

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F302852

SHIRLEY A. TAYLOR

CLAIMANT

CASTINO INDUSTRIES, INC.

RESPONDENT EMPLOYER

AMERISURE INSURANCE COMPANY

RESPONDENT CARRIER

ORDER AND OPINION FILED AUGUST 21, 2003

Hearing before Administrative Law JUDGE LINDA K. MARSHALL.

Claimant represented by the HONORABLE JOHN BARTTELT, Attorney at Law, Jonesboro, Arkansas.

Respondents represented by the HONORABLE JOHN D. DAVIS, Attorney at Law, Little Rock, Arkansas.

STATEMENT OF THE CASE

The above claim came on for a hearing in Jonesboro, Arkansas on July 8, 2003. A prehearing conference was held on May 15, 2003 and a prehearing order was filed on May 22, 2003. A copy of the prehearing order was marked as Commission Exhibit No. 1 and made a part of the record without objection.

At the prehearing conference and prior to the hearing, the parties agreed to the following stipulations:

1. There was an employer-employee relationship on March 7, 2003.
2. The compensation rate will be agreed to by the parties if the claim is found to be compensable.

The claimant contends that she sustained a specific incident injury on March 7, 2003 and is entitled to medical benefits and temporary total disability benefits from March 11, 2003, to a date to be determined.

The respondents contend if the claimant fell at work as she contends, then she was not performing employment services at the time. The claim has been controverted in its entirety.

From a review of the record as a whole, to include medical reports, documents and other matters properly before the Commission, and having had an opportunity to hear the testimony of the witnesses and to observe their demeanor, the following findings of fact and conclusions of law are made in accordance with Ark. Code Ann. §11-9-704:

**FINDINGS OF FACT
AND
CONCLUSIONS OF LAW**

1. There was an employer-employee relationship on March 7, 2003.
2. The compensation rate will be agreed to by the parties if the claim is found to be compensable.
3. The claimant's slip and fall in the bathroom on March 7, 2003, is not excluded from the definition of compensable injury under Ark. Code Ann. §11-9-102(4)(B)(iii).
4. The claimant has failed to prove by a preponderance of the evidence that she sustained a compensable injury arising out of and in the course of her employment on March 7, 2003.

5. The respondents are responsible for medical expenses provided by Dr. Lancaster at the direction of the employer.

DISCUSSION

The claimant, 20 years old, contended that while working for the employer on March 7, 2003, she sustained a slip and fall incident in the restroom, causing a back injury. The claimant contended at the hearing that the fall occurred about 9:45 p.m., which was about 30 minutes after her last break of the evening. The respondents had testimony from Gary Salard, plant manager for the respondent employer, Chris Winfrey, second shift supervisor for the respondent employer, and Tina Douglas, human resource administrator for the respondent employer and a recorded statement from the claims adjuster that the claimant reported a slip and fall injury in the bathroom occurring during her break.

Ark. Code Ann. §11-9-102(4)(A)(i) defines a compensable injury as “[a]n accidental injury...arising out of and in the course of employment” A compensable injury does not include an “[i]njury 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). This statute does not define the phrase “in the course of employment” or the term “employment services.” *Olsten Kimberly Quality Care v. Pettay*, 328 Ark. 381, 944 S.W.2d 524 (1997).

The Arkansas Supreme Court has held that an employee is performing “employment services” when he or she “is doing something that is generally required by his or her employer....” *White v. Georgia-Pacific Corp.*, 339 Ark. at 478, 6 S.W.3d at

100. The same test is used to determine whether an employee was performing “employment services” as is used when determining whether an employee was acting within “the course of employment.” *White v. Georgia Pacific Corp.*, *supra*; *Olsten Kimberly*, *supra*. 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.” *White v. Georgia-Pacific Corp.*, 339 Ark. at 478, 6 S.W.3d at 100 and *Olsten Kimberly*, *supra*.

The Arkansas Supreme Court in *Collins v. Excel Specialty Products & Co.*, 347 Ark. 811, 69 S.W.3d 14 (2002) and in *Pifer v. Single Source Transp.*, 347 Ark. 851, 69 S.W.3d 1 (2002), noted that the activity of seeking toilet facilities, although personal in nature, has been generally recognized as a necessity such that accidents occurring while an employee is on the way to or from toilet facilities, or while he or she is engaged in relieving himself or herself, arise within the course of employment. *Matlock v. Blue Cross Blue Shield*, 74 Ark. App. 322, 49 S.W.2d 126 (2001).

The claimant in the present case went to the bathroom provided by her employer when the accident occurred. The claimant was engaged in conduct permitted by the employer and the employer provided restroom facilities on its premises.

Just as the Arkansas Court of Appeals found in *Matlock*, *supra*, and the Arkansas Supreme Court found in *Collins*, *supra*, and *Pifer*, *supra*, that the respective claimant’s bathroom break was a necessary function and directly or indirectly advanced the interests of her employer, I find the same in the instant case. Consequently, the claimant’s incident is not excluded from the definition of “compensable injury” under

Ark. Code Ann. §11-9-102(4)(B)(iii), since the incident did not occur at a time when she was not performing employment services.

The claimant must still meet all the requirements of Ark. Code Ann. §11-9-102(4)(A)(i). The injury must be proven by medical evidence, supported by objective findings. Ark. Code Ann. §11-9-102(4)(D). Objective findings are those findings that cannot come under the voluntary control of the patient. Ark. Code Ann. §11-9-102 (16). The claimant must also prove that there is a causal connection between the work-related accident and the injury. *Stephenson v. Tyson Foods, Inc.*, 70 Ark. App. 265, 19 S.W.3d 36 (2000).

In the present case, the claimant testified that she sustained a fall in the bathroom and gave varying accounts about it occurring while she was on break and then a different account of falling after she had returned to work and then later gone to the bathroom. The claimant returned to work on the Monday following her Friday fall and she continued to work that day. She completed an injury report on Tuesday and sought medical treatment. There was conflicting testimony from the claimant and two co-employees, Jennifer Reed and Dorothy Blevens, about the claimant's activities over the weekend of March 8 and March 9. Both Ms. Reed and Ms. Blevens testified the claimant returned to work on March 10, 2003, and stated she had cleaned her sister's house on Saturday and Sunday and had only been paid \$40. Ms. Blevens was asked how she remembered that conversation and her answer was:

Because, number one, I thought, I didn't know she had a sister, and number two, I thought they could pay me \$440 and I wouldn't clean nobody's house 'cause I don't like to clean house. That's how I, I can remember that. (T., p. 50, lines 15-17.)

The claimant's testimony was she had planned to clean her sister's house but did not and was confined to home on Saturday. I found the testimony of Ms. Reed and Ms. Blevens to be more credible than the claimant's testimony.

A MRI of the claimant's lumbar spine was made on March 15, 2003 and revealed "...Degenerative disc at level of L5-S1. Correlation with axial imaging shows a degenerative bulging annulus at the level of L5-S1 with a small central HNP...." Cl. Exh. No. 1, p. 4.

I find the claimant has failed to prove by a preponderance of the evidence that she sustained a compensable injury arising out of and in the course of her employment on March 7, 2003. I did not find the claimant to be a credible witness. I found the testimony of her co-workers, Ms. Reed and Ms. Blevens, as well as the testimony of other work employees, to be more credible than the claimant. I further find that the claimant has failed to prove a causal connection between the work-related accident and her current condition. The medical evidence attributes the claimant's current condition to a degenerative process rather than an acute trauma.

The claimant testified that she advised Tina Douglas, human resources administrator, about her slip and fall and an appointment was made for her with Dr. Lancaster. (T., p. 16.) Where the employer directs the employee to visit a specific physician and incur medical expenses, the employer is estopped from denying responsibility for the cost of treatment rendered by the physician notwithstanding the claimant's back condition was found non-compensable. *Southern Hospitalities v. Britain*, 54 Ark. App. 318, 925 S.W.2d 81 (1996). I find respondents are responsible for medical services provided by Dr. Lancaster at the direction of the employer.

ORDER

The claimant has failed to prove by a preponderance of the evidence that she sustained a compensable injury arising out of and in the course of her employment on March 7, 2003. The respondents are responsible for medical expenses provided by Dr. Lancaster at the direction of the employer. The claim for benefits is respectfully denied and dismissed.

IT IS SO ORDERED.

**LINDA K. MARSHALL
ADMINISTRATIVE LAW JUDGE**