

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F404193

GERALDINE WYERS, EMPLOYEE	CLAIMANT
SECURITAS SECURITY SERVICES USA, EMPLOYER	RESPONDENT
ACE AMERICAN INSURANCE COMPANY, CARRIER	RESPONDENT

**OPINION FILED JANUARY 30, 2006**

Upon review before the FULL COMMISSION, Little Rock, Pulaski County, Arkansas.

Claimant, MS. GERALDINE WYERS, appears pro se.

Respondent represented by HONORABLE E. DIANE GRAHAM, Attorney at Law, Fort Smith, Arkansas.

Decision of Administrative Law Judge: Reversed.

OPINION AND ORDER

The respondents appeal a decision of the Administrative Law Judge filed April 22, 2005, finding, in relevant part, that the claimant has proven by a preponderance of the evidence that she sustained a compensable back injury on February 27, 2004, as the result of her slipping and falling on a wet restroom floor. The Administrative Law Judge specifically found that the claimant's fall was not idiopathic in nature. In addition, the Administrative Law Judge found that the credible evidence established that the claimant's diagnosed herniated

L5-S1 disc fragment, which required surgery on July 23, 2004, was caused by her February 27, 2004, slip and fall incident. The Administrative Law Judge ordered the respondents to pay benefits in accordance with his findings.

Our carefully conducted de novo review of this claim in its entirety reveals that the claimant has failed to prove by a preponderance of the evidence that she sustained a compensable back injury on February 27, 2004, as a result of a work related fall. Rather, the preponderance of the evidence shows that the claimant's fall was idiopathic, and therefore, is not compensable. Further, even if it is found that the claimant sustained injuries from a compensable fall on the above date, a finding which we specifically do not make, the claimant has failed to prove by a preponderance of the evidence that her herniated disc is causally related to her slip and fall accident. Therefore, the decision of the Administrative Law Judge should be and hereby is reversed and this claim is denied and dismissed.

At the time of her alleged accident, the claimant had worked as a security guard for the respondent employer for approximately two years. The claimant worked in her capacity as a security guard exclusively at the Tyson chicken processing plant in Clarksville. Prior to her employment with the respondent employer, the claimant was an attendant at a nursing home. At around 4:20 on the afternoon of February 27, 2004, the claimant entered a restroom at the Tyson plant and fell. The claimant was taken to the emergency room of a nearby hospital, where she was found to have a contusion on her left hip. An x-ray of the claimant's left pelvic region showed no indication of fracture, dislocation, or other abnormality. The claimant was given Naprosyn and released to return to work.

Ms. Vonda Berry, the claimant's supervisor at the time of her alleged accident, testified that the claimant called her at about 4:30 p.m. on the evening of February 27, 2004, to inform her of her accident. Ms. Berry further testified that upon her arrival at the plant about 10 minutes later, she found the claimant lying on the restroom

floor. Ms. Berry further testified that the restroom floor did not appear to be wet at that time, and that she did not have to take precautions in moving about because of the condition of the floor. Ms. Berry stated that when she asked the claimant what had happened, the claimant replied that she had "passed out and fell." Although the claimant was alone in the restroom when Ms. Berry arrived, the claimant told Ms. Berry that the plant nurse had telephoned for an ambulance, which arrived shortly thereafter. Once the claimant was *en route* to the hospital, Ms. Berry phoned another employee, Ms. Stacey Bohannon, to fill in the remainder of the claimant's shift. When Ms. Bohannon arrived at the plant, Ms. Berry proceeded to the hospital to check on the claimant. After the claimant was released from the hospital, Ms. Berry drove the claimant back to the plant and they began filling out an incident report. When questioned about a particular section of that incident report, specifically the Supervisor's Accident Investigation Report, Ms. Berry testified as follows:

Q. Okay. And Page 44, which is the Incident Report, is talking about the

incident. It says "Who, What, Where, and Why." What does it have beside Why?

A. "Passed out and fell."

Q. Where did you get that information?

A. I got it from her [the claimant].

Q. Okay. Then when you brought her back to the Guard Shack and she filled out everything that's filled out on Page 42, you then filled out Page 43?

A. Right.

Q. Okay. And on Question 14, would you read that response to us?

A. (Consulting document) "Geraldine went to the ladies room, said she passed out and fell in the bathroom."

Q. Again, was that based on what Ms. Wyers told you?

A. Yes.

Ms. Berry further testified that her supervisor, Mr. David Dalrymple, arrived at the plant while she and the claimant were filling out the incident report. Ms. Berry then witnessed Mr. Dalrymple fill out his required report regarding the incident.

Ms. Bohannon testified that she spoke with the claimant about the incident upon her return to the plant that evening. Ms. Bohannon stated that the claimant told her that "she got dizzy and she passed out and fainted." Ms. Bohannon denied that the claimant made any statements indicating that she had slipped on a wet floor at the time of her fall.

The claimant stated that she had been on duty approximately one hour prior to her fall. The claimant testified that she left the guard shack and entered the plant in order to use the restroom. The claimant further testified that the plant floor was "standing in water," so she "eased through" the standing water and made her way to the restroom without incident. The claimant stated that once inside the restroom, she found that the restroom floor was also wet. The claimant said that she made it "nearly to the stall" when her feet "went out from underneath" her and she "slid down". The claimant reasoned that she must have hit her head on something as she fell because her head was hurting and she was dizzy when she telephoned Ms. Berry. The

claimant could not recall specifically what she had hit her head on. The claimant testified that she was wearing a brand new pair of shoes at the time of the incident that were supposedly slip resistant.

Although the claimant stated that she was dizzy after her fall, she denied having been dizzy when she entered the restroom on the afternoon in question. In addition, aside from an incident where the claimant had been stung by a wasp, she denied experiencing episodes of dizziness prior to her fall on the afternoon in question.

When the claimant presented to the Johnson Regional Medical Center after her fall of February 27, 2004, her sole complaint was left hip pain. In a follow-up visit with Dr. Wilson on March 3, 2004, the claimant complained of right sided abdominal pain, but she made no recorded complaints during that visit regarding her left hip or her back. In fact, the claimant did not complain of low back and left leg pain until her visit with Dr. Wilson on May 5, 2004. A report of that visit indicates that the claimant complained to Dr. Wilson of low back pain radiating into her

left leg. The claimant admitted that her low back and left leg symptoms did not occur contemporaneously with her fall on February 27, 2004. The claimant denied, however, having experienced problems with her back and/or left leg prior to her fall.

In contradiction to the claimant's testimony, Dr. Wilson's medical records reveal that the claimant was seen on June 15, 1992, for lower lumbar strain. The claimant was working at a nursing home at that time. Again, on January 21, 1993, the claimant presented to Dr. Wilson with low back pain radiating slightly into the left leg as a result of picking up a patient at the nursing home two weeks prior. On September 11, 1996, the claimant was seen by Dr. Wilson with complaints of left-sided low back pain with no explanation concerning the cause. In his report dated November 11, 1999, Dr. Wilson reported that a cow had fallen on the claimant, resulting in left-sided neck pain. On April 3, 2002, the claimant complained to Dr. Wilson of left lower back pain, and on October 30, 2002, she complained to Dr. Wilson of generalized pain, constant left chest pain,

left arm numbness, and left hip pain. Although Lyme disease was ultimately ruled out as the cause of the claimant's reported pain, no explanation as to a cause of her pain was reported. On November 12, 2002, the claimant presented to Dr. Wilson with "painful lower extremities bilaterally". Finally, on October 8, 2003, the claimant reported to Dr. Wilson that she was experiencing lower back pain with intermittent numbness in her entire left side. In addition to her history of low back and left leg symptoms, the medical record reflects that the claimant was diagnosed with acute vertigo on February 2, 2000. The claimant also has a history of hypertension, hypothyroidism, and a hiatal hernia for which she takes prescription medication.

On May 5, 2004, persistent complaints of low back and left leg pain prompted Dr. Wilson to order that the claimant undergo an MRI. This MRI, which was taken on May 7, 2004, revealed a central disc herniation at L5-S1. Based upon this finding, Dr. Wilson referred the claimant to Dr. Joseph Queeney for a neurosurgical evaluation. Dr. Queeney examined the claimant on May 28, 2004, at which

time he and the claimant discussed her treatment options. The claimant chose conservative treatment over surgery, so Dr. Queeney sent her for physical therapy. After conservative measures failed to alleviate the claimant's symptoms, she opted for surgical intervention. On July 23, 2004, the claimant underwent a left microlaminotomy and microdiscectomy performed by Dr. Queeney. On August 26, 2004, the claimant was seen by Dr. Queeney in follow-up from her surgical procedure. In his report of that visit, Dr. Queeney stated that the claimant's condition had improved since her surgery. In addition, Dr. Queeney noted that he had been unaware until that time that the claimant's condition was allegedly due to a work related injury. More specifically, Dr. Queeney stated:

I examined plain films performed at the Centers of Excellence which does show some disc degeneration at L5-S1 as well as the laminotomy defect off to the left side. Apparently she has been in contact with an attorney and her injury from back early in the year apparently is a disputed Workman's Comp case. I was never made aware of this and never informed that this was an on-the-job injury.

The claimant disputed the accuracy of Dr. Queeney's statements regarding his awareness that her back condition was the result of an alleged work related injury. Her testimony concerning this issue is as follows:

That's not accurate. When I went up there, I told him [Dr. Queeney] the first time. He said, "I get paid to whack on people, and I don't really care too much about doing it to workers' comp people; but since your doctor referred me..." And it upset me something fierce.

I went straight to my doctor's office [referring to Dr. Wilson]. I could not talk to my doctor, so I gave the message. I was really upset and told them down there in the doctor's office, and my doctor apparently never got the message.

It is undisputed that the claimant fell in the restroom on the afternoon of September 27, 2003, while she was working for the respondent employer in her capacity as a security guard. However, the claimant has failed to prove by a preponderance of the evidence that this fall was work related. Even if the claimant had met her burden of proof and her fall was found to be compensable, she has failed to

prove that her back injury was causally related to that fall.

First, an idiopathic fall is one whose cause is personal in nature, or peculiar to the individual. ERC Contractor Yard & Sales v. Robertson, 335 Ark. 63, 977 S.W.2d 212 (1998). Because an idiopathic fall is not related to employment, it is generally not compensable unless conditions related to employment contribute to the risk by placing the employee in a position which increases the dangerous effect of the fall. Id.

The claimant testified that she slipped on a wet restroom floor on the afternoon of September 27, 2004, resulting in injuries to her hip, back, and head. However, the credible testimony of her supervisor, Ms. Berry, is that the floor was not wet when she arrived on the scene shortly after this incident occurred. The claimant further testified that after her fall, she laid on the floor what "four or five hours," and that she was "embarrassed and disgraced" because her uniform had gotten wet. The record is devoid of any evidence to corroborate the claimant's contention that

her uniform was wet as result of this incident. Furthermore, even if the floor had been wet, the claimant admitted that she was wearing a new pair of slip proof shoes at the time. In addition, the claimant testified that she must have hit her head on something as she was falling. More specifically, the claimant testified as follows:

Q. Did you hit anything on the way down?

A. Apparently I did because when I called my supervisor, Vonda Berry, I told her my head was hurting and that I was dizzy and my hip hurt right in here. (Indicating)

Q. If you remember, did you hit a door or a wall or did all that hit the floor?

A. I couldn't say if my head hit the wall or the stall thing. There's a wall there on the stalls. I can't say if I hit that or hit the wall or if my head just hit the floor.

The emergency room records from the date of the incident do not reflect that the claimant sustained any injury to her head. Those records indicate that the claimant sustained a contusion to her left hip only. Furthermore, the

claimant denied to emergency personnel having sustained any head trauma from her fall.

Lastly, the claimant admitted that she was taking medication for hypertension, hypothyroidism, and a hiatal hernia at the time of her fall. Although the claimant had been taking these medications for a period of time, she denied knowing that dizziness is a side effect of each medication that she was taking, or that dizziness is a symptom of high blood pressure. As previously mentioned, the claimant denied having experienced prior episodes of dizziness for which she sought medical treatment. This testimony contradicts the claimant's medical records which show that she was treated for dizziness on at least three separate occasions prior to September 27, 2004.

Finally, the claimant denied having passed out prior to her fall. Moreover, the claimant denied having told anyone that she had passed out and fallen. However, the incident reports, which were completed by the claimant and her supervisor, and the first page of the emergency room

records are consistent with Ms. Berry's testimony that the claimant told her she had passed out and fallen.

Questions concerning the credibility of witnesses and the weight to be given to their testimony are within the exclusive province of the Commission. White v. Gregg Agricultural Ent., 72 Ark. App 309, 37 S.W.3d 649 (2001). When there are contradictions in the evidence, it is within the Commission's province to reconcile conflicting evidence and to determine the true facts. Id. The claimant's testimony concerning her fall of September 27, 2004, and the injuries she claims she sustained in that fall is often in complete contradiction to the medical record. The claimant's testimony also contradicts that of her supervisor and co-worker. The only supporting evidence that the claimant offered at the hearing was the biased testimony of her daughter, Ms. Sarah Lyle. An ex-employee of Tyson, Ms. Lyle testified concerning her past personal observations about conditions at the Tyson plant, particularly the floors. However, this witness's testimony was not relevant to events surrounding the claimant's fall on the afternoon in

question. Considering the inconsistencies between the claimant's testimony, the medical records, and the testimony of other credible witnesses, and considering the claimant's propensity to forget certain critical details concerning her past medical history, we find that the claimant has proven that she is an unreliable witness. Therefore, the claimant's testimony is given little weight.

Therefore, and for the reasons set forth above, we find that the claimant has failed to prove by a preponderance of the evidence that her fall on September 27, 2004, was work related. The weight of the credible evidence reveals that the claimant suffered an idiopathic fall on the afternoon in question. Therefore, the compensability of this claim is hereby denied and the decision of the Administrative Law Judge reversed. Moreover, even if the claimant had proven that her fall was compensable, a finding we specifically do not make, we find that she has failed to prove by a preponderance of the evidence that her subsequent back injury was causally connected to that fall. The claimant, who in contradiction to her testimony had been

treated for back problems prior to her fall, made no contemporaneous complaints of back injury at the time of her fall. And although an MRI was not taken of the claimant's back until her first reports to Dr. Wilson of pain in that area, medical personnel obviously were given no indication of injury to the claimant's back at the time of her fall, and, therefore, saw no reason to conduct that type of diagnostic testing. In addition to the requirements for compensability set forth in Ark. Code Ann. §11-9-102(4)(A)(i), employees are required to show that a causal connection existed between their injury and employment. Gerber Products v. McDonald, 15 Ark. App. 226, 691 S.W.2d 879 (1985). Furthermore, the claimant must establish a compensable injury by medical evidence, supported by objective findings as defined in §11-9-102(16). The record is devoid of objective medical findings which support a finding that the claimant hurt her back at the time of or as a result of her fall. Moreover, the record is devoid of opinions rendered by the claimant's treating physicians which establish a causal connection between the claimant's

fall and her back condition. Because the claimant had previous problems with her low back and left leg, the evidence preponderates against these problems having resulted from her fall in the restroom. Therefore, we find that the claimant has failed to establish that her herniated disc is causally connected to her fall.

Based upon the above and foregoing, the decision of the Administrative Law Judge is hereby reversed, and this claim is denied and dismissed.

IT IS SO ORDERED.

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OLAN W. REEVES, Chairman

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KAREN H. MCKINNEY, Commissioner

Commissioner Turner dissents.

DISSENTING OPINION

\_\_\_\_\_I must respectfully dissent from the majority's opinion reversing the Administrative Law Judge's April 22, 2005 decision. The majority found that the claimant has

failed to prove by a preponderance of the evidence that she sustained a compensable back injury on February 27, 2004, as a result of a work related fall. In the majority's opinion, the preponderance of the evidence shows that the claimant's fall was idiopathic, and therefore, not compensable.

Further, the majority states that even if it was found that the claimant sustained injuries from a compensable fall on the above date, a finding which they did not specifically make, the claimant failed to prove by a preponderance of the evidence that her herniated disc is causally related to her slip and fall accident.

In my opinion, claimant has established by a preponderance of the credible evidence that she slipped and fell on a wet floor in the bathroom at Tyson during the course and scope of her employment. In this regard, I note that claimant's testimony as to what happens appears to be extremely well corroborated by the contemporaneous medical reports from the Emergency Room where she sought treatment on the night of her fall. The Emergency Medical Services Narrative from February 27, 2004, contains a history that

the claimant slipped and fell. The Johnson Regional Medical Center report from that same date contains a somewhat ambiguous typed statement of "passed out at work". Another report from February 27, 2004, unambiguously indicates that claimant's chief complaint was that she fell on a wet floor and likewise indicates that she slipped on a wet floor. The handwritten history contained in the Nursing Assessment Form from the date of injury indicates that claimant's chief complaint was that she slipped on a wet floor and was experiencing pain in her left hip. To whatever extent the claimant 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 the respondent employer 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 claimant's employment.

To the extent that the respondents assert that there is no casual relationship between claimant's herniated disc and her fall on February 27, 2004, I note from the contemporaneous medical report from February 27, 2004, that claimant 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 claimant 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 in 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 claimant, 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, claimant 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.

For the foregoing reasons, I must respectfully dissent from the majority opinion. In my opinion, the Administrative Law Judge's April 22, 2005 decision should be affirmed and adopted.

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SHELBY W. TURNER, Commissioner