

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F209560/F312942

BARBARA COCHRAN	CLAIMANT
WAL-MART ASSOCIATES, INC.	RESPONDENT
CLAIMS MANAGEMENT, INC. INSURANCE CARRIER	RESPONDENT

OPINION FILED APRIL 20, 2006

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 CURTIS NEBBEN, Attorney, Fayetteville, Arkansas.

STATEMENT OF THE CASE

A hearing was held on February 23, 2006, 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 December 19, 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 all relevant dates, the relationship of employee-employer-carrier existed between the parties.

3. The claimant sustained a compensable injury to her right shoulder on July 27, 2002.

4. The claimant is entitled to a weekly compensation rate of \$160.00 for temporary total disability and \$154.00 for permanent partial disability.

5. Medical expenses have been paid for the claimant's shoulder injury.

6. Respondents accepted a 7 percent whole body impairment and will pay an attorney's fee on this impairment.

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

1. Compensability of the claimant's cervical spine injury on July 27, 2002.

2. Related medical.

3. Has the claimant sustained a recurrent tear to her right shoulder?

4. Lack of notice in regard to the claimant's neck injury until December 30, 2003, when the AR-C was filed.

5. Attorney's fees.

In regard to the foregoing issues the claimant contends that review of the medical records clearly reveal that she complained about problems with her neck and right upper extremity in connection with the shoulder injury that she sustained on July 22, 2002. The claimant contends that her condition has not been fully diagnosed and that in addition to sustaining an injury to her right shoulder she also sustained injury to her cervical spine which manifested itself as symptoms in the right hand. The claimant contends that her nerve conduction study regarding her right upper

extremity is abnormal and that she, therefore, either has carpal tunnel syndrome that is a result of her job activities or the abnormal nerve conduction study is indicative of injury to her cervical spine and actually represents the presents of radiculopathy. The claimant contends that she is in need of additional diagnostic testing in the form of an MRI to a cervical spine and that she is entitled to evaluation by a neurosurgeon in order to completely assess the effects of the injury that she sustained in July of 2002 which resulted in symptoms of not only her shoulder but also in her neck and her right upper extremity. The claimant contends that she has sustained a recurrent tear of the right rotator cuff and that the respondents are liable for future medical treatment and possible disability benefits in regard to that recurrent tear.

In regard to the foregoing issues the respondents contend that they have paid all benefits to which the claimant is due concerning her right shoulder injury. Concerning the cervical spine/carpal tunnel syndrome injury, the respondents controvert this claim in its entirety on the basis that 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. In addition, in the event that the cervical spine/carpal tunnel syndrome claim should be found to be compensable, the respondents contend that their first notice of said claim was the filing of the AR-C on or about December 30, 2003, and in the event benefits should be awarded, the claimant is not entitled to benefits until that date.

The documentary evidence submitted in this matter consists of the Commission's pre-hearing order marked Commission's Exhibit No. 1. The claimant submitted documentary evidence marked Claimant's Exhibit No. 1, Claimant's Exhibit No. 2 and Claimant's Exhibit No. 3. The respondents submitted documentary evidence marked Respondents' Exhibit No. 1. All these exhibits were admitted without objection.

#### DISCUSSION

The claimant testified that she will have been working for the respondent nine years in June 2006. The parties have stipulated that the claimant sustained a compensable injury to her shoulder on July 27, 2002. The claimant testified that on July 27, 2002, she also sustained an injury to her cervical spine while working for the respondent. The claimant explained that the cashiers used to do what was called break packs. The claimant explained that break packs were where you break down the new products that have come in, put them in carts and pull them back to their respective departments. The claimant testified that on July 27, 2002, she was pulling three carts of health and beauty products such as lotions and shampoos, noting that each cart weighed approximately one hundred pounds. The claimant testified that she was pulling these carts to the health and beauty department and as she was pulling with her right hand she felt a pull and a yank in her shoulder, a pop at the top of her right shoulder and pain went into her shoulder and up into her neck on the back. The claimant testified that she was in a hurry because she had to go to the register at

midnight so she got the carts by both hands and just backed up pulling them to their department and then she went on to her regular job. The claimant testified that she did not think that she was hurt that bad at the time but after two or three days she realized that she needed to see a doctor because she had been having to carry her arm around.

The claimant testified that the respondents sent her to Preferred Medical but after she did not get any relief from the treatment she went on her own to her personal doctor, Dr. Price, because she felt confident in him. The claimant testified that she complained to Dr. Price about the pain in her neck. The claimant testified that she told Dr. Price about her accident at work and noted that she was not getting any relief from the doctor that the respondents had sent her to and that she wanted him to check her out. The claimant agreed that she had seen Dr. Price in April, May and June 2002 with complaints to her low back but that she had not complained to him about any neck problems. The claimant testified that some years prior to her accident she also received chiropractic treatment from Dr. Balkman who had done adjustments and manipulations on her spinal cord which included her neck and back. The claimant testified that between the time she had seen Dr. Balkman and her July 2002 accident she had not received any treatment for her neck. The claimant testified that the neck problems that she was experiencing after July 2002 were much different from what she felt before. The claimant explained that she could bend her neck forward and feel something that was not

right inside like a popping sound when she turned her neck and the pain was much more severe and it went up into the back of her head.

The claimant testified that the respondents have sent her to several doctors including Dr. Moore, an orthopedic doctor, and a neurologist. The claimant agreed that the respondents sent her to Dr. Arnold who in turn sent her to Dr. Mores. The claimant agreed that Dr. Arnold recommended surgery but the respondents wanted her to be treated more conservatively so they sent her to Dr. Rosenzweig in Little Rock. The claimant agreed that Dr. Rosenzweig had her evaluated with a nerve conduction study and subsequently she was referred to Dr. Pearce in Little Rock who did surgery on her shoulder. The claimant testified that her neck problems never did clear up between the time of her accident and when she was operated on by Dr. Pearce. The claimant testified that the respondents also sent her to Dr. Rutherford and Dr. Moore. The claimant testified that her neck pain and discomfort continued so she went on her own to Dr. Adada in Little Rock who is with the University of Arkansas Medical Center. The claimant explained that he is a neurosurgeon and that he is in her network of doctors. The claimant agreed that Dr. Adada identified her with having a herniated disc at C5-C6. The claimant also agreed that this is the same level that she was having problems with when she saw Dr. Price in September 2002. The claimant testified that the neck problems which she developed shortly after her July 27, 2002, accident have never completely gone away and that she has mentioned these problems to the numerous doctors which she has seen. The claimant

testified that she did follow up after her surgery with Dr. Pearce but that with her continuing problems, the respondents have not allowed her to receive medical treatment. The claimant testified that she has tried to get back in to see Dr. Pearce but the respondents will not authorize to see him.

The claimant testified that she has gone on her own to Dr. Coker in Fayetteville. The claimant testified that Dr. Coker has done additional testing on her shoulder. The claimant testified that she has had no new injury to her shoulder as far as any specific identifiable event subsequent to her surgery. The claimant testified that she returned to work for the respondent two weeks after her surgery and that her shoulder has continued to bother her. The claimant testified that her problems with her shoulder which she is seeing Dr. Coker for are in the same area as the problems she was having when Dr. Pearce was treating her. The claimant testified that her problems now are just more severe.

On cross examination, the claimant testified that she was 66 years old and that her birth date is December 1, 1939. The claimant again agreed that she has received treatment from Dr. Balkman, a chiropractor, prior to July 27, 2002, for her back and neck. The claimant agreed that in 1989 she had a car accident which resulted in her having a whiplash kind of injury. The claimant was shown the Form AR-C on which she identified her signature. The claimant agreed that this form reflects only an injury to her right shoulder. The claimant testified that she has had two MRIs on her neck, one right after the accident and the

other one was when she was seen by Dr. Adada. The claimant testified that at the time of her accident she was working as a cashier and that she sorted new product that had come in from the truck and delivered it to the different departments. The claimant testified that currently she is doing a lot of door greeting and that on Friday and Saturday she works on the cash register. The claimant testified that she works approximately thirty to thirty-two hours per week. The claimant testified that the two days she works on the cash register, if there is something that she cannot lift, she always gets someone to help her. The claimant testified that if she feels like something is going to pull her shoulder anymore or hurt her neck she just will not do it. The claimant testified that she lives alone in a house and keeps her house and yard. The claimant testified that she is responsible for mopping, vacuuming and sweeping but it has not been done in a long time. The claimant testified that she is able to drive her car and has made a trip to Dallas and has gone to Florida to visit her daughter. The claimant testified that on the Florida trip she had to stop periodically and she had to stop and stay all night during the trip. The claimant testified that she likes to do ballroom dancing. The claimant testified that she dances about one day a week, noting that her partner is 83 years old and does not work her too hard.

The medical records set forth that the claimant was seen by Dr. Price on August 14, 2002, with complaints of a ten to twelve day history of severe pain in her right shoulder radiating to the

scapula area on the right side of her neck. The doctor notes that the claimant's pain radiates to the posterior part of her arm, down the lateral surface of her forearm and into her fourth and fifth finger. Medications were prescribed and an MRI of the claimant's cervical spine was scheduled to rule out a nerve root compression at C5-6 level. The claimant was seen by Dr. Price on September 4, 2002, where he notes that the claimant reports cervical radiculopathy which is probably from a disc at C5 C6. Dr. Price notes that the claimant did not have her MRI because she was sent by the workers' compensation carrier to Pro Med who changed her medication and suggested that she have a CT scan of the neck which was not approved by workers' comp. Dr. Price notes that the claimant is seen reporting severe pain in the right side of her neck radiating into the right scapular area and down into her fifth and fourth fingers on her right hand. Dr. Price notes that the claimant's discomfort is not relieved by the Bextra or other medications prescribed by Pro Med. The claimant's medications were changed back to what they were before and it was recommended that she undergo an MRI. On September 16, 2002, Dr. Price writes that he has reviewed the claimant's MRI which showed degenerative disc disease at C5-C6 and 7 levels with no foraminal compromise or central disc herniation. On September 17, 2002, Dr. Price notes that the claimant's MRI revealed degenerative disc disease in the lower intervertebral disc and no neuroforaminal compromise was read. Dr. Price writes on September 18 that the claimant continues to have pain in the right side of her neck going down the back to

the right scapular area and that she has a depressed triceps reflex and decreased strength in this area. Dr. Price notes that her medications have given her some relief and she has improved as compared to her previous examination. The doctor notes that she will not be able to work at this time and should begin physical therapy with heat and stretching exercises as well as cervical exercises. On September 30, 2002, the claimant was seen by Dr. Price for what was feared to be pneumonia but it is also noted that she reports pain in the right side of her neck which has improved with her medications and heat treatments although this discomfort is still very much present. On October 1, 2002, Dr. Price notes that the claimant continues to be treated for her branchial problems and will continue her physical therapy and treatment for her degenerative cervical disc problems. The claimant was seen by Dr. Michael Morse on November 1, 2002, and after a review of her work related injury and symptoms, he examined the claimant. Dr. Morse sets forth that he believes the claimant has a rotator cuff injury or other type of shoulder strain and recommended that she have an MRI. The doctor notes that if this test does not reveal any problems she will need a cervical mylogram and post mylogram CT. It is also noted that she has right carpal tunnel syndrome as revealed from an EMG nerve conduction study performed by Dr. Morse. The claimant was seen by the doctor on October 2, 2003, where it is noted that she was complaining of right arm and shoulder pain which she has had for a long time. Dr. Price writes on October 8, 2003, that the claimant has degenerative joint disease of the cervical

spine with some radiation into her right arm which is symptomatic. The doctor recommended that the claimant continue using her Advair, Ultracet and Celebrex for her neck and right arm pain. Dr. Subramanian writes on November 6, 2003, that the claimant was seen for complaints of pain in her right shoulder, the supraspinatus area and the scapula. After examination, the claimant was prescribed medications, heat and physical therapy. The claimant was next seen for problems with her neck on August 4, 2004, where she reports chronic neck pain which has become worse. The claimant was requesting an MRI of her neck and after examination, her medications were refilled and an MRI was scheduled for her neck. The claimant underwent an MRI of her cervical spine on August 11, 2004, which revealed degenerative disc dissection, disc space narrowing, circumferential bulges, and posterior inplate osteophyte at C5-6 and C6-7. This test also revealed that at C5-6 there is a small paracentral disc herniation that does contact and indent the right interior aspect of the cord at this level. The MRI also showed that at T3-4 there is a mild circumferential disc bulge. Dr. James Russell writes on October 27, 2004, that he has seen the claimant for evaluation of her neck and shoulder pain. Dr. Russell notes that the claimant does not report any radiation into her arm but that she does have chronic muscle spasms in her neck. On examination, Dr. Russell notes that the claimant has a lot of spasm in the paravertebral muscles as well as the posterior head of the sternocleidomastoid on the left greater than on the right. The claimant was assessed with acute neck spasm and was treated with

medications as well as physical therapy. Dr. Elisa Payne writes on June 30, 2005, that the claimant presents for evaluation of multiple medical problems, one them including problems with neck pain due to bulging disc for which surgery had been recommended. It is also noted that the nerve conduction tests indicate nerve damage in the claimant's right upper extremity. The claimant's medications were refilled. Dr. Badia Adada writes on May 25, 2005, that he has seen the claimant for her complaints of neck and right shoulder pain noting that in 2002 she was involved in a work related accident and since then has had persistent pain with occasional numbness in the last two digits of her right hand. After examination and review of the claimant's MRI, treatment options were discussed and an EMG and nerve conduction study were recommended before she should be considered as a candidate for surgery. Dr. Adada writes on June 29, 2005, that he has reviewed the claimant's EMG nerve conduction studies which show radiculopathy in her right upper extremity compatible with either C7 or C8 radicular compression, noting that she is known for C5-6 and C6-7 herniated discs. Dr. Adada writes that because of the symptoms and the presence of radiculopathy surgery will be indicated once she has been cleared by her cardiologist.

Additional medical records set forth that the claimant was seen by Dr. Matthew Coker where it is noted that she had an arthroscopic distal clavicle resection and acromioplasty and rotator cuff repair by Dr. Pierce. The claimant reports that the surgery helped but she started back to work too soon and has

continued to have pain in her right shoulder. The claimant reports to Dr. Coker that she also injured her neck at this same time and that an initial MRI did not show any bulging discs but subsequent tests did reveal bulging discs at C5-6 and C6-7 which does put a bit of pressure on the anterior cord. After physical examination and review of the claimant's various tests, the doctor recommended physical therapy for her shoulder as well as home exercises. Dr. Coker recommended that the claimant have a steroid injection into her right shoulder to see if this would help with any of the inflammation. Dr. Coker notes that although he thinks that some of her pain is coming from her shoulder but due to her radicular symptoms down into her hand consisting of numbness with pain and also around the paraspinal muscles he thinks that this problem is generating from her neck. Dr. Coker notes that they are to see the claimant back in six weeks and if she is not better at that time they will consider a repeat MRI of the shoulder versus repeat surgery. The claimant did undergo an MRI of her right shoulder on March 16, 2005, which revealed an abnormal signal and distal rotator cuff primarily involving the supraspinatus tendon-suspect tear. On April 14, 2005, Dr. Coker writes that he has seen the claimant's MRI of her right shoulder which showed a probable recurrent tear of the right rotator cuff. Dr. Coker notes that since the claimant is showing some benefit from her therapy they will continue to see if this will address her problems noting that if the time comes when she can no longer tolerate the pain a second surgery will be considered. Dr. Coker recommended that the

claimant be placed on light duty but notes that he would like to see her progress to regular duty as tolerated.

The respondents' medical records set forth that the claimant had some sort of whiplash event in 1962 with a recurrence on February 1, 1978, which resulted in her having a stiff neck and soreness on the right side as well as low back pain. These same medical records set forth that the claimant had complaints of neck ache and pain as well as low back and hip being sore on the right side since October 26, 1989, following an automobile accident. Joe Balkman, a chiropractor, writes on July 11, 1999, that approximately twenty-eight years ago the claimant was involved in an automobile collision and she sustained injuries to her neck and back. Dr. Balkman opines that when someone has experienced a previous accident and then has a new event even though it might be slight the time for healing may be a bit longer than anticipated due to scar tissue from the first injury. In regards to the claimant, Dr. Balkman opines that he does not anticipate any permanent impairment. The claimant received treatment from Dr. Balkman in the year 2000 for low back pain and it is noted that on August 7, 2000, that she is improving noting that both her shoulders and neck are sore and stiff and her low back has improved. On May 23, 2001, the claimant was treated for soreness to the right side of her neck, headaches and low back soreness. On December 18, 2003, Dr. Pearce writes that the claimant had surgery for her right shoulder on December 8, 2003, to repair a rotator cuff tear. At this time Dr. Pearce notes that the claimant can

return to left arm duty only as of December 22, 2003, she is to continue to wear a sling, to begin her exercises and to follow up in four weeks. On March 25, 2004, Dr. Charles Pearce writes that the claimant has reached maximum medical improvement as of this date and she can return to work without restrictions as it pertains to her right shoulder. Dr. Pearce notes that the claimant has sustained a 12 percent permanent impairment rating as it pertains to the upper extremity and this rating is based on the A.M.A. Guides, Forth Edition.

After a complete review of this entire record, I find that the claimant has proven by a preponderance of the evidence that she sustained a compensable injury to her cervical spine on July 27, 2002, while working for the respondent. The medical records set forth that the claimant made complaints about her neck as well as her right shoulder from the very onset of her medical treatment for her compensable injury. These same medical records consistently set forth that the claimant complained of pain in her neck radiating up into her head and down into her shoulders. The respondents have accepted and treated the claimant's right shoulder problems and she has even undergone surgery to repair her torn rotator cuff. It is understandable, therefore, that unless her treating physicians are telling her that she is having a cervical problem that she would just relate her neck problems to her right shoulder problems. The claimant is not a trained medical person and, therefore, would not understand the physiology of the neck and shoulder area. Therefore, the respondents should pay for the

medical treatment for this claimant's cervical problems subsequent to the filing of her AR-C on December 30, 2003. I further find that the claimant has proven by a preponderance of the evidence that she has experienced a recurrence of her right shoulder problems. It has been stipulated and agreed by the parties that the claimant did sustain an injury to her right shoulder while working for the respondent which resulted in surgery to repair a rotator cuff tear. The claimant has testified that she returned to work two weeks after her surgery and subsequently was never pain free in the right shoulder area. Tests have revealed that the claimant has a probable recurrent tear to her right rotator cuff. The respondents, therefore, should continue to pay for medical treatment for this claimant's right shoulder problems.

#### FINDINGS & CONCLUSIONS

1. The Arkansas workers' Compensation Commission has jurisdiction of this claim.
2. On all relevant dates, the relationship of employee-employer-carrier existed between the parties.
3. The claimant sustained a compensable injury to her right shoulder on July 27, 2002.
4. The claimant is entitled to a weekly compensation rate of \$160.00 for temporary total disability and \$154.00 for permanent partial disability.
5. Medical expenses have been paid for the claimant's shoulder injury.

6. Respondents accepted a 7 percent whole body impairment and will pay an attorney's fee on this impairment.

7. The claimant has proven by a preponderance of the evidence that she sustained a compensable injury to her cervical spine on July 27, 2002, while working for the respondent. See discussion above.

8. The respondents should pay for all reasonable and necessary medical treatment for this claimant's cervical problems subsequent to December 30, 2003, which is the date she filed an AR-C claiming a neck injury. See discussion above.

9. The claimant has proven by a preponderance of the evidence that she has had a recurrence of her right shoulder problems. See discussion above.

10. The respondents should pay for all reasonable and necessary medical treatment for this claimant's recurrent compensable injury to her right shoulder.

11. The respondents have controverted this claimant's entitlement to additional benefits for her compensable injury as well as compensability of the claimant's cervical spine.

#### ORDER

The claimant has proven by a preponderance of the evidence that she sustained a compensable injury to her cervical spine on July 27, 2002.

The respondents should pay for all reasonable and necessary medical treatment for this claimant's cervical spine injury subsequent to December 30, 2003.

The claimant has proven by a preponderance of the evidence that she sustained a recurrence of her compensable right shoulder injury and should be entitled to additional medical treatment for this recurrence at the respondents' expense.

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