

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F303699

MARGARETA EDWARDS YOUNG

CLAIMANT

WAL MART STORES, INC.
SELF INSURED

RESPONDENT

CLAIMS MANAGEMENT,
THIRD PART
Y ADMINISTRATOR

RESPONDENT

OPINION FILED MARCH 10, 2004

Hearing before ADMINISTRATIVE LAW JUDGE MICHAEL L. ELLIG in Springdale, Washington County, Arkansas.

Claimant represented by JAY TOLLEY, Attorney, Fayetteville, Arkansas.

Respondents represented by TOD BASSETT, Attorney, Fayetteville, Arkansas.

STATEMENT OF THE CASE

A hearing was held in the above styled claim on January 26, 2004, in Springdale, Arkansas. The deposition of the claimant was taken on November 20, 2003. This deposition has been admitted as Respondent's Exhibit No. 2.

During the hearing, reference was made to a one page document in the questioning of several witnesses. These witnesses also referred to an incident report that was completed on March 4, 2003. Under the mistaken belief that the document about which some of the witnesses had been questioned, was the incident report of March 3, 2004, I requested that it be admitted as a Commission's Exhibit. Upon examination of the document at the hearing, it became apparent that this one page document was only the first page of a two page document. Therefore, at the conclusion of the hearing, I requested the respondents to obtain and provide the second page of this document to insure completeness. When the second page of this document, was subsequently provided, it was readily apparent that this document was not the incident report completed on March 4, 2003. Rather, the document from the hearing was an employee's notice of injury report, which was not completed until April 4, 2003. For the purposes of clarity, I requested the

respondents to provide the actual incident report that was completed on March 4, 2003. This report has also been made a portion of Commission's Exhibit No. 2. Pages one and two of this exhibit are the notice of injury report of April 4, 2003, and page three is the initial incident report of March 4, 2003.

A pre-hearing order was entered in this case on September 23, 2003. This pre-hearing order set out the stipulations offered by the parties and outlined the issues to be litigated and resolved at the present time. Immediately prior to the commencement of the hearing, the parties announced that they could agree on the appropriate weekly compensation rates. A copy of the pre-hearing order with this amendment noted thereon, was made Commission's Exhibit No. 1.

The following stipulations were offered by the parties and are hereby accepted:

1. On March 4, 2003, the relationship of employee-self insured employer-third party administrator existed between the parties.
2. The appropriate weekly compensation rates are \$302.00 for total disability and \$227.00 for permanent partial disability.
3. The claim is controverted in its entirety.

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

1. Whether the claimant sustained compensable injuries to her back, hips, and legs on March 4, 2003.
2. The claimant's entitlement to the payment of medical expenses, temporary total disability benefits from April 12, 2003 to a date yet to be determined, and attorney's fees.
3. The effect of Ark. Code Ann. §11-9-411 on any benefits to which the claimant may be entitled.

In regard to these issues, the claimant contends:

“Claimant was injured on March 4th when she fell because her foot slipped and hurt her back, hips, and legs.”

In regard to these issues, the respondents contend:

“Respondent denies that the claimant sustained a compensable accidental injury which arose out of and during the course of her employment with Wal Mart on March 4, 2003. While the respondent admits that the claimant was involved in an incident per se on the stated date, it denies that any physical injury was sustained as a result thereof. The claimant continued to work on a full time basis for the next month before presenting to her treating chiropractor of approximately 25 years for some adjustments to her spine. If the claimant became symptomatic in her spine toward the end of March of 2003, then it was solely attributable to her pre-existing longstanding degenerative disc disease.”

It is the respondents’ understanding that the claimant has previously submitted some of her medical bills for payment under her separate and distinct group health coverage offered by Wal Mart. The claimant may be receiving short term disability benefits as well. Solely in the alternative should the Commission ultimately conclude that the claim is compensable then in that event, respondent respectfully requests entitlement to a credit for those monies previously paid to or on behalf of the claimant.”

DISCUSSION

_____The central issue in this case is whether the claimant sustained “compensable” injuries to her back, hips, and legs on March 4, 2003. The burden rests upon the claimant to prove the occurrence of “compensable” injuries to these portions of her body.

In order to meet this burden, the claimant must first “establish” by medical evidence, the actual existence of the physical injuries or conditions alleged to be compensable. Further, she must show that the existence of these physical injuries or conditions is supported by the independent observation of “objective findings” or findings beyond her voluntary control. Ark. Code Ann. §11-9-102(4)(D).

The medical evidence records the presence of various subjective complaints involving the claimant’s back, hips, or pelvic area, and legs (as well as numerous other

portions of her anatomy). However, the evidence fails to reveal the presence of any “objective findings” to support the existence of any injuries or conditions involving the claimant’s pelvis, hips, or legs. However, the evidence does show the presence of “objective findings” to support the actual existence of a physical injury or condition involving her back or lumbar spine. These “objective findings” are in the form of abnormalities noted on an MRI study, which was performed on May 27, 2003. This study revealed the presence of decreased height of the L3-4 intervertebral disc, which was attributed to disc dessication (dehydration and loss of water content in the tissues forming the disc) and mild osteophytosis (bone spur formations on the surfaces of the vertebral bodies) at all levels of the claimant’s lumbar spine. The radiologist further interpreted this MRI, as showing that the remainder of the claimant’s discs were of normal height and signal intensity, all vertebral body heights were normal, there was no malalignment of the spine, no bone marrow edema, no evidence of disc protrusion, spinal stenosis, or foraminal stenosis at any level, the claimant’s exiting nerve roots were bilaterally symmetrical and showed no evidence of enlargement or swelling (edema).

On November 11, 2003, Dr. Cyril Raben purportedly authored a report, wherein he stated that he reviewed the MRI study of May 27, 2003 and that it was his opinion that this study showed not only dessication and settling of the L3-4 disc with “modic changes” (changes in the bone of the surrounding vertebra, possibility the osteophytosis noted by the radiologist) of the L2-L3 and L4 vertebra. However, he also purportedly expressed the opinion that this study showed abnormalities in the form of bulging and/or neuroforaminal stenosis at the L3-4 level and mild bulging and stenosis at the L5-S1 level. These latter conclusions are expressly contrary to the radiologist’s interpretation of this study. Then in a subsequent narrative report to the respondents’ attorney, Dr. Raben specifically contradicts many of the statements contained in his November 11, 2003 “clinic note”. In this subsequent narrative report, he states that he has not personally reviewed the MRI

study, performed of May 27, 2003. He even denies seeing the claimant on November 11, 2003. He does acknowledge that he has the report of the radiologist, based on this study. He further acknowledged that this report noted only the presence of degenerative disc disease, which mainly affected the L3-4 level, and did not show any disc bulges, protrusions, or herniations and did not show any evidence of impingement or pressure or any nerve roots or the spinal cord, itself. In light of this subsequent narrative report, I find that I can give no weight and credit to the statements contained in Dr. Raben's "clinic note" of November 11, 2003, particularly those concerning the presence of intervertebral disc bulging and foraminal stenosis with resulting pressure on the exiting nerve roots.

In summary, I find that the claimant has failed to "establish" by medical evidence, which is supported by "objective findings", the actual existence of any physical injury or conditions involving her pelvis, hips, or legs. Thus, she has failed to prove that she has sustained any "compensable injuries" to these portions of her anatomy, within the meaning of Ark. Code Ann. §11-9-102(4)(D). However, she has "established" by medical evidence, which is supported by "objective findings, the actual existence of physical injuries or conditions involving her lumbar spine, in the form of loss of disc height, and dessication of the L3-4 disc and osteophytic changes to all of the lumbar vertebra. Thus, she has satisfied the requirements of Ark. Code Ann. §11-9-102(4)(D) in regard to these injuries or conditions.

It next becomes necessary to determine if the medically established and objectively supported injuries or conditions, involving the claimant's lumbar spine (primarily at the L3-4 level), satisfy the definitional requirements of Ark. Code Ann. §11-9-102(4)(A)(i). These definitional requirements are:

- (1) The injury or condition must arise out of and occur in the course of the employment.
- (2) The injury or condition must be caused by a specific incident.
- (3) The injury or condition must be identifiable by time and place of

occurrence.

- (4) The injury or condition must result in internal or external physical harm to the claimant's body.
- (5) The injury or condition must require medical services or result in disability.

The evidence unquestionably shows that the claimant was involved in a "specific incident" on March 4, 2003, and that this "specific incident" was in the form of an employment related fall. In order to meet the first three definitional requirements of Ark. Code Ann. §11-9-102(4)(A)(i), the claimant must prove, by the greater weight of the credible evidence, the existence of the causal relationship between her employment related fall, on March 4, 2003, the medically "established" and objectively supported injuries or conditions involving her back or lumbar spine. However, this fall need not be the sole or even major cause of the conditions. This causal relationship may be in the form of an aggravation of pre-existing conditions.

After consideration of all the evidence presented, it is my opinion that the greater weight of the evidence fails to prove a causal relationship between the fall on March 4, 2003, and any difficulties which the claimant may have subsequently experienced with her back or lumbar spine. Thus, the claimant has failed to establish that any of these difficulties represent a "compensable injury", as that term is defined by Ark. Code Ann. §11-9-102(4)(A)(i).

First, the evidence fails to show a reasonably close temporal relationship between the "specific incident" on March 4, 2003, and the onset of any symptoms indicative of the occurrence of a physical injury to the claimant's back. The initial incident report (Commission's Exhibit No. 2, page 3) records no complaints of difficulties involving the claimant's back or lumbar spine. The testimony of Randy Huske (a co-employee of the claimant who was present at the time of the fall) indicates that the claimant made no complaints of difficulties with any portion of her body, immediately following the fall. He

stated that the claimant simply got up off the floor and “kind of laughed”. He further testified that he assisted the claimant in moving the pallet that allegedly caused her fall and that she made no complaints or appeared to experience any difficulties in performing this activity. Joyce Hughes (the claimant’s supervisor and the author of the initial incident report, contained in Commission’s Exhibit No. 2), testified that the claimant reported the fall, shortly after it occurred, but complained of no difficulties involving the back. Most importantly, the claimant testified that she did not experience any difficulties or symptoms with her back, at the time of the fall (T.58). She further testified that she experienced no symptoms with her back for at least two weeks after the fall, even though she continued to perform her rather heavy job duties for this respondent (T.59). According to her testimony, her back simply started hurting after she had either been walking or standing for a period of time. She did not recall where she was when these symptoms appeared (T.60).

This lack of a reasonably close temporal relationship between the employment related fall of March 4, 2003 and the onset of symptoms indicative of a physical injury to the claimant’s back or lumbar spine must also be considered in light of the claimant’s past medical history. The evidence shows that the claimant has complained of difficulties with the same portions of her body (i.e. her lower back, hips and legs) for a considerable period of time prior to her fall on March 4, 2003. She has sought and received frequent and extensive chiropractic treatment to these portions of her body on numerous occasions prior to March 4, 2003.

Although most of the records of Dr. Norman Smith (a chiropractor) are illegible, they indicate that the claimant has been experiencing difficulties in the form of numbness in her hip since at least May of 1987, lower back and hip pain since at least May of 1996, right knee pain since at least April of 1997, and right leg pain since at least November of 2002. Following the claimant’s motor vehicle accident, in April of 2002, the claimant sought

treatment from Dr. Smith for injuries sustained in this accident on June 13, 2002. In his notation of that date, Dr. Smith not only diagnosed a defect involving the claimant's mid back or thoracic spine (levels T. 5-8), but also diagnosed a defect or difficulties in the L3-4 area (the same area where the defect is noted on the MRI). On November 7, 2002, January 20, 2003, and January 25, 2003, the claimant again sought the services of Dr. Smith. In his notations on those dates, he not only diagnosed difficulties involving the claimant's mid back or thoracic spine, but again diagnosed difficulties involving the L3-4 and 5 levels of her lower back or lumbar spine.

The claimant repeatedly testified that her difficulties after the fall were somehow different than any she had previously experienced. However, the only difference she could describe was that her more recent symptoms were greater in magnitude. It must also be noted that the diagnosis of Dr. Smith made in his treatment and comment record for March 31, 2003, (the claimant's initial visit after her fall) was essentially identical to the diagnoses he made of the claimant's difficulties on November 7, 2002, November 16, 2002, January 20, 2003, and January 25, 2003. This diagnosis appears to continue to be Dr. Smith's diagnosis of the etiology of the claimant's difficulties through April of 2003.

Finally, the lack of a close temporal relationship between the fall on March 4, 2003, and the onset of the claimant's current back difficulties must be considered in light of the nature of the objectively demonstratable defects involving her lumbar spine. These defects are essentially all degenerative in nature, rather than due to any specific traumatic event. Clearly, a fall such as that experienced by the claimant on March 4, 2003, could aggravate these pre-existing degenerative defects. However, if this were the case, symptoms indicative of the occurrence of such an aggravation would be reasonably expected to manifest themselves contemporaneously with the fall or at least within a period of only minutes or hours thereafter (not two weeks as indicated by the claimant's testimony).

It is equally possible that these degenerative defects could be aggravated by any

number of activities or incidents even those involving little or no noticeable trauma. This would include such day to day activities of life, such as bending, stooping, twisting, and even walking or standing. This fact is demonstrated by the repeated episodes of symptoms involving these portions of her body, as reflected in the chiropractic records, which appear to have occurred without any noticeable trauma. In her testimony, the claimant even describes one of these incidents that apparently occurred after her fall when her back was numb while she was working in her garden.

In summary, the claimant has failed to prove that on March 4, 2003, she sustained a physical injury to her back or lumbar spine that satisfies all of the definitional requirements of Ark. Code Ann. §11-9-102(4)(A)(i). Thus, she has failed to prove a “compensable injury” to this portion of her body.

FINDINGS OF FACT & CONCLUSIONS OF LAW

1. The Arkansas Workers’ Compensation Commission has jurisdiction of this claim.
2. On March 4, 2003, the relationship of employee-self insured employer-third party administrator existed between the parties.
3. On March 4, 2003, the claimant earned wages sufficient to entitle her to weekly compensation benefits of \$302.00 for total disability and \$227.00 for permanent partial disability.
4. The claimant has failed to prove by the greater weight of the credible evidence that on March 4, 2003, she sustained any compensable injuries to her back, hips, and/or legs.
5. The respondents have denied the occurrence of any compensable injuries on March 4, 2003, and have controverted this claim in its entirety.

ORDER

Based upon my foregoing findings and conclusions, I have no alternative but to deny

and dismiss this claim in its entirety.

IT IS SO ORDERED.

MICHAEL L. ELLIG
Administrative Law Judge