

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F404193

GERALDINE WYERS,
EMPLOYEE

CLAIMANT

SECURITAS SECURITY SERVICES USA,
EMPLOYER

RESPONDENT

ACE AMERICAN INSURANCE COMPANY,
INSURANCE CARRIER

RESPONDENT

OPINION FILED APRIL 22, 2005

Hearing conducted before ADMINISTRATIVE LAW JUDGE MARK CHURCHWELL, in Russellville, Pope County, Arkansas.

The claimant was PRO SE.

The respondents were represented by HONORABLE E. DIANE GRAHAM, Attorney at Law, Fort Smith, Arkansas.

STATEMENT OF THE CASE

A hearing was held in the above-styled claim on February 9, 2005 in Russellville, Arkansas. A prehearing order was entered in this case on December 13, 2004. A copy of this prehearing order set out the stipulations offered by the parties and outlined the issues to be litigated and resolved at the present time. A copy of this prehearing order was made Commission's Exhibit No. 1 to the hearing record.

The following stipulations were submitted by the parties either in the prehearing order or during the course of the hearing and are hereby accepted:

1. The existence of the employment relationship on 2/27/04.
2. Respondents controvert claimant's claim.
3. Respondents paid for the initial medical treatment.
4. The claimant's applicable average weekly wage is \$99.63 per week.

By agreement of the parties, the issues to be litigated and resolved at the present time were limited to the following:

1. Compensability.
2. Admissibility of claimant's proffered Exhibit 1 (a written letter purportedly signed by Joan Sowm).

The record consists of the February 9, 2005 hearing transcript and the exhibits contained therein.

DISCUSSION

1. Admissibility of Sowm Letter

Ms. Graham indicated that she was not provided the name of Joan Sowm as a potential witness prior to the date of hearing, and I likewise have no recollection of having received any notice from Ms. Wyers naming Ms. Sowm as a potential witness, as she agreed to do during the course of the prehearing telephone conference. Not only would any

statement from Ms. Sowm not comply with the seven day rule contained in my prehearing order, accepting a written statement instead of live testimony would also deny the respondents the right to cross-examine the witness. Under these circumstances, I find that the proffered letter purportedly signed by Joan Sowm, claimant's proffered Exhibit 1 should be excluded from consideration in rendering a decision on the compensability issue presented at the hearing.

2. Compensability of Injury

Ms. Wyers contends that she slipped and fell on a wet floor sustaining a herniated disc at the L5-S1 level of her lower back in a bathroom at the Tyson's plant where she worked as a guard employed by Securitas Security Service. The respondents assert that Ms. Wyers did not slip and fall in the bathroom, but instead passed out and fell, therefore sustaining an idiopathic injury. In addition, the respondents assert that there is no causal connection between the fall that occurred on February 27, 2004 and Ms. Wyers' subsequent low back condition which required surgery on July 23, 2004.

While the respondent's attorney has done a superb job presenting documentary evidence and eliciting witness

testimony to support the respondents' argument that Ms. Wyers simply passed out and fell, sustaining an idiopathic injury, based on the record in this case, I find that Ms. Wyers has established by a preponderance of the credible evidence that instead she did in fact slip on a wet floor in the bathroom at Tyson's during the course and scope of her employment causing her fall. In this regard, I note that Ms. Wyers' testimony as to what happened appears to be extremely well corroborated by the contemporaneous medical reports from the Emergency Room where she sought treatment that night. The Emergency Room history contained on page 18 of the joint exhibit contains a history that Ms. Wyers slipped and fell. While the next report on page 19 contains a somewhat ambiguous typed statement of "passed out at work", I note that the history contained on page 20 unambiguously indicates that Ms. Wyers' chief complaint was that she fell on a wet floor and likewise indicates that she slipped on a wet floor. Likewise, the handwritten history contained on page 22 of the joint exhibit indicates that Ms. Wyers' chief complaint was that she slipped on a wet floor and was experiencing pain in her left hip. To whatever extent that Ms. Wyers may have experienced dizziness during the course of the fall, or after the fall, which appears to

have added great confusion to the accident reports prepared for Securitas by various individuals after the fall, the contemporaneous medical reports nevertheless established by a preponderance of the evidence that the fall itself occurred as the result of a slip due to a wet floor, and therefore arose out of and in the course of Ms. Wyers' employment.

To the extent that the respondents assert that there is no causal relationship between Ms. Wyers' herniated disc and her fall on February 27, 2004, I note from the contemporaneous medical report from February 27, 2004 that Ms. Wyers complained of left hip pain and was ultimately diagnosed with a left hip contusion. However, she was not provided any MRI studies until May 7, 2004, and in his initial consultation report from May 28, 2004, Dr. Queeney recorded a history of low back pain and left lower extremity pain which began after falling on February 27, 2004. I further note that Ms. Wyers was capable of performing her job before February 27, 2004, but was subsequently diagnosed by Dr. Queeney after testing to have a moderate size extruded fragment within the neural foramen on the left side at L5-S1, clearly causing nerve root compression as indicated in his July 23, 2004 operative report. After

considering the nature of the accident sustained by Ms. Wyers, her contemporaneous complaints at the hospital, her continuing complaints as corroborated by Dr. Queeney's history, and the nature of the disc abnormality ultimately determined by MRI testing and by operation, Ms. Wyers has proven by a preponderance of the evidence that the extruded disc fragment which required surgery on July 23, 2004 was caused by the slip and fall which she experienced at work on February 27, 2004. Finally, I note that her compensable back injury is well established by objective medical findings in the record, including MRI testing and surgical observations.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. The existence of the employment relationship on 2/27/04.
2. Respondents controvert claimant's claim.
3. Respondents paid for the initial medical treatment.
4. The claimant's applicable average weekly wage is \$99.63 per week.
5. Claimant has established by a preponderance of the evidence that she sustained a compensable back injury on February 27, 2004. Specifically, the preponderance of the

credible evidence establishes that the fall was caused by a slip on a wet floor, and was not an idiopathic injury as the respondents assert.

6. The preponderance of the credible evidence establishes that the claimant's diagnosed herniated L5-S1 disc fragment which required surgery on July 23, 2004 was caused by the slip and fall injury which Ms. Wyers sustained on February 27, 2004.

AWARD

The respondents are directed to pay benefits in accordance with the findings of fact set forth herein.

IT IS SO ORDERED.

MARK CHURCHWELL
Administrative Law Judge