

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F507964

PAMELA JAMES, EMPLOYEE	CLAIMANT
MAYTAG MANUFACTURING, EMPLOYER	RESPONDENT
FIDELITY & GUARANTY, CARRIER	RESPONDENT

OPINION FILED MAY 8, 2007

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

Claimant represented by HONORABLE JAMES A. MCCLARTY,
Attorney at Law, Newport, Arkansas.

Respondent represented by HONORABLE WILLIAM C. FRYE,
Attorney at Law, Little Rock, Arkansas.

Decision of Administrative Law Judge: Affirmed.

OPINION AND ORDER

In an opinion filed on August 10, 2006, the Administrative Law Judge found that the claimant proved by a preponderance of the evidence that she sustained a compensable injury on July 26, 2005, in the course and scope of her employment. The Administrative Law Judge also finds the claimant's injury was due to slipping on the employer's stairs, and was not the result of an idiopathic episode. Accordingly, the Administrative Law Judge granted medical and temporary total disability benefits.

After a de novo review of the record, it is clear that the Administrative Law Judge was correct in finding (1) that the injury occurred in the course and scope of her employment, (2) that it was not the result of an idiopathic episode, and (3) that the claimant was entitled to temporary total disability benefits. Therefore, we affirm the Administrative Law Judge's decision.

Claimant had been employed by Respondents for sixteen (16) years, where she worked on an assembly line. The claimant testified that in order to get to the side of the assembly line where she worked, she was required to use temporary stairs that crossed over the assembly line. This was the only way for the claimant to get to and from her work area.

On July 26, 2005, at the end of her shift, the claimant ascended the temporary stairs as a means to depart the assembly line area. Claimant testified that she was headed to her locker, where she stored her employee apron, work tools, and personal items, and then she was going to clock-out to go home. However, while ascending the temporary stairs, the claimant fell and fractured her hip.

Claimant testified that while ascending the temporary stairs, she heard the steps "pop" and then raise

up and rock back and forth. The claimant then caught her right toe on the step, which caused her to fall. The claimant testified that these steps were only temporary steps, and as such, they had not yet been bolted to the floor. Both parties stipulated to the fact that the Claimant's husband, who was also employed at Maytag, would testify that the stairs were not bolted to the floor. Respondent's Health and Safety Manager, Charles "Woody" Osteen, testified that he did know the exact date when the steps were put in or if they were bolted down yet on the date of the claimant's injury. Osteen could only state that the stairs had been there for only a few weeks, were repositioned several times after this incident, and that he thought that the stairs were bolted to the concrete floor on the date of the accident. Ultimately, there was no evidence that the stairs were bolted to the floor.

Claimant testified that, after falling, she could not get up and was experiencing severe pain. Co-workers Craig Springsteen and Chris Bell were nearby and assisted the claimant in locating Rhonda Jones, the Respondent's nurse. When Jones arrived at the scene, she was accompanied by line supervisor, Jeff Gallion. Because she could not move herself, the claimant was picked up and placed in a

wheelchair by Jones. Jones examined the claimant and drafted the injury report, which reinforces the claimant's testimony about the events which occurred. Jones's report states, "As she was going up the steps of the crossover, she got to the second or third steps and fell up the steps."

The claimant was then sent to Prime Care Medical to see Dr. Warnock, the off-site worker's compensation doctor for the respondents. Dr. Warnock referred the claimant to the Emergency Room. Claimant's husband, Levi James, accompanied her to the emergency room. Claimant was seen by Dr. Sherwood, who diagnosed the claimant as having a fractured left hip. Dr. Sherwood's medical records indicate that the claimant felt a sharp pain in her left hip, and a coworker had to catch her so that she did not fall. The claimant was then seen by Dr. James R. McCoy, an orthopedic surgeon, whose final diagnosis was "intertrochanteric fracture secondary to fall." Dr. McCoy successfully operated on the claimant, performing an open reduction and internal fixation of her left hip. Dr. McCoy's medical records indicate that x-rays were taken on December 12, 2005, and which indicated that the claimant's hip was "almost completely healed" and stable.

Claimant testified that she had a history of pain, caused primarily from fibromyalgia and rheumatoid arthritis. In fact, she had experienced some pain in her legs prior to the accident. Claimant testified, however, that the pain she felt that day after falling was unlike any other fibromyalgia flare-up, and that she had never felt that level of pain in her left hip as she felt after the fall.

The respondent contends that the claimant was not performing employment service at the time she sustained her injury and therefore, was not performing employment services as required to receive benefits due to sustaining a compensable injury. Workers' compensation laws define a compensable injury as, "An accidental injury causing internal or external physical harm to the body . . . arising out of the course of employment and which requires medical services or results in disability or death. A.C.A. §11-9-102(4)(A)(i). Employment services are performed when the employee does something, "within the time and space boundaries of employment," and the injury occurred when the employee was acting to benefit the employer directly or indirectly. Collins v. Excel Spec. Products, 347 Ark. 811, 69S.W.3d 14(2002); Pifer v. Single Source Transp., 347 Ark. 851, 69 S.W.3d 1(2002).

Claimants have been determined to be acting in the course of business despite being in a different section of the employer's building to retrieve tools, because the tools were manifestly advancing the employer's interest. In Privett v. Excell Specialty Products, Privett was required to wear a hard hat, a hair net, an apron, a smock, gloves, and a steel-mesh sleeve for safety and sanitary reasons. Because she was required to use sharp knives on the job, she was also required to carry a knife scabbard with her on the job. Privett could not begin performing her job unless she had the proper equipment and clothing. On the injury date, Privett, in the production area of the plant, realized that she had left her scabbard in the laundry room. As she proceeded back to the laundry room, she slipped and fell, and was injured. The Arkansas Court of Appeals found that the claimant was performing employment services because she was furthering the employer's interests by fulfilling the requirement of carrying necessary equipment required by the employer. Privett v. Excell Specialty Products, 76 Ark. App. 527 69 S.W.3d 445 (2002).

Additionally, claimants have previously been determined to be acting in the course of employment despite being on break in situations where they further the

employer's interests. In Wal-Mart Stores, Inc. v. Sands, a case where the respondent required workers to lock up personal items in lockers prior to working or returning from break, and the claimant injured herself while locking up personal items before returning from a break, the claimant was found to be performing employment services because she was furthering the employer's interests by fulfilling the requirements of a loss prevention policy required by the employer. Wal-Mart Stores, Inc. v. Sands, 80 Ark. App.51; 91 S.W.3d 93 (2002).

Likewise, in Wallace v. West Fraser South, the claimant was deemed to be performing employment services when he was injured while crossing a board that was put in place to prevent workers from having to walk in a muddy ditch. At the time of the injury he was returning from break but had not yet reached his work area. Wallace v. West Fraser South, 365 Ark. 68; ___ S.W.3d ___ (2006). In Wallace the claimant, in advance of the hearing, gave a recorded statement to a claims adjustor. In that statement he reported he was returning from break at the time of the injury. However, during the hearing, he testified that he had already returned from break at the time the injury occurred. In reaching its conclusion the Arkansas Supreme

Court upheld the Commission's determination that Wallace's injury occurred as he was "returning from break." The Court found that Wallace's injuries therefore occurred within the "time and space boundaries of his employment." Rather, the question was whether Wallace was "carrying out the employer's purpose or advancing the employer's interests directly or indirectly." Id. The Court opined that by crossing the board in order to return to work the claimant directly advanced the employer's interests and was therefore acting within the scope of employment. Id.

In the present case, as in Privett, the claimant was wearing at least one tool necessary to perform her job when she fell. As in Sands, the claimant was proceeding to a locker, to stow her apron and tool and to retrieve her purse, when the fall occurred. As in Wallace, the claimant's injury occurred on the steps which were installed to facilitate employees getting to and from the work site. In fact, the steps were the only means for the claimant to get to and from her work site. The claimant was working within the time and space of her employment as she was going to her locker and then the time clock and had to cross the stairs in order to perform those duties. It is evident that the claimant was manifestly advancing her employer's interests

by taking the only stairs from her work area to the locker where she stored her work tools and was retrieving her personal items before clocking out.

The Respondent rejects the claimant's contention that she was performing employment services at the time of the injury. The Respondent contends that the claimant's shift had ended, and, as such, she was not advancing the employers interests. This is wrong as a matter of law for the aforementioned reasons. The claimant was clearly within the scope of employment as she was crossing the stairs in order to hang up her tools. Despite the fact that her shift had ended, the claimant was still required to go to her locker, store her work tools and retrieve personal items and then clock out. As such, she was advancing her employers interests at the time of the accident.

The Respondent argues that the claimant has a history of back, leg, and hip pain, and problems produced from fibromyalgia and arthritis. In fact, there is no evidence that the claimant had ever fallen due to the fibromyalgia or arthritis. Nor is there any evidence that the claimant would have sustained a fracture without falling. Rather, the claimant fell due to the dangerous work conditions, in that the temporary stairs were not bolted to

the floor and the claimant felt the stairs rock back and forth before she snagged her toe and fell.

Courts generally have held that when a claimant suffers from an unexplained injury it is compensable; whereas when a claimant suffers from an idiopathic injury it is not. Little Rock Convention & Visitors Bureau v. David Pack, 60 Ark. App. 82 (1997); 959 S.W.2d 415(1997). An idiopathic injury is an injury that is personal in nature or peculiar to the individual sustaining the injury. Id; Kuhn v. Majestic Hotel, 324 Ark. 21, 918 S. W. 2d 158(1996). As an idiopathic injury is not related to the employment in order for it to be compensable there must be conditions related to the employment which increase the dangerous effect of the fall. Leon B. Crawford v. Single Source Transportation Fidelity & Casualty Insurance Company, 87 Ark. App. 216, 189 S.W.3d 507 (2004), citing Little Rock Convention & Visitors Bur., supra. See also, ERC Contractor Yard & Sales v. Robertson, 60 Ark. App. 310, 961 S.W.2d 36 (1998).

In Leon B. Crawford v. Single Source Transportation Fidelity & Casualty Insurance Company, the claimant worked as a truck driver. He was injured while he was stepping from an elevated position down steep steps on

the truck. The claimant testified that while he was negotiating the steps, his knee "gave" or buckled. As a result, he fell to the ground and felt pain in his knee. The Court found that the claimant's injury was not idiopathic as it was sustained in an effort to exit the employer's vehicle from an elevated position. Crawford, supra.

Likewise, in Swaim v. Walmart, the claimant, a diabetic employee heard a "pop" in his foot while pulling a pallet of produce. The court found that there was not substantial evidence that the diabetes predisposed the employee to a foot fracture, nor was there substantial evidence that the work conditions did not contribute to the risk that a fracture could occur. Swaim v. Wal-Mart Associates, Inc., 91 Ark. App. 120, ___ S.W.3d ___ (2006).

In contrast, however, the court in Whitten v. Edward Trucking, found that the claimant had sustained an idiopathic injury and was therefore denied benefits. The claimant was walking up the stairs at work when he felt a pain in his back and fell to the floor. He did not trip or stumble, nor was he carrying anything heavy. The claimant had three known medical conditions or events predating his injury. One doctor opined that the fall may have been caused by a lesion on the thoracic cord. As such, the Court found

that the claimant sustained an idiopathic injury and not an unexplained fall, and denied benefits. Whitten v. Edward Trucking/Corporate Solutions, 87 Ark. App. 112, 189 S.W.3d 82 (2004).

In the present case, as in Crawford, the claimant was negotiating steps, which were the only means by which the claimant had access to her work area. As in Swaim, the record contains no evidence that the fibromyalgia or arthritis predisposed the claimant to falling, yet there was substantial evidence that the stairs were not bolted down, thereby contributing to the risk of falling. The case at hand is distinguished from Whitten, in that the claimant was negotiating stairs which were not bolted to the floor. The claimant testified that she caught her right toe on the stairs, because the stairs began rocking back and forth. The stairs were the actual cause of her falling. Thus the claimant explains the fall, whereas in Whitten, the claimant felt a pain and then fell, providing no evidence that the stairs caused the fall. Also, in the present case none of the doctors determined that the claimant's arthritis caused the fall.

In the present case, the claimant and her husband testified that the stairs were not bolted to the floor,

which ultimately caused the claimant to fall. In fact, the stairs were temporary and had only been in that particular location for two weeks. It is interesting that even Woody Osteen, Respondent's Safety and Health Manager, testified that did not know when the stairs had been bolted. Clearly, the claimant fractured her hip, yet there is no evidence in the record saying that the pre-existing condition caused the fall. Rather, the claimant fell due to snagging her toe on unstable stairs.

In the present case there is no evidence the claimant had a history of spontaneously falling due to her arthritis. The claimant did, however, fall at work on March 3, 2005, but she was not injured, nor did she seek medical treatment. The claimant testified that she was pushing a cart when it turned over, causing her to fall with the cart. Thus, the claimant's testimony fully explained the circumstances surrounding the fall. In September of 1997, the claimant stepped out of the shower, became dizzy and passed out. When she came to, she was in a seated position. The claimant, however, did not experience a spontaneous fall due to her arthritis; she became dizzy and fainted, which explains the circumstances surrounding that incident. In the present case, the claimant's testimony also fully explained

the circumstances surrounding the fall, and it is evident that the claimant did not sustain a fall due to arthritis. Furthermore, even if the claimant suffered from an unexplained injury, it would still be compensable. See Little Rock Convention and Visitors Bureau. Yet the claimant in the present case fully explained that the stairs were rickety, which ultimately led to her falling, and thus her injury is still compensable. Additionally, even if the claimant was simply clumsy, her fall would still be compensable.

Furthermore, the evidence does not indicate the claimant suffered from an idiopathic injury. Although the claimant does suffer from fibromyalgia and arthritis and has previously complained of back, hip, and leg pain, there is no evidence that these problems caused the injury or contributed in any way to the injury. In fact, the claimant was not in severe pain until after she fell. It was only after falling that she was in so much pain that she could no longer walk and had to use a wheelchair to leave the work area. The Administrative Law Judge specifically points to the respondent's position that the claimant's hip fracture would have occurred had the claimant simply been walking, and concludes that the record does not contain evidence to

support this position. In fact, the respondents rely solely on Dr. Sherwood's emergency room impression that the claimant felt a sharp pain in her left hip, and a coworker had to catch her so that she did not fall. However, Jones, the respondent's nurse and first to examine the claimant, noted that the injury occurred when the claimant fell going up the stairs. Furthermore, Dr. McCoy specifically found that the fracture was secondary only to the fall. Thus, the Administrative Law Judge correctly found that the claimant did not sustain an idiopathic injury.

Also in the present case, the claimant reported the fall immediately to Jones, who ultimately filed an injury report. The claimant reported that she fell going up the stairs. The claimant's testimony also fully explained the circumstances surrounding the fall. Yet the respondents contend that the claimant is inconsistent because the doctors reports are somewhat inconsistent. However, when the claimant sought treatment, the physicians were focused primarily on treating the injury, not what caused the injury. First, Dr. Sherwood reported that the claimant was walking up some stairs going to work when the pain became acutely worse and felt a sudden onset of very sharp pain in her left hip. Second, Dr. McCoy's records were inconsistent

in that they first stated that the claimant was going down steps, had a severe sudden onset of pain in her left hip, and apparently suffered a spontaneous fracture. It was not until after the claimant's surgery that Dr. McCoy noted that he had been mistaken about the facts and that the claimant actually fell while going up the stairs over her assembly line while getting ready to go home. Third, Dr. Koch ultimately and correctly diagnosed the claimant as having a fracture secondary to her fall. The inconsistent medical reports are not proof that the claimant was inconsistent, but rather that the doctors ultimate responsibility was to treat the condition rather than pay attention to every detail of the accident. In fact, the medical reports of the claimant's injury were written by the individual doctors, not by the claimant. Ultimately, the facts as given in Jones' report are the most accurate reflection of the truth. It is therefore evident that the claimant was not inconsistent and that her initial and immediate report is the truth. Furthermore, the Commission has in the past given precedence to a contemporaneous injury report rather than to the history obtained by a subsequent treating physician. See, Geraldine Wyers v. Securitas Security Services USA, Full Commission Opinion Filed January 30, 2006 (F404193).

Even if one believes the fall was idiopathic in nature, the location of the injury indicates there were aggravating circumstances which would make the injury compensable. The claimant testified that the injury occurred on the stairs, which would in itself would be enough to necessitate an aggravating circumstance. Jones even included in her report that the injury occurred on the stairs. Additionally, the stairs where the accident occurred were only temporary stairs. The claimant testified that the stairs were not bolted to the floor, and that the stairs began rocking back and forth before she caught her toe on the step. Furthermore, Osteen testified that he did not know when the stairs had been bolted to the floor. It is evident that the stairs were bolted to the floor subsequent to the claimant's fall, which would indicate the unsecured temporary stairs were likely the reason for the claimant's fall and that the conditions of the stairs increased the dangerous effect of employment.

The claimant also requests medical and temporary total disability benefits. Arkansas Worker's Compensation law provides that an employer shall promptly provide an injured employee such medical treatment as may be reasonably necessary in connection with the injury received by the

employee. Ark. Code Ann. §11-9-508(a). The claimant bears the burden of proving that she is entitled to additional medical treatment. Dalton v. Allen Eng'g Co., 66 Ark. App. 201, 989 S.W.2d 543 (1999). Whether treatment is reasonably necessary in relation to the claimant's compensable injury is a question of fact for the Commission. See, e.g., Hill v. Baptist Medical Centers, 74 Ark. App. 250, 48 S.W.3d 544 (2001).

The claimant requested additional medical directly related to the hip injury on June 25, 2005, which was reasonable and necessary to the treatment of the injury. Respondents do not dispute that the requested medical is related to the claimant's injury or that it is reasonably necessary in treating that condition. Accordingly, we affirm the Administrative Law Judge's decision granting medical benefits.

The claimant also requested temporary total disability benefits for the time period of July 26, 2005 to a date to be determined. Temporary total disability for unscheduled injuries is that period within the healing period in which claimant suffers a total incapacity to earn wages. Ark. State Highway & Transportation Dept. v. Breshears, 272 Ark. 244, 613 S.W.2d 392 (1981). The healing

period ends when the underlying condition causing the disability has become stable and nothing further in the way of treatment will improve that condition. Mad Butcher, Inc. v. Parker, 4 Ark. App. 124, 628 S.W.2d 582 (1982).

The Administrative Law Judge granted the claimant temporary total disability from July 26, 2005 through December 12, 2005. The Administrative Law Judge found that Dr. McCoy's medical records indicate that x-rays were taken on December 12, 2005, and indicated that the claimant's hip was "almost completely healed" and stable. No subsequent records indicate that the claimant was off work as a result of her compensable hip fracture. Accordingly, it is evident the claimant remained in her healing period and unable to work during the time she is requesting benefits. We affirm the Administrative Law Judge's decision granting temporary total benefits.

The Administrative Law Judge granted the claimant medical and temporary total disability benefits due to finding that her injury occurred while she was performing employment services and her injury was not due to an idiopathic fall. This finding was supported by the fact that the claimant was negotiating stairs at her place of employment when the injury occurred. Also, the

Administrative Law Judge relied on the testimony of the claimant and her husband regarding whether the temporary stairs were bolted to the floor at the time of the injury. Furthermore, the medical records do not show any indication that the claimant had a history of falling due to arthritis, and the employer provided no witnesses to the injury in order to testify that the claimant felt pain and was injured before falling. Also, the employer provided no evidence that the claimant's medical history contributed to either the fall or the injury.

Ultimately, the evidence indicates the claimant struck her left leg and hip after falling during the process of negotiating temporary and unsecured stairs. The claimant had no personal illness causing her to fall. Furthermore the claimant was negotiating the only access to and from her work area, indicating that the circumstances of her work worsened her injury. As a result of that fall, the claimant suffered a fractured hip. Therefore, we affirm the Administrative Law Judge's decision to award medical and temporary total disability benefits.

All accrued benefits shall be paid in a lump sum without discount and with interest thereon at the lawful rate from the date of the Administrative Law Judge's

decision in accordance with Ark. Code Ann. §11-9-809 (Repl. 2002).

Since the claimant's injury occurred after July 1, 2001, the claimant's attorney's fee is governed by the provisions of Ark. Code Ann. §11-9-715 as amended by Act 1281 of 2001. Compare Ark. Code Ann. §11-8-715 (Repl. 1996) with Ark. Code Ann. §11-9-715 (2002). For prevailing on this appeal before the Full Commission, claimant's attorney is hereby awarded an additional attorney's fee in the amount of \$500.00 in accordance with Ark. Code. Ann. §11-9-715(b) (Repl. 2002).

IT IS SO ORDERED.

OLAN W. REEVES, Chairman

PHILIP A. HOOD, Commissioner

Commissioner McKinney dissents.

DISSENTING OPINION

I must respectfully dissent from the majority opinion. My carefully conducted de novo review of this claim in its entirety reveals that the claimant's hip fracture was

the result of an idiopathic fall, and is, therefore, not compensable.

At the end of her shift on July 26, 2005, the claimant was walking up a short flight of temporary stairs built over the assembly line on which she had been working. The claimant testified that she was headed to her locker to store her apron and tools, then clock-out to go home. The claimant testified that as she was ascending the steps, she heard the steps "pop", they raised, and she caught her right big toe on a step. The claimant stated that she was on the second or third ascending step when this incident occurred. The claimant alleges that when she caught her toe on the step, it caused her to fall, striking her left ribs and left hip on the stair rails. It was later confirmed that the claimant had a broken left hip that required surgical repair.

The claimant testified that the stairs were "more or less a temporary set-up", that was put in place until permanent stairs could be built for the new assembly line. She further testified that the stairs were not bolted down to the floor on the date in question. The claimant attributed the popping noise that she allegedly heard at the time of the incident to the steps being unfastened to the

floor, and essentially slapping the floor from the shift caused by her weight. More specifically, the claimant testified as follows:

A. Well, the steps were not secured to the floor as they normally are; and if the weight is a little heavier on one side than it is on the other, sometimes it'll pop up on one side.

Q. It'll rock?

A. Yes. It kinda rocks back and forth; and whenever it raised up, that was when I caught my toe.

The claimant stated that she was unable to move without assistance after she fell. She said that her left leg "wouldn't work" and she was in "a lot of severe pain." The claimant testified that the second shift plant nurse, Rhonda Jones, was alerted to the incident by co-workers Craig Springsteen and Chris Bell. Ms. Jones arrived at the scene accompanied by line supervisor, Jeff Gallion. The claimant stated that Ms. Jones assisted her into a wheelchair and took her to the nurse's station.

The claimant testified that she was accompanied to the emergency room by her husband, Levi James. An emergency room report from that date reflects that the claimant was examined by Dr. Sherwood, who stated the following:

HISTORY OF PRESENT ILLNESS: This 49 year old white female presents to the emergency room with history of having left hip pain kind of on and off in the past. She says it got acutely worse today when she was walking up some stairs going to work. She felt the sudden onset of very sharp pain in her left hip and a co-worker had to catch her so she didn't fall.

Emergency room x-rays revealed that the claimant had a fractured hip. Therefore, orthopedic surgeon, Dr. James R. McCoy, performed an open reduction with internal fixation of the claimant's fracture on July 27, 2005, with good results. In his preoperative notes, Dr. McCoy stated that the claimant had a "sudden onset of severe pain in her left hip while just walking down some stairs at work yesterday afternoon about five o'clock." In his consultation report dated that same day, Dr. McCoy stated:

This is a 49 year old white female who presents with the chief complaint that while at work yesterday afternoon at the Maytag washing machine company she started to walk over some steps that led over "her line", as she puts it, and she started down the steps and had the severe sudden onset of pain in her left hip. She had to be helped down and was brought to the emergency room last night ...

An injury report dated July 26, 2005, generally corroborates the claimant's version of events. This report reflects that as the claimant was "[g]oing to cross the crossover at the Front bulkhead cell on Dryer line #2", she got to the "second or third step and fell up on the steps." This report further corroborates that the claimant was brought to the nurse's station in a wheelchair, and from there sent to Prime Care for further evaluation. However, this report does not describe the mechanics of the claimant's fall. In addition, this report indicates that the claimant had been experiencing pain in her left hip and leg for approximately two days prior to the incident.

When questioned about her preexisting pain, the claimant admitted that she had a long history of back, hip, leg, and shoulder pain and problems produced primarily by fibromyalgia. A review of the medical records reveals that the claimant has been under active medical treatment by her family physician, Dr. C.W. Koch, for symptoms associated with this condition since the mid-1990's. Further, on July 14, 1998, the claimant was evaluated by a rheumatologist, Dr. Laura Trigg, who in addition to fibromyalgia, diagnosed the claimant with osteoarthritis. In her report, Dr. Trigg indicated that the claimant had a

history of left leg trauma dating back to 1993. The records also indicates, and the claimant's testimony corroborates, that she passed out and fell in her bathroom at home in 1997. Further, the claimant was involved in an automobile accident in March of 1998, from which she experienced subsequent tenderness in her left hip and back for a period of about three months.

With regard to more contemporaneous incidents of falling and injury, the records corroborate testimony by the claimant that she filed a report of injury on March 3, 2005, after she fell on top of an overturned rack at work. The claimant sustained bruises on her legs, but apparently received no medical treatment and missed no time from work as a result of this incident.

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); Kuhn v. Majestic Hotel, 324 Ark. 21, 918 S.W.2d 158 (1996); Little Rock Convention & Visitors Bur. v. Pack, 60 Ark. App. 82, 959 S.W.2d 415 (1997); Moore v. Darling Store Fixtures 22 Ark. App. 21, 732 S.W.2d 496 (1987). Injuries sustained due to an unexplained cause are different from injuries where the cause is idiopathic. ERC Contractor Yard

& Sales v. Robertson, supra. Where a claimant suffers an unexplained injury at work, it is generally compensable. Little Rock Convention & Visitors Bur., supra. Because an idiopathic injury is not related to employment, it is generally not compensable unless conditions related to the employment contribute to the risk by placing the employee in a position, which increases the dangerous effect to the fall. Id.

The record clearly reveals that the claimant has a long standing history of hip and leg problems. Further, the claimant admits that these problems sometimes affect the way she walks. Referring to the significance of these problems and the affect they have on her mobility, the claimant testified as follows:

Q. Back on July 29, 1998, you went to see her [Dr. Trigg] and indicated that you were having significant problems with your left hip and left leg. When you described to Doctor Trigg having significant problems, what did you mean?

A. Significant problems?

Q. Yes, ma'am. You went in and said that you were having significant problems with your left hip.

A. That would be that is was just major. That's the way I describe significant.

Q. In your deposition, you told me that

you describe this in your hip as being a deep muscle pain.

A. Correct.

Q. Would that be around the ball of the hip; the muscles around that is what you're describing?

A. The middle of my hip, and it just goes all the way through..

Q. Would it affect the way you walk?

A. At times, yes.

The claimant described experiencing severe pain in her left hip for two consecutive days prior to the incident of July 26, 2005. The claimant testified as follows:

A. It started on Monday between break and lunch, which would be between 9:30 and 11:30. When I got home that night, I took a hot Epsom salt bath and it got better. The next morning, I felt fine and went back to work. Then after I'd been on it for a few hours, it did the same thing. Those were the only two days that I had problems with that hip.

Q. ... you're saying that for two days, you had pain in that hip with every step?

A. Yes.

The claimant testified that the stairs were not bolted down, causing them to rock when she stepped on them, which contributed to her fall. However, the testimony of

Charles Woodrow "Woody" Osteen, contradicts the claimant's testimony in this regard. Mr. Osteen testified that as the Safety and Health Manager for the respondent employer, it is part of his job to ensure that safety guidelines are met. According to Mr. Osteen, the plant had a "line changeover" in July, and the steps in question had been in place for approximately a week or two prior to the July 26, 2005, incident. Mr. Osteen estimated that the stairs, which were constructed of steel and sheet metal, weighed between 100 to 150 pounds and required two men to move. Mr. Osteen agreed that the stairs, which serve approximately 100 to 120 people per shift, are required to be bolted to the floor. Although Mr. Osteen could not state with certainty the exact date the stairs had been bolted to the floor, he stated unequivocally that if they had not been bolted on the day in question, he would have been made aware of this prior to the beginning of the claimant's shift as he was performing his routine safety inspection. Finally, Mr. Osteen stated that he had personally used those particular stairs on the day in question, and he attested that they were stable.

As previously mentioned, although the claimant's injury report generally corroborates her story, it does not specifically reflect that she snagged her toe causing her to

trip and fall on the stairs. And, although the claimant claims now that the doctors were mistaken, there was no "trip and fall" incident reflected in the claimant's hospital records on the day in question, or the day after. Rather, the history recorded at the hospital by the claimant's physicians reflects that she experienced a sudden, debilitating onset of hip pain that essentially brought her to the ground. Moreover, the claimant agreed that only she and her husband were at the emergency room on July 26, 2005. Therefore, it is evident that any historical account of her alleged injury was provided to her doctors by either the claimant or her husband.

Uncorroborated testimony of an interested party is always considered to be controverted. However, the rule also applies to a non-party witness whose testimony might be biased. Burnett v. Philadelphia Life Insurance Co., 81 Ark. App. 300, 101 S.W.3d 843 (2003). It is not arbitrary to choose not to credit such testimony. Id. Moreover, the testimony of an interested party is taken as disputed as a matter of law whether offered on his own behalf or on the behalf of another interested party. Knoles v. Salazar, 298 Ark. 281, 766 S.W.2d 613 (1989).

Clearly, the claimant is an "interested party" in this claim, whereas her doctors are not. In a letter from Dr. McCoy dated November 3, 2005, he states as follows:

As I have outlined to you in previous communications, Mrs. James sustained a fractured proximal femur while working in the employment of the local Maytag manufacturing company here in Searcy. She underwent surgery on 7/27/05 for that purpose.

I appreciate the time and effort you have spent trying to help this lady with her workers' compensation claim. I am of the opinion that this is as clear cut case of compensable injury as I have ever seen. However, I am not an expert in interpreting the law, and I would have to defer that to you. I do want to clarify one point, and that is: when she came to the hospital, the report from Dr. Gary Sherwood said that she fell going up the stairs going to work, when in fact the patient indicates that she was actually at work and walking up a flight of stairs over her assembly line getting ready to go home from work when she fell injuring her hip.

The preponderance of the evidence demonstrates that the claimant was clearly involved in an incident at work on July 26, 2005, from which she sustained physical injury that required medical treatment. However, I find that the claimant has failed to prove by a preponderance of the evidence that this incident was employment related, and

therefore, compensable. Rather, the preponderance of the evidence demonstrates that the claimant's fall was idiopathic, and therefore, not compensable. Therefore, for all the reasons set forth herein, I must respectfully dissent from the majority opinion.

KAREN H. MCKINNEY, Commissioner