

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. H106935

TIFFANY PAYAN, EMPLOYEE	CLAIMANT
LITTLE ROCK SCHOOL DISTRICT/GEYER SPRINGS GT ACADEMY, EMPLOYER	RESPONDENT
ARKANSAS SCHOOL BOARDS ASSOCIATION, INSURANCE CARRIER/TPA	RESPONDENT

OPINION FILED JUNE 24, 2022

Hearing held before Administrative Law Judge Chandra L. Black, in Little Rock, Pulaski County, Arkansas.

Claimant represented by Mr. Daniel Webb, Attorney at Law, Little Rock, Arkansas.

Respondents represented by Ms. Carol Lockard Worley, Attorney at Law, Little Rock, Arkansas.

**Statement of the Case**

On January 26, 2022, the above-captioned claim came on for a hearing in Little Rock, Arkansas. A Prehearing Telephone Conference was conducted on that same day from which a Prehearing Order was filed on that same day. The order and responsive filings have been marked as Commission's Exhibit No. 1.

Stipulations

During the Prehearing Telephone Conference, and/or at the hearing, the parties agreed to the following stipulations:

1. The Arkansas Workers' Compensation Commission has jurisdiction of the within Claim.
2. The employee-employer-insurance carrier relationship existed at all relevant times, including on or about August 11, 2021.

3. The Claimant's average weekly wage was \$1,168.33 with compensation rates of \$736.00 and \$552.00. The maximum compensation rates for a 2021 injury.
4. All issues not litigated are reserved under the Arkansas Workers' Compensation Act.
5. Respondents have controverted this claim in its entirety on the grounds that the Claimant was not performing employment services at the time of her compensable injury.

Issue

At the beginning of the hearing, the parties decided to litigate the sole issue of compensability. Specifically, whether the Claimant was performing employment services at the time of her accidental injury on August 11, 2021. (TR. 7)

Contentions

The respective contentions of the parties are as follows:

Claimant:

Claimant contends she is employed by the Little Rock School District for whom she was providing employment services on August 11, 2021 when she suffered a compensable injury to her right leg and knee. Claimant reserves all additional benefits under the workers' compensation act. Respondents:

Respondents will stipulate to the employer-respondent relations on August 11, 2021 but deny that the Claimant was performing employment services at the time of her injury. Respondents will also stipulate that the Claimant's average weekly wage of \$1,163.33 would entitle her to TTD/PPD benefits in the respective amounts of \$736.00 and \$552.00.

Based on my review of the record as a whole, to include the aforementioned documentary evidence, other matters properly before the Commission, and after having had an opportunity to hear the testimony of the witnesses and observe their demeanor, I hereby make the following

findings of fact and conclusions of law in accordance with Ark. Code Ann. §11-9-704 (Repl. 2012).

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

1. The Arkansas Workers' Compensation Commission has jurisdiction over this claim.
2. I hereby accept the above-mentioned proposed stipulations as fact.
3. The Claimant proved by a preponderance of the evidence that on August 11, 2021, she was performing employment services for her employer, the Little Rock School District (LRSD), when her injuries were inflicted upon her.

**Summary of Evidence**

The Claimant (Ms. Tiffany Payan), Ms. Sarah Dreher (friend/teacher), Ms. Charlotte P. Cornice (Little Rock School District "LRSD" Principal/Coordinator), and Ms. Esther Jones (Director of Early Childhood Services for LRSD) testified during the hearing.

The record consists of the hearing transcript of March 30, 2022 and the exhibits contained therein. Specifically, the following documentary exhibits are included in the record/transcript: Commission's Exhibit 1 comprises the Commission's Prehearing Order of January 26, 2022 and the parties' respective response to the Prehearing Questionnaire; Claimant's Exhibit List, consisting of twenty-nine (29) numbered pages was marked as Claimant's Exhibit 1.

**Testimony**

**Tiffany Payan/the Claimant**

Ms. Payan holds a bachelor's degree. She has worked for the Little Rock School District (LRSD) for six years. Per school year contract in August 2021, she was assigned to work at the Geyer Springs Early Childhood Center. She continues to teach the three-year-olds. Ms. Payan confirmed she is asking the Commission to approve her claim for a compensable injury.

On August 11, 2021, Ms. Payan injured her knee at Romine Early Childhood Center, a school within the Little Rock School District. She admitted she went over to Romine because her friend, Ms. Sarah Dreher (referred to as “Sarah”) asked her to come help her. According to Ms. Payan, Sarah needed help in arranging her classroom so it would pass ECERS and DHS standards. Ms. Payan’s attorney asked her what sort of condition she found Sarah’s room to be in when she arrived. She replied: “It was overwhelmingly full of furniture and unsafe for children.” Ms. Payan was shown Claimant’s Exhibit, page 25 of Claimant’s Exhibit, which she confirmed depicts the condition of the room when she arrived at Romine on the afternoon of August 11, 2021. According to Ms. Payan, she arrived at Romine around 3:30 p.m. She confirmed school was in session, but it was staff training days, and only the teachers were working. Ms. Payan testified that during this period of time when the students are not there and they are getting ready for their return, she sometimes stay until at work until 6:00 p.m., or 7:00 p.m. She testified she could stay in her room as long as the custodian was there because they have the codes for the security system.

Under further questioning, Ms. Payan testified:

Q: Okay. All right. So did you tell anybody, you know, that you were gonna leave Geyer Springs and go to this other school in the district and help Sarah?

A: Yes, sir.

Q: Who did you tell?

A: Olivia Piazza and Charlotte Cornice.

Ms. Payan denied she received any indication from anybody that she should not go over and help Sarah with her classroom. She gave a specific description of the condition of Sarah’s room when she arrived. According to the Ms. Payan, the room was full of a lot of furniture, and there were shelves in the middle of the room, which created blind spots, for the children. She denied leaving her workplace early to go help Sarah or leaving anything unfinished in her

classroom. Ms. Payan verified that classes could have been conducted in Sarah's classroom in the condition she found it in. She confirmed that time was becoming an issue because there were only two days left before school started and one of those days was designated as a staff training day. Ms. Payan further denied that Sarah's classroom would have passed ECERS, which is the standard on which they are graded.

Regarding her injury on August 11, 2021, Ms. Payan testified they were swapping out a shelf, when some of the shelving became dislocated and fell on her, causing her to fall to the ground. She confirmed an ambulance was called, and she was taken to the hospital, at Baptist. Ms. Payan testified she reported her injury to Mr. Tyrone Harris. He is the Coordinator at Romine Early Childhood Center. Per Ms. Payan's testimony, she was in excruciating pain when she arrived at the hospital. Ms. Payan specifically testified that the next morning, she was unable to lift her leg.

After Ms. Payan received care from the emergency room at Baptist, she treated at OneLife Wellness, in Searcy. They took her off work and treated her with a medication regimen. She also sought medical care from Searcy Medical Center Orthopedic Care. There, Ms. Payan came under the care of Dr. Kyle Blickenstaff. He prescribed physical therapy pending the results of her MRI. She confirmed that the workers' comp carrier initially accepted her injury and paid for these visits. However, upon receipt of the MRI results, surgery was recommended, which she has agreed to undergo. Ms. Payan testified that she continues with a very painful knee, for which she wears a knee brace. According to Ms. Payan, she has people who come by her house to help her move and lift things around her house.

With respect to her claim being denied, Ms. Payan testified she had surgery scheduled, but the Respondents denied it. She confirmed that the Respondents had been paying on the claim for two months. Ms. Payan testified that she is still willing to undergo the surgery.

As of the date of the hearing, both Ms. Payan and Sarah continued to work for the Little Rock School District. She verified that both schools are a part of the Little Rock School District. Ms. Payan confirmed that as a teacher she is called upon to work outside of the facility where her classroom is located. According to Ms. Payan, she does observations and training outside of her assigned school. She confirmed that teachers must still go on field trips.

On cross examination, Ms. Payan confirmed she signed a contract with the Little Rock School District when she went to work there. Counsel for the Respondents showed Ms. Payan a copy of her contract, which is part of Claimant's Exhibit 1, at page 29. Ms. Payan admitted her contract reads, "The employee agrees to perform services as assigned by the Little Rock School District Superintendent, or her assigned supervisor." She confirmed her assigned school is Geyer Springs. Ms. Payan teaches and performs her employment related activities at that location.

She admitted neither Ms. Jones nor Ms. Cornice had not assigned her to go over to Romine. Ms. Payan testified that on the day of her injury, she was scheduled to work from 8:30 a.m. until 3:30 p.m. She admitted she had been texting Sarah. Ms. Payan confirmed that Sarah is someone she had worked with at Rockefeller School and Geyer Springs. Ms. Payan admitted she texted Sarah at 3:39 p.m. telling her she had arrived at Romine. She further admitted that Charlotte Cornice is her principal, and that Sarah Dreher is not management. Ms. Payan stated that Sarah is her coworker. Also, Ms. Payan confirmed that Sarah does not tell her when to come to work, when to go home, or what job to do in her classroom. She agreed the assignment of her work duties are limited to Ms. Cornice and perhaps Ms. Jones.

Ms. Payan testified that she continues to be the caregiver for Michael Roach. According to Ms. Payan, she cooks for Mr. Roach and makes sure he takes his medicine and things of that nature. She performs twenty hours a week of caregiving for him.

Sarah Dreher

Ms. Dreher was called as a witness on behalf of Ms. Payan. She testified she is employed by the Little Rock School District. Ms. Dreher works at the Romine Early Childhood Center. Ms. Dreher teaches P3 and has worked for the school district for seven years. Ms. Dreher confirmed she is familiar with Ms. Payan and that they have worked together in the past.

She confirmed that on August 11, 2021 she was with Ms. Payan. They were in her classroom at Romine. Ms. Dreher was unable to recall if she asked Ms. Payan to come help her with her classroom or if she volunteered. However, upon being shown a picture of Claimant's Exhibit at page 25, which depict her classroom as it appeared on August 11, 2021, she confirmed that she needed some help getting her room set up.

Ms. Dreher verified she is familiar with ECERS. She admitted her classroom was not up to ECERS standards. She testified that she had the rest of the week and then the following week before school started. Ms. Dreher admitted she was worried about getting her classroom in order. She admitted Ms. Payan came over to her classroom and started helping her move the furniture around.

Under further questioning, Ms. Dreher confirmed she was present when Ms. Payan got injured. Specifically, she explained:

Q: Can you tell us what happened?

A: Um, we were trying to move up the shelf, and she lifted the shelf up and was moving it, and when she was moving it, the next thing I know she had fallen on the ground -- or she was down with the shelf.

Ms. Dreher testified that Ms. Payan was on the floor yelling and in pain. She called 911 and an ambulance was dispatched to transport Ms. Payan to the hospital. Ms. Dreher followed the ambulance to the hospital. She confirmed that she did not think there was anything wrong with Ms. Payan coming to help her.

On cross examination, Ms. Dreher admitted she is not Ms. Payan's supervisor or a part of management. She agreed that she teaches the three-year-olds. Ms. Dreher further agreed that she has no authority within the Little Rock School District, or Romine or Geyer Springs, to direct anyone else on what to do, other than the three-year-olds at Geyer Springs. Ms. Dreher verified she had a paraprofessional/an assistant who could have helped her out. She admitted to being keenly aware that an early childhood specialist such as Ms. Olivia Piazza could have also come and helped her with her classroom. Per Ms. Dreher, she also had the ability to set up a technical help form with ASU and they would have come help her arrange her room if she needed that assistance. Ms. Dreher admitted this type of help is coordinated through Ms. Jones. She confirmed these avenues were clearly available if she needed assistance in setting up her Pre-K classroom.

Ms. Charlotte P. Cornice

Charlotte P. Cornice was called as a witness to testify on behalf of the Respondents. She is the Principal/Coordinator at Geyer Springs Early Childhood Center. Ms. Cornice has been with the Little Rock School District for four years. She confirmed that in August 2021, she worked at Geyer Springs. Ms. Cornice is familiar with Ms. Payan and her workers' compensation claim. Ms. Cornice is her supervisor.

She confirmed that she is familiar with Ms. Payan's contract with the Little Rock School District. Per Ms. Cornice, Geyer Springs is Ms. Payan's assigned school. She denied that the fact



Ms. Payan works for the Little Rock School District, gives her carte blanche ability to work at any school without a formal assignment.

Ms. Cornice denied that prior to finding out about Ms. Payan's injury, she was aware that Ms. Payan was going to go over to Romine. She also denied ever giving Ms. Payan permission to go over to Romine. Ms. Cornice testified that if Ms. Payan had asked about help for Sarah Dreher in setting up her classroom, she would have let her know Ms. Piazza was available to do that. Also, Ms. Cornice testified that if Ms. Dreher needed some additional help, they have A-State available, but they have to put in a ticket with them for technical assistance. She went on to explain that Ms. Piazza is the Early Childhood Specialist. Ms. Piazza is the person responsible for helping to set up rooms and/or coordinating things with the different classes.

Regarding the technical help provided by ASU, Ms. Cornice confirmed that they do the same type of work performed by Ms. Piazza. She denied that Ms. Payan went over to Romine during her regular working hours, which are from 8:00 a.m. to 3:00 a.m. She also denied that Ms. Payan sometimes worked until midnight setting up her classroom because the doors are locked at 6:00 p.m. and the alarms are set.

Ms. Cornice denied that on August 11, 2021 Ms. Payan was assigned to work at Romine Nor did Ms. Cornice ask her to go over there. According to Ms. Cornice, from August 8 through the 10<sup>th</sup>, they were in training, and August 11<sup>th</sup> was the day to set up the classrooms. Ms. Cornice confirmed that Ms. Payan did not complete her assignment of setting up her own classroom. She further confirmed that someone else had to go in to finish setting up Ms. Payan's classroom after her injury. Ms. Cornice essentially denied that it benefitted her or Geyer Springs School in any way for Ms. Payan to go over to Romine to assist a teacher to set her classroom. She also confirmed that the text messages show that Ms. Payan was at Romine at 3:39 p.m. Based on the

time of this text message, Ms. Cornice agreed this would not have been during the space and time of her employment.

On cross examination, Ms. Cornice testified that she had some of the other paras<sup>1</sup> set up Ms. Payan's classroom after her injury. Ms. Cornice testified that she had to set up the centers and make sure that all the supplies were available.

Under further questioning, Ms. Cornice testified:

Q: Now, you said that -- that -- we talked about -- about -- how Tiffany's going over to Romine did not help Geyer Springs, but would you agree it could've helped the Little Rock School District had she been able to actually help Sarah get her room set up?

A: Miss Payan and Miss Dreher are friends, so friends help each other.

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Q: Okay. So would the Little Rock School District benefit from a room at Romine being set up?

A: For Romine, yes.

Ms. Cornice was asked if she encourages teachers to help other teachers as things come up or is it every man for himself. She replied, "No. We encourage a family environment at Geyer Springs." Counsel for the Claimant asked if it is a district-wide policy to promote a family atmosphere, Ms. replied, "I can only speak for Geyer Springs." However, Ms. Cornice admitted teachers can stay from time to time and work later than 3:00 p.m., should they want to do so.

Regarding the technical support from ASU, Ms. Cornice admitted they service the whole State and are located in Jonesboro. She confirmed that the turnaround time for them to respond to a request is about five days, but sometimes longer. Ms. Cornice essentially confirmed that she is aware of teachers sometimes working outside their classroom.

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<sup>1</sup> "Parpro/parpros refers to paraprofessionals.

On redirect examination, Ms. Cornice admitted that when teachers go off campus for field trips, they have approval from the school district and parents. She confirmed that on August 11, 2021, Ms. Payan did not have permission or direction or assignment to go off campus. In fact, Ms. Cornice agreed that if furniture needs to be moved, the teacher can call the custodians and/or paraprofessionals to help with that task. Ms. Cornice agreed it would have benefitted the Little Rock School District if Ms. Dreher had gone through the proper channels and called the early childhood specialist or asked for technical assistance. She agreed that the family environment policy does not mean you send people over to other schools.

Esther Jones

Esther Jones was called to testify on behalf of the Respondents. She is the Director of Early Childhood Services for the Little Rock School District. Ms. Jones has been in that position for five years. She confirmed she was the director on back on August 11, 2021. Ms. Jones verified that when an individual is assigned to a specific school, which is their space and boundaries of work. She verified she was not aware that Ms. Payan had requested or asked that she be allowed to go over to Romine to volunteer in helping her get her room set up.

According to Ms. Jones, had she been aware of Ms. Dreher's need for help, the first thing she would have done is sent Olivia Piazza over to help. Ms. Piazza is the Early Childhood Specialist for the district, and it is her job to go to schools to help teachers with room set-ups, development of lesson plans or any task they need help with. Ms. Jones confirmed it is not within Ms. Payan's job duties to go out to help people in different schools. She explained that if they have multiple classrooms needing technical assistance, they call A-State and complete a technical assistance form and they will come out and help teachers set up their classrooms. Ms. Jones confirmed that this was not done in this instance. She denied that at any point, she received

communication from Ms. Payan indicating she was going out to Romine. Nor did she direct Ms. Payan to go over to Romine.

Ms. Jones confirmed that she is not Ms. Payan's immediate supervisor. However, she testified that she manages the entire Early Childhood Program, which consists of thirteen (13) sites and sixty-five (65) classrooms. Ms. Jones denied that she ever directed Ms. Payan to go over and help Sarah at Romine.

On cross examination, Ms. Jones explained:

Q: Now, you say you're -- you're sort of umbrella supervising over sixty-five (65) teachers.

A: Over their supervisors and their -- and them. They fall under their supervisors. So for instance, we have six (6) center. Miss Cornice is the Principal/Coordination of one (1) of those centers. So I supervise the five (5) principal/coordinators, and then they supervise their teachers and other staff.

Q: Is that the same sort of level and amount of teachers that Miss Piazza helps?

A: She has the ability, if they call on her, for that assistance, but most of our teachers are seasoned teachers and they go into the year not needing any help.

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Q: I see. So would you agree [sic] me that it would benefit the Little Rock School District if that room was set up and ready for students?

A: All classrooms that are set up and ready for the school to begin on the first day would benefit the Little Rock School District.

### **Adjudication**

#### Employment Services

The crucial issue for determination in the present claim is whether the Claimant, Ms. Tiffany Payan, was performing employment services at the time of her accident injury of August 11, 2021.

In that regard, for the Claimant to establish a compensable injury as a result of a specific incident, the following requirements of Ark. Code Ann. §11-9-102(4)(A)(i) (Repl. 2002), must be established: (1) proof by a preponderance of the evidence of an injury arising out of and in the course of employment; (2) proof by a preponderance of the evidence that the injury caused internal or external physical harm to the body which required medical services or resulted in disability or death; (3) medical evidence supported by objective findings, as defined in Ark. Code Ann. §11-9-102 (4)(D), establishing the injury; and (4) proof by a preponderance of the evidence that the injury was caused by a specific incident and is identifiable by time and place of occurrence. *Mikel v. Engineered Specialty Plastics*, 56 Ark. App. 126, 938 S.W.2d 876 (1997).

In *Hudak-Lee v. Baxter County Reg. Hosp.*, 2011 Ark. 31, 378 S.W.3d 77, the Arkansas Supreme Court stated:

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) (Supp. 2009). A compensable injury does not include an injury that is inflicted upon the employee at a time when employment services are not being performed. Ark. Code Ann. § 11-9-102(4)(B)(iii) (Supp. 2009). The phrase “in the course of employment” and the term “employment services” are not defined in the Workers' Compensation Act. *Texarkana Sch. Dist. v. Conner*, 373 Ark. 372, 284 S.W.3d 57 (2008). Thus, it falls to the court to define these terms in a manner that neither broadens nor narrows the scope of the Act. *Id.*

An employee is performing employment services when he or she is doing something that is generally required by his or her employer. *Id.*; *Pifer v. Single Source Transp.*, 347 Ark. 851, 69 S.W.3d 1 (2002). 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. *Jivan v. Econ. Inn & Suites*, 370 Ark. 414, 260 S.W.3d 281 (2007). 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. *Id.* In *Conner*, 373 Ark. 372, 284 S.W.3d 57, we stated that where it was clear that the injury occurred outside the time and 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. Moreover, 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. *Id.*

After careful consideration of the record before me, I find that Ms. Payan was performing employment services at the time of her accidental injury on August 11, 2021.

On August 11, 2021, the Claimant sustained injuries to her left leg and knee while helping a friend, Ms. Sarah Dreher, set up her classroom at Romine, for which she medical treatment. The Respondents initially accepted the claim and paid some benefits. However, they have since controverted the claim.

The facts surrounding this claim are simple and undisputed. Of importance, this claim involves two local Little Rock schools, Romine and Geyer Springs. The parties acknowledged that both schools (Romine and Geyer Springs) fall under the control and jurisdiction of the Little Rock School District (LRSD).

With that in mind, at the time of Ms. Payan's accident, she was under contract with the Little Rock School District (LRSD) to work as a preschool teacher. Ms. Payan was assigned to teach at Geyer Springs. Her friend, Ms. Sarah Dreher, also worked for the LRSD as a preschool teacher. Ms. Dreher was assigned to work at Romine. They both continue to work for LRSD.

Nevertheless, on the day of the incident, Ms. Payan agreed to help Ms. Dreher set up her classroom, in order to bring it up to ECERS standards, thereby making it safe for the students. Ms. Payan's working hours were from approximately, 8:00 a.m. until 3:30 p.m. At the end of her workday, Ms. Payan left her assigned campus/Geyer Springs, and went over to Romine and began helping Ms. Dreher with organizing her classroom. Her testimony proves that when she arrived at Ms. Dreher's classroom, she found "it to be overwhelmingly full of furniture and unsafe for

children.” Ms. Payan testified that as she was attempting to move a shelf to make it safe for the students, and in doing so, the shelving dislocated and fell on her. She injured her right leg and knee during the incident. An ambulance was dispatched, and Ms. Payan was transported to a nearby hospital. Her accident occurred at approximately 3:39 p.m.

Although Ms. Payan was not at her assigned school when her work-related incident occurred, she was still on one of the school premises of her employer/LRSD. The evidence shows that teachers routinely worked beyond their normal working hours, which was done here, especially at the beginning of the school year. Most significantly, Ms. Payan was injured while helping Ms. Dreher create a safe environment for the students of Romine, which is one of the quintessential employment duties of a teacher, especially one of preschoolers. Specifically, Ms. Payan was helping a fellow teacher and friend organize and rearrange her classroom when shelving dislodged and fell on her. Ms. Payan was performing employment services because her employer received a benefit from her helping Ms. Dreher create a safe classroom for LRSD preschoolers. Undoubtedly, LRSD derived a benefit from Ms. Payan’s services despite the fact in doing so, she also assisted a close friend and fellow colleague.

Therefore, I am persuaded that Ms. Payan’s injury is compensable because it was inflicted upon her while performing employment related services even though she was at a location other than her assigned school. Ms. Payan’s injury grew out of an effort to make a LRSD pre-K classroom safe for its students. Her act of helping to rearrange shelves and furniture in a classroom at a site other than her assigned school, so as to ensure the safety of those particular LRSD preschoolers can be said to directly and indirectly advance the interest of her employer, which is the Little Rock School District.

Payan – H106935

For the aforementioned reasons, I find that the Claimant has proven by a preponderance of the evidence she was performing employment services at the time that the work accident occurred.

**AWARD**

In accordance with the findings of fact and conclusions of law set forth above, this claim is found to be a compensable claim.

**IT IS SO ORDERED.**

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**CHANDRA L. BLACK**  
**Administrative Law Judge**