

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F300150

KATHY CHRISTIAN, EMPLOYEE

CLAIMANT

**GUNTER'S FAMILY RESTAURANT, EMPLOYER
UNINSURED**

RESPONDENT

OPINION FILED OCTOBER 1, 2003

Hearing before Administrative Law Judge Dail Stiles on September 4, 2003, in Little Rock, Pulaski County, Arkansas.

Claimant appeared Pro Se.

Respondent appeared Pro Se.

A hearing was held on September 4, 2003, to determine the compensability of the claim filed herein.

It was stipulated that the employer/employee relationship existed on December 20, 2002.

The claimant contends that she sustained injuries to her back, hip, head and shoulder when she fell on December 20, 2002, and that that incident arises out of and during the course and scope of her employment. The claimant seeks payment of medical bills that she has incurred as a result of that December 20, 2002 incident.

The respondent contends the claimant did not sustain a sufficient injury from her fall of December 20, 2002, to entitle her to any benefits.

STATEMENT OF THE CASE

The claimant worked as a waitress for the respondent who owned a family restaurant in Perryville.

The claimant said that around 5:30 to 6:00 p.m. on December 20, 2002, she slipped on a slick floor, and as she was falling, struck her head on a cabinet.

The claimant declined medical treatment on the evening of December 20, 2002, but later sought medical treatment at the emergency room in Morrilton.

The claimant stated that she went directly home from work but did not remember how she got home. The claimant said she stayed in bed and could hardly walk after the injury, and after several days, presented to the emergency room at a hospital in Morrilton and then began treating with Dr. Dennis Ozment in Morrilton.

The claimant said after her first medical visit after the injury, she returned to the restaurant and talked to Ms. Gunter about paying her medical bills, and that Ms. Gunter advised that she had no insurance and would be unable to pay the bills.

The claimant says she has been in constant pain since the injury, and that her back, hip and legs hurt, as well as her head, and that she has developed blurred vision as a result of the injury.

Carolyn Gunter, the owner of the restaurant, said she was not at the restaurant when the claimant fell on December 20, 2002, but she was told by two other employees that the claimant fell and hit a Rubbermaid trash can, and that she did not strike a cabinet.

Ms. Gunter testified that the claimant came to see her approximately a week after December 20, 2002, and requested cash to cover some medical bills which Ms. Gunter declined. Ms. Gunter stated that two other co-employees also stated that the claimant had been drinking the afternoon of December 20, 2002, prior to her injury.

Steve Gunter, the son of Carolyn Gunter, testified that he was at the restaurant when the claimant fell and saw her fall. He said she went down on her knees and fell to the side on a Rubbermaid garbage can and did not strike her head

on anything. He stated that the claimant immediately said her head was bleeding, and that he was looking at her head to see if there was blood and at that time smelled alcohol on the claimant.

Steve Gunter said that he asked the claimant if she wished to seek medical treatment and she declined. Mr. Gunter stated that he was told by the two co-employees that the claimant had been drinking, and that she was leaving to meet her boyfriend. Mr. Gunter said he went to Morrilton and saw the claimant's car sitting at a nightclub called Jose's in Morrilton.

A letter from one Jeff Rankin was introduced on behalf of the respondent without objection. The letter was dated June 26, 2003. Jeff Rankin stated that he observed the claimant on the evening of December 20, 2002, at Jose's supper club at Morrilton. Mr. Rankin said in his letter that he observed the claimant dancing, and that she did not appear to be injured. He said he had observed the claimant on two other occasions. Mr. Rankin stated that he observed the claimant once at a liquor store in Morrilton carrying a case of beer to the counter and also at a flea market at Oppelo at which time the claimant was carrying a child who appeared to be three or four years old. Mr. Rankin said that he also had observed the claimant climb and descend a steep flight of stairs without any observable difficulty.

Mrs. Gregory, the claimant's mother, testified on her behalf and stated that she thought the claimant came home directly from work. She was asked by me on three separate occasions what time her daughter arrived home, and she declined to answer saying only that it was after dark and had felt the claimant had come directly home from work.

A review of the medical evidence reflects that the claimant sustained a soft tissue injury and is possibly experiencing some difficulties from migraine headaches which she had an earlier history of.

Diagnostic tests have been run subsequent to December 20, 2002, on the claimant, including several x-rays and a CT scan of the head, all of which proved to be normal.

In an office note of January 9, 2003, Dr. Dennis Ozment noted that the claimant had serous fluid in the left ear. He makes no observation nor does he render any opinion as to the cause of the fluid buildup on the claimant's left tympanic membrane.

In an office note of January 16, 2003, Dr. Ozment noted that the claimant was complaining of visual difficulties primarily when she was straining to have a bowel movement. In that same office note, Dr. Ozment stated that the claimant, "insists on following up with a neurologist, which I will send a consult to Dr. Boop for further evaluation."

On January 17, 2003, the claimant presented at the emergency room at Baptist Medical Center in Little Rock. At that time, she was complaining of blurred vision and diffuse musculoskeletal pain. The claimant was also complaining of an intense burning feeling in her head, pressure and numbness in her forehead and pain radiating down her face. Dr. Holly Handloser stated in the account of the January 17, 2003 visit and examination, "Honestly I'm having a very hard time following Ms. Christian's story. She is very scattered when I ask questions, she just restarts the story and I cannot get a timeline between December 20 and today January 17." Dr. Handloser's examination was normal.

The claimant was also seen by Dr. Freyaldenhoven at Arkansas Neurology, Inc. in Conway in April of 2003 and again in July of 2003. The

claimant's chief complaint at Arkansas Neurology, Inc. was headaches. Dr. Freyaldenhoven stated, "I still suspect the spells are migrainous in origin. Today's exam shows evidence of constricted visual fields bilaterally. . . ."

FINDING OF FACT

There are no "objective findings" in the medical evidence to support the claimant's claim of compensability which she contends arises out of and during the course and scope of her employment on December 20, 2002. In addition, the one objective finding noted in the medical evidence which was fluid in the left ear, is not causally connected to the claimant's fall of December 20, 2002.

DISCUSSION

Objective medical evidence is necessary to establish the existence and extent of an injury. Wal-Mart Stores, Inc. v. Van Wagoner, 337 Ark. 443, 990 S.W.2d 522 (1999). In the instant case, the diagnosis made early on was that the claimant had a soft tissue injury, and later, the neurologist, Dr. Freyaldenhoven, suspects the headaches are migraine in origin, and there is a notation in the medical evidence that the claimant has suffered from migraine headaches prior to December 20, 2002. The claimant simply does not meet her burden of proving by a preponderance of the evidence that she sustained an injury arising out of her employment. For an injury to arise out of one's employment, the employee is required to show that a causal connection exists between the injury complained of and the employment. See Gerber Products v. McDonald, 15 Ark. App. 226, 691 S.W.2d 879 (1985). In this case, the claimant simply does not show that the physical complaints she is making subsequent to December 20, 2002, are causally related to her work or any incident which occurred at work.

In addition, I do not find the claimant's testimony credible. I find her credibility lacking, particularly, in her rendition of events immediately following her slip and fall on the late afternoon of December 20, 2002.

The above claim is respectfully denied and dismissed.

IT IS SO ORDERED.

DAIL STILES
Administrative Law Judge