

**BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION**

**CLAIM NO. F206182**

<b>CHERIKA WILLIAMS, EMPLOYEE</b>	<b>CLAIMANT</b>
<b>CINGULAR WIRELESS, EMPLOYER</b>	<b>RESPONDENT</b>
<b>PACIFIC EMPLOYERS INSURANCE COMPANY, INSURANCE CARRIER</b>	<b>RESPONDENT</b>

**OPINION FILED APRIL 14, 2004**

Hearing before Administrative Law Judge Dail Stiles on March 18, 2004, in Little Rock, Pulaski County, Arkansas.

Claimant represented by Mr. Steven R. McNeely, Attorney at Law, Little Rock, Arkansas.

Respondents represented by Mr. Joseph H. Purvis, Attorney at Law, Little Rock, Arkansas.

A hearing was held on March 18, 2004, to determine the compensability of the claim filed herein.

It was stipulated that the employer/employee relationship existed on May 17, 2002. It was stipulated that the claimant's earnings were sufficient to entitle her to weekly indemnity benefits of \$285.00 for temporary total disability and \$214.00 for permanent partial disability benefits.

The claimant contends she sustained a compensable injury arising out of and during the course and scope of her employment on May 17, 2002. The claimant contends she is entitled to temporary total disability benefits from May 17, 2002 through December 11, 2002, as well as attendant medical benefits and attorney's fees.

The respondents controvert the claim in its entirety contending that if the claimant sustained an accident on May 17, 2002, she was not in the performance of employment services at the time she may have experienced an accident.

## STATEMENT OF THE CASE

The claimant worked for the respondent employer as a customer service representative answering customers' inquiries by telephone.

At the hearing, the claimant stated she was going to the bathroom on the afternoon of May 17, 2002, when she slipped and fell descending some stairs sustaining injuries to her neck, back and knee.

The claimant was first treated at Baptist Hospital and later came under the treatment of Dr. Jack Somers, Jr., her family physician.

Dr. Somers diagnosed the claimant as having thoracic and lumbar strain.

When Dr. Somers first saw the claimant, he diagnosed her as having multiple soft tissue injuries related to a fall at work. Dr. Somers prescribed some physical therapy for the claimant.

On September 15, 2003, Dr. Somers stated in a letter to the claimant's attorney that he had prescribed some Flexeril on May 20, 2003, for muscle spasms directly related to her fall. He was asked by the claimant's attorney about muscle spasms in his deposition, which was taken on January 13, 2004 and introduced into evidence at the hearing. He was asked specifically:

Q. . . . did you ever see Cherika Williams have muscle spasms?

A. She had tenderness, yes, she had tenderness of her muscles when she was examined, at least the first two days, according to my exam.

The deposition of Zachary Hunt, the physical therapist who treated the claimant, was taken on February 5, 2004 and introduced into evidence.

Mr. Hunt stated that he never found any objective findings to support the claimant's complaints, and that the first time she came to physical therapy, she was wearing high-heeled shoes, which he thought somewhat unusual.

Dorothy Ghant, a co-employee, said that she and Tonya Gillespie, a co-worker, were going on break from the second to the first floor. She stated the reason they were going to the first floor is that there was an ice machine on the first floor. Ms. Ghant testified that there was a break room and bathroom on the second floor where she and the claimant worked. Ms. Ghant testified that the claimant bumped into her as they were descending the stairs, and that when Ms. Ghant turned around, the claimant was falling backwards toward the side railing or hand railing on the stairs. Ms. Ghant said she helped to break the claimant's fall and noticed that the claimant's eyes rolled back in her head. Ms. Ghant said she did not know if the claimant was going on break at the time of the incident, and that she did not know if the claimant indeed had suffered a fainting or syncopal episode.

Tonya Gillespie, another co-worker, stated she was going on break with Ms. Ghant when the claimant accompanied them down the stairs from the second to the first floor. Ms. Gillespie said the claimant never actually did fall, but Ms. Gillespie noticed that the claimant's eyes rolled back in her head. Ms. Gillespie said she did not know whether the claimant was going on break or going to the bathroom.

The claimant was asked on cross-examination if she recalled testifying at her deposition that she'd gone with Tonya Gillespie and Dorothy Ghant on break on May 17, 2002, and the claimant said she thought she had said at her deposition that she was going to the bathroom. The respondents' attorney challenged her on that point at hearing.

The claimant first went to Baptist Health on May 17, 2002, and one of the typewritten pages from the emergency room report of that date stated that the claimant, "states she had no syncopal episode causing the fall." However, a

handwritten note from the emergency room that same day stated, “fell down three stairs blacking out.”

The first time Dr. Jack Somers saw the claimant on May 20, 2002, his office note reflected, “Cherika was at work four days ago when she had an apparent syncopal episode according to a friend while walking on some stairs and fell. . . . “

The claimant denied having a syncopal episode at hearing and said she slipped on something causing her to fall, and that she was on her way to the bathroom.

This examiner inquired of the claimant about a conversation she had had with one of the Legal Advisors approximately one month after May 17, 2002. The Legal Advisor’s note stated, “Injury occurred while going to break.” The Legal Advisor’s next line in the note was, “blanked out (blacked out)/anxiety attack, fell down stairs.” The claimant was asked why the Legal Advisor would have written that down, and the claimant said she did not know.

#### **FINDINGS OF FACT**

1. The claimant was not in the performance of employment services when she experienced an incident or accident on the stairs at her workplace on May 17, 2002.
2. The claimant was going on break at the time she experienced an incident or accident, therefore, the claim is barred.

#### **DISCUSSION**

To being with, I do not find the claimant’s testimony at hearing credible. She had given prior inconsistent statements. The evidence taken as a whole leads this examiner to conclude that the claimant indeed had a syncopal episode or possibility an anxiety attack, which caused her to faint as opposed to slipping on the stairs. Further, the evidence preponderates in favor of the claimant

going on a break. She had given testimony before the hearing that she was going on break and had decided by the time she got to hearing that she was rather going to the bathroom on May 17, 2002.

Ark. Code Ann. §11-9-102(4)(B)(iii) is controlling and states:

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; . . .

In order for a claimant to be covered, the claimant must be engaged in the performance “of those functions which are essential to the success of the enterprise in which the employer is engaged.” Olsten Kimberly Quality Care v. Pettey, 55 Ark. App. 343, 934 S.W.2d 956 (1996). In the instant case, the claimant was going on break, and she was not engaged in any enterprise which furthered the employer’s interest.

The above claim is respectfully denied and dismissed.

IT IS SO ORDERED.

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DAIL STILES  
Administrative Law Judge