

**BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION**

**CLAIM NO. F301365**

<b>FRANCIS WOODS, EMPLOYEE</b>	<b>CLAIMANT</b>
<b>FLAKE WILKERSON MARKET, EMPLOYER</b>	<b>RESPONDENT #1</b>
<b>CONTINENTAL CASUALTY CO., CARRIER</b>	<b>RESPONDENT #1</b>
<b>SECOND INJURY FUND</b>	<b>RESPONDENT #2</b>

**OPINION FILED AUGUST 29, 2003**

Hearing before ADMINISTRATIVE LAW JUDGE ANDREW L. BLOOD on June 2, 2003, at Little Rock, Pulaski county, Arkansas.

Claimant represented by the HONORABLE BRENT BABER, Attorney at Law, Little Rock, Arkansas.

Respondents #1 represented by the HONORABLE FRANK B. NEWELL, Attorney at Law, Little Rock, Arkansas.

Respondent #2 represented by the HONORABLE TERRY PENCE, Attorney at Law, Little Rock, Arkansas.

**STATEMENT OF THE CASE**

A hearing was conducted in the above-style claim to determine claimant's entitlement to worker's compensation benefits.

On May 15, 2003, a pre-hearing conference was conducted in this claim, from which a Pre-hearing Order of the same date was filed. The Pre-hearing Order reflects stipulations entered by the parties, the issues to be addressed during the course of the hearing, and the parties' respective contentions relative to the issue. The Pre-hearing Order is herein designated a part of the record as Commission Exhibit #1. Since the principle issue before the Commission is that of

compensability Respondent #2 was granted permission to be excused from the hearing.

The testimony to Frances Woods, the claimant; Erica Singleton; Christina Cushman; and Rob Lloyd, coupled with medical reports, and other documents comprise the record in this claim. During the hearing the attorney for respondents requested permission to obtain the medical records relative to claimant's treatment for a stroke which she suffered subsequent to the injury which serves as the basis for the present claim. Respondents were granted permission to obtain the records and to submit them as exhibits to this record upon furnishing copies to claimant. Respondents did in fact secure some of the records and furnish them to the Commission under cover letters with an index. The exhibits are herein designated a part of this record as Respondent #1 First Supplement Exhibit, and Respondent #1 Second Supplement Exhibit respectively.

### **DISCUSSION**

Frances Mary Lender Woods, the claimant, with a date of birth of July 12, 1960, is a high school graduate with some post-secondary education and training. Claimant commenced her employment with respondent on or about October 28, 2002, as a telephone interviewer. Claimant last discharged employment services for respondents on January 15, 2003, when she suffered a fall at work, which is the basis of the present claim for workers' compensation benefits.

On May 8, 2003, the parties obtained the deposition of the claimant, which is a part of the record in this claim as Respondent exhibit #2. Throughout her work history claimant has suffered several previous work-related injuries with different employers. Further, as a result of disabilities to her left ribs and low back claimant was approved and received social security disability benefits from 1986 through 1996. Claimant returned to the job market in 1997, and

was employed by Merit Co, the predecessor to respondent-employer, for less than one month.

Claimant performed the same job duties for Merit as she did in the employment of respondent.

Claimant begin to experience symptoms in 1996 which were later diagnosed as rheumatoid problems in 1997. Claimant ceased work because she was having blackouts.

Claimant attribute the blackouts to seizures. Claimant applied for social security disability benefits again in September 2002, and was turned down. Thereafter claimant returned to the job market and secured employment with respondents in October 2002.

Claimant testified that she informed supervisory personnel of respondent-employer at the time she was hired that she had an arthritic condition:

I informed Tracy about my rheumatoid, which I had already put it on the card about the medicines and stuff that I take and everything. I informed her about that I could not stand to sit for a long period of time because my job does require to sit and talk on the phone.

And I asked, and also informed them, that I took – her– that I took medications. And I asked her would it be a problem for me to be able to get up and leave my desk and go take medication. Or if I got– because we were– actually, they don't want us to take a break. It's two hours, period, in between breaks; no longer. That's what the regular person had. And I informed them that I could not do that. So she told me it would not be a problem. And to insure myself that it would not be a problem, I went ahead, also, and talked to Jim.

\* \* \*

I went in his office [Jim Holt, general manager] and talked to him because I wanted to make sure. Because I knew he was over everybody and knew if anybody can say so, it would be him. And when I talked to him about it, he informed me that his father had rheumatoid and he knew how painful it was. And he gave me the sympathy and told me that he would work with me in any way that he possibly could. (RX. 2, pp. 12-13)

During the pertinent time period, claimant worked from 8:30 a.m. until 2:30 p.m. The testimony of the claimant reflects what whenever she left her work station to take her medication

she notified her supervisor. Claimant's testimony reflects that on January 15, 2003, she arrived for work at 8:30 a.m. Claimant testified:

I came in. I may not remember everything exactly the way it went that day. But I remember I came in, and I always stopped by Jason's. That's the – he's over the whole floor, the supervisor. He tells you what cubicle you are assigned to. After that I went and put by belongings in my cubicle. I went in the break room, because the lockers are in the break room, to get my things, my mouthpiece, and headphone cushions out of the locker. And I went to work.  
(RX 2, pp.38-39)

Claimant further testified, regarding the morning of January 15, 2003:

I didn't see a lot. I didn't see it [a spill on the floor]. When I was in the room earlier, one of the vending guys was in there. And I know I was headed on my way out. That's why I had went in there to empty my locker. And a drink had spilled in the guy's face. And he kind of make some little noise, oh, S or something. And the older guy that was with us – because he was a young guy – he said don't worry about it. Just keep working. I just looked at him. I just went on out the door, kept going out the door, because it wasn't my business. (RX2, pp. 47-48)

Claimant use a cane, which she carried in her right hand to assist in walking. At approximately 10:30 a.m. claimant notified her supervisor that she was leaving her cubicle to take her medication:

I got up from my chair. I told my floor supervisor, and I also told Jason, which is another supervisor, which I always do when I get ready to take my medicine, that I was going to take my medicine. I went into the break room. I went over to the counter in the kitchen with the sink, and I got some water. I took my medicine, which was a Prednisone tablet that I take for rheumatoid arthritis. I took the medicine. I turned around and I was coming back out of the break room. My right foot slipped on something slippery on the floor and I – I swerved. I – really , just kind of hard – my body just swerved. The left side of my body hit the wall, including my face. I kind of went down and my left leg and my left shoulder hit the wall, and my left leg twisted and my left ankle twisted. Erica and Rhonda was in the break room and they jumped up

and came and caught me from falling, going all the way to the floor. And I thank God for that. And they helped me up and got a chair and sat it under me and went and got – Chris was the first person that I remember entering into the break room, and that Monica Lamar Coleman was the second person that I – that came into the break room. And from there, everybody was trying to get my leg untwisted, and I couldn't stand for them to untwist it because it was in too much pain. (T. 11-12)

Claimant's husband was contacted at her request. Upon his arrival, claimant preceded the emergency room of St. Vincent Medical Center where she received medical treatment.

Claimant's testimony reflects that following her emergency room visit she received medical treatment the following day from her primary care physician, Dr. Torin Gray. Claimant was directed to remain off work Dr. Gray and received medical treatment under the care of same until March 14, 2003.

On March 19, 2003, claimant was seen by Dr. Donald G. Leonard, her rheumatologist, for the first time since the January 15, 2003, fall at work, having last seen same on January 9, 2003. Claimant continued to treat with Dr. Leonard. On or about May 24, 2003, claimant's testimony reflects that she had a grand mal seizure and a cerebrovascular accident [stroke] and was admitted to St. Vincent Medical Center for approximately one week.

Claimant testified that the residuals of her stroke included weakness on the right side of her body, to include her right hand, as well as slurred speech. During the hearing claimant was in a wheelchair. Claimant testified:

I have used my wheelchair on occasion for years now, sir, for distances if I have to go for distances. But if you want to know about the cane, I didn't – couldn't feel like I could trust this right hand to hold the cane to walk with son that's [why] I'm in the chair today. (T. 26-27)

Claimant acknowledged that she had fallen prior to January 15, 2003. Claimant's

testimony reflects:

Sir, I do not remember exactly a number, but it's not like it was regularly. And it really - - if you want to call it a fall, I guess you could because I wasn't like I just fell down. It's more or less I would more or less ease down because of the pain. So if you want to call it a fall, then we will call it a fall. (T. 27-28)

Claimant testified that the last fall she suffered which caused her to seek medical treatment prior to that of January 15, 2003, occurred in 1997. (RX 2, p65).

Finally, claimant maintains that the fall she suffered on January 15, 2003, was the product of something "slippery" on the floor.

Ms. Erica Singleton, an employee of respondent, testified that on the morning of January 15, 2003, she was sitting in the break room with a co-worker, Rhonda Smith, prior to clocking in when she witnessed an incident at the soft drink machine. Ms. Singleton noted that she usually clocked in at 9:00 a.m. Ms. Singleton testified:

Well, that morning me and Rhonda was sitting in the break room getting ready to clock in or whatever and the guy who was filling up the coke machine, one of the pops burst or however you want to say it and it was spewing out everywhere and whatever, whatever. So, he was like, do y'all got a mop and we was like, we don't know, we don't know. Go ask at the front desk over there. So, he went up to the front desk, come back, Chriss go him the mop over there and he mopped the floor and he was - - well, while he was mopping the floor he asked us, he was like, can y'all tell everybody who walked through here that this floor is wet and we was like, we ain't got time to be telling them that the floor is wet because we've got to go clock in. And, we was like, don't you put a wet floor sign there and he was like, well, I asked her did she have one and she told me they didn't have one. And, so, that was basically it.(T. 40-41).

Ms. Singleton was also present in the break room when the claimant suffered her fall. Ms.

Singleton testified regarding her observation:

I mean she came from around like where the sinks and microwaves were to where we was. It was like table - - say for instance like this was the sink or whatever and it's a wall. She came around the corner which wash where we was standing like a table like where you guys are sitting at.

\* \* \*

And, she just slipped and fell. I mean, it was just like, she had her cane in one hand, she had her drink and I think her purse in another hand and when she was walking she kind of did like this and her leg - - her right leg went up under her left leg and came one way and her body went the other way but me and Rhonda was able to kind of catch her before she completely hit the ground. (T. 41-42).

Ms. Christina D. Cushman, front desk administrator for respondent-employer, testified that on January 15, 2003, between 8:30 a.m. and 8:45 a.m., the vending machine gentleman asked her for a mop because he had spilt some soda out on the floor. Ms. Cushman noted:

I gave him the mop and I have to still walk around with him as he went to the vending machine with it and then I proceeded to go back to my desk. (T. 45).

Ms. Cushman observed that there was approximately the contents of a can of soda on the floor.

Ms. Cushman returned to her regular duties after furnishing the dry mop to the vending man.

Ms. Cushman testified that she next received information regarding the break room at approximately 11:00 a.m. when she was informed that the claimant had fallen:

I don't remember if it was Erica or Rhonda. Somebody came and told me that Ms. Woods had fallen down in the break room and so I ran back there.

\* \* \*

I kind of looked on the floor because everybody kept saying, you know, there was spillage on the floor and she fell on that and of course I looked at her and made sure she was okay and then I was looking on the floor to see if there was still spillage all over the floor. I didn't see any. (T. 47).

Ms. Cushman observed that the claimant was in pain. Further, Ms. Cushman noted that the surface of the floor of the break room is covered in linoleum. Finally, Ms. Cushman noted that shortly after she arrived in the break room following the claimant's fall there were people coming in and out of the area because it was getting close to lunchtime, and that Mr. Rob Lloyd arrived.

Ms. Cushman acknowledged that a wet floor sign was not put up in the break room at the time she furnished the mop to the vending man. Ms. Cushman testified that the claimant was wearing slack on January 15, 2003. Ms. Cushman did not touch the claimant's clothing to see if they were wet.

Mr. Rob Lloyd, Human Resources Manager for respondent-employer, testified regarding the events of January 15, 2003, relative to the claimant:

Well, as far as any of the events that happened in the morning, I wasn't aware of the spill until somebody had said something after Ms. Woods had already fallen and Chriss had come and told me that she had fallen in the break room so that's when I went in there. But, as far as anything before then - -

\* \* \*

Well, when I went in there, the first thing of course was seeing how Frances was. I sat there and talked with her for a moment to find out where the pain was, what we needed to do. She asked for her husband so, of course, we made sure that her husband was called. After her, asking Erica, Rhonda, anybody back there that saw it. I asked her what had actually happened. I did have Erica and Rhonda both, since they were the ones that saw it tell me exactly what they saw, show me where she was at, take me to the actual spot where she slipped, show me exactly where she had fallen.

\* \* \*

When I asked Rhonda and Erica both to show me exactly where it was, I wanted them both physically to put me in that spot, I tested the floor with my foot and actually bent down and touched it. It was dry. (T. 51-53).

Mr. Lloyd acknowledged that he did not physically inspect the claimant's clothing. Further, Mr. Lloyd testified that he conducted his inspection of the floor "about five to 10 minutes", after he was told of the claimant's fall, or a time frame of about 15 minutes. (T. 54). Finally, Mr. Lloyd conceded that while he was unaware if people had been walking through the area before he arrived:

It was getting close to lunch. The area that we were in, yeah there were people that would have been coming through there. (T. 54).

Prior to the January 15, 2003, fall by the claimant at work, she had been under care and treatment of Dr. Donald G. Leonard since May 22, 1996, having been referred to same by Dr. Yvette Baker, a neurologist, for suspected Connective Tissue Disease. Claimant was ultimately diagnosed with rheumatoid arthritis. In a December 4, 2001, report, Dr. Leonard noted that the claimant had been under his care since May 1996, and when seen on October 24, 2001, with very active rheumatoid arthritis and wheel chair bound. (Resp. #1, Supplemental Exhibit, p.29).

Following her January 15, 2003, fall at work, claimant was seen at the emergency room of St. Vincent Health System on the same day.(CX ). Claimant next received medical treatment on January 20, 2003, under the care of Dr. Torin Gray, her primary care physician. Claimant continued under the care and treatment of Dr. Gray until March 14, 2003. On March 19, 2003, claimant came under the principle care and treatment of Dr. Leonard for complaints attributed to the January 15, 2003, fall at work.

After a through consideration of all the evidence in this record, to include the testimony of the witnesses, medical reports, and other documents, I make the following:

### **FINDINGS**

1. The Arkansas Workers' Compensation Commission has jurisdiction of this claim.
2. On January 15, 2003, the relationship of employee-employer-carrier existed among the parties.
3. On January 15, 2003, the claimant earned wages sufficient to entitle her to weekly compensation benefits of \$138.00.
4. On January 15, 2003, the activity engaged in by the claimant at the time she suffered her fall was within the parameter of the course and scope of her employment with respondents as to satisfy the employment services requirement.
- \_\_\_\_\_5. The claimant has failed to prove by a preponderance of the evidence that as a result of the fall she suffered on January 15, 2003, the same resulted in an injury which caused internal or external harm to the body which required medical services or resulted in disability with medical evidence supported by objective findings, as defined by Ark. Code Ann. §11-9-102 (16), establishing the injury.

### **CONCLUSIONS**

Claimant commenced her employment with respondent #1, on or about October 28, 2002, as a telephone interviewer, and last discharged employment duties on January 15, 2003. On January 15, 2003, at approximately 10:30 a.m. claimant suffered a fall in the break room of respondent-employer after taking medication for a pre-existing, non-work related condition.

Claimant asserts that the fall suffered on January 15, 2003, was done so at a time she was within the course and scope of her employment, and that the injuries resulting from fall which required medial treatment and renders temporarily totally disable are compensable. Respondents #1 deny that the claimant's claim is compensable, and controvert the claim in its entirety.

The present claim is one governed by the provisions of Act 796 of 1993, in that claimant asserts entitlement to workers' compensation benefits as a result of an injury having been sustained subsequent to the effective date of same.

### **EMPLOYMENT SERVICES**

Respondents #1 maintain that at the time claimant suffered her fall on January 15, 2003, she was not performing employment services. Specifically, respondents #1 note that the claimant was away from her work area at the time of the fall.

Ark. Code Ann. §11-9-104 (B) provides, "Compensable injury" does not include:

- (ii) Injury incurred while engaging in or performing or as the result of engaging in or performing any recreational or social activities for the employee's personal pleasure;
- (iii) Injury which was inflicted upon the employee at a time when employment services were not being performed or before the employee was hired or after the employment relationship was terminated;

The credible evidence in the record reflects that at the time claimant was hired by respondent-employer she disclosed her medical history to same. Specifically, claimant disclosed that she suffered from rheumatoid arthritis which impacted the duration of time she could remain seated before having to get up and move around. Further, claimant relayed to respondent-employer that had to take medication periodic during the day for her condition. The evidence in the record reflects that respondent-employer accommodated the claimant with respect to the afore throughout the time of her employment with same. Further, the evidence reflects that claimant notified her supervisor whenever she left her workstation to take her medication, and was never denied permission to do so.

Employment services are performed when the employee does something that is generally

required by his or her employer. *Collins v. Excel Spec. Prod.*, 374 Ark. 311, 69 S.W. 3d 14,(2002); *Pifer v. Single Source Transp.*, 374 Ark. 851, 69 S.W. 3d 1 (2002). The same test to determine whether an employee is acting within the course of employment is used to determine an employee was performing “employment services”. The test is whether at the time of the injury asserted, the same occurred within the time and space boundaries of employment, when the employee was carrying out the employer’s purpose or advancing the employer’s interest directly or indirectly. *Collins, supra; Pifer, supra*. In *Olsten Kimberly Quality Care v. Petty*, 55 Ark. App. 343, 934 S.W. 2d 956 (1996), *aff’d*, 328 Ark. 381, 944 S.W. 2d 524 (1997), the test was stated as whether the employee is “engaged in the primary activity that [s]he was hired to perform or in incidental activities that are inherently necessary for the performance of the primary activity.”

In the instant claim, respondents were aware of the claimant’s need to take medication for her pre-existing, non-work related condition at the time of her employment. Further, the evidence preponderates that respondent-employer sanctioned the afore activity. Claimant notified supervisory personnel whenever she left her workstation to take her medication. Respondents were aware that in addition to taking medication, claimant was unable to sit for prolonged periods of time (two hours) without being able to get up and move about. The afore, medication and the ability to get up and move about, enabled the claimant to perform her employment duties with respondent-employer. The evidence in the record preponderates that at the time of the claimant’s fall on January 15, 2003, she was within the parameters of the course and scope of her employment with respondent-employer and satisfied the employment services requirement for any injury she may have sustained.

### IDIOPATHIC FALL

It is undisputed that the claimant suffered from rheumatoid arthritis prior to January 15, 2003. The evidence in the record reflects that claimant was first diagnosed and begin receiving medical treatment relative to the afore in May 1996. While claimant acknowledged that she suffered falls as a result of the rheumatoid arthritis prior to January 2003, there is no evidence in the record to reflect that she required medical treatment as a result of since 1997.

An idiopathic fall is one which is caused by a condition personal in nature or peculiar to the individual. *ERC Contractor Yard & Sales v. Robertson*, 335 Ark. 63, 977 S.W. 2D 212 (1998). An idiopathic fall is to be distinguished from an unexplained fall, which is of neutral or undetermined causation. In the instant claim there is insufficient evidence from which to conclude that the claimant's fall was caused by factors personal to herself.

It is undisputed that on the morning of January 15, 2003, a soft drink spilled on the floor of the break room. Further, the evidence reflects that the personnel of the vendor secured a mop from supervisory personnel of respondent to clean up the spillage. Additionally, the evidence reflects that a "wet floor" warning sign was requested. Claimant attributes her fall to a wet/slippery surfaced floor. The mechanics of the claimant's fall was witnessed by two co-workers. While there is testimony in the record to reflect that the area of the claimant's fall was inspected and failed to disclose any liquid or wet surface, the evidence further reflects the inspection did not occur until at least fifteen (15) minutes had passed since the fall. Further, that there was a high foot traffic in the area after the fall, and before the inspection. The preponderance of the evidence reflects that the claimant's fall was the product of slippery substance on the break room floor.

## COMPENSABLE INJURY

It is undisputed that claimant suffered a fall on January 15, 2003. Further the evidence in the record reflects that the afore fall was within in the course and scope of her employment and within the parameters of employment services.

To prove a compensable injury as a result of a specific incident which is identifiable by time and place of occurrence, the claimant must establish by a preponderance of the evidence: (1) an injury arising out of and in the course of employment; (2) that the injury caused internal or external harm to the body which required medical services or resulted in disability or death; (3) medical evidence supported by objective findings, as defined in Ark. Code Ann. §11-9-102 (16), establishing the injury; and (4) that the injury was caused by a specific incident and identifiable by time and place of occurrence. Ark. Code Ann. §11-9-102 (4) (A) (i) (Repl. 2002). Should the claimant fail to establish by a preponderance of the evidence any of the requirements for establishing the compensability of the claim, compensation must be denied. *Mikel v. Engineered Specialty Plastics*, 56 Ark. App. 126, 938 S.W. 2d 876 (1997).

Following the fall suffered by the claimant on January 15, 2003, she first received medical treatment at the emergency room of St. Vincent Health. The record does not reflect a narrative report relative the physical examination performed during the emergency room visit. The record does reflect a “return to work instruction” document authored by Dr. Zsolt Sandor, relative to the claimant. The document noted that the claimant was discharged on 1-15-03; should be able to return to work in 2 days; and should adhere to the work restriction of no heavy lifting. (CX 1).

The first medical record reflecting a physical examination of the claimant following the

January 15, 2003, fall, is a January 20, 2003, clinic note of Dr. Torin Gray. The note reflects:

O. On exam she has diffuse tenderness to light touch on the left side of her body, ankles, knees, hips. No swelling is noted. There is no gross deformity noted anywhere. There is no bruising.(CX 1, p.1).

While the clinic notes of Dr. Gray reflect that claimant called the office on January 24, 2003, and reported, among other things, that her left wrist was swelling more, there is no evidence to reflect that the same was observed by medical personnel or anyone else.

Review of the clinic notes of Dr. Gray relative to a February 11, 2003, visit of the claimant reflects:

O. Exam she seems tender over most of the left side of her body but without demonstrable deformity or swelling.(CX 1, p. 3).

While under the care and treatment of Dr. Gray, claimant underwent extensive diagnostic studies, relative to her complaints of shoulder, wrist, and ankle pain, the same did not yield objective medical evidence of injury.

On March 19, 2003, claimant was seen by Dr. Donald G. Leonard, her rheumatologist, for the first time since her January 15, 2003, fall at work. Although Dr. Leonard, in his report of May 29, 2003, attributes the flare up in the claimant's rheumatoid arthritis to the January 15, 2003, fall at work, a review of the medical record of his treatment of the claimant following the January 15, 2003, fall does not disclose the presence of medical evidence supported by objective findings, as defined pursuant to Ark. Code Ann. §11-9-102 (16).

The claimant has failed to sustain her burden of proof by a preponderance of the evidence that she sustained a compensable injury, pursuant to Ark. Code Ann. §11-9-102 (4) (i), as a result of the fall suffered on January 15, 2003. This claim is respectfully denied, and dismissed.

**IT IS SO ORDERED.**

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**ANDREW L. BLOOD,  
Administrative Law Judge**