

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F302442 & F214611

STEPHANIE STEGALL,
EMPLOYEE

CLAIMANT

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

RESPONDENT

OPINION FILED AUGUST 9, 2004

Hearing conducted before ADMINISTRATIVE LAW JUDGE MARK CHURCHWELL, at Searcy, White County, Arkansas.

The claimant was represented by HONORABLE STEVEN MCNEELY, Attorney at Law, Little Rock, Arkansas.

The respondent was represented by HONORABLE COLLEEN MCCULLOUGH, Attorney at Law, Little Rock, Arkansas.

STATEMENT OF THE CASE

A hearing was held in the above-styled claim on June 22, 2004 in Searcy, Arkansas. A prehearing order was entered in this case on April 29, 2004. A copy of this prehearing order set out the stipulations offered by the parties and outlined the issues to be litigated and resolved at the present time. A copy of this prehearing order was made Commission's Exhibit No. 1 to the hearing record.

The following stipulations were submitted by the parties either in the prehearing order or at the start of the hearing and are hereby accepted:

1. The parties stipulate to the existence of an employee/employer relationship on or about 2-23-02 and 11-17-02.

2. The parties stipulate that claimant sustained an injury to her right arm/shoulder on 11-17-02 and that respondents have accepted the 11-17-02 claim (F214611) and have paid certain benefits.

3. The alleged 2-23-02 neck injury is controverted in its entirety.

4. The claimant's average weekly wage in February of 2002 was \$496.30 equating to a TTD rate of \$331.00.

By agreement of the parties, the issues to be litigated and resolved at the present time were limited to the following:

1. Compensability of a neck injury on 2-23-02.
2. Attorneys fees.
3. Medical lien.
4. Attorney's lien for attorney Tom Mickel.
5. TTD from 3-4-02 until 7-6-02.
6. Respondent's entitlement to an offset, for short term disability and group health benefit payments, pursuant to Ark. Code Ann. § 11-9-411.

The record consists of the June 22, 2004 hearing transcript and the exhibits contained therein.

DISCUSSION

For the claimant to establish a compensable injury as the result of a specific incident which is identifiable by time and place of occurrence, the following requirements of Ark. Code Ann. § 11-9-102(4) (A) (i) (Repl. 2002) 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 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. 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. Mickel v. Engineered Specialty Plastics, 56 Ark. App. 126, 938 S.W.2d 876 (1997).

In the present case, there appears to be no dispute that the claimant began experiencing symptoms from a large herniated C5-6 cervical disc on or about February 23, 2002. The presence of the herniated disc is established by

objective medical findings, including diagnostic test results. The threshold issue in the present case is whether or not the claimant has established by a preponderance of the credible evidence that the injury occurred when she first began to maneuver a different double jack on February 23, 2002 as she now asserts.

The claimant testified that when she went to turn a corner with a double jack that she was unaccustomed to using, the equipment was hard to turn and she experienced a sharp pain in her shoulder, arm, and neck area. The claimant testified that she reported this incident and her injury the next day to management, including Mr. Osborne and Mr. Kearney. The claimant testified that her immediate supervisor, Mr. Tims was on vacation the week the injury occurred, and that she reported the injury to him the next week when he returned. Mr. Tims testified that he has no recollection whether or not the claimant reported any work related injury to him, and Mr. Osborne and Mr. Kearney both testified that the claimant never reported a work related injury to either one of them, although they both testified that they were aware on approximately February 24, 2002 that the claimant was experiencing some type of neck problems. Mr. Osborne testified that when the claimant came in to work

one morning, she indicated that she did not know what was wrong with her neck.

The documentary evidence is likewise conflicting. The earliest medical report in the record, Dr. Killough's March 4, 2002 clinic note, indicates that the claimant's symptoms started the previous week while working with a different double jack. Ms. Bondran's March 8, 2002 office note references the claimant's driving a stiff and difficult to maneuver double jack the previous week, and the claimant's registration form dated March 13, 2002 for Dr. Green indicates that the claimant felt that her condition was work related and that she had been hurting ever since the day she was required to operate a double jack that was hard to turn.

However, when Dr. Green completed his portion of the claimant's request for leave of absence on March 14, 2002, Dr. Green left blank that portion of the form which requested his response as to whether or not the injury was work related. According to documentary evidence from the Hartford, which apparently paid the claimant's short-term disability benefits that she received, the claimant advised an examiner with the Hartford at 5:36 p.m. on March 20, 2002 that she was unaware how her injury occurred.

The claimant's theory as to "what happened" in this case seems to boil down to an allegation that she hurt herself using a double jack on February 23, 2002, that she repeatedly reported the injury to her managers and to the personnel manager, and that she was throughout the process a passive participant when they failed to document her alleged work related injury on an accident report or in her request for a leave of absence. However, I note that it was Dr. Green on March 14, 2002 who failed to provide the information on the request for leave of absence which the claimant later signed on March 18, 2002, which might have provided an opinion as to whether or not Dr. Green considered the condition work related, and I note that it was the claimant, not the respondents, who provided The Hartford information on March 20, 2002 that she was unaware how her injury occurred. I point out that it was against the financial interest of The Hartford on March 20, 2002 to document an employee intake indicating that the claimant was unaware how her injury occurred, and since this information was against the financial interest of the Hartford, I accord this evidence great weight.

In short, while the claimant's earliest medical records corroborate her hearing testimony that she associated her

onset of symptoms with using a different double jack on February 23, 2003, Dr. Green inexplicably failed to render any opinion on that possibility when requested to do so on March 14, 2002, and the claimant herself was apparently no longer willing to associate her symptom onset with any particular activity at least by March 20, 2002. In light of Dr. Green's inexplicable failure to render an opinion on this issue, in light of the inconsistency between the claimant's testimony and the testimony of her managers as to whether or not she ever reported her symptoms as work related, and in light of the claimant's March 20, 2002 statement that she did not at that time know how her injury occurred, I find that the claimant has failed to meet her burden of proof that a preponderance of the credible evidence establishes that she sustained an injury using a different double jack on February 23, 2002 as she asserts.

Because the claimant has failed to prove by a preponderance of the credible evidence that sustained a work related injury, the remaining issues in this case are moot.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. The parties stipulate to the existence of an employee/employer relationship on or about 2-23-02 and 11-17-02.

2. The parties stipulate that claimant sustained an injury to her right arm/shoulder on 11-17-02 and that respondents have accepted the 11-17-02 claim (F214611) and have paid certain benefits.

3. The alleged 2-23-02 neck injury is controverted in its entirety.

4. The claimant's average weekly wage in February of 2002 was \$496.30 equating to a TTD rate of \$331.00.

5. The claimant has failed to prove by a preponderance of the credible evidence that she sustained an injury using a different double jack on February 23, 2002, as she asserts.

ORDER

For the reasons discussed herein, this claim for benefits must be, and hereby is, denied.

IT IS SO ORDERED.

MARK CHURCHWELL
Administrative Law Judge