

**BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION**

**CLAIM F210325**

**VERNEAL WILLIAMS,  
EMPLOYEE**

**CLAIMANT**

**SOUTHWEST SECURITY  
COMPANY, INC.,  
EMPLOYER**

**RESPONDENT NO. 1**

**COMMERCE & INDUSTRY  
INSURANCE COMPANY,  
INSURANCE CARRIER**

**RESPONDENT NO. 1**

**SUPERMARKET INVESTORS, INC., D/B/A  
HARVEST FOODS, EMPLOYER**

**RESPONDENT NO. 2**

**LIBERTY MUTUAL INS. CO.,  
INSURANCE CARRIER**

**RESPONDENT NO. 2**

**OPINION FILED FEBRUARY 28, 2005**

Hearing conducted February 23, 2005, before Administrative Law Judge Richard B. Calaway in Little Rock, Pulaski County, Arkansas, with

Mr. Philip M. Wilson, Attorney at Law, Little Rock, Arkansas, appearing for the claimant,

Mr. Frank B. Newell, Attorney at Law, Little Rock, Arkansas, appearing for Respondents No. 1, and

Mr. Michael E. Ryburn, Attorney at Law, Little Rock, Arkansas appearing for Respondents No. 2.

**STATEMENT OF THE CASE**

This is a dispute over compensability of injuries allegedly suffered by the claimant at a job site but at a time when he was not scheduled to work.

As an employee of Southwest Security Company, Inc., the claimant might be assigned to provide security guard services at the Harvest Food Stores operated by Supermarket Investors, Inc., on Main Street or Asher Avenue in Little Rock. The incident arose when the claimant arrived to eat

lunch at the Main Street Harvest Food Store and was asked to help apprehend a shoplifter, even though he was not assigned to work at that time or place.

The claimant, admittedly an employee of Southwest Security Company, contended that he should also be considered an employee of Supermarket Investors, Inc., either as a dual employee, joint employee, or special employee, primarily because of the agreement that he perform security guard services for Southwest Supermarket Investors, Inc. He further contended that he sustained compensable injuries to his hand September 1, 2002, when, while on his way to work at the Asher Avenue Harvest Foods Store, he helped apprehend a shoplifter on the premises of the Harvest Foods Store on Main Street, pursuant to the direction of a supervisor at that store. He requested benefits, including temporary total disability benefits for a period of six weeks and reasonably necessary medical and related expenses. An attorney's fee for controversion was also requested. Other possible issues were reserved.

Respondents No. 1, Southwest Security and Commerce & Industry Insurance, contended that the claimant's injuries were not compensable because they did not arise out of and in the course of his employment, at a time when employment services were being performed. They further contended that the claimant had previously injured his hand and did not suffer any additional injury at the time of the alleged incident. Specifically, they contended that the incident occurred at the Main Street Harvest Foods Store at a time when the claimant was not assigned to work that location. They also contended that the claimant was following the direction of an employee of the Main Street Harvest Foods Store who was not a representative of the employer, Southwest Security Company, Inc.

Respondents No. 2, Supermarket Investors, Inc., and Liberty Mutual, contended that the claimant was not an employee of Supermarket Investors, Inc., d/b/a Harvest Foods, but was an employee of Southwest Security Company and that there was no contract of hire between Supermarket Investors, Inc., and the claimant. They further contended that the claimant was not performing employment services; that a compensable injury cannot be established by medical evidence supported by objective findings; and that the claimant's hand was hurt elsewhere on a prior occasion. Specifically, they contended that the claimant had stopped at the Main Street Harvest Foods Store merely for lunch and had not been assigned to work there at that time, but was on his way to work at a different store.

Based upon the record as a whole, and without giving the benefit of the doubt to any party, as required by the Act, the following findings of fact and conclusions of law are hereby made:

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

1. The Arkansas Workers' Compensation Commission has jurisdiction of the parties and subject matter of this claim.
2. Pursuant to the stipulations of the parties and the record, the claimant was an employee of Southwest Security Co., Inc., at all pertinent times, including September 1, 2002, and that his average weekly wage was \$250.00.
3. The preponderance of the evidence fails to show that the claimant suffered injuries arising out of and in the course of his employment.

**DISCUSSION**

The claimant was employed as a security guard by Southwest Security Company, Inc., which provided security guard services to various businesses, including Supermarket Investors, Inc., d/b/a Harvest Foods. The record shows that by contract dated August 19, 1999, Southwest agreed to provide guard services to Supermarket Investors, Inc., and that the security guards thus provided were to perform such guard services as the client shall request, but that such guards shall be employees of Southwest Security, which was designated an independent contractor.

On September 1, 2002, pursuant to the contract, the claimant had been assigned by Southwest Security Company, Inc., to work at the Asher Avenue Harvest Foods Store beginning at 4:00 p.m. Several hours before going to work, he put on the uniform supplied by Southwest Security Company, Inc. and stopped at the Harvest Foods Store on Main Street to eat lunch. Pursuant to his employment as a Security Guard, the claimant could be assigned to work at the Main Street Store as well as the Asher Avenue Store. However, on this occasion, he had not been assigned to work at the Main Street Store or to start work before 4:00 p.m.

The assistant manager at the Main Street Store testified that he saw the claimant in uniform and did not realize that he was not on duty at that store. As the claimant entered the store, the Assistant Manager asked the claimant and the security guard on duty to help catch a shoplifter who was attempting to run out the front door. The claimant asserts that, during the ensuing scuffle with the shoplifter, he injured his right hand. If such an injury occurred, it will be considered compensable only if the preponderance of the evidence shows that it arose out of and in the course of his employment.

Cliff McAdoo, the owner of Southwest Security, Inc., testified that he thought the claimant had injured his hand in an incident away from work before the incident at work. He stated that

before September 1, 2002, he had discussed the injury with the claimant who said that he had hurt his hand working on a motor vehicle and had asked about wearing his gun on the left side since his right hand was bandaged. McAdoo also testified that he had warned the claimant not to wear his uniform unless he was on duty. The claimant, however, stated at the hearing that the bandage was on his left hand and that he had only had a Band-Aid on his right thumb because of a small cut he had received cleaning fish.

The claimant also gave testimony indicating that he worked for Southwest Security Company and received his checks and his job assignments from Southwest Security Company. Once he arrived at a proper work site at the proper time, as directed by Southwest Security Company, he was to provide security guard services as requested by Harvest Foods. However, Harvest Foods only had authority to direct the claimant's activities when he arrived at a job site pursuant to the direction of Southwest Security Company. The employees of Harvest Foods had no authority to direct work activity of the claimant independent of the contractual agreement between it and Southwest Security Company, Inc.

It was also clear that the claimant was aware that his shift had not started and that he was not at his assigned place of work when the incident occurred at the Main Street Harvest Food Store. In other words, when the claimant walked through the door of the Main Street Harvest Food Store, his actions were not arising out of and in the course of his employment. He was simply there to eat lunch on his own time and not his employer's, Southwest Security Company, Inc. Had he arrived at the premises pursuant to a work assignment, he would have been under an obligation to respond to the assistant manager when he directed him to assist with apprehending the shoplifter. However, because the claimant was visiting the Harvest Foods Store on his own volition and not as the result

of a directive from his employer, the incident with the shoplifter did not arise out of and in the course of his employment and could not be the source of a compensable injury.

For the foregoing reasons, this request for benefits should be, and it is hereby, respectfully, denied and dismissed.

**IT IS SO ORDERED.**

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RICHARD B. CALAWAY  
Administrative Law Judge