

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F505737

CYNTHIA DAVIS	CLAIMANT
WAL-MART ASSOCIATES, INC.	RESPONDENT
CLAIMS MANAGEMENT, INC. INSURANCE CARRIER	RESPONDENT

OPINION FILED DECEMBER 28, 2005

Hearing before ADMINISTRATIVE LAW JUDGE ELIZABETH DANIELSON in Fort Smith, Sebastian County, Arkansas.

Claimant represented by EDDIE H. WALKER, JR., Attorney, Fort Smith, Arkansas.

Respondents represented by DALE BROWN, Attorney, Fayetteville, Arkansas.

STATEMENT OF THE CASE

A hearing was held on October 27, 2005, in Fort Smith, Arkansas.

A pre-hearing conference was held in this claim, and as a result a pre-hearing order was entered in the claim on July 14, 2005. This pre-hearing order set forth the stipulations offered by the parties, the issues to litigate and the contentions thereto.

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

1. The Arkansas workers' Compensation Commission has jurisdiction of this claim.

2. On February 25, 2005, the relationship of employee-employer-carrier existed between the parties.

3. The claimant is entitled to a compensation rate of \$342.00 for temporary total disability and \$257.00 for permanent partial disability.

By agreement of the parties the issues to litigate are limited to the following:

1. Compensability of the claimant's injuries to her spine and right upper extremity.

2. Related medical.

3. Temporary total disability from May 27, 2005, through September 16, 2005.

4. Attorney's fees.

In regard to the foregoing issues the claimant contends that she sustained injury to her cervical spine and her right upper extremity when she fell at work while performing her job duties. The claimant contends that she is entitled to temporary total disability benefits from May 27, 2005, until a date yet to be determined and reasonable and necessary medical treatment. The claimant contends that her attorney is entitled to an appropriate attorney's fee.

In regard to the foregoing issues the respondents contend that the claimant did not sustain a compensable injury arising out of and in the course of her employment as defined by the Arkansas workers' Compensation Act, and, therefore, is neither entitled to temporary total disability benefits nor reasonable and necessary medical treatment.

The documentary evidence submitted in this matter consists of the Commission's pre-hearing order marked Commission's Exhibit No. 1. The claimant submitted two packets of documentary evidence marked Claimant's Exhibit No. 1 and Claimant's Exhibit No. 2 as

well as a letter from River Valley Medical Clinic marked Claimant's Exhibit No. 3. The respondents submitted documentary evidence marked Respondents' Exhibit No. 1 and the deposition of the claimant marked Respondents' Exhibit No. 2. All these exhibits were admitted without objection.

#### DISCUSSION

The claimant testified that she was an eight and one half year employee with the respondent. The claimant testified that on February 25, 2005, she fell off a ladder while at work. The claimant explained that she was trying to get a UPC number off of a twenty-seven-inch TV. The claimant testified that she was on the top step of a six-foot ladder working with the television when the television shifted and when it became obvious that she could not stop it from falling, she tried to get out of its way. The claimant testified that the TV fell and hit the top of the ladder, knocked the ladder, herself and everything to the floor. The claimant testified that she landed on her butt. The claimant testified at the time she was shaken up but she was not aware of any specific injury except for a bruise on her right arm or elbow. The claimant testified that following her fall she went upstairs and sat down in the break room because she was shaking like a leaf.

The claimant testified that she is a department manager for the respondent. The claimant agreed that sometime after February 25, 2005, she was moving some material and when she reached up with her right hand she felt a pain through her elbow into her upper arms and into her shoulder going straight across her shoulder up

into her left ear. The claimant testified that she did not understand what was going on at the time she just knew that it did not feel right and she had never had this type of feeling before. The claimant testified that about a week after her accident she called to make an appointment with Dr. Harper and it took a little while for her to get an appointment with him. The claimant agreed that at the time she saw Dr. Harper on March 24, 2005, she did not associate her job-related accident with the problems that she was experiencing. The claimant testified that it was not until she was seen by Dr. Capocelli, a neurosurgeon, that she related her fall from the ladder to her injury. The claimant testified that she has not experienced any other accident or event from the date of her fall until she was seen by Dr. Capocelli. The claimant testified that most of her problems have been on her right side and that the bruise which she had was on her right arm below her elbow. The claimant testified that as she fell off the ladder her arms were behind her in an attempt to try and catch or break the fall. The claimant testified that as a result of her fall she has undergone surgery for her neck.

On cross examination, the claimant agreed that if it had not been for her conversation with Dr. Capocelli she would not have related her fall while working for the respondent with her injury. The claimant testified that she has had three workers' compensation claims, one while working for a prior employer. The claimant testified that this injury was for carpal tunnel syndrome and she received workers' compensation benefits. The claimant testified

that she has had one prior workers' compensation claim with the respondent. The claimant testified that again she was on a ladder but this time a small three step ladder and as she was stepping down her foot or shoe got hung and she twisted her knee. The claimant testified that her assistant manager was present and saw her fall at this time. The claimant testified that she was sent to the company doctor. The claimant agreed that she was familiar with workers' compensation reporting and requirements. When asked about her fall on February 25, 2005, the claimant testified that after her fall she did not request medical treatment. The claimant agreed that between February 25 through May 27 when she was seen by Dr. Capocelli she did not ask the respondents to send her to a doctor. The claimant testified that she sought medical treatment on her own, agreeing that she did not associate it with her work related fall. The claimant testified that between February 25 and May 27, 2005, she continued to report to work as scheduled and fulfill all the duties required of her in her department. The claimant agreed that she did not ask for or seek any type of accommodation in order to do her work but she did experience pain in her right shoulder all the way up to her neck and into her ear. The claimant testified that any time she would lift something that was heavy or have to reach up, she would feel pain from her elbow into her shoulder, across her shoulder blades and then up into her right ear. The claimant stated that this sometimes would make her feel like she was going to have a headache. The claimant agreed that it was about one week after her fall that she began to

experience this pain and she further agreed that she had never experienced this sort of pain before. The claimant testified that this pain or discomfort would occur depending on the type of work she was doing. The claimant testified that to move even a thirteen-inch TV it got to the point where she could hardly lift it. The claimant was asked how she could not associate her problems with her fall and the claimant testified that she just did not give it a thought. The claimant remembered that all she knew was that her right side which was her dominate and stronger side began to not feel right and that is why she went to a doctor. The claimant testified that before she was able to get in to see Dr. Harper she was taking Tylenol for her discomfort about once a day but it really did not help. The claimant testified that she does not know if anyone witnessed her fall off the ladder on February 25 but she does know that James Cole, the toy department manager, and Sheila came around the corner just as she was landing. The claimant testified that when she was seen by Dr. Harper she told him about the pain across her shoulders and up to her ear. The claimant testified that Dr. Harper did not ask her what she thought might have caused it. The claimant testified that when she saw Dr. Jennings on April 6, 2005, she again explained where her discomfort was and he did not ask her what had happened to cause her problems. The claimant testified that Dr. Jennings set her up for an MRI and then sent her to Dr. Capocelli. The claimant testified that her visits with Dr. Harper and Dr. Jennings were paid by her as well as her husband's insurance. The claimant testified that when she was

first seen by Dr. Capocelli he asked her if she had been in a car accident or had a fall and that is when she related to him her February 2005 fall. The claimant testified that Dr. Capocelli recommended and performed surgery. The claimant testified that subsequent to her surgery she has felt wonderful. The claimant testified that as of the date of this hearing she has a little bit of soreness when she sits for any long period of time. The claimant was asked about her water sports and she testified that she has done knee boarding for the past ten years. The claimant testified that she has had many wipe outs but has never had an injury. The claimant agreed that except for her conversation with Dr. Capocelli there would be no reason that she would have linked her fall with her herniated disc and need for surgery.

On redirect examination, the claimant testified that when Dr. Capocelli asked her if she had had a fall, she described what happened to her in February 2005, while working for the respondent. The claimant agreed that she had no way of knowing that the symptoms that she began to experience were related to a specific incident. The claimant testified that the two other workers' comp claims that she has had, one for a former employer and one with the respondent, were not disputed claims. The claimant agreed that once Dr. Capocelli told her that he thought her fall was the reason for her discomfort she then turned this injury in on workers' compensation. The claimant testified that at the time of her fall she reported the incident and filled out paperwork as to what had happened specifically reporting about the bruise on her right upper

extremity. The claimant testified that to her knowledge there was nothing about the respondents' procedure that she did not follow.

On redirect examination, the claimant agreed that the event with the TV falling and knocking her off of the ladder was a frightening event and did result in her shaking like a leaf after it happened. The claimant testified that her fall was the farthest thing from her mind within a couple of days to a couple of weeks later.

The claimant set forth in her deposition that on the day of her accident she was up on a ladder checking a UPC number when it shifted and started falling toward her. The claimant testified that the TV first hit the ladder knocking the ladder as well as herself to the ground. The claimant testified that Sheila and James came around the corner and helped get her up. The claimant testified that she does not recall being in pain at that time but that she was shaking like a leaf. The claimant testified that she told Sheila and James that she needed to sit down and since she could not sit while down on the floor she went up to the break room. The claimant testified that on the way to the break room she stopped at Jeanette's office. The claimant testified that Jeanette was the store manager. The claimant testified that she reported to Jeanette what had happened just as she had told James and Sheila. The claimant testified that she recalls this event happening around 10:00 in the morning and that her shift ended at 4:00 in the afternoon. The claimant testified that she worked her entire shift. The claimant testified that when she reported this event to

Jeanette, Jeanette had her fill out paperwork and a report of the accident. The claimant testified that about a week to a week and a half later she was putting merchandise up when she felt a pain in her right arm which ran all the way up to her ear. The claimant testified that after she was seen by Dr. Capocelli he was the one that told her that the ladder incident was what had caused her problems. The claimant testified that up until then she had not associated the two events as one causing the other. The claimant testified that up until she saw Dr. Capocelli none of the other doctors had asked her if she had been in a car wreck or had a fall. The claimant testified that it was her understanding that the surgery which she underwent by Dr. Capocelli involved putting a plate in connecting her four, five, six and seven levels with six screws. The claimant testified that since her surgery she has felt wonderful.

The medical records set forth that the claimant was seen by Dr. Harper on March 24, 2005, with a complaint of joint pain, noting that the claimant aches all over and has been for the past couple of weeks. The doctor's notes indicate that the claimant is having problems sleeping and that her discomfort is mainly in her shoulders and low back. It is further noted by Dr. Harper that the claimant is having thoracic spasms. On April 6, 2005, Dr. Jennings writes that the claimant reports right shoulder and neck pain with severe burning into her right shoulder. An MRI dated April 8, 2005, reveals that the claimant has a large right paracentral C8 herniated nucleus pulposus and a small right paracentral C5

herniated nucleus pulposus. On May 27, 2005, the claimant was seen at the River Valley Muscular Skeletal Center and an assistant physician's nurse, Carmen Oxford, sets forth that the claimant is seen for right neck and shoulder pain, noting that for the past two months she has had increased pain in her neck and right shoulder which radiates into her elbow and also radiates to the side of her neck right below her earlobe. It is noted that the claimant reports that approximately three months ago she fell off of a ladder and that one month after that she started developing symptoms. After examination, the claimant was diagnosed with having disc disease and herniations at C6-7 and a smaller herniation at C5-6. Surgery was discussed with the claimant as well as the amount of time she would need to be off work as a result of her surgery. Dr. Keith Holder writes on May 31, 2005, that the claimant reports that on February 25, 2005, she fell off of a six-foot ladder while trying to get some numbers off of a television. The intake note sets forth that after this fall the claimant began to develop symptoms about three weeks later noting that her right shoulder and the right side of her neck became painful. Dr. Holder notes that an MRI of the claimant's neck revealed a large right paracentral C6 herniation and a smaller right paracentral C5 herniation. It is noted that Dr. Capocelli has released the claimant from work until surgery. Dr. Holder notes that he will not be treating her but would defer this to the claimant's neurosurgeon but did recommend medications and agreed that the claimant should not return to work until after her

surgical intervention. Dr. Anthony Capocelli operated on the claimant on June 23, 2005, performing an anterior cervical discectomy and interbody arthrodesis at C5-6 and C6-7 with an allograft fusion and Atlantis plate instrumentation, C5, 6 and 7. On follow up Dr. Capocelli writes on July 20, 2005, that the claimant is now three to four weeks post cervical discectomy and is doing well except for some intermittent stiffness in the trigger points in her neck. Dr. Capocelli notes that he would keep the claimant off work until the end of August and will make x-rays at that time. Dr. Capocelli recommended exercises and refilled her prescriptions. Dr. Capocelli, on July 20, 2005, continued the claimant off work at least until August 30, 2005. On August 30, 2005, the claimant was released to return to work with the maximum lifting of twenty-five pounds and to work no more than two hours a day. Dr. Capocelli writes on October 5, 2005, that the claimant has been under his care since May 27, 2005, for chronic neck pain and radicular symptoms which she suffered after a fall at work. Dr. Capocelli notes that the claimant has a history of low back and thoracic spasms and myofascial syndrome but no history of cervical disease and no radicular symptomatology in the right arm. Dr. Capocelli continues to write that to that end it is his belief that based on the claimant's history and objective findings that she had a work injury suffered when she fell from a ladder.

After a complete review of all the testimony and evidence presented in this matter, I find that the claimant has proven by a preponderance of the evidence that she sustained a compensable

injury to her cervical spine and right upper extremity on February 25, 2005, when she fell off a ladder onto the floor. The claimant has testified to a specific incident happening at work while performing employment services and there are objective medical findings to substantiate an injury. Dr. Capocelli has opined that based on the claimant's report of her fall that her injuries are a result of this event. The respondents, therefore, should pay for all reasonable and necessary medical treatment from May 27, 2005. The claimant did not request medical treatment of the respondent until this date even though she had reported her fall on the date that it happened. The claimant has also proven by a preponderance of the evidence that she is entitled to temporary total disability from May 27, 2005, through September 5, 2005, when the claimant was released to return to work with restrictions.

#### FINDINGS & CONCLUSIONS

1. The Arkansas workers' Compensation Commission has jurisdiction of this claim.
2. On February 25, 2005, the relationship of employee-employer-carrier existed between the parties.
3. The claimant is entitled to a compensation rate of \$342.00 for temporary total disability and \$257.00 for permanent partial disability.
4. The claimant has proven by a preponderance of the evidence that she sustained a compensable injury while working for the respondent on February 25, 2005. See discussion above.

5. The respondents should pay for all reasonable and necessary medical treatment for this claimant's compensable injury subsequent to May 27, 2005.

6. The claimant has proven by a preponderance of the evidence that she is entitled to temporary total disability from May 27, 2005, through September 5, 2005. See discussion above.

7. The respondents have controverted this claim in its entirety.

8. The claimant's attorney is entitled to the maximum statutory attorney's fee based on the benefits awarded herein.

ORDER

The claimant has proven by a preponderance of the evidence that she sustained a compensable injury while working for the respondent on February 25, 2005.

The respondents should pay for all reasonable and necessary medical treatment for this claimant's compensable injury subsequent to May 27, 2005.

The respondents should pay temporary total disability to this claimant from May 27, 2005, through September 5, 2005.

The respondents shall pay to the claimant's attorney the maximum statutory attorney's fee on the additional benefits awarded herein, with one half of said attorney's fee to be paid by the respondents in addition to such benefits and one half of said attorney's fee to be withheld by the respondents from such benefits.

All benefits herein awarded which have heretofore accrued are payable in a lump sum without discount.

This award shall bear the maximum legal rate of interest until paid.

IT IS SO ORDERED.

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ELIZABETH DANIELSON  
ADMINISTRATIVE LAW JUDGE