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ARKANSAS COURT OF APPEALS

DIVISION IV
No. CA09-673

	Opinion Delivered January 27, 2010
PAULINE BARRETT APPELLANT V. C.L. SWANSON CORP. and CINCINNATI INSURANCE CO. APPELLEES	APPEAL FROM THE ARKANSAS WORKERS' COMPENSATION COMMISSION [F807062] REVERSED AND REMANDED

WAYMOND M. BROWN, Judge

Appellant Pauline Barrett appeals the decision of the Arkansas Workers' Compensation Commission, finding that she was not performing employment services when she was injured on July 11, 2008. Appellant contends that the Commission's decision denying her claim is not supported by substantial evidence. We agree and reverse and remand this case for an award of benefits.

Appellant tripped over a rug in the main office prior to leaving work for the day. Appellant struck her head on a wall and fell to the floor on her left side. She was taken to the emergency room via ambulance, where she was diagnosed with an acute fracture of the proximal humerus. Appellees controverted appellant's injury as compensable, and a hearing was held before the administrative law judge (ALJ) on November 5, 2008.

At the time of the hearing, appellant was sixty-three years old. She testified that she had worked for appellee C.L. Swanson nine years prior to her injury. At the time of her injury, she was the commissary catering manager. Appellant described her job as follows:

> As the commissary catering manager I am in charge of all of the production of food that goes out to all the drivers on the routes. In carrying out my job duties, I communicate directly with customers, find out what they want, put together a quote, procure the food from my vendors, and arrange the catering. When I speak with the vendors I receive faxes with quotes and compile the quotes in a file. The fax machine is not in my office, but in the office at the front of the building. It is my routine to check the fax machine before I leave work every day. I was asked to do this many years ago and I have done so ever since. The reason being, often times I deal with last-minute faxes for last-minute caterings, so I have to call the vendors and order the food immediately so we are able to do the event.
>
> I routinely clock out before I go to the front of the office to check the fax machine. Sometimes, depending on what is in the fax machine or my mailbox, I walk back to my office to tend to and speak with my supervisor and co-worker about last-minute items of business. The time clock is approximately two blocks from my office, on the opposite side of the building from where I enter and exit the building. I would routinely continue to do work for my employer on many days after I had already clocked out.

According to appellant, on July 11, 2008, she clocked out in the back of the building, went to her office and retrieved her purse, and proceeded to the front office. Once in the front office, she placed her purse on a printer, checked her mailbox, checked the fax machine, and conversed with Marjorie Plichta, the office manager. Appellant stated that she would normally check with her supervisor, James Pickney, but he was not there on July 11, 2008. Appellant said that there was nothing in her mailbox or on the fax machine the day of her injury. She testified that she talked to Marjorie "about something business oriented" but she could not remember specifically what they talked about on July 11, 2008. According to

appellant, she started to walk out of the front office when she tripped and fell; however she stated that she fell before she retrieved her purse from the printer. Appellant said that it was common for her to "do extra work at the end of the day after clocking out." She also testified that she would sometimes work on weekends and take calls after hours.

On cross, appellant stated that her trip-and-fall did not occur in front of the mailbox or fax machine. She stated that she did not recall the conversation she had with Marjorie but that their "conversations at the end of the day usually involved business matters." According to appellant, Marjorie would not have seen appellant fall if Marjorie was facing her desk.

Marjorie testified that she could not "remember if, at the time of [appellant's] fall, she was engaged in conversation with [Marjorie] that pertained to the business of C.L. Swanson." Marjorie stated that on the day of appellant's injury, they talked about "business-related things." According to Marjorie, appellant was not carrying her purse or anything else at the time of her fall.

On cross, Marjorie stated that when she and appellant were at work, their conversation "was about business, especially at the end of the day." Marjorie testified that appellant worked nights, weekends, and "even after she had clocked out." According to Marjorie, appellant "always came into the office to check the mail and fax machine and to check in with me before she left for the day."

On redirect, Marjorie stated that she did not see appellant fall; however, she did see appellant start to trip and heard appellant's head hit the wall. Marjorie testified that she was not looking at appellant when she fell.

Larry Mounce testified that he was present when appellant fell on July 11, 2008. Mounce stated that his back was to appellant when she fell. According to Mounce, appellant and Marjorie were carrying on a conversation when appellant fell. Mounce said that appellant fell before she retrieved her purse from the printer.

On cross, Mounce said that he tried to catch appellant as soon as he heard her fall. He stated that he did not know exactly where Marjorie was at the time of appellant's fall. Mounce testified that appellant had a stack of papers in her hand when she came into the office on July 11, 2008, which she placed on Marjorie's desk.

The ALJ issued an opinion on December 1, 2008, finding that appellant suffered a compensable injury to her left arm while employed by C.L. Swanson on July 11, 2008. Appellees appealed to the Commission, which reversed the decision of the ALJ in an opinion filed May 29, 2009. In that opinion, the Commission stated:

> Simply put, we cannot find that the claimant proved by a preponderance of the evidence that she was performing employment services at the time she fell. She had completed her work day and had clocked out. She was on her way out the door when she fell. Further evidence that she was not engaged in any business-related conversation is that Ms. Plichta and Mr. Mounce both did not see the claimant fall. Had they been engaged in conversation with the claimant regarding some work-related matter, it would follow that they would be talking to each other face-to-face and not to the back of their heads. Therefore, when we consider all of the evidence, we cannot find that the claimant was performing employment services at the time she fell. Accordingly, [we] reverse the decision of the Administrative Law Judge. This claim is hereby denied and dismissed.

Appellant filed a timely notice of appeal.

In reviewing decisions from the Workers' Compensation Commission, we view the evidence and all reasonable inferences deducible therefrom in the light most favorable to the

Commission's findings, and we affirm if the decision is supported by substantial evidence. *Foster v. Express Pers. Servs.*, 93 Ark. App. 496, 222 S.W.3d 218 (2006). Substantial evidence exists if reasonable minds could reach the Commission's conclusion. *Jivan v. Economy Inn & Suites*, 370 Ark. 414, 260 S.W.3d 281 (2007). When a claim is denied because the claimant has failed to show an entitlement to compensation by a preponderance of the evidence, the substantial-evidence standard of review requires us to affirm if the Commission's opinion displays a substantial basis for the denial of relief. *Whitlach v. Southland Land & Dev.*, 84 Ark. App. 399, 141 S.W.3d 916 (2004).

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. 2007). A compensable injury does not include an injury which was inflicted upon the employee at a time when employment services were not being performed. Ark. Code Ann. § 11-9-102(4)(B)(iii). An employee is performing employment services when he or she is doing something that is generally required by his or her employer. *Dairy Farmers of America, Inc. v. Coker*, 98 Ark. App. 400, 255 S.W.3d 905 (2007). 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. *Pifer v. Single Source Transp.*, 347 Ark. 851, 69 S.W.3d 1 (2002). 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.* Whether an employer requires an employee to do something has been dispositive of whether the activity constituted

employment services. *Ray v. University of Ark.*, 66 Ark. App. 177, 990 S.W.2d 558 (1999).

Appellant argues that the facts in *Foster*, *supra*, are analogous to the facts in this case. In *Foster*, Foster worked in accounts receivable on the second floor of the employer's premises, and her duties included processing credit card receipts and e-checks that she had to retrieve from the cashier's desk in a separate area. Employees entered the building through the service bay, and there were times when Foster was questioned by other employees in the service-bay area. Her duties also required her to visit the service-bay area as needed at other times during the work day, and she was considered to be on the job when she entered the service-bay doors. On the day of the accident, Foster slipped and fell just after she had arrived at work and was walking in the service-bay area on her way to the cashier's desk to collect credit-card receipts. On these facts, we held that Foster was entitled to benefits because she was injured in an area where employment services were expected of her.

Just as the claimant in *Foster*, appellant was injured in an area where employment services were expected of her. Checking the mailbox and fax machine at the end of the day advanced C.L. Swanson's interests. Additionally, appellant was in the office to do something she had done for years at the request of her employer. It does not matter that at the time of the fall appellant had already clocked out, because the testimony proved that she often worked off of the clock and that she checked the mailbox and fax machine each day after clocking out. In light of the evidence, we hold that reasonable minds could not reach the Commission's conclusion. Therefore, we reverse and remand this case for an award of benefits.

Reversed and remanded.

GRUBER and GLOVER, JJ., agree.