

**BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION**

**CLAIM NO. F308566**

**JOSEPH S. CORNELL, EMPLOYEE** **CLAIMANT**

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

**CLAIMS MANAGEMENT, INC., TPA** **RESPONDENT**

**OPINION FILED AUGUST 31, 2004**

Hearing before Administrative Law Judge J. Mark White on July 22, 2004, in Texarkana, Miller County, Arkansas.

Claimant represented by Mr. Howard J. Goode, Attorney at Law, Texarkana, Texas.

Respondents represented by Ms. Christine A. Cryer, Attorney at Law, Little Rock, Arkansas.

**STATEMENT OF THE CASE**

On July 22, 2004, the above-captioned claim came on for a hearing in Texarkana, Arkansas. A pre-hearing conference was conducted on June 7, 2004, and a Prehearing Order was entered that same day. A copy of the June 7, 2004, Prehearing Order has been marked as Commission Exhibit No. 1 and made a part of the record herein without objection. At the hearing, the parties confirmed that the stipulations, issues and respective contentions, as amended, were properly set forth in the Prehearing Order.

The parties stipulated that the Arkansas Workers' Compensation Commission has jurisdiction of this claim; that the employee/self-insured employer

relationship existed at all relevant times, including July 31, 2003; and that the claimant earned an average weekly wage of \$320, entitling him to a compensation rate of \$211 for total disability and \$158 for permanent partial disability benefits. At the hearing, the parties further stipulated that the respondents paid the claimant six days of temporary total disability benefits.

The parties agreed that the issues to be presented were whether the claimant sustained a compensable injury on July 31, 2003; whether the claimant is entitled to associated medical and indemnity benefits; and controversion and attorney's fees.

The claimant contends that he was covered by workers' compensation coverage on July 31, 2003, while he was employed by the respondent; that he suffered a compensable injury on such date; that he is entitled to temporary partial disability benefits; and that he is entitled to attorney's fees and medical expenses. At the hearing, the claimant contended specifically that he is entitled to twelve days of temporary total disability benefits.

Respondents contend that the claimant is not entitled to the requested benefits because he cannot establish that he sustained a compensable injury on July 31, 2003, for the lack of objective findings supported by medical evidence; and that the claimant's current condition is the result of a preexisting pathology and not a compensable injury.

## FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the record as a whole, to include medical reports, documents and other matters properly before the Commission, and having had an opportunity to hear the testimony of the witnesses and to observe their demeanor, the following findings of fact and conclusions of law are hereby made in accordance with Ark. Code Ann. § 11-9-704:

1. The Arkansas Workers' Compensation Commission has jurisdiction of this claim.
2. The stipulations agreed to by the parties are reasonable and are hereby accepted as fact.
3. The claimant has failed to prove by a preponderance of the evidence that he sustained an injury by lifting milk crates while working for the respondent.
4. The claimant has failed to prove by a preponderance of the evidence that he sustained an injury arising out of and in the course of his employment.
5. The claimant has therefore failed to prove by a preponderance of the evidence that he sustained a compensable injury.
6. The respondents have controverted this claim in its entirety.

## DISCUSSION

### I. History

On July 31, 2003, the claimant was employed as a stocker in the respondent's dairy department. Several years prior to his alleged injury, he had been employed by the respondent as a management trainee, though he left that employment and pursued further schooling before returning to work for the respondent.

On that day, the claimant was stacking milk crates in the dairy cooler with his supervisor, Mike Lewis. The claimant testified that as he lifted four crates together, he "turned and I felt a twinge and I made a noise." He testified that Lewis asked if he was okay, and he continued to work for a short while until he "couldn't do it anymore." He testified that he walked out of the cooler with Lewis, where the two met an assistant store manager, Greg Jones. The claimant testified that with Lewis standing there, outside the cooler, he reported his injury to Jones. The claimant testified that he "ended up going home that day" and was unable to complete his shift. Payment records submitted by the respondents, however, show that the claimant did not clock out that day until 8:47 p.m. On his accident report, the claimant had identified the time of accident as 3:30 p.m., some five hours earlier.

The testimony of Lewis was markedly different than that of the claimant. Lewis testified that the claimant "picked up a couple of milk lugs that were empty

and he started complaining about his stomach hurting.” He said he told the claimant to “see a member of management.” Lewis testified he remained in the cooler when the claimant left. He testified that he heard nothing more about the incident until the respondent’s attorney contacted him. More importantly, Lewis testified that before going into the cooler that day, he saw the claimant sitting in the breakroom holding some pictures of the claimant playing basketball in college. He testified that he overheard the claimant say he had injured his stomach playing basketball the day before. When the claimant began complaining of stomach pain in the cooler, Lewis testified, he “figured he was trying to get the day off.”

Jones, the assistant store manager, acknowledged in his testimony that the claimant reported a stomach injury to him, but he denied that Lewis was present during the conversation. Jones testified that the conversation took place in the cooler, but the claimant testified it took place outside the cooler. Jones testified the claimant said he did not need to see a doctor, and that he heard nothing more about it until the following week.

The claimant’s alleged injury occurred on a Thursday. The claimant admitted on cross-examination that he worked his shift the following Sunday, apparently without incident. On Monday, he sought treatment from a personal physician, Dr. R.D. Rush. Dr. Rush recorded the claimant as saying he felt a pull on the lower left

groin while lifting – Dr. Rush did not identify where or how the lifting incident took place, or whether it was work related. He noted a “very mild bulge on scrotal exam with valsalva. Spontaneous reduction.” Dr. Rush diagnosed the claimant with a left inguinal hernia/strain. He placed the claimant on light duty through August 11 and prescribed medication, but the claimant did not fill the prescription.

The claimant testified that he took Dr. Rush’s light-duty note to the respondent on Wednesday, August 6. Respondent demanded that he be seen by the company physician, so Jones accompanied the claimant to see Dr. David McKay. Dr. McKay ruled out a hernia but noted swelling in the groin and diagnosed a left inguinal strain. Dr. McKay agreed the claimant should be on light duty and prescribed medication. The respondent accommodated the light-duty request and put the claimant to work as a greeter.

The claimant returned to Dr. McKay on August 7, and again on August 18. In his August 18 note, Dr. McKay wrote that the claimant “wants to be off work for a couple of weeks.” At the hearing, the claimant denied telling Dr. McKay this, testifying that he only told Dr. McKay he “needed some rest.” Dr. McKay wrote in his note that he refused to take the claimant off work.

The claimant last worked for the respondent on September 11. He testified that he stopped coming to work because of the pain of his injury, and that he called

in sick to Greg Jones and to other managers. Jones, however, denied that the claimant ever called in sick to him. Jones testified that he and the other managers maintain a written log of all employees who call in sick; the log was submitted into evidence by the respondent. Jones testified that the claimant's name is nowhere listed in the log. He testified it was his impression that the claimant failed to report to work and did not call in.

On September 23, the claimant was terminated for failing to show up for work for three consecutive days without notice. That same day, the claimant saw a specialist, Dr. Michael Hillis, on a referral made by Dr. McKay the day before. Dr. Hillis recommended that the claimant be off of work for two weeks; he signed a backdated off-work slip allowing the claimant to be off from work from September 15 through October 6.

## **II. Adjudication**

For the claimant to establish a compensable injury as a result of a specific incident, the following requirements of Ark. Code Ann. § 11-9-102 (4)(A)(i) must be established: (1) proof by a preponderance of the evidence of an injury arising out of and in the course of employment; (2) proof by a preponderance of the evidence that the injury caused internal or external physical harm to the body which required

medical services or resulted in disability or death; (3) medical evidence supported by objective findings, as defined in Ark. Code Ann. § 11-9-102(16), establishing the existence and extent of the injury; and (4) proof by a preponderance of the evidence that the injury was caused by a specific incident and is identifiable by time and place of occurrence. *Ford v. Chemipulp Process, Inc.*, 63 Ark. App. 260, 977 S.W.2d 5 (1998). If the claimant fails to establish by a preponderance of the evidence any of the requirements for establishing the compensability of a claim, compensation must be denied. *Id.*

The claimant's testimony regarding his alleged injury and subsequent events was contradicted in significant part by the testimony of Greg Jones and Mike Lewis. As noted above, Lewis testified that the claimant attributed a stomach injury to playing basketball – testimony which the claimant forcefully denied. Lewis denied being present when the claimant reported his injury to Jones, though the claimant testified otherwise. The claimant testified that he called in sick to Jones and other managers, but Jones denied that the claimant did so, and the written records maintained by the respondent support Jones' testimony. Dr. McKay quoted the claimant as saying he wanted "to be off work for a couple of weeks." The claimant denied telling Dr. McKay this.

These contradictions between the claimant's testimony, the testimony of the

other witnesses, and the medical records raise substantial doubts as to the claimant's credibility. If the claimant's account of his alleged injury were corroborated by other evidence, I might be able to find that he had met his burden of proof. But as the evidence stands, there is insufficient evidence by which I can clearly determine who is telling the truth. Because the claimant's testimony is contradicted by the testimony of other witnesses, because there is no independent evidence corroborating his account of the accident, and because there is insufficient evidence to differentiate the credibility of the claimant from the credibility of the other witnesses, I must find that the claimant has failed to prove by a preponderance of the evidence that he sustained an injury by lifting milk crates while working for the respondent.

Because the claimant has failed to prove that his alleged injury occurred as he testified, I find that the claimant has failed to prove by a preponderance of the evidence that he sustained an injury arising out of and in the course of his employment. Therefore, I find that the claimant has failed to prove by a preponderance of the evidence that he sustained a compensable injury.

**AWARD**

The claimant has failed to prove by a preponderance of the evidence that he sustained a compensable injury. Therefore, this claim for benefits must be, and it hereby is, denied and dismissed.

**IT IS SO ORDERED.**

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**HON. J. MARK WHITE**  
Administrative Law Judge