

# ARKANSAS COURT OF APPEALS

DIVISION IV  
No. CA11-775

JANICE C. TUCKER

APPELLANT

V.

BANK OF AMERICA INDEMNITY  
INSURANCE COMPANY OF NORTH  
AMERICA and GALLAGHER BASSETT  
SERVICES, INC.

APPELLEES

**Opinion Delivered** January 18, 2012

APPEAL FROM THE ARKANSAS  
WORKERS' COMPENSATION  
COMMISSION  
[F904217)

REVERSED and REMANDED

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**RITA W. GRUBER, Judge**

Janice C. Tucker appeals the decision of the Arkansas Workers' Compensation Commission denying her claim against appellee Bank of America for benefits related to a broken right wrist she suffered when she slipped and fell in a stairwell. The Commission, adopting and affirming the opinion of the administrative law judge, found that Tucker "failed to prove a compensable injury as she was not performing employment services at the time of the accident." Tucker contends on appeal that the Commission's decision was contrary to law and was not supported by substantial evidence. We remand to the Commission for further analysis and findings.

Tucker does not dispute the Commission's description of her accident or her seven-year job history with the bank, where she had worked in various branch locations and progressed from teller to teller manager, assistant manager, and branch manager. Her final



position was in the downtown high-rise building in Little Rock where the bank leased several office floors. Tucker parked her car in the adjacent parking deck the morning of May 6, 2009, before the bank opened, and began walking to the building. Her fall occurred in an enclosed stairwell between the deck and building, where rainwater had collected. She had gained access to both the parking deck and the stairwell with a swipe card issued by the bank, and she was walking with an acquaintance from another business located in the building.

Tucker underwent surgery for her broken wrist and returned to work the next week at light duty, initially needing co-workers' help because of her cast and medication that affected her memory and judgment. She was subsequently fired when it was discovered that, in a violation of company policy, overdraft charges had been waived under her security code on a joint account she held with her son.

Tucker and Daryl Wiltshire, a vice-president of the bank and Tucker's supervisor, gave somewhat conflicting testimony regarding her job description and duties. Tucker testified that her duties began at the time she drove past the outdoor ATM and into the parking deck, surveying the area for security and orderliness, and that she was required to wear her bank identification and put on her "game face" the moment she exited her car. Wiltshire testified that Tucker had been a valued employee before the incident that led to her dismissal. He said that the duties she described before entering the door of the bank belonged to the "opening team" and that, although he appreciated her efforts, she was not part of the team that day.

The issue in this case is governed by our statutory provision that an injury is not compensable if it was sustained "at a time when employment services were not being



performed.” Ark. Code Ann. § 11-9-102(4)(B)(iii) (Supp. 2011). 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, 857, 69 S.W.3d 1, 4 (2002). The same test is used to determine whether an employee was performing employment services as is used to determine whether an employee was acting within the course of employment. *Id.*; *Parker v. Comcast Cable Corp.*, 100 Ark. App. 400, 269 S.W.3d 391 (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. *Pifer, supra*. 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. *Texarkana Sch. Dist. v. Conner*, 373 Ark. 372, 284 S.W.3d 57 (2008).

The dissenting commissioner in this case, finding that Wiltshire’s testimony was not credible, noted that he did not state that Tucker’s behavior was inconsistent with bank security or policies for an officer entering the building alone. He noted that Tucker carried out instructions that were explicit to the main branch or to her previous employment at various branch locations, and that her employment had not been changed, altered, or criticized by her superiors. The commissioner found, after analyzing appropriate appellate cases, that Tucker was unquestionably serving her employer’s interest, directly and indirectly, at the time she was injured. However, the majority’s opinion contains no such analysis or finding of credibility.



Cite as 2012 Ark. App. 66

The Commission is charged with the duty to make and enter findings of fact and rulings of law. Ark. Code Ann. § 11-9-207(a)(5) (Repl. 2002). When the Commission fails to make specific findings on an issue, it is appropriate that we reverse and remand for the Commission to make such findings. *Excelsior Hotel v. Squires*, 83 Ark. App. 26, 115 S.W.3d 823 (2003). We do so in this case.

Reversed and remanded.

MARTIN and BROWN, JJ., agree.

*George Bailey*, for appellant.

*Mayton, Newkirk & Jones*, by: *Eric Newkirk*, for appellee.