

FINAL AWARD DENYING COMPENSATION
(Affirming Award and Decision of Administrative Law Judge
by Supplemental Opinion)

Injury No.: 09-052591

Employee: Jackie Porter
Employer: RPCS, Inc.
Insurer: Fuel Marketers Insurance Trust

This workers' compensation case is submitted to the Labor and Industrial Relations Commission (Commission) for review as provided by § 287.480 RSMo. Having reviewed the evidence, read the briefs, heard the parties' arguments, and considered the whole record, the Commission finds that the award of the administrative law judge is supported by competent and substantial evidence and was made in accordance with the Missouri Workers' Compensation Law. Pursuant to § 286.090 RSMo, the Commission affirms the award and decision of the administrative law judge with this supplemental opinion. The Commission adopts the findings, conclusions, decision, and award of the administrative law judge to the extent that they are not inconsistent with the supplemental opinion set forth below.

Findings of Fact

On July 16, 2009, around 4:00 p.m., coworkers found employee on the floor in a vestibule outside the employee bathroom, complaining that she'd fallen. Employee suffered a hip injury requiring surgery and also an aggravation of some preexisting back problems, and brought this claim against employer.

The administrative law judge found that employee did not provide credible testimony regarding the circumstances of her fall owing to memory and cognition problems. We agree. We note also that the testimony employee provided at the hearing with respect to the moments before the event (that the last thing she remembers was washing her hands) contradicts her deposition testimony (that the last thing she remembers was locking the bathroom door).

Nobody saw employee fall, and there is no evidence such as video or audio recordings depicting the event. Heather Bonner, employee's coworker, testified that she and two other coworkers were the first to find employee. Ms. Bonner heard employee calling for help and discovered her lying up against the wall in the vestibule outside the bathroom. Ms. Bonner testified she heard employee tell another coworker that she lost her balance and fell. Ms. Bonner also testified she heard employee say she had fallen inside the bathroom and had pulled herself from the bathroom into the vestibule. Debbie Blodgett, another coworker, testified that she went with Ms. Bonner to respond to employee's cries for help, and discovered employee propped slightly against the wall in the vestibule outside the bathroom. Ms. Blodgett testified she asked employee what happened and employee told her she'd been reaching for a stall door and had lost her balance and fallen. Ms. Blodgett testified she asked employee how she got into the vestibule outside the bathroom and employee told her she'd pushed herself through the door. Employee's

Employee: Jackie Porter

- 2 -

grandson, Thomas James, testified that all employee told him when he arrived on the scene was that she had gone to the restroom and woken up on the floor.

We note that employee's attorney, in the course of adducing evidence suggesting the vestibule itself was hazardous, made clear that whether employee fell inside or outside of the bathroom was "disputed." See *Transcript*, page 31. We find the evidence on this point indeterminate. Both Ms. Blodgett and Ms. Bonner testified they heard employee say she fell inside the bathroom and then crawled out of the bathroom, but it strikes us as unlikely, especially considering that the vestibule door was, as employee's grandson put it, "super heavy," that employee was able to navigate her way through that door while crawling on the floor with a serious hip injury. We note both Ms. Blodgett and Ms. Bonner agreed it was difficult to imagine how employee could have made it through the vestibule door in such a condition. This would tend to indicate employee fell in the vestibule, rather than inside the bathroom, but the lack of any credible evidence of the circumstances of employee's fall does not permit us to resolve this question.

Ultimately, in light of the foregoing ambiguities and gaps in the evidence, we are able to find only the following facts with regard to what happened to employee at about 4:00 p.m. on July 16, 2009: (1) employee was on her feet inside the bathroom, (2) employee fell for unknown reasons, and (3) employee was discovered on the floor outside the bathroom. We are unable to determine the specific risk or hazard that resulted in employee's fall.

Conclusions of Law

Accident

The version of Chapter 287 applicable to this claim provides the following definition of an "accident" for purposes of the Missouri Workers' Compensation Law:

The word "accident" as used in this chapter shall mean an unexpected traumatic event or unusual strain identifiable by time and place of occurrence and producing at the time objective symptoms of an injury caused by a specific event during a single work shift.

We conclude employee sustained an accident. Employee established that she fell somewhere in or around the employee bathroom at about 4:00 p.m. on July 16, 2009, and that she experienced symptoms of a serious injury at that time. In other words, employee proved that she suffered an unexpected traumatic event identifiable by time and place and producing at the time objective symptoms of an injury caused by a specific event during a work shift. Employee's evidence has satisfied the foregoing statutory definition.

Injuries arising out of and in the course of employment

We proceed now to the question whether employee proved her injuries arose out of and in the course of employment. Section 287.020.3(2) RSMo sets forth the test and provides as follows:

Employee: Jackie Porter

- 3 -

An injury shall be deemed to arise out of and in the course of the employment only if:

(a) It is reasonably apparent, upon consideration of all the circumstances, that the accident is the prevailing factor in causing the injury; and

(b) It does not come from a hazard or risk unrelated to the employment to which workers would have been equally exposed outside of and unrelated to the employment in normal nonemployment life.

Here, we are concerned only with subsection (b) set forth above, because we are convinced that its application is dispositive. The courts have interpreted the language of subsection (b) to involve a “causal connection” test that employees must satisfy in order to prove that an injury has arisen out of and in the course of employment. *Johme v. St. John’s Mercy Healthcare*, 366 S.W.3d 504, 510-11 (Mo. 2012), quoting *Miller v. Mo. Highway & Transp. Comm’n*, 287 S.W.3d 671, 674 (Mo. 2009). In *Johme*, the Missouri Supreme Court held that an employee who fell while making coffee at work did not sustain injuries that were compensable under workers’ compensation. *Id.* at 512. The *Johme* employee fell in her office kitchen after making a new pot of coffee, per workplace custom, to replace a pot of coffee from which she had taken the last cup. *Id.* at 506. The *Johme* court concluded that the risk or hazard that resulted in the employee’s fall was “turning and twisting her ankle and falling off her shoe.” *Id.* at 511. The Court held that the employee “failed to meet her burden to show that her injury was compensable because she did not show that it was caused by risk related to her employment activity as opposed to a risk to which she was equally exposed in her ‘normal nonemployment life.’” *Id.* at 512.

In so holding, and in specifically contrasting a “work-related risk” versus a “risk to which the employee was equally exposed” outside of work, the *Johme* court made clear that our analysis must begin with an identification of the risk or hazard that resulted in the employee’s injuries, followed by a quantitative comparison whether this specific employee was equally exposed to that risk in her own normal nonemployment life. Following the Court’s reasoning, the result of that quantitative comparison should tell us whether the risk is related or unrelated to employee’s work, and in turn, whether the employee’s injuries were sufficiently causally connected to work, which finally will resolve the question whether an employee’s injuries arose out of and in the course of employment.

But here, we have found that employee failed to establish, as a factual proposition, the risk or hazard that resulted in her fall. Employee advances a number of theories in an attempt to overcome this critical evidentiary problem, but each simply invite us to speculate that something dangerous about employer’s bathroom or the vestibule outside it *may have* caused employee to fall. Employee variously attacks the heavy door to the bathroom, the tile flooring in the bathroom or the smooth laminate flooring in the vestibule, and even the mere possibility that there was water or some other substance on the bathroom floor. In our view, these disparate attempts to portray employer’s bathroom as unusually treacherous merely reinforce the conclusion that we simply don’t know what risk or hazard caused employee to fall.

Employee: Jackie Porter

- 4 -

We note that the administrative law judge cited *Bivins v. St. John's Reg'l Health*, 272 S.W.3d 446 (Mo. App. 2008), wherein the court found that an employee's injuries were not compensable where she testified that she "just fell" and where no evidence suggested something about her work contributed to the event. *Id.* at 450. The *Bivins* court concluded that, in such circumstances, the employee failed to prove that her injuries arose out of and in the course of her employment. *Id.* at 451-52. We agree with the administrative law judge that *Bivins* is fatal to this claim. This is because even if we accept employee's argument that the heavy door or *possibly* wet floor rendered employer's bathroom more dangerous than other bathrooms, employee's evidence does not permit us to rule out the possibility that nothing about the bathroom itself actually contributed to the event but that employee "just fell." In other words, because employee has failed to identify a specific risk or hazard, we are unable to perform the causal connection test identified by the court in *Johme* as determinative of the issue whether employee's injuries arose out of and in the course of her employment.

Finally, we reject employee's argument that this Commission should apply the civil negligence doctrine of *res ipsa loquitur* because employee fails to identify any authority for using a common law civil negligence doctrine to analyze a statutory element of a workers' compensation claim.

Decision

Based upon the foregoing, we affirm the award of the administrative law judge with this supplemental opinion. We deny employee's claim because she failed to prove that she sustained injuries arising out of and in the course of her employment for purposes of the Missouri Workers' Compensation Law.

All other issues are moot.

The award and decision of Administrative Law Judge Victorine R. Mahon, issued September 14, 2011, is attached, affirmed, and incorporated by this reference to the extent it is not inconsistent with our findings, conclusions, and decision herein.

Given at Jefferson City, State of Missouri, this 7th day of December 2012.

LABOR AND INDUSTRIAL RELATIONS COMMISSION

V A C A N T

Chairman

James Avery, Member

Curtis E. Chick, Jr., Member

Attest:

Secretary

AWARD

Employee: Jackie Porter

Injury No. 09-052591

Dependents: N/A

Employer: RPCS, Inc.

Before the
DIVISION OF WORKERS'
COMPENSATION
Department of Labor and Industrial
Relations of Missouri
Jefferson City, Missouri

Additional Party: N/A

Insurer: Fuel Marketers Insurance Trust
c/o Alternative Risk Services

Hearing Date: July 28, 2011

Checked by: VRM/db

FINDINGS OF FACT AND RULINGS OF LAW

1. Are any benefits awarded herein? No.
2. Was the injury or occupational disease compensable under Chapter 287? No.
3. Was there an accident or incident of occupational disease under the Law? No.
4. Date of accident or onset of occupational disease: Alleged July 16, 2009.
5. State location where accident occurred or occupational disease was contracted:
Alleged to have occurred in Greene County, Springfield, Missouri.
6. Was above employee in employ of above employer at time of alleged accident or occupational disease? Yes.
7. Did employer receive proper notice? Yes.
8. Did accident or occupational disease arise out of and in the course of the employment? No.
9. Was claim for compensation filed within time required by Law? Yes.
10. Was employer insured by above insurer? Yes.
11. Describe work employee was doing and how accident occurred or occupational disease was contracted: Claimant fell at work.
12. Did accident or occupational disease cause death? No. Date of death? N/A.
13. Part(s) of body injured by accident or occupational disease: Alleged back and right hip.

14. Nature and extent of any permanent disability: N/A.
15. Compensation paid to date for temporary disability: None.
16. Value necessary medical aid paid to date by employer/insurer? None.
17. Value necessary medical aid not furnished by employer/insurer? None.
18. Employee's average weekly wages: \$320.00.
19. Weekly compensation rate: \$213.34.
20. Method wages computation: By agreement of the parties.

COMPENSATION PAYABLE

21. Amount of compensation payable: None.
22. Second Injury Fund liability: N/A.

TOTAL: NONE.

23. Future requirements awarded: None.

FINDINGS OF FACT and RULINGS OF LAW:

Employee: Jackie Porter

Injury No. 09-052591

Dependents: N/A

Employer: RPCS, Inc.

Before the
**DIVISION OF WORKERS'
COMPENSATION**
Department of Labor and Industrial
Relations of Missouri
Jefferson City, Missouri

Additional Party: N/A

Insurer: Fuel Marketers Insurance Trust c/o Alternative Risk Services

Hearing Date: July 28, 2011

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INTRODUCTION

The undersigned Administrative Law Judge conducted a hearing on July 28, 2011, involving a claim filed by Jackie Porter (Claimant), who was represented by attorney Randy Alberhasky. Claimant sustained an injury while at work. She seeks medical benefits and either ongoing temporary total disability, or permanent total disability. RPCS, Inc., (Employer) and Fuel Marketers Insurance Trust c/o Alternative Risk Services (Insurer), appeared by their attorney, Austin E. Williamson. They contend the case is not compensable.

EXHIBITS

The following exhibits were offered and admitted:

Joint Exhibit 1:

Medical Records of Jackie Porter

Claimant's Exhibits:

- B. St. John's Clinic-Nixa Eye Specialists, 8 pages certified 4/15/11
- C. John's Clinic-Orthopedic Specialists, 9 pages certified 4/26/10
- F. Ozarks Community Hospital, 3 pages certified 7/13/11
- G. St. John's Clinics, 9 pages certified 1/20/10
- I. Denial letter from insurer, 1/30/2009
- J. Denial letter from insurer, 7/30/2009
- K. Answer Employer/Insurer, 1/13/2010
- L. Answer Employer/Insurer, 1/14/2010
- M. RSMo. §287.210 letter, 4/15/2010
- N. RSMo. §287.210 letter, 4/26/2010
- O. RSMo. §287.210 letter, 5/17/2010
- Q. Photographs of employee's home, 1-3
- R. Photographs of work place, 1-11
- S. Durable Power of Attorney for Jackie R. Porter
- U. Deposition of Jackie Porter Volume 1 taken 9/29/2010
- V. Deposition of Jackie Porter Volume 2 taken 10/29/2010

Employer/Insurer's Exhibits

1. Video Surveillance
2. Deposition – Jackie Porter (Vol. 1)
3. Deposition – Jackie Porter (Vol. 2)
4. Deposition – Dr. Shane Bennoch (with attachments)
5. Deposition – Thomas Allen James
6. Deposition – Dr. Jefferey Woodward (with attachments)
7. Deposition – Angie Bolen (with attachments)
8. Deposition – Heather Bonner (with attachments)
9. Medical Records – excerpts – Jackie Porter
10. Deposition – Debbie Blodgett (with attachments)
11. Letter – RSMo §287.210, 1/25/2011
12. Answer – Employer/Insurer, 7/27/2011

In addition to these exhibits, the Administrative Law Judge has made a legal file consisting of the Report of Injury.

ISSUES

1. Did an accident occur?
2. Did an injury occur that arose out of and in the course of employment?
3. Was notice was timely provided?
4. Is Claimant entitled to reimbursement of her medical expenses?
5. Is Employer/Insurer liable for additional medical treatment?
6. Is Claimant entitled to temporary total disability and for what time period?
7. If no further treatment is ordered, what is the nature and extent of any disability?

FINDINGS OF FACT

Thomas James, Claimant's grandson, has lived with Claimant for much of the past 10 years. He testified that Claimant was mentally and physically spry before the alleged work accident, although she had always had a bend in her back and poor posture. He saw her immediately after the car accident she had in 2008, and she had no lingering effects. He often drove her to and from work, taking her at about 8 a.m. and picking her up at around 4:30 p.m. She worked full time, eight hours per day, five days per week. She worked for Ramey's market, handling coupons for several years. Prior to that she had held jobs in retail. Claimant is a high school graduate. She was 85 years old as of the date of the hearing.

While James testified that he had never known his grandmother to be unsteady on her feet or need a cane or walker prior to the incident at Ramey's on July 16, 2009, she had fallen twice in the past. Once was in the ice covered parking lot at Ramey's. Another time, Claimant tripped over her dog's bed at home, in the dark. She wore glasses before the accident, but had gone through cataract surgery a month or two before the alleged accident, and had been given a new prescription since her eyesight had improved. She had not expressed any problems with her glasses or vision.

On July 16, 2009, James was notified around 4:00 p.m. that Claimant was fallen at work. James went into the store and observed his grandmother on the floor in a vestibule or small foyer that separated the restroom from the rest of the store. There were doors leading to the foyer and into the bathroom. James said the door leading to the foyer was heavy, and was fitted with a device to assure that it automatically closed. The floor in the foyer, as well as in the bathroom, was a smooth, hard laminate. James believed the foyer floor was waxed and slick, although he did not testify to observing any substance on the floor or have slipped himself. He saw no oil, water, or debris on the floor. He never entered the bathroom. He conceded that Claimant did not appear to be wet.

Claimant advised her grandson that she remembered washing her hands, but she did not remember falling. She remembered being on the floor and hurting all over, but she does not know how she came to be on the floor. She was not able to discuss her diagnoses, other than she believed he had fractured her hip and had a hip replacement and went to rehabilitation. She said she had no reason to dispute the medical records. It was apparent that Claimant no longer had the mental acumen necessary to testify reliably regarding the events of July 16, 2009, or the specifics of her medical treatment. She did not even recall her attorney's identity who was sitting in front of her at the hearing.

James accompanied Claimant to the hospital. He thereafter managed Claimant's medical care, using a durable medical power of attorney. After Claimant's hip surgery, he arranged for Claimant's transportation to Manor Care, where she underwent treatment and two months of therapy. James testified that all of the treatment Claimant received at St. Johns and Manor Care was related to the fall at work. All the medical bills had been paid through Medicare. Claimant has since required a walker to ambulate. Although she walks outside, she no longer can perform her own shopping. She is able to care for her own hygiene, fix small meals such as oatmeal, work puzzles, and watch television. Since the incident at work, her mental condition was deteriorated. She has not worked since the incident on July 16, 2009.

Claimant's house is a small, one-level abode, which she shares with her grandson and his female companion. The house is carpeted throughout, including the bathroom.

Angie Bolen testified by deposition on behalf of Ramey's market, where she worked as Claimant's supervisor. According to Bolen, Claimant sorted coupons, going through envelopes of coupons that were sent in and mailed out. She worked at a desk. Bolen felt that Claimant had balance issues, depending on the earliness of the day. Still, her condition was not so unsteady that Bolen considered it to be unsafe. Claimant was working full time. While Bolen observed Claimant look down when she walked, she never knew Claimant to fall except for the icy parking lot incident at Ramey's, and the time Claimant tripped at home in the middle of the night.

Bolen explained that the bathroom where Claimant was found was made of ordinary, older bathroom tile. The doors to the bathroom were made of wood, and larger than those you find in a residence, with a device to close them automatically on the top. She identified photos of the hallway where Claimant was found, with bathroom supplies and a mop bucket that are typically stored there next to the bathroom.

Ramey's accounting clerk, Debbie Blodgett, testified by deposition. She was working with Claimant and was the employee who found Claimant slumped against the wall in the interior hallway just outside the women's bathroom. She responded when she heard Claimant cry for help about 4:10 p.m. Claimant was coherent, but in pain. Claimant told Blodgett that she had lost her balance and fallen backwards. Blodgett noticed no water on the floor. There are two solid wood doors that lead to the bathroom that are exactly the same, about five feet apart. Claimant did not appear to be wet or have any substance on her that might indicate that there had been something on the restroom floor. Blodgett saw nothing blocking the stalls or anything that would have caused someone to fall.

Ramey's human resources and payroll assistant, Heather Bonner, testified by deposition. She responded when Claimant yelled for help. Claimant told her she had lost her balance and fallen. Claimant was coherent. She was bleeding on one of her arms, but Bonner observed no blood on the floor. Bonner said the doors to the hallway and bathroom have mechanized closing devices and are bigger than the one's found in a home. Bonner indicated that no one mops during the day, suggesting that floor would not have been wet.

There is no evidence of any holes or broken tiles on the floor. The evidence of Blodgett and Bonner indicates that there were no uneven surfaces in the restroom. Blodgett, Bonner, and Bolen all testified that there was a smooth transition from the restroom to the foyer, and that there was no lip that might cause someone to trip.

I find that all of the fact witnesses testified credibly. But for the reasons cited above, I do not find Claimant's testimony reliable. Claimant could not recall any details as to how or even if she fell.

Surveillance Video

The surveillance video tape shows Claimant walking into work. She clearly did not walk in an upright manner, but was significantly stooped. The surveillance video also demonstrates the hallway leading into the corridor or vestibule of the bathroom. It appears to be a smooth, waxed linoleum floor, typically found in a grocery store setting.

Medical Records

Following the incident at work, Claimant was transported to St. John's Hospital by ambulance. She was diagnosed with a displaced right femoral neck fracture and several compression deformities in the thoracic spine, possibly acute. She subsequently underwent a right hip bipolar arthroplasty. On July 20, 2009, she was discharged to the Manor Care Nursing Home where she received therapy. In August 2009, she was readmitted to St. John's Hospital with increasing confusion, generalized weakness and dehydration. Emergency room records indicate that Claimant was suffering from atrial fibrillation. She was thereafter again discharged to the care of the nursing home for further therapy and treatment. Records noted noticeable short term memory loss. In October 2009, she was discharged from the nursing home.

Medical records indicate that Claimant has suffered from, among other diagnoses, conclave scoliosis, spondylosis, degenerative disc disease, arthritis, osteoporosis, osteopenia, cardiac dysrhythmia, angina, and atrial fibrillation, and gate abnormality.

Expert Opinions

Dr. Shane Bennoch testified by deposition on January 17, 2011. He had examined Claimant and diagnosed her as having a displaced femoral neck fracture with surgery on the right hip and persistent back pain secondary to traumatic fractures at T11 and T12. He placed her on a 10-pound weight restriction with the need to shift posture to relieve pain as needed. Dr. Bennoch testified that Claimant was unable to explain to him how she got on the floor. Dr. Bennoch agreed that Claimant told him that one moment she was standing up and then the next moment she woke up on the floor. Dr. Bennoch said Claimant either had a syncopal episode and fell, or she fell as a result of some slip.

Dr. Bennoch explained that most of the time a syncopal episode is vasovagal caused by a sudden drop in blood pressure. A patient loses consciousness transiently and then awakens. Because Claimant never had a history of syncopal episodes, he thought that it was unlikely that is what occurred. He thought a slip and fall was the most likely case, but he conceded that he did not know.

Dr. Bennoch opined that Claimant had reached maximum medical improvement by early 2010, and would have been temporarily and totally disabled up until that point in time from the hip injury alone. In addition to a 35 percent permanent partial disability to the right hip, he believed Claimant should have a consultation regarding the thoracic spine. In that absence of such consultation or opinion of future treatment, he believed Claimant suffered a 30 percent permanent partial disability as a result of the thoracic spine.

Dr. Woodward examined Claimant on January 29, 2010, and testified by deposition on February 14, 2011. He did not believe work was the prevailing factor in causing Claimant's injuries on July 16, 2009, because neither the medical records, nor his review of the facts with Claimant, revealed that Claimant had slipped or tripped on any object. Rather, Claimant's direct history revealed that she did not recall why she fell. In Dr. Woodward's opinion, the patient was performing daily, routine restroom activities. She just happened to be at work, but that this event could have occurred anywhere else. He said nothing in the Claimant's history or medical records indicating a compelling cause in the workplace that would make that event work-related. Dr. Woodward believed Claimant had postural challenges from her spine deformity and her elderly state, and she most likely just had a loss of balance. Dr. Woodward gave permanent partial disability ratings of 30 percent at the 160-week level for the work-related right hip condition, 12 percent at the 400-week for the thoracic spine condition, in addition to 10 percent pre-existing thoracic spine degenerative disease and osteopenia conditions.

Having considered the experts' opinions, I find that Dr. Woodward is more persuasive than that of Dr. Bennoch. While Dr. Bennoch suggests a causal connection for Claimant's fall, he admitted he did not know. There is insufficient evidence to support a finding that Claimant fell as a result of anything connected with the workplace.

CONCLUSIONS OF LAW

No Admission

Claimant alleged in her Claim for Compensation that she fell on a slippery floor. She contends that Employer never denied that the floor was slippery in its answer, and thus the factual allegation must be deemed admitted, citing *Ward v. Mid-America Fittings*, 974 S.W.2d 586 (Mo. App. W.D. 1991). Even if Claimant had raised the purported admission as an issue at the onset of the hearing, the contention fails. Employer's answer, filed January 8, 2010, reads in applicable part, as follows:

Employer is without sufficient information to admit or deny the claim for compensation, and therefore denies the same. Employer further is without sufficient information to admit or deny the additional allegations concerning RSMo 287.120, and therefore denies the same.

(Exhibit K). As the above quotation reveals, Employer denied all compensability and did not admit to any factual allegation. Claimant's point is denied.

Claimant Has Not Met Her Burden

Claimant has the burden to prove all of the essential elements of her case. *Thorsen v. Sachs Electric Co.*, 52 S.W.3d 611, 618 (Mo. App. W.D. 2001), *overruled on other grounds by Hampton v. Big Boy Steel Erections*, 121 S.W.3d 200, 225 (Mo. banc 2003). Based on the substantial and competent evidence and the application of the Missouri Workers' Compensation Law, I conclude that Claimant has failed to meet her burden.

Claimant's memory is failing. She is not a reliable historian. She could not recall why she fell, or even if she fell. No one witnessed her fall. No one witnessed water or any other debris or material on the floor that would have caused Claimant to fall. While the floor may have been waxed, there is no evidence that such fact was the cause of Claimant's fall. There is no evidence that Claimant fell because the doors leading to the rest room were heavy. There is no evidence that the doors, having been equipped with an automatic closing mechanism, hit Claimant or caused her to fall forward. Even if Claimant "fell," there simply is nothing in the record demonstrating a nexus between Claimant's work and the cause of her purported fall. If she simply lost her balance, as suggested by Dr. Woodward, she could have fallen anyplace in her nonemployment life. Claimant had fallen outside of work in the past. Her workplace merely provided the location for an injury, and was not the cause of the injury.

This case is similar to *Bivens v. St. John's Regional Health Center*, 272 S.W.3d 446 (Mo. App. W.D. 2008), in which an employee of a hospital was walking down a hallway at work when she simply fell. As noted in that case, the burden rests solely with the Claimant to show a direct causation between the injury and the job.

[T]he employment must in some way expose the employee to an unusual risk or injury from such agency which is not shared by the general public... It is not sufficient that the employment may simply have furnished an occasion for any injury for some unconnected source.

Bivens, 272 S.W.3d at 449. The appellate court concluded that Bivens, having been unable to provide an explanation for her fall, failed to establish that the injury arose out of her employment. Based on the evidence in the instant case, that is the only conclusion I can logically make in this case. Claimant failed to prove that she sustained an accident that arose out of her employment. Compensation is denied. Because this conclusion is dispositive, I do not address the remaining issues in this case.

Made by: _____
Victorine R. Mahon
Administrative Law Judge
Division of Workers' Compensation