she could begin full-time work immediately. The claimant also answered "No" to the question, "Do you have any disabilities that limit your ability to perform your normal job duties?" The Full Commission therefore finds that the claimant did not continue within a healing period for her compensable scheduled injury beyond November 19, 2020. Temporary total disability benefits cannot be awarded after a

claimant's healing period has ended. *Elk Roofing Co. v. Pinson*, 22 Ark. App. 191, 737 S.W.2d 661 (1987). The claimant thus proved that she was entitled to temporary total disability benefits beginning July 23, 2020 and continuing until November 19, 2020.

After reviewing the entire record *de novo*, the Full Commission finds that the claimant proved she sustained a compensable scheduled injury on July 23, 2020. The claimant proved that the medical treatment of record provided in connection with her compensable injury was reasonably necessary in accordance with Ark. Code Ann. §11-9-508(a)(Repl. 2012). The claimant proved that she was entitled to temporary total disability benefits beginning July 23, 2020 and continuing until November 19, 2020. The record indicates that, at the time of hearing, the parties reserved issues pertaining to permanent anatomical impairment. The Full Commission therefore reserves the issue of the claimant's entitlement to permanent anatomical impairment and/or permanent disability.

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

CHRISTOPHER L. PALMER, Commissioner

M. SCOTT WILLHITE, Commissioner