

**BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION**

**CLAIM NUMBER F200470**

**CLIFFORD HENRY, EMPLOYEE**

**CLAIMANT**

**WAL-MART ASSOCIATES, INC.,  
SELF-INSURED EMPLOYER**

**RESPONDENT**

**OPINION FILED AUGUST 14, 2003**

A hearing was conducted on June 12, 2003, before ADMINISTRATIVE LAW JUDGE DON N. CURDIE, at Helena, Phillips County, Arkansas.

The claimant was represented by Edward H. Schieffler, Attorney at Law, West Helena, Arkansas.

The respondent was represented by Patrick L. Spivey, Attorney at Law, Little Rock, Arkansas.

**STATEMENT OF THE CASE**

A hearing was held on June 12, 2003, in Helena, Arkansas. It was stipulated as follows:

1. The employee/employer relationship existed at all relevant times.
2. The claimant's average weekly wage was \$179.00.
3. The claimant sustained a compensable back injury on December 24, 2001.
4. Certain medical benefits have been paid.

The issues to be litigated at the hearing were as follows:

1. Is claimant entitled to additional medical treatment by an orthopaedic

specialist or in the form of a return visit to see Dr. Scott Hall, the claimant's authorized treating physician? (Respondent states additional medical treatment is not reasonably necessary.)

2. Is claimant entitled to an attorney's fee?

The claimant testified that he is 43 years of age. He injured his back two times before December 24, 2001, the date of his compensable back injury. He injured it twice in 1998, and has had continuous back pain since then. (T-12) Subsequent to those previous two injuries, he received instructions not to lift over 40 pounds.

The claimant, at the time of the hearing, was working in the Garden Center at Wal-Mart Stores in Helena, Arkansas, as a floor salesman. He testified that on December 24, 2001, he was pushing carts:

"A. I was getting ready to get off that day and I was pushing carts up clinement.

Q. Pushing where?

A. Uphill. Coming up a hill and I pushed about ten or fifteen to many and I heard, well I felt a tightness in my lower back. And I hurt it.

Q. And what?

A. Then I started having pains and I believe I hurt it.

Q. And did Wal-Mart send you to Dr. Scott Hall?

A. Yes sir.

Q. Dr. Hall send you to the hospital to have x-rays?

A. Yes sir."  
(T-8)

The claimant testified that at various times, it is painful for him to walk. He

testified that he has “a real tightness in the lower back, and sometimes it gets so tight you know I can barely bend over and straighten back up.” (T-9) The claimant testified that the reason he has not returned to see Dr. Scott Hall for his back is because he doesn’t have any insurance or finances to pay for it. He last saw Dr. Hall on February 4, 2002, when Dr. Hall stated that the claimant could return back to normal duties at work. He has not seen a doctor for his back since February 4, 2002. The claimant testified that he has this tightness 3 to 4 times per month that begins when he is bending over or standing too long. (T-10) In order to alleviate these symptoms, his wife gives him massages, and that helps the stiffness and pain. The claimant testified that he wants to see a back specialist or return to see Dr. Hall, his family doctor. The claimant admitted that no doctor has recommended any specific treatment.

The claimant’s wife, Viola Henry, testified that the claimant limps quite often when his back hurts. She stated that he has problems walking any distance at least once a week; and to help him, she massages his back once or twice a week. She stated that the claimant takes muscle relaxers and pain medication.

The medical records in this case reflect that the claimant injured his back in March, 1998. There was a diagnosis of muscle spasms. In August, 1998, the opinion was that the claimant did not have a disc problem in his low back, but that he had sprained his back again. He was given a back brace and prescribed Naprosyn. By September, 1998, the claimant was better, but continued to wear the back brace to work. He experienced, according to medical records, back pain in April, 1999, and February 1, 2000.

The records reflect that the claimant had back pain and was taking

muscle relaxers on November 27, 2001. After the compensable injury of December 24, 2001, the claimant was told by his doctor that he could return to work with no pushing or pulling for one week. January 28, 2002 x-rays showed that the claimant's spine did not have any abnormalities.

### **FINDINGS OF FACT AND CONCLUSIONS OF LAW**

1. The employee/employer relationship existed at all relevant times.
2. The claimant's average weekly wage is \$179.00.
3. The claimant sustained a compensable back injury on December 24, 2001.
4. Certain medical benefits have been paid.
5. The preponderance of the evidence reflects that the claimant is not entitled to additional medical treatment, and any additional treatment is not reasonably necessary, and related to the claimant 's compensable injury.

### **DISCUSSION**

Employers must promptly provide medical services which are reasonably necessary for treatment of compensable injuries. A.C.A. § 11-9-508(a). However, injured employees have the burden of proving by a preponderance of the evidence that medical treatment is reasonably necessary for treatment of a compensable injury. Medical treatment intended to reduce or enable an injured worker to cope with chronic pain attributable to a compensable injury may constitute reasonably necessary medical treatment.

The evidence in this case reflects that the claimant sustained a

compensable back injury on December 24, 2001. However, prior to that date, the claimant had injured his back and had complained of back pain many times. The preponderance of the evidence reflects that the claimant's treating physician, Dr. Hall, released the claimant to return to work with certain restrictions. He has apparently recommended no further treatment.

On November 27, 2001, shortly before the claimant's alleged compensable injury on December 24, 2001, the claimant complained of low back pain. He did not report this as a specific injury, but related it to the May, 1999 work related back injury. The claimant was prescribed Flexiril, a muscle relaxer. The preponderance of the evidence in this case reflects that the claimant has had continuous back pain for years. It was stipulated that he sustained a compensable back injury on December 24, 2001. There was no indication that the compensable back injury made the claimant's condition any worse than it had been on November 27, 2001, when he went to the doctor regarding a painful low back. The preponderance of the evidence does not reflect that any additional medical treatment would be reasonably necessary for the treatment of the claimant's compensable injury. While it is true that medical treatment intended to reduce or enable an injured worker to cope with chronic pain attributable to a compensable injury may be reasonably necessary medical treatment, the preponderance of the evidence in this case reflects that it is just as likely that any medical treatment which would allow the claimant to cope with chronic pain could be attributable to claimant's previous back problems. The preponderance of the evidence reflects that the claimant had chronic back pain prior to the compensable injury of December 24, 2001. The claimant has failed to prove his case by a

preponderance of the evidence and his claim must be denied and dismissed.

**IT IS SO ORDERED.**

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DON N. CURDIE,  
Administrative Law Judge

DC