

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F406697

REGINA RUSHING,
EMPLOYEE

CLAIMANT

ANTHONY STANLEY D/B/A
STANLEY JANITORIAL SERVICE,
UNINSURED EMPLOYER

RESPONDENT

OPINION FILED DECEMBER 6, 2005

Hearing previously conducted before ADMINISTRATIVE LAW JUDGE MARK CHURCHWELL, in Little Rock, Pulaski County, Arkansas.

The claimant was Pro Se at the hearing; subsequently represented by HONORABLE M. EDWARD MORGAN, Attorney at Law, Clinton, Arkansas.

The respondent did not appear at the hearing; subsequently represented by HONORABLE GEORGE S. IVORY, Attorney at Law, Little Rock, Arkansas.

STATEMENT OF THE CASE

The claimant, Regina Rushing, filed a form AR-C with the Commission on July 8, 2004 requesting benefits for an injury sustained on November 13, 2003. This Form AR-C listed Ms. Rushing's employer as Stanley Janitorial Service, Inc. This claim was ultimately assigned to me for a hearing on Ms. Rushing's request for benefits. I attempted to contact both Ms. Rushing and Anthony Stanley on several occasions in preparation for a hearing. However, I received no response from Anthony Stanley to my written requests, and Anthony Stanley did not answer the telephone when I conducted my scheduled prehearing telephone conference.

I ultimately conducted a hearing on February 22, 2005. Ms. Rushing appeared pro se, and Mr. Stanley did not appear at the hearing.

As a result of evidence introduced into the record at the February 22, 2005 hearing, I entered an opinion on April 25, 2005, finding as follows:

1. At the time of Ms. Rushing's injury, the preponderance of the evidence establishes that Stanley Janitorial Service, Inc. employed regularly more than three employees; therefore, the Arkansas Workers' Compensation Commission has jurisdiction over this claim.
2. The claimant proved by a preponderance of the credible evidence that she sustained a compensable low back injury on November 13, 2003.
3. The claimant has established by a preponderance of the credible evidence that she is entitled to a period of temporary total disability benefits beginning on November 13, 2003 through the date of the hearing held on February 22, 2005 and continuing to a date yet to be determined. Through the hearing date, Ms. Rushing is entitled to \$11,122.00 in accrued unpaid temporary total disability benefits.
4. The preponderance of the evidence establishes that the medical treatment Ms. Rushing incurred from Conway Emergency Room on November 13, 2003 is reasonably necessary for treatment of her work related injuries. Ms. Rushing has accrued unpaid medical expenses to date of \$2,081.00 which are the responsibility of Stanley Janitorial Service, Inc.

5. The preponderance of the evidence establishes that ongoing medical treatment for Ms. Rushing's compensable low back injury will be reasonably necessary.

Thereafter, attorney M. Edward Morgan filed on behalf of Ms. Rushing on October 25, 2005 a Motion to Amend Final Order and Judgment, and on November 3, 2005, Mr. Morgan filed on behalf of Ms. Rushing, in the alternative, a timely filed Form AR-C listing as the employer Anthony Stanley d/b/a Stanley Janitorial Service, Inc. In his Motion to Amend Final Order and Judgment, Mr. Morgan alleged that Stanley Janitorial Service, Inc. is not a viable entity, was not at any time incorporated in the State of Arkansas, and that therefore my April 25, 2005 opinion should be amended to include Anthony Stanley as the respondent. By letter dated November 7, 2005, I contacted Mr. Stanley and his new attorney, George Ivory, seeking a response or objection, if any, to the claimant's motion for the entry of an Order finding Mr. Stanley personally liable for the benefits to which Ms. Rushing is entitled. I indicated in that letter that if I had not received a written objection to the claimant's motion within 15 days from either Mr. Stanley or Mr. Ivory, I would conclude that all parties are waiving any

right to a hearing on the claimant's motion, and that Mr. Stanley has no objection to the Motion.

I have not received any written objection to date from Mr. Stanley or Mr. Ivory regarding the claimant's motion. I therefore conclude that all parties are waiving any right to a hearing on the claimant's motion, and that Mr. Stanley has no objection to the claimant's motion.

Consistent with my November 7, 2005 letter, I have made a part of the record as Commission exhibits in consideration of this motion the following: the transcript from the February 22, 2005 hearing and the exhibits contained therein; the Opinion and Order I filed on April 25, 2005; Mr. Morgan's Motion to Amend Final Order and Judgment filed on October 25, 2005; Ms. Rushing's Form AR-C filed November 3, 2005 listing as her employer Anthony Stanley d/b/a Stanley Janitorial Service, Inc.; my November 7, 2005 letter addressed to Mr. Ivory and Mr. Stanley and copied to Mr. Morgan and Ms. Rushing; the transcript from ALJ Barbara Webb's July 14, 2005 hearing; ALJ Webb's September 29, 2005 Opinion and Order; and relevant pages from (http://www.sosweb.state.ar.us/corps/search_corps.php), the Secretary of State's web site which has no historical listing for Stanley Janitorial Services, Inc. I have "blue-

backed" for identification all documents listed except the February 22, 2005 hearing transcript.

DISCUSSION

As indicated above, by hearing held on February 22, 2005 and by opinion dated April 25, 2005, I adjudicated a claim for liability of Stanley Janitorial Service for an injury sustained during a period in which the business was uninsured. However, that opinion did not recognize that Anthony Stanley's business, Stanley Janitorial Service, was not, in fact, incorporated under the laws of the State of Arkansas. However, Ms. Rushing's testimony at the February 22, 2005 hearing clearly indicates that Ms. Rushing was an employee of Anthony Stanley.

In an Opinion and Order filed on September 29, 2005 by Administrative Law Judge Barbara Webb, ALJ Webb approved an agreement whereby Anthony Stanley would have suspended \$9,000 of a \$10,000 fine for non-compliance conditioned, in part, on Mr. Stanley's agreement to pay all adjudicated claims during the period of non-coverage. Nevertheless, Mr. Stanley has not yet paid Ms. Rushing's claim, and Ms. Rushing therefore now requires a final compensation order or award naming her actual uninsured employer, Anthony Stanley

d/b/a Stanley Janitorial Service, for enforcement purposes pursuant to Ark. Code Ann. § 11-9-712.

After considering the claimant's timely filed motion, Mr. Stanley's lack of objection thereto, and all other matters properly before the Commission, I draw the following conclusions:

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. The Arkansas Workers' Compensation Commission has jurisdiction over the present claim for benefits filed by Regina Rushing against Anthony Stanley. The Form AR-C naming Anthony Stanley as Ms. Rushing's employer and Ms. Rushing's Motion to Amend Final Order and Judgment were each timely filed less than two years after the date of Ms. Rushing's injury.

2. All parties have waived any right to a hearing on the claimant's Motion to Amend Final Order and Judgment.

3. Anthony Stanley has no objection to the Commission entering an Opinion finding Anthony Stanley legally liable for the full amount of the judgment contained in the April 25, 2005 Opinion and Order.

4. Stanley Janitorial Service was not incorporated under the laws of the State of Arkansas when Ms. Rushing became injured on November 13, 2003.

5. Ms. Rushing was an employee of Anthony Stanley d/b/a Stanley Janitorial Service when Ms. Rushing sustained her injury on November 13, 2003.

6. After considering the procedural history of this case, the lack of objection to the claimant's motion, and all matters properly before the Commission, I find that Anthony Stanley is legally liable for the full amount of the judgment contained in the Opinion filed April 25, 2005 against Stanley Janitorial Service, Inc.

AWARD

For benefits accrued through the date of the hearing held on February 22, 2005, I find that Anthony Stanley d/b/a Stanley Janitorial Service is liable to Ms. Rushing for \$11,122.00 in unpaid temporary total disability compensation and for \$2,081.00 in un-reimbursed medical expenses, for a total accrued liability of \$13,203.00. In order to comply with this award, Mr. Stanley must complete these payments within 45 days from the date that Mr. Stanley, or his attorney, George Ivory, receives a copy of this Order unless a timely petition for review is filed with the Full Workers' Compensation Commission. See Ark. Code Ann. § 11-9-711;

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Ark. Code Ann. § 11-9-802; Johnson v. American Pulpwood Co.,

38 Ark. App. 6, 826 S.W.2d 827 (1992).

IT IS SO ORDERED.

MARK CHURCHWELL
Administrative Law Judge