

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO.: HOO6759

DAISY M. STOUT, EMPLOYEE	CLAIMANT
OZARK WAFFLES, LLC, EMPLOYER	RESPONDENT
CENTRAL ADJUSTMENT COMPANY, INC., CARRIER/THIRD PARTY ADMINISTRATOR	RESPONDENT

OPINION FILED MAY 17, 2021

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

Claimant appeared pro se.

Respondents represented by Mr. Michael Ryburn, Attorney at Law, Little Rock, Arkansas.

STATEMENT OF THE CASE

On April 14, 2021, the above-captioned claim was heard in Little Rock, Arkansas. A pre-hearing telephone conference was conducted on February 23, 2021. Pursuant to the telephone conference, a pre-hearing order was filed that same day. The pre-hearing order has been marked as Commission's Exhibit #1 and made a part of the record without any objection from the parties.

Stipulations

During the pre-hearing telephone conference, and/or during the hearing, the parties agreed to the following stipulations. They read:

1. The Arkansas Workers' Compensation Commission has jurisdiction of the within claim.
2. The parties will stipulate to the Claimant's average weekly wage.
3. The Respondents have controverted this claim in its entirety.

Issues

The parties agreed to litigate the following issues:

1. Whether the Claimant sustained compensable head, chest, heart/cardio, neck/spine and rib injuries during and in the course of her employment, with the respondent-employer on June 6, 2020.
2. Whether the Claimant is entitled to reasonable and necessary medical treatment for her alleged injuries of June 6, 2020.
4. Whether the Claimant is entitled to temporary total disability compensation from June 7, 2020 to a date yet to be determined.

Contentions

The parties' respective contentions are as outlined below:

Claimant:

The Claimant contends essentially contends that she sustained multiple bodily injuries as set forth above, during and in the course of her employment with the respondent-employer as a result of the use of excessive force upon her person by a police officer with the Little Rock Police Department (LRPD). She further contends that she is entitled to reasonable and necessary medical treatment and temporary total disability compensation.

Respondents:

The Respondents contend that the Claimant was terminated for cause and after she would not leave the premises a police officer was called to escort her out. She was allegedly injured in a scuffle with the police officer. This claim is not compensable because:

1. The Claimant was not an employee at the time of the incident.
2. The Claimant was not performing an employment service at the time of the incident.

3. There are no objective findings to confirm a compensable injury.

Summary of Evidence

The record consists of the hearing transcript of April 14, 2021, and the exhibits contained therein. Specifically, the following exhibits have been made a part of the record: Commission's Exhibit #1 includes the pre-hearing order entered on February 23, 2021, and the parties' respective response to the Prehearing Questionnaire. The Claimant's Documentary Packet has been made a part of the record; it has been marked as Claimant's Exhibit No. 1. This exhibit consists of nineteen pages.

Witness

During the hearing, the sole witness to testify was the Claimant, Ms. Daisy M. Stout.

After reviewing the evidence, to include the aforementioned documentary evidence, other matters properly before the Commission, and after having had an opportunity to hear the testimony of the Claimant and observe her 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 of this claim.
2. I hereby accept the aforementioned stipulations as fact.
3. The evidence preponderates that the Claimant was not performing employment services at the time of her scuffle with an officer from the Little Rock Police Department, on June 6, 2020.

CASE IN CHIEF

Hearing Testimony

The Claimant was 36 years of age as of the date of the hearing. She had worked for the respondent-employer since February 2020. According to the Claimant, her job title was grill

operator, but she worked in the role of a salesperson, which is equivalent to a server. The Claimant alleges that she sustained compensable injuries while working for Ozark Waffles (referred to interchangeably herein as “Waffle House”) on June 6, 2020 as a result of being assaulted by an officer with the Little Rock Police Department.

At the time of the Claimant encounter with the officer, Leroy and Bird (their last names have not been provided) were the managers on duty. Specifically, the Claimant has asserted that she sustained various physical and mental injuries as a result of excessive force being used against her by of the officers from the Little Rock Police Department. She testified that she sustained numerous injuries, which included but was not limited to her head, spine, back, and ribs, chest, heart, neurological problems, vertigo, cognitive dysfunction, episodes of spacing out, blackouts, loss of memory, seizures, along with bruises to her arms and ribs. The Claimant testified that she has had three consecutive heart attacks following her alleged injury to her chest.

Prior to the Claimant’s incident with the police officer, she had an exchange with her supervisor-Leroy. The Claimant essentially testified that Leroy came up to her while she was working and started making offensive comments to her. Specifically, the Claimant explained, “He asked -- he’s, like, “Are you on drugs?” and I’m, like, “No.” And then some time passed by, and then he came up to me and he say, “I can tell you’re struggling, and so I don’t want you to take any more takeout orders. I just want you to do dine-in orders.”

According to the Claimant, she began performing these job duties as instructed. She testified that a customer came in and decided that instead of dining-in, as he had initially planned, changed his mind and decided that he wanted his food to go. The Claimant testified that once the customer’s food was ready, she grabbed the food, and Leroy began to yell at her about grabbing the guy’s food. She testified that Leroy said to her, “No, I told you that I wanted you to just to do

dine-in.” According to the Claimant, Leroy started slamming his hands on the counter and yelling at her.

Ultimately, Leroy directs the Claimant to “go home.” The Claimant testified that she asked to see another manager due to some of the remarks that had been made to her by Leroy throughout the lunch service.

The Claimant testified:

Q Okay. At the time of your injury, had you been terminated from your job? Did they tell you “You’re fired.”?

A He didn’t say I was fired.

Q What did he say?

A When he said “Go home,” go home in the restaurant business does not necessarily mean that you are fired. It means your being let go for that day. It can mean you’re being let go for the day; business is slow so you have to go home. Let go in the restaurant business means different things. It can mean that you’re cut because they don’t have no -- there’s not enough business for you to be there. It can mean different things. That’s what I’m saying, and that’s why I asked for a manager to come because he -- like I said, he was harassing me the whole time, and I told him I’m not going home as a result of his poor management and that it wasn’t fair for me to be getting sent home for helping the customer and getting food to the customers...

The Claimant admitted that she was required to clock in and out. However, the Claimant confirmed that the machine used for clocking in and out was inoperable. As a result, a member of management was responsible for clocking her out.

However, the Claimant explained:

Q Okay. And what happened next?

A And so I told him I wasn’t leaving until I spoke to another manager as a result of what he had said to me and what he had been doing to me and the harassing remarks and the derogatory remarks and the treatment that he had been doing to me while I was waiting for a manager. I thought he made [sic]-- that he had contacted Jim. Jim is the person who I had been waiting for. Jim is a guy that’s over Leroy. I was waiting for either him or Tammy or someone to show up other than Leroy. I had already ready contact corporate

for -- not necessarily corporate, but other upper division management about how he treated me while we were on work shift together. And so I waiting... (TR 15)

The Claimant testified that she went over to the dish pit to wait for an upper division management person. As she was waiting, officers from the LRPD arrived at her workplace. The Claimant essentially testified that she stepped out peacefully to talk to the officers. According to the Claimant, she tried to explain to the officers that they (co-workers) were intentionally doing things to her at work to get her fired, written up, in trouble, or making her it appear as if she was being unprofessional at work because of an incident that had occurred at a prior job. The Claimant testified that she went on to explain to the officers that she was being harassed by the customers in addition to her co-workers.

Regarding the Claimant's encounter with the police officer, she explained:

A ... I was talking to her and she said something and I thought the conversation was done and over with and I walked back in to retrieve my belongings -- my coat and my tips and my things so that I could just -- you know, so I could leave.

And I'm trying to let everyone know I said, "I just want you guys all to know that what, you know, Waffle House is doing to their employees. They're discriminating against their disabled employees and they're doing things to them that they should be doing and they are -- I didn't finish my speech before I felt LRPD, like, rush up behind me and she snatched me up, like aggressively off my foot, and when she did that, she -- I went into a seizure and -- or I froze up and she end up -- I end up when I entered -- I'm sorry. When I entered the -- I was standing right here. Everyone had their back to me, and so in order for me to get and retrieve my belongings, I would have had to get their attention to be able to get my belongings for them to bring my stuff out to me.

And so I had to speak loud in order for them to hearing me and, like I said, as I'm speaking to them she runs from -- she is standing -- or the LRPD is standing at the door behind me and my back is to her, and like I said, I didn't anything. I hadn't committed a crime. And she ran up behind me, and as soon as I feel her as she's rushing me, and I feel her her snatch my left arm up. And when she did that I end up now facing her, and as I'm facing her, and as I'm facing her, you know, I -- I'm -- I go into my seizures that I have causes me to just kind of like freeze up or, you know, cognitive dysfunctions and stuff.

And then her -- but the -- her pulling and pulling me the way she did causes me to trip -- like, kind of like trip over my footing. Like I said, I already had an injury to my right foot. My right foot, which is the exhibit that I showed with an indication that my right foot was already broke. And so she she -- when she grabbed and snatched me, she -- our body and the momentum of her snatching me up and everything took me down into the

Waffle House jukebox. My head -- this part of my head came in direct contact. (TR 16-18)

On cross-examination, the Claimant confirmed that she suffered preexisting conditions, including a broken foot, due to a prior workers' compensation claim from another job. She admitted that her prior workers' compensation claim is still going on. According to the Claimant she is awaiting a hearing for that claim. The Claimant denied that she is currently being paid any benefits on that claim. She also has other claims. The Claimant testified that she has several preexisting disabilities, including a history of epilepsy, seizures, strokes, tremors, heart problems, PTSD, anxiety, narcolepsy with cataplexy causing sleep paralysis, hypoglycemia, loss of cognitive function, and musculoskeletal disorders. According to the Claimant, she becomes jittery, overly aggressive, agitated, and she forget things.

Specifically, the Claimant testified:

Q Now, when you went to work for Waffle House you had all this stuff going on already?

A Correct.

Q And that could have been a reason for maybe the way you were performing your job?

A It is.

Q It is the reason?

A Correct.

Q Okay. So when the supervisor said, "Go home," it was because you were mishandling something or doing something that he thought you shouldn't be doing, and that's because of your pre-existing disabilities?

A I -- I would say it -- correct.

The Claimant maintained that she does not know who called the police, or why they were there. However, the Claimant admitted that Leroy wanted her off the premises of Waffle House.

Although the Claimant was off the clock and not making money, she testified that she went back inside to retrieve her belongings. The Claimant denied that she argued with the police officer. She verified that she has not made a claim against the officer. According to the Claimant, she is fighting the criminal charges against her because she had not been “resisting,” and believes she was unlawfully detained.

Under further questioning, the Claimant testified:

Q But at the time that she tackled you you were just standing there inside waiting on a manager?

A When I walked back in?

Q Yes.

A I was waiting for a manager and waiting for my belongings and my closeout for this.

The Claimant verified that when she went back in, she was speaking and directing some of her words to the customers in Waffle House. According to the Claimant, she was explaining what had happened. She could not recall if she called the manager a “racist.” However, the Claimant admitted that she told everyone that they should not be eating at Waffle House. According to the Claimant, she felt they(management) were unethical because the company was discriminating against people with disabilities. It was during that exchange that the policeman grabbed the Claimant and tried to remove her from Waffle House.

With respect to the medical reports, the Claimant confirmed that she did not admit into evidence any of the medical reports relating to her fall at Waffle House. According to the Claimant, she was not able to get those records. She has not returned to work at any place since June 6, 2020. The Claimant has not been able to seek medical treatment because she does not have any health insurance coverage or the money to pay up front.

ADJUDICATION

The crucial issue for determination is whether the Claimant was performing employment services at the time of her alleged injuries of June 6, 2020.

In that regard, 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 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 or before the employee was hired or after the employment relationship was terminated[.]

The test for determining whether an employee was acting within the "course of employment" at the time of the injury requires that the injury occur within the time and space boundaries of the employment, when the employee is carrying out the employer's purpose or advancing the employer's interests directly or indirectly. Pilgrim's Pride Corp. v Caldarera, 54 Ark. App. 92, 923 S.W. 2d 290 (1996). The issue of whether an employee was performing employee services at the time of the injury depends on the particular facts and circumstances of each case. Texarkana Sch. Dist. V. Conner, 373 Ark. 372, 284 S.W. 3d 57, (2008).

An employee is performing employment services when he or she is doing something that is generally required by his or her employer. 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 interests, directly or indirectly. *Id.*

After reviewing the evidence in this case impartially, without giving the benefit of the doubt to either party, I find that Claimant was not performing employment services at the time of her alleged compensable incident with the police officer on June 6, 2020; therefore, she did not suffer a compensable work-related injury under Arkansas law. Specifically, I find that the Claimant's encounter with the LRPD police officer occurred outside the time and space boundaries of her employment with Waffle House. Moreover, at the time of the Claimant's encounter with the officer, the interests of her employer were not being advanced directly or indirectly.

Nevertheless, I found the Claimant's account of incident of June 6, 2020 to be correct. However, the preponderance of the evidence proves that at the time of the Claimant's scuffle with the police officer, she had been instructed by management to "go home." Instead of going home as instructed by her manager, the Claimant refused to leave the premises until she could speak with someone from upper management. As a result, the Little Rock Police Department was called. Ultimately, the Claimant's testimony shows that one of the police officers grabbed her from behind, and she fell and struck her head. The Claimant contends she sustained several compensable injuries due to the use of excessive force against her by one of the officers during the incident of June 6, 2020.

However, the preponderance of the evidence clearly establishes that at the time of the Claimant's scuffle with the police officer, she was not directly or indirectly advancing her employer's interest. Under these circumstances, I find that the Claimant was not performing employment services on June 6, 2020, during her encounter with the LRPD police officer.

As such, this claim must be, and is hereby respectfully denied and dismissed in its entirety.

Accordingly, the remaining issues relating to this matter have been rendered moot and not discussed herein this opinion.

ORDER

The evidence preponderates that at the time of the Claimant's encounter with the LRPD officer, on June 6, 2020, she was not performing employment services. This claim is hereby respectfully denied and dismissed in its entirety.

IT IS SO ORDERED.

CHANDRA L. BLACK
Administrative Law Judge