

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F407886

ALTHELLA R. REEVES, EMPLOYEE	CLAIMANT
WAL-MART ASSOCIATES, EMPLOYER	RESPONDENT
CLAIMS MANAGEMENT, INC.	RESPONDENT

OPINION FILED JULY 13, 2005

Hearing held before the HONORABLE S. DALE DOUTHIT, Administrative Law Judge, April 26, 2005 at Texarkana, Miller County, Arkansas

Claimant was represented by HONORABLE GREGORY R. GILES, Attorney at Law, Texarkana, Arkansas.

Respondents were represented by HONORABLE AMY S. HUFFMAN, Attorney at Law, Little Rock, Arkansas.

STATEMENT OF THE CASE

A hearing was conducted in this claim on April 26, 2005, to determine whether the claimant sustained a compensable injury within the meaning of the Arkansas Workers' Compensation Laws.

A prehearing conference was conducted on December 29, 2004, and a prehearing

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order was filed on December 30, 2004. At the hearing the parties announced that the stipulations, issues and their respective contentions were properly set out in the prehearing order, subject to additional stipulations, contentions and issues agreed to at the hearing. A copy of the prehearing order was introduced into evidence as Commission Exhibit #1, and made a part of the record without objection.

The parties stipulated to the following:

- 1) The Arkansas Workers' Compensation Commission has jurisdiction of this claim;
- 2) That the employee/employer/carrier relationship existed at all relevant times, including July 15, 2004.
- 3) That the claimants applicable temporary total disability and permanent partial disability rates are \$114.00 per week.
- 4) That this claim has been controverted in its entirety by the respondents.

By agreement of the parties, the primary issue presented for determination concerned compensability. If overcome, claimant's entitlement to associated benefits must be addressed.

Claimant contended she sustained a compensable injury to her neck on July 15, 2004, arising out of and in the course of her employment, and that she is entitled to temporary total disability benefits from July 15, 2004 to a date yet to be determined.

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Claimant further contends that the medical treatment she received to date has been reasonable, necessary, and related to her work injury, and that respondents should be ordered to pay for those services, plus attorney's fees.

The respondents contend that the claimant cannot prove an accidental injury, caused by a specific event and identifiable by time and place of occurrence, which caused internal or external physical harm arising out of, and in the course of her employment which required medical services, or resulted in disability, or death, nor established by medical evidence supported by objective findings. That since claimant's problems are not compensable, she is not entitled to indemnity benefits with respect to her alleged injuries. Respondents contend, in the alternative, with respect to TTD benefits, that the claimant is not totally incapacitated from earning wages.

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 observe the character and demeanor of the claimant, the following findings of fact and conclusions of law are made in accordance with A.C.A. §11-9-704.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

- 1) The Arkansas Workers' Compensation Commission has jurisdiction of this claim.

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- 2) The stipulations agreed to by the parties are accepted as facts.
- 3) The claimant has failed to prove, by a preponderance of the evidence, that she sustained an injury arising out of and during the course of her employment with Wal-Mart, Inc. on June 15, 2004.

DISCUSSION

The claimant had been employed by the respondent for approximately nine months prior to her alleged compensable injury on July 15, 2004, as a cashier. The claimant alleged she suffered a compensable neck injury on July 15, 2004, and testified as follows regarding the incident:

A. On July 15th I was lifting a bag of bird seed. I had a customer - usually most of them will leave their heavier items in the buggy and I will get the little gun and go around and scan them, but on this particular day, I had another customer already in front of this customer so by the time I got to that customer she had put everything up on the belt, which I have to get all that stuff off the belt and put it in the bags. I was lifting a bag of bird seed and I felt something pop in my neck, but I didn't try to stop and grab or reach for it. My job is to hurry up and get done, get the customers out of the store, so I felt the popping in my neck but I just kept going anyway because I am thinking I need to hurry up and get her out of the line because there was even more customers behind her. So I just kept going after the bird seed. I lifted the bird seed and put it and - put the rest of the groceries in her buggy, and that was it. (T. pg 15, lns 6-23)

The claimant testified that after the alleged "pop" in her neck on July 15, 2004, she continued to work and completed her shift. She testified the pain in her neck became

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extreme after she got home from work, and on the 16th of July, she had to go to the emergency room twice.

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

The claimant must prove that her injury was “...the result of an accidental injury that arose in the course of employment, and that it grew out of and resulted from, the employment.” Cook v. Aluminum Company of America, 35 Ark. App. 16, 21, 811 S.W. 2d 329, 332 (1991).

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This claim turns largely upon the credibility of the claimant. For the reasons which I will set forth below, I did not find the claimant to be a credible witness with regard to her alleged neck injury.

The claimant testified she had a knot come up on the back of her neck two days before the alleged “popping” incident at work on July 15, 2004. She testified that although a knot had popped up, that she was experiencing no pain from it. (T. pg. 14, lines 3-10 & 24-25 and T. pg. 20, lines 1-7) In direct conflict with the claimant, claimant’s sister, Cleola Epps, testified as follows about the pre-July 15, 2004 knot and associated pain:

A. A few days prior to the actual incident of the strain, the neck strain, she told me that she had developed a knot on her neck and she was complaining about pain from that. She felt that she had been straining at work, lifting things, because she was a cashier. At the time I didn’t really pay much attention to it, I mean as far as look at it or feel, you know, exactly where it was, but she did tell me that it was on the back of her neck.

B. So you do remember her complaining about a knot?

A. Yes. (T. pg. 59, lines 9-20)

Of the two witnesses who testified about the claimant’s neck pain shortly before the alleged July 15, 2004 injury, I find Ms. Epps to be more credible, and therefore find the likelihood of a pre-existing neck injury to be highly probable.

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The claimant testified that the knot she had come up on the back of her neck was two days prior to July 15, 2004, actually manifesting itself while she was working around July 13, 2004. (T. pg. 19, lines 5-6) However, Ms. Deborah Davis testified that the claimant told her “that she had hurt her neck at home.” (T. pg. 74, lines 5-6) Ms. Davis also testified that during that conversation the claimant asked her to feel the knot on the back of her neck. (T. pg. 74, lines 6-7). Ms. Davis testified that approximately three to four days after her conversation with the claimant regarding the claimant’s knot, the claimant changed her story and said she had hurt her neck at work. (T. pg. 72, lines 21-23). I find Ms. Davis’ testimony to be the more credible regarding the timeliness of the knot and associated neck pain prior to July 15, 2004.

In addition to the documents introduced at the hearing, the respondents also introduced a videotape of the claimant on July 15, 2004, (RX 1 Blue Back Cover) The videotape was presented by the respondents to show the two occasions in which the claimant scanned bird seed. This examiner reviewed the videotape and could see one occasion when the claimant lifted bird seed. More probative was the videotape reviewed in its entirety that specifically showed the last several minutes of the claimant’s shift on July 15, 2004. The video shows no accidental injury, or even a hint that the claimant experienced a “pop” in her neck.

The record is replete with other inconsistencies in the claimant’s testimony.

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For example, the medical reports show the claimant reported a “pop” in her neck the “morning” on the 15th of July, (CX 1, pg. 9); then the next report states the claimant reported a “pop” in her neck at noon on the 15th of July. (CX 1, pg. 10). Neither of those accounts by the claimant square with the computer records of Wal-Mart which show the claimant never checked out a customer with bird seed until after 6:00 p.m. on the 15th of July. Even more strange is the fact that the claimant never mentioned neck pain or a work injury the first time she went to the emergency room following her work shift on July 15, 2004.

The claimant also changed her statement to her employer when she made her request for medical treatment. On the request, the claimant stated her neck popped when she lifted bird seed at 12:00 p.m. on July 15, 2004. (RX 1, pg. 20). However, when cross-examined about the cash register records showing she checked out no bird seed prior to 6:00 p.m. on July 15, 2004, the claimant then stated she didn’t recall what time of day the incident occurred.

The claimant’s testimony even contradicted her sister’s testimony on seemingly irrelevant points. For example, the claimant testified that after she completed her shift on July 15, 2004, she went home to her husband who was watching the kids. The respondents’ attorney specifically asked the claimant if her sister was at her home on the 15th of July, 2004 taking care of her kids, but the

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claimant denied it.

Q. And you finished out your shift that day?

A. Yes ma'am, I did.

Q. And then you went home?

A. Yes, ma'am.

Q. You said that you called your sister? (T. pg. 39, lines 21-25)

A. Yes, Ma'am.

Q. Was your sister not there at your home taking care of your children?

A. My husband had my kids that night. (T. pg. 40, lines 1-4)

Ms. Epps, the claimant's sister, testified that "on the 15th when she came home from work I was at her house, watching her children." (T. pg 59, 24-25)

The claimant also acknowledged at the full hearing that when she filled out her request for workers' compensation benefits with the respondent, that she indicated she had never injured her neck before July 15, 2004. Upon further cross-examination, the claimant acknowledged that she had been in an extensive wreck and injured her neck prior to July 15, 2004. She then testified she had been diagnosed with whiplash and treated for about a month and one-half as a result of the wreck.

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This examiner has serious doubts as to whether the claimant can prove internal or external physical harm to her body supported by objective medical findings; however, I will not address those elements as I find the claimant has failed to sustain her burden of proof by a preponderance of the evidence of an injury arising out of and in the course of her employment with the respondent. Due to the inconsistencies and credibility questions I have with the claimant, I further find she has failed to prove by a preponderance of the evidence that an injury was caused by a specific incident identifiable by time and place of occurrence.

The claimant has the burden of proving job-relatedness of any alleged injury, without the aid of any kind of presumption in her favor. The burden of proof the claimant must meet is a preponderance of the evidence. Voss v. Wards Pulpwood Yard, 248 Ark. 465, 425 S.W. 2d 629 (1970). In the case at hand the claimant has failed to sustain her burden of proof.

ORDER

After reviewing the evidence in this case impartially, without giving the benefit of the doubt to either party, I find the claimant has failed to prove that she

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sustained an injury arising out of and during the course of her employment with the respondents. Accordingly, this claim is hereby respectfully denied and dismissed.

IT IS SO ORDERED.

S. DALE DOUTHIT
Administrative Law Judge

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