

**BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION**

**CLAIM NUMBER F402090**

**ANNA N. KAIN, EMPLOYEE**

**CLAIMANT**

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

**RESPONDENT**

**CLAIMS MANAGEMENT, INC.**

**RESPONDENT**

**OPINION FILED OCTOBER 5, 2004**

Hearing conducted before ADMINISTRATIVE LAW JUDGE D. FRANKLIN AREY, III, in Little Rock, Pulaski County, Arkansas.

Claimant was represented by THOMAS W. MICKEL, Attorney at Law, Conway, Arkansas.

Respondents were represented by ANDREW M. IVEY, Attorney at Law, Little Rock, Arkansas.

**STATEMENT OF THE CASE**

On July 28, 2004, the above-captioned claim came on for a hearing at Little Rock, Arkansas. A prehearing telephone conference was conducted on June 15, 2004; a Prehearing Order was filed in this claim on that same date.

The parties agreed to two stipulations, as set forth in the Prehearing Order and confirmed by the parties at the hearing. The stipulations that follow are hereby accepted:

1. The relationship of employee-employer existed between the parties on February 20, 2004, and at all relevant times.
2. Claimant's average weekly wage was \$263.75 resulting in a compensation rate for temporary total disability of \$176.00, and her compensation rate for permanent

partial disability is \$154.00.

At the July 28, 2004 hearing, the parties discussed the issues set forth in the Prehearing Order. The third issue contained in the Prehearing Order was modified by agreement of the parties. Therefore, as confirmed and agreed upon by the parties, the issues to be litigated and resolved are limited to the following:

1. Whether Claimant suffered a compensable injury during the course and scope of her employment.
2. Whether Claimant is entitled to reasonably necessary medical expenses from February 22, 2004 to the present.
3. Whether Claimant is entitled to temporary total disability benefits from February 22, 2004 to March 25, 2004.
4. Whether Claimant is entitled to an award of attorney's fees due to controversion.

Claimant contends that she suffered a compensable injury during the course and scope of her employment. Claimant seeks temporary total disability benefits, medical benefits, and an attorney's fee. Respondents challenge the compensability of Claimant's injury.

### **DISCUSSION**

Claimant worked in the fabric department at one of the Respondent Employer's stores in Conway; she testified that her job was "to zone and cut fabric and sell the fabric." Claimant recalled that on February 20, 2004, she "was zoning the bottom shelf of the fabric [by] pulling the fabric out to make it look

right. And whenever I had stood up I had felt a really sharp pain in my back.” This pain developed in the lower right side of her back and down her right leg; Claimant testified at the hearing that she was still having back problems and that she still needs medical treatment.

Claimant reported this incident and sought medical treatment, both of her own accord and at the direction of Respondents. The medical records introduced consistently record Claimant’s complaints of pain, as well as other observations. Dr. Randal Bowlin completed a Form AR-3 on February 23, 2004 (the handwritten date appears to be a "23"); he noted Claimant's decreased range of motion. Dr. Billy McBay's clinic note dated March 4, 2004 notes "muscle tightness." Claimant underwent an MRI of her lumbar spine on March 5, 2004; it records an impression of "[u]nremarkable MRI of the lumbar spine."

In a letter dated May 12, 2004, Dr. Bowlin elaborated on his examination of Claimant on February 23, 2004, some three days after her incident. His examination revealed the following:

Her back revealed a decreased range of motion due to pain. Limited range of motion in forward flexion, lateral flexion, and hyperextension. Her deep tendon reflexes were symmetrical. In my initial examination, no mention was made of a significant muscle spasm, which typically would be mentioned if it had been noted.

Dr. Bowlin observed that he had prescribed medication for Claimant. He

explained: "The rationale behind the anti-inflammatories and muscle relaxants were to diminish her pain response. It is not necessarily based on physical findings, but upon Ms. Kain['s] response to various activity."

The employee has the burden of proving a compensable injury. Carman v. Haworth, Inc., 74 Ark. App. 55, 59, 45 S.W.3d 408, \_\_\_ (2001). To be compensable, an injury must be established by medical evidence supported by objective findings. Ark. Code Ann. § 11-9-102(4)(D). "Objective findings" are those findings which cannot come under the voluntary control of the patient. Ark. Code Ann. § 11-9-102(16)(A)(i). Claimant must sustain her burden of proving the elements of a compensable injury by a preponderance of the evidence. See Ark. Code Ann. §§ 11-9-102(4)(E) and 11-9-704(c)(2).

I find that Claimant has not sustained her burden of establishing a compensable injury supported by objective findings. While I do not question Claimant's complaints of pain, the record does not reflect any objective findings in support of an injury to her back. Her March 5, 2004 MRI recorded an "unremarkable" impression. None of the medical records indicate the presence of muscle spasms; indeed, Dr. Bowlin specifically noted the absence of such a finding in his May 12, 2004 letter.

Two findings in the medical records should be addressed. Claimant's decreased range of motion is noted more than once. However, the Arkansas

Court of Appeals has held that, with respect to "straight-leg-raising tests and range-of-motion tests[,] ... neither test is objective for purposes of determining compensability." Mays v. Alumnitec, Inc., 76 Ark. App. 274, 278, 64 S.W.3d 772, \_\_\_ (2001). Similarly, a clinic note dated March 4, 2004 reported "muscle tightness" upon the doctor's examination of Claimant. Again, the Arkansas Court of Appeals does not accept such a finding as objective evidence, noting that "muscle tightness can come under the voluntary control of the patient." Carman, 74 Ark. App. at 60-61, 45 S.W.3d at \_\_\_.

Based upon this finding, it is not necessary to discuss Claimant's request for medical benefits, temporary total disability benefits, or an attorney's fee. Because Claimant failed to establish by a preponderance of the evidence one of the requirements for establishing the compensability of the injury alleged, she failed to establish the compensability of her claim, and compensation must be denied. See Reed v. ConAgra Frozen Foods, Full Workers' Compensation Commission Opinion filed February 2, 1995 (E317744).

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

1. The stipulations agreed upon by the parties are reasonable and are approved.
2. The relationship of employee-employer existed between the parties on

February 20, 2004, and at all relevant times.

3. Claimant's average weekly wage was \$263.75 resulting in a compensation rate for temporary total disability of \$176.00, and her compensation rate for permanent partial disability is \$154.00.

4. Claimant did not sustain her burden of proving by a preponderance of the evidence that she suffered a compensable injury on February 20, 2004. Specifically, I find that the record is devoid of any proof of objective findings as required by Ark. Code Ann. § 11-9-102(4)(D).

5. Because Claimant failed to prove a compensable injury, it is not necessary to discuss her requests for medical benefits, temporary total disability benefits, and an attorney's fee.

**ORDER**

Claimant failed to sustain her burden of proving that she suffered a compensable injury. Therefore, the above claim is respectfully denied and dismissed.

IT IS SO ORDERED.

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D. FRANKLIN AREY, III  
Administrative Law Judge

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