

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

WCC NO. F412221

BARBARA FARMER, Employee	CLAIMANT
WAL-MART STORES, INC., Employer	RESPONDENT
CLAIMS MANAGEMENT, INC., Carrier	RESPONDENT

OPINION FILED MAY 6, 2005

Hearing before ADMINISTRATIVE LAW JUDGE GREGORY K. STEWART in Springdale, Washington County, Arkansas.

Claimant represented by EVELYN BROOKS, Attorney, Fayetteville, Arkansas.

Respondents represented by CURTIS NEBBEN, Attorney, Fayetteville, Arkansas.

STATEMENT OF THE CASE

On April 13, 2005, the above captioned claim came on for a hearing at Springdale, Arkansas. A pre-hearing conference was conducted on February 2, 2005, and a pre-hearing order was filed on that same date. A copy of the pre-hearing order has been marked Commission's Exhibit #1 and made a part of the record without objection.

At the pre-hearing conference the parties agreed to the following stipulations:

1. The Arkansas Workers' Compensation Commission has jurisdiction of the within claim.
2. The relationship of employee-employer existed between the parties on November 10, 2004.
3. The claimant was earning sufficient wages to entitle her to compensation at the weekly rates of \$278.00 per week for total disability benefits and \$209.00 for permanent partial disability benefits.

At the pre-hearing conference the parties agreed to litigate the following issues:

1. Compensability of injury to right wrist on November 10, 2004.
2. Temporary total disability benefits.

3. Medical.
4. Attorney fee.

At the time of the hearing the claimant clarified that the requested period of temporary total disability benefits would be November 10, 2004 through January 12, 2005.

The claimant contends she was injured on November 10, 2004. She was mopping a floor when she slipped and fell breaking her right wrist. She requests temporary total disability, medical, and an attorney fee.

The respondents contend the claimant did not sustain an injury arising out of and in the course of her employment as defined by the Arkansas Workers' Compensation Act. Among other things, the respondents contend the claimant does not have measurable and objective findings to support the definition of a compensable injury.

From a review of the record as a whole, to include medical reports, documents, and other matters properly before the Commission, and having had an opportunity to hear the testimony of the witness and to observe her demeanor, the following findings of fact and conclusions of law are made in accordance with A.C.A. §11-9-704:

#### FINDINGS OF FACT & CONCLUSIONS OF LAW

1. The stipulations agreed to by the parties at the pre-hearing conference conducted on February 2, 2005, and contained in a pre-hearing order filed that same date, are hereby accepted as fact.

2. Claimant has met her burden of proving by a preponderance of the evidence that she suffered a compensable injury to her right wrist while working for respondent on November 10, 2004.

3. Respondent is liable for all reasonable and necessary medical treatment provided in connection with claimant's compensable right wrist injury.

4. Claimant is entitled to temporary total disability benefits beginning November 22,

2004 and continuing through January 12, 2005.

5. Respondent has controverted claimant's entitlement to indemnity benefits.

#### FACTUAL BACKGROUND

The claimant is a 56-year-old woman who completed the eleventh grade and obtained her GED. The claimant was hired by the respondent in 2000 to work in its bakery department in a store in Siloam Springs.

Claimant testified that on November 10, 2004, she slipped and fell on a wet floor, landing on her right wrist. Claimant was taken by ambulance to the emergency room at the Siloam Springs Hospital where an x-ray of the claimant's right wrist revealed no definite fracture or malalignment. Claimant was given a splint and diagnosed with a contusion/sprain of the right wrist. Claimant returned to work for respondent on November 11 and on that same day was sent by respondent to Dr. Thompson. Dr. Thompson also released the claimant to return to work with restrictions of no bending, lifting, pulling, or carrying with her right hand for four days. Dr. Thompson prescribed Tylenol and Motrin for pain and inflammation.

On November 12, 2004 the claimant sought medical treatment from the W.W. Hastings Hospital in Tahlequah, Oklahoma. Hastings is a Native American hospital. Three x-ray views taken of claimant's right wrist on November 12 revealed a minimally displaced fracture of the distal radius. As a result, claimant was given a splint and an appointment was made for her to see Dr. DePaula, an orthopaedic surgeon, on November 18, 2004.

Before claimant could see Dr. DePaula, she was sent by the respondent to Dr. Lewis on November 15, 2004. Dr. Lewis noted that claimant had evidence of bruising and swelling of her right wrist, but nevertheless released claimant with a diagnosis of a resolved right wrist strain. Claimant did see Dr. DePaula on November 18, 2004, and Dr. DePaula

placed a cast on the claimant's right wrist. Subsequent x-rays revealed that claimant's right wrist fracture had healed.

Claimant has filed this claim contending that she suffered a compensable injury to her right wrist while employed by respondent. She seeks payment of medical benefits, temporary total disability benefits, and a controverted attorney fee.

### ADJUDICATION

The claimant contends that she suffered a compensable injury to her right wrist when she slipped and fell while working for respondent on November 10, 2004. Claimant's claim is for a specific injury identifiable by time and place of occurrence. The Commission has stated in *Henry Weaver v. Precision Packaging*, Full Commission Opinion filed February 2, 1995 (E400880), that pursuant to Act 796 of 1993, the following must be shown in order to establish the compensability of an injury occurring after July 1, 1993:

- (1) proof by a preponderance of the evidence of an injury arising out of and in the course of his 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;
- (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.

After reviewing the evidence in this case impartially, without giving the benefit of the doubt to either party, I find that claimant has met her burden of proving by a preponderance of the evidence that she suffered a compensable injury to her right wrist.

As previously noted, claimant testified that she suffered the compensable injury when she slipped and fell on a wet floor, landing on her right wrist on November 10, 2004.

As a result of this fall, claimant was taken by ambulance to the emergency room at the Siloam Springs Hospital. A review of the medical reports reveals a history of injury consistent with claimant's testimony that she slipped and fell on a wet floor, landing on her right wrist. After consideration of the claimant's testimony which I find to be credible and entitled to great weight as well as the remaining evidence presented in this case, I find that claimant has met her burden of proving by a preponderance of the evidence that her injury to her right wrist arose out of and in the course of her employment with respondent and that it was the result of a specific incident identifiable by time and place of occurrence.

I also find that claimant has met her burden of proving by a preponderance of the evidence that the injury resulted in internal physical harm to her body which resulted in disability and the need for medical treatment and that claimant has offered medical evidence supported by objective findings establishing an injury.

Obviously in this case the initial x-ray taken in the emergency room on November 10, 2004 was read as negative revealing no definitive fracture or malalignment. However, I believe it is important to note that the x-ray report states that it is a "very limited examination with a single view". Only two days after that single view x-ray the claimant sought medical treatment at the Hastings Hospital in Tahlequah. On that day, three views of the claimant's right wrist were taken and those x-rays revealed a minimally displaced fracture of the distal radius. As a result, claimant was referred to an orthopaedic surgeon who placed a cast on her right wrist. Even Dr. Lewis, who examined claimant on November 15, 2004 at the request of the respondent, noted objective evidence of bruising and swelling of the claimant's right wrist.

Although it might be argued that the fracture occurred after the x-ray was taken on November 10 and before additional x-rays were taken on November 12, 2004, I find no merit to that contention. As previously noted, the x-ray report of November 10 indicates that it is a limited examination with a single view. On the other hand, the x-ray report from

November 12 consisted of three views of the claimant's right wrist. Furthermore, there is no evidence that claimant suffered any other injury to her right wrist between November 10 and November 12. In short, it appears that the x-ray taken on November 10 was not as comprehensive as the three views taken on November 12 and simply did not pick up the displaced fracture of the distal radius.

Accordingly, based upon the evidence presented, I find that claimant has met her burden of proving by a preponderance of the evidence that she suffered a compensable injury to her right wrist while working for respondent on November 10, 2004.

Having found that claimant has met her burden of proving by a preponderance of the evidence that she suffered a compensable injury, respondent is liable for payment of all reasonable and necessary medical treatment relating to claimant's compensable right wrist injury. This includes but is not limited to the emergency room at the Siloam Springs Hospital, Dr. Thompson, Dr. Lewis, the Hastings Hospital, and Dr. DePaula.

The final issue for consideration involves claimant's request for temporary total disability benefits. The injury to claimant's wrist is a scheduled injury. An employee who suffers a scheduled injury is entitled to receive temporary total disability benefits or temporary partial disability benefits during their healing period or until they return to work, whichever occurs first, regardless of whether there is a total incapacity to earn wages. *Wheeler Construction Co. v. Armstrong*, 73 Ark. App. 146, 41 S.W. 3d 822 (2001).

After claimant's compensable injury she was initially released to return to work by her treating physicians and did in fact return to work for respondent for several days. Claimant testified that as of November 22, 2004, she took medical leave from the respondent for her injury. Dr. DePaula, on a form completed November 24, 2004, indicated that claimant should remain off work beginning November 12, 2004 and continuing through January 12, 2005. Since claimant did continue to work for respondent for a few days after November 12, I find that she is entitled to temporary total disability

benefits beginning November 22, 2004, the first day she no longer worked for respondent, and continuing through January 12, 2005, the date she was released to return to work by Dr. DePaula.

Claimant testified that when she took medical leave she received some short-term disability benefits totaling approximately \$1,000.00. Pursuant to A.C.A. §11-9-411, respondent is entitled to a credit for those benefits.

Because claimant's compensable injury occurred after July 1, 2001, the claimant's attorney fee is governed by the amendments made by the Arkansas General Assembly in 2001. Pursuant to A.C.A. §11-9-715(a)(1)(B), claimant's attorney is entitled to an attorney fee in the amount of 25% of the compensation for indemnity benefits payable to the claimant. Thus, claimant's attorney is entitled to a 25% attorney fee based upon the temporary total disability benefits awarded. This fee is to be paid one-half by the carrier and one-half by the claimant. Also pursuant to A.C.A. §11-9-715(a)(1)(B), an attorney fee is not awarded on medical benefits.

#### AWARD

Claimant has met her burden of proving by a preponderance of the evidence that she suffered a compensable injury to her right wrist while employed by respondent on November 10, 2004. Respondent is liable for all reasonable and necessary medical treatment provided in connection with claimant's compensable injury. Claimant is entitled to temporary total disability benefits from November 22, 2004 through January 12, 2005. Respondent has controverted claimant's entitlement to temporary total disability benefits.

Pursuant to A.C.A. §11-9-715(a)(1)(B), claimant's attorney is hereby awarded an attorney fee in the amount of 25% of the indemnity benefits payable to the claimant. This fee is to be paid one-half by the carrier and one-half by the claimant. The respondents are to withhold the claimant's portion of the attorney's fee from the claimant's award and

to pay the attorney's fee directly to the claimant's attorney.

All sums herein accrued are payable in a lump sum without discount and this award shall bear interest at the maximum legal rate until paid.

IT IS SO ORDERED.

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GREGORY K. STEWART  
ADMINISTRATIVE LAW JUDGE