

**BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION
WCC NO. H301091**

DIANA L. WATKINS, EMPLOYEE	CLAIMANT
SMITH HOUSE, INC., EMPLOYER	RESPONDENT
TECHNOLOGY INS. CO., CARRIER	RESPONDENT

OPINION FILED MARCH 20, 2024

Hearing before Administrative Law O. Milton Fine II on March 15, 2024, in Jonesboro, Craighead County, Arkansas.

Claimant *pro se*.

Respondents represented by Mr. William C. Frye, Attorney at Law, North Little Rock, Arkansas.

STATEMENT OF THE CASE

On March 15, 2024, the above-captioned claim was heard in Jonesboro, Arkansas. A pre-hearing conference took place on January 23, 2024. The Prehearing Order entered on that date pursuant to the conference was admitted without objection as Commission Exhibit 1. At the hearing, the parties confirmed that the stipulations, issues, and respective contentions, as amended, were properly set forth in the order.

Stipulations

At the hearing, the parties discussed the stipulations set forth in Commission Exhibit 1. Following an amendment of the fourth,¹ they read:

¹Stipulation No. 4 originally read: "The parties will stipulate at the hearing to Claimant's average weekly wage and compensation rates."

1. The Arkansas Workers' Compensation Commission has jurisdiction over this claim.
2. The employee/employer/carrier relationship existed on February 22, 2021, and at all other relevant times.
3. Respondents have controverted this claim in its entirety.
4. Claimant's average weekly wage of \$122.02 entitles her to compensation rates of \$81.00/\$61.00.

Issues

At the hearing, the parties discussed the issues set forth in Commission Exhibit 1.

The following were litigated:

1. Whether Claimant sustained a compensable left ankle injury by specific incident.
2. Whether Claimant is entitled to reasonable and necessary medical treatment.
3. Whether Claimant is entitled to temporary total disability benefits.

All other issues have been reserved.

Contentions

The respective contentions of the parties are as follows:

Claimant:

1. Claimant contends that she sustained a compensable left ankle injury when she fell on ice in the parking lot of her workplace when she stepped out of her vehicle. She is entitled to medical and temporary total disability benefits.

Respondents:

1. Respondents contend that Claimant left the premises to go buy cigarettes and failed to clock out. She was returning to the facility and fell in the parking lot. Claimant was not performing any employment services at the time of her injury.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the record as a whole, and having had an opportunity to hear the testimony of the witnesses and to 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):

1. The Arkansas Workers' Compensation Commission has jurisdiction over this claim.
2. The stipulations set forth above are reasonable and are hereby accepted.
4. Claimant has not proven by a preponderance of the evidence that she sustained a compensable injury to her left ankle by specific incident.
5. Because of Finding of Fact/Conclusion of Law No. 4, *supra*, the remaining issues—whether Claimant is entitled to reasonable and necessary medical treatment and to temporary total disability benefits—are moot and will not be addressed.

CASE IN CHIEF

Summary of Evidence

The witnesses at the hearing were Claimant, Daniel Henry, and Linda Lloyd. The Prehearing Order was the only document admitted into evidence.

Adjudication

A. Compensability

In this action, Claimant has alleged that she suffered a compensable injury to her left ankle by specific incident on February 22, 2021, when she slipped on ice and fell onto the parking lot of her place of employment, Comfort Inn. This happened, per her testimony, as she was exiting her vehicle. She had begun her shift that day for Respondent employer, where her job duties included tending the breakfast bar that was made available to the customers of the hotel. Claimant related that she returned to her vehicle that morning to retrieve her Yeti cup. Respondents, in turn, have denied that Claimant suffered a compensable injury of any type. They have asserted, inter alia, that Claimant was not performing employment services at the time of her fall.

Arkansas Code Annotated § 11-9-102(4)(A)(i) (Repl. 2012), which I find applies to the analysis of Claimant’s alleged injury, defines “compensable injury”:

- (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[.]

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 that cannot come under the voluntary control of the patient. *Id.* § 11-9-102(16). The element “arising out of . . . [the] employment” relates to the causal connection between the claimant’s injury and his or her employment. *City of El Dorado v. Sartor*, 21 Ark. App. 143, 729 S.W.2d 430 (1987). An injury arises out of a claimant’s employment

“when a causal connection between work conditions and the injury is apparent to the rational mind.” *Id.*

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.*

If the claimant fails to establish by a preponderance of the evidence **any** of the requirements for establishing compensability, compensation must be denied. *Mikel v. Engineered Specialty Plastics*, 56 Ark. App. 126, 938 S.W.2d 876 (1997). This standard means the evidence having greater weight or convincing force. *Barre v. Hoffman*, 2009

Ark. 373, 326 S.W.3d 415; *Smith v. Magnet Cove Barium Corp.*, 212 Ark. 491, 206 S.W.2d 442 (1947).

The determination of a witness' credibility and how much weight to accord to that person's testimony are solely up to the Commission. *White v. Gregg Agricultural Ent.*, 72 Ark. App. 309, 37 S.W.3d 649 (2001). The Commission must sort through conflicting evidence and determine the true facts. *Id.* In so doing, 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 that it deems worthy of belief. *Id.*

No medical records were offered into evidence. Consequently, the evidentiary record is devoid of objective findings of an injury to Claimant's left ankle. She thus cannot show that she sustained a compensable injury; her claim must fail at the outset. Claimant has not proven compensability by a preponderance of the evidence.

B. Remaining Issues

Because of the foregoing, the remaining issues—whether Claimant is entitled to reasonable and necessary medical treatment and temporary total disability benefits—are moot and will not be addressed.

CONCLUSION

In accordance with the Findings of Fact and Conclusions of Law set forth above, this claim for initial benefits is hereby denied and dismissed.

IT IS SO ORDERED.

Hon. O. Milton Fine II
Chief Administrative Law Judge