

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM F403480

**NEALEETA R. HARRIS,
EMPLOYEE**

CLAIMANT

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

RESPONDENT

**CLAIMS MANAGEMENT, INC.,
BENEFITS ADMINISTRATOR**

RESPONDENT

OPINION FILED NOVEMBER 18, 2004

Hearing conducted September 16, 2004, before Administrative Law Judge Richard B. Calaway in Hot Springs, Garland County, Arkansas, with

Mr. C. Burt Newell, Attorney at Law, Hot Springs, Arkansas, appearing for the claimant and

Ms. Susan M. Fowler, Attorney at Law, Little Rock, Arkansas, appearing for the respondents.

STATEMENT OF THE CASE

This is a dispute over whether the claimant suffered a back injury that is recognized as compensable under the Act, when she fell at work and suffered a compensable injury to her head.

The claimant contended that on March 13, 2004, she suffered a compensable back injury when she slipped and fell at work and that she should be awarded related benefits, including reasonably necessary medical and related expenses and temporary total disability benefits from the date of injury until March 18, 2004, from March 22 through May 3, 2004, and from June 2, 2004, until the date of the hearing. An attorney's fee for controversion was also requested. Other possible issues were reserved.

The respondents contended that the claimant's back problems pre-existed the incident at work and, further, that a compensable injury, as distinguished from pre-existing pathology, cannot be established by medical evidence supported by objective findings.

Based upon the record as a whole, and without giving the benefit of the doubt to any party, as required by the Act, the following findings of fact and conclusions of law are hereby made:

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. The Arkansas Workers' Compensation Commission has jurisdiction of the parties and subject matter of this claim.

2. Pursuant to the stipulations of the parties and the record, the employment relationship existed at all pertinent times; the claimant's average weekly wage on March 13, 2004, was \$370.72; the claimant suffered a compensable injury on that day which has been accepted by the respondents; and the alleged back injury has been controverted in its entirety.

3. The preponderance of the evidence fails to show that a compensable injury to the claimant's low back has been established by medical evidence supported by objective findings.

DISCUSSION

The claimant had worked as a customer service manager for the respondent employer for over eight years when on March 13, 2004, as she approached a cash register she slipped on a grape and fell. She testified that she felt very severe pain in her head and her lower back. She was immediately taken to the St. Joseph's Mercy Health Center Emergency Room where she was seen by Dr. Mark E. Larey who wrote that she had suffered contusions and lumbar strain secondary to fall as well as head contusion. Thereafter, she was seen by the company physician, Dr. Michael Atta, her personal physician Dr. Richard Gardial, Hot Springs orthopedic surgeon Dr. Bruce L. Smith, Jr., as well as Hot Springs neurosurgeon Dr. James M. Arthur.

The emergency room record describes the claimant's fall at work and indicates that she suffered contusions and lumbar strain secondary to fall as well as head contusion. X-rays of the

cervical spine were described as unremarkable while x-rays of the lower lumbar spine were said to show degenerative facet changes but no fracture or focal erosion. X-rays of the claimant's right hip were also described as unremarkable. An MRI performed April 2, 2004, described degenerative disc changes in the lumbar spine as well as facet joint hypertrophy greatest at L4-L5 and L5-S1; probable posterior inlet tear in the foraminal portion of the L4-L5 disc on the left; and asymmetric bulging of the L5-S1 disc on the right. On this record, the respondents have accepted the head contusion as compensable but not the lumbar strain and contusion, even though the latter conditions may have resulted in off-work status for the claimant and additional medication attention, including medication, physical therapy, and steroid injection therapy. She contends that the lumbar strain and contusion are also compensable and has requested benefits as stated above.

The evidence included the testimony of the claimant and Michael Joe Davis, the deposition of the claimant, videotapes, and documentary evidence, including medical records.

It is well established that the claimant has the burden of proving entitlement to benefits, generally by a preponderance of the evidence and without the benefit of any presumption of compensability or entitlement to benefits.

Under prior law, it was the duty of the Commission to draw every legitimate inference possible in favor of the claimant, and to give the claimant the benefit of the doubt in making factual determinations. However, current law requires that evidence as to meeting the burden of proof be weighed impartially and without giving the benefit of the doubt to any party, including the claimant. Act 10 of 1986, §10(2nd Ex. Sess.), Ark. Code Ann. §11-9-704(c)(4), effective July 1, 1986; Fowler v. McHenry, 22 Ark. App. 196 (1987). Even under prior law, when the claimant was entitled

to the benefit of the doubt, conjecture and speculation, however plausible, were not permitted to supply the place of proof. Dena Construction Co. v. Herndon, 264 Ark. 791 (1979).

Current law requires the claimant to establish a compensable injury by medical evidence, supported by objective findings, Ark. Code Ann. §11-9-102(4)(D), and defines objective findings as those which cannot come under the voluntary control of the claimant. Ark. Code Ann. §11-9-102(16). Here, the record contains objective medical findings of pathology revealed by the MRI scan, as noted above. However, when her physicians diagnosed the claimant's injury resulting from the fall at work, they did not mention the MRI findings, such as the tear at L4-5 or the bulge at L5-S1 but, instead, stated that she had suffered only contusions and a strain. Moreover, when respondent's counsel inquired, the claimant's treating physicians did not describe any objective findings as a basis for their opinions or treatment.

For example, Dr. Larey's letter of June 24, 2004, indicated that his impressions on March 13, 2004, were based on subjective findings such as tenderness to palpation, history, and presenting complaints. Dr. Atta's letter of June 29, 2004, stated that his diagnosis was based on the claimant's description of the injury and verbal symptoms rather than redness, swelling, or bruising in her back. Then, on August 16, 2004, Dr. Larey wrote that he did not observe any muscle spasm. On August 26, 2004, Dr. Atta also wrote that he did not observe muscle spasms. Similarly, on April 14, 2004, Dr. Smith had written that review of the MRI does show some degenerative disc changes but no acute disc rupture.

Thus, although the claimant apparently has suffered injuries recognized by her physicians as needing treatment and resulting in off-work status, they are not compensable under the Act because

they cannot meet the requirement of establishment by medical evidence, supported by objective findings.

For the foregoing reasons, this request for benefits should be, and it is hereby, respectfully, denied and dismissed.

IT IS SO ORDERED.

RICHARD B. CALAWAY
Administrative Law Judge