

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F505225

LATARSHA ALSUP	CLAIMANT
WAL-MART ASSOCIATES, INC.	RESPONDENT
CLAIMS MANAGEMENT, INC. INSURANCE CARRIER	RESPONDENT

OPINION FILED JUNE 5, 2006

Hearing before ADMINISTRATIVE LAW JUDGE ELIZABETH DANIELSON in Springdale, Washington County, Arkansas.

Claimant represented by KENNETH OSBORNE, Attorney, Fayetteville, Arkansas.

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

STATEMENT OF THE CASE

A hearing was held on March 28, 2006, in Springdale, Arkansas.

A pre-hearing conference was held in this claim, and as a result a pre-hearing order was entered in the claim on January 27, 2006. 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 May 4, 2005, the relationship of employee-employer-carrier existed between the parties.

3. The claimant sustained compensable injuries to multiple body parts.

4. Medical expenses have been paid.

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

1. Additional medical.

In regard to the foregoing issues the claimant contends that she was involved in an accident in which she was a pedestrian struck by an automobile in the parking lot of the respondent. Following the accident, the claimant received medical attention from various providers. The respondents have paid some of the medical expenses incurred by the Plaintiff. However, the respondents refuse to pay benefits for all of claimant's medical expenses incurred. The respondents have indicated that they are still processing these medical expenses but will not accept and make payment or deny payment for these expenses. The claimant is uncertain which bills are being processed by the respondents as the respondents will not communicate that to the claimant.

In regard to the foregoing issues the respondents contend that they have paid all benefits that the claimant is entitled.

The documentary evidence submitted in this matter consists of the Commission's pre-hearing order marked Commission's Exhibit No. 1. The claimant submitted medical information marked Claimant's Exhibit No. 1. The respondents submitted medical information marked Respondent's Exhibit No. 1 and a change of request marked Respondents' Exhibit No. 2. All these exhibits were admitted without objection.

DISCUSSION

The claimant testified and it has been stipulated by the parties that she sustained compensable injuries to multiple parts of her body on May 4, 2005. The claimant testified that she was struck by a truck in the respondent's parking lot which knocked her out away from the truck. The claimant testified that she landed on her back but as a result of her accident she injured her back, her left knee and her right wrist. The claimant testified that she was transported to the hospital by ambulance and subsequently was treated by Dr. Berestnev at the Lowell Clinic.

The claimant testified that she had a case manager assigned to her case, Michelle Roberts. The claimant testified that Ms. Roberts set up her appointments for her medical treatment and oversaw her treatment plan. The claimant agreed that from May 4 up until May 24, 2005, all of her appointments were with the Lowell Clinic even her physical therapy. The claimant testified that from the date of her injury up through May 24, 2005, she was never free of back pain even though she was taking medications daily. The claimant testified that on the evening of May 24 she began to experience extreme back pain and began to tear up. The claimant testified that her oldest child noticed that she was crying and suggested that he take her to the emergency room. The claimant testified that she was unable to drive and that her son drove her to the emergency room. The claimant testified that she was all slumped over, could barely walk and was in tears by the time she arrived at the emergency room. The claimant testified that it did

not cross her mind to try to contact the Lowell Clinic or Ms. Roberts about authorization to go to the ER since the Clinic was closed and she did not have a home number for Ms. Roberts. The claimant remembered that she arrived at the emergency room at around 10:00 at night. The claimant testified that the respondents have paid for all of her medical treatment up to May 24, 2005, and that currently she is asking that they pay for the medical treatment she received at the ER as well as the hospitalization which she experienced through May 26 and the tests and treatment provided to her at that time.

On cross examination, the claimant agreed that Dr. Berestnev had given her medications for pain. The claimant also agreed that she had requested a change of physician on May 24, 2005, before she went to the ER that evening. The claimant testified that she submitted this request by fax during her working hours. The claimant testified that she was not sure if she saw Dr. Berestnev after May 26, 2005, but that she had followed all of her scheduled appointments and was unsure when Dr. Berestnev released her from his care.

The medical records set forth that the claimant was picked up by ambulance on May 4, 2005, and taken to Northwest Medical Center in Bentonville. The emergency room records indicate that the claimant was hit by a full size vehicle and hurt her right hip, leg, right wrist and had pain in her back. It is noted that the claimant had contusions on her right wrist, right hip and right knee. X-rays taken were normal and she was prescribed medication

for pain. Dr. Konstantin Berestnev saw the claimant on May 6, 2005, noting that she was hit by a pickup truck and was thrown two to three feet from the truck. The doctor notes that immediately after the injury the claimant was complaining of pain in her neck, throbbing and swelling in her right wrist, swelling in her right knee and she later developed pain in her knee. X-rays revealed that there were no fractures. Dr. Berestnev notes that the claimant has pre patellar bruising of the right knee and pain with palpitation. After a full examination, the doctor assessed the claimant with having a right knee bruising, right knee MCL strain and multiple soft tissue contusions of the neck and right wrist. The claimant was prescribed medication as well as to perform stretching exercises for her knee and she was to avoid lifting more than five pounds with her right hand and to avoid climbing, squatting or kneeling for one week. On May 9 Dr. Berestnev writes that he has seen the claimant for follow up and notes after examination that she still has bruising to her right knee and a right knee strain as well as lumbar strain which is still symptomatic. The doctor notes that at this time the claimant reports that it is her back pain that is bothering her the most. Dr. Berestnev again prescribed medications and to lift no more than twenty pounds and avoid climbing. The claimant was again seen by Dr. Berestnev on May 16, 2005, for her continued complaints of low back pain as well as bruising to her right knee and right knee strain. On May 17, 2005, Dr. Berestnev prescribed for the claimant two weeks of physical therapy to be attended three times a week.

The medical records set forth that the claimant began her physical therapy on May 23, 2005, to address her right knee bruising, right knee strain as well as low back pain. The claimant was admitted to the Northwest Medical Center Emergency Room on May 25, 2005, at 21.25 p.m. with complaints of pain from her neck down through her back and shoulders. Dr. Shannon Wipf writes on May 25, 2005, that the claimant came to the ER on May 24, 2005, with complaints of back pain, sharp in nature and a little worse on the left than on the right. The notes indicate that the claimant reports pain extends to her shoulder blades and that she is unable to stand up straight due to the pain in her low back. After examination, MRIs were ordered for the claimant's back and she was to be seen by Dr. Greenburg, a neurosurgeon. MRIs of the claimant's lumbar, cervical and thoracic spine were all normal. The claimant was released from the hospital on May 26 with instructions. The claimant began physical therapy on May 26, 2005, to address the symptoms in her back. The claimant received or went to five physical therapy sessions with it being noted in her last session on June 6, 2005, that she has improved, to continue with her home exercise program and to see her physician. Dr. Berestnev writes on June 20 that the claimant is doing better as to her various complaints. Dr. Berestnev notes that she is doing better after her physical therapy and has no complaints except occasionally pains in her back. After examination, Dr. Berestnev assesses the claimant with having low back pain healing, right knee bruising which is healing as well as right knee MCL Strain which is

also healing. Dr. Berestnev released the claimant to regular duties.

After a complete review of this entire matter, I find that the claimant has proven by a preponderance of the evidence that she is entitled to her medical treatment which she received from May 24 through May 26 for her compensable low back problems to be paid for by the respondent. The respondents have accepted and paid for various treatment for this claimant including treatment for her low back pain and at the time that this claimant's back pain accelerated, there was no way for her to contact the respondents to get authorization to go to the emergency room. The records set forth that after being seen in the ER, the claimant's condition and complaints were such that the attending physicians at that time thought it best to admit her to the hospital for further testing and observation. The respondents, therefore, should pay for the treatment and care which this claimant received from May 24, 2005, through May 26, 2005, for her compensable back problems.

FINDINGS & CONCLUSIONS

1. The Arkansas workers' Compensation Commission has jurisdiction of this claim.
2. On May 4, 2005, the relationship of employee-employer-carrier existed between the parties.
3. The claimant sustained compensable injuries to multiple body parts.
4. Medical expenses have been paid.

5. The claimant has proven by a preponderance of the evidence that she is entitled to additional medical treatment for her compensable injuries, specifically the medical treatment which she received from May 4, 2005, through May 26, 2005. See discussion above.

ORDER

The claimant has proven by a preponderance of the evidence that she is entitled to additional medical treatment for her compensable injuries, specifically treatment she received from May 24, 2005, through May 26, 2005. Therefore, the respondents should pay for this additional medical treatment.

IT IS SO ORDERED.

ELIZABETH DANIELSON
ADMINISTRATIVE LAW JUDGE