

**BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION**

**CLAIM NUMBER F311952, F311953 & F311905**

**JOHNNY M. HELTON, EMPLOYEE**

**CLAIMANT**

**WAL-MART, INC.,  
SELF-INSURED EMPLOYER**

**RESPONDENT**

**OPINION FILED MARCH 17, 2006**

A hearing in this case was conducted on October 19, 2006, before ADMINISTRATIVE LAW JUDGE D. FRANKLIN AREY, III, at Harrison, Boone County, Arkansas.

Claimant was represented by Frederick Spencer, Attorney at Law, Mountain Home, Arkansas.

Respondent was represented by Curtis L. Nebben, Attorney at Law, Fayetteville, Arkansas.

**STATEMENT OF THE CASE**

A prehearing telephone conference was held in this claim on July 18, 2005. A Prehearing Order was filed on that same date. A copy of the Prehearing Order was admitted into the record as Commission Exhibit #1.

The parties agreed to four stipulations. Two of these stipulations are listed in the Prehearing Order and were confirmed at the hearing; the parties agreed to the third and fourth stipulations at the hearing. The following stipulations are hereby accepted.

1. The relationship of employee-employer existed on August 30, 2002; in October, 2002; and on April 27, 2003, when the alleged incidents occurred, and at all relevant times.
2. These claims have been controverted in their entirety.
3. Claimant's temporary total disability rate is \$264.00.

4. If called to testify, Michelle Moss would corroborate Claimant's testimony.

Moss did testify at the hearing after the parties agreed to this fourth stipulation.

At the October 19, 2005 hearing, the parties discussed the issues set forth in the Prehearing Order. Ultimately, the parties agreed to strike the first, second, and seventh issues listed in the Prehearing Order. As to the fourth issue listed in the Prehearing Order, the parties agreed that the date should be April 26, 2003. Thus, the parties agreed that the issues to be litigated and resolved are limited to the following:

1. Whether Claimant suffered a compensable injury on or about October, 2002.
2. Whether Claimant suffered a compensable injury on or about April 26, 2003.
3. Whether Claimant's depression is compensable under Ark. Code Ann. § 11-9-113.
4. Whether Claimant is entitled to reasonable and necessary medical benefits.
5. Whether Claimant is entitled to an attorney's fee for controversion.

### **RECORD**

#### **A. Record on Motion to Recuse**

Prior to the hearing, Claimant filed a Motion to Recuse; at the October 19, 2005 hearing, the parties were notified that certain items would be blue-backed and made a part of the Commission's record, with regard to this motion:

1. Claimant's attorney's July 25, 2005 letter to the Administrative Law Judge; and
2. Claimant's Motion to Recuse.

#### **B. Record on Constitutional Challenges**

Prior to the hearing, Claimant also filed a Brief challenging the constitutionality of the Arkansas Workers' Compensation Commission on various grounds. At the October

19, 2005 hearing, the parties were notified that the following items would be blue-backed and made a part of the Commission's record, with regard to this brief:

1. Claimant's attorney's July 25, 2005 letter to the Attorney General;
2. Wendy Kelley's July 26, 2005 letter to Claimant's attorney; and
3. Claimant's Brief received by the Commission on July 28, 2005.

### **MOTION TO RECUSE**

Claimant's Motion to Recuse raises a number of arguments that essentially challenge the constitutionality of the Arkansas Workers' Compensation Commission. He notes that "Judge Arey would not consciously intend to discriminate against the claimant in this case." However, Claimant argues that all administrative law judges are under pressure to rule against claimants. Claimant therefore seeks my recusal, the recusal of all other administrative law judges, and the appointment of a special administrative law judge (without specifying how that might be accomplished).

It should be noted that the Full Commission has rejected these arguments in other claims. See Long v. Wal-Mart Stores, Inc., Full Workers' Compensation Commission Opinion filed January 25, 2006 (F309931) (citing cases addressing Claimant's issues in other proceedings).

Further, the rule of necessity mandates that I remain on this claim. The rule of necessity provides that an administrative officer is not disqualified because of bias or prejudice where he or she alone has the power and authority to act, and if disqualified, action could not otherwise be taken. See Acme Brick Co. v. Missouri Pacific R.R., 307 Ark. 363, 369, 821 S.W.2d 7, \_\_\_ (1991). The Arkansas Supreme Court adopted this rule to provide an exception to disqualification where the authority of the administrative officer is

exclusive, and no legal provision for calling in a substitute is provided. *Id.* at 370, 821 S.W.2d at \_\_\_\_\_. Here, there is no statutory procedure in place to address Claimant's request for the appointment of a special administrative law judge. Therefore, if one administrative law judge must recuse for the reasons given, all administrative law judges must recuse; and, even if one could be appointed, a special administrative law judge would be subject to the same infirmities which form the basis for Claimant's challenges and recusal motion. If all administrative law judges must recuse and a special administrative law judge cannot be appointed, this claim could not be heard. Therefore, pursuant to the rule of necessity, and in light of the Commission's rejection of Claimant's arguments in other cases, I will remain on this claim. Claimant's Motion to Recuse is denied.

### **CONSTITUTIONAL CHALLENGES**

Claimant raises a number of constitutional challenges to the Commission's adjudication process. His constitutional arguments will be addressed in turn.

#### **A. Evidence of Executive Branch and Private Interest Pressure**

Claimant contends that he has presented evidence of executive branch and private interest pressure on the Commission, which allegedly infringes upon the decisional independence of the Commission's administrative law judges ("ALJs"). He contends that this pressure results in the ALJs' actual and apparent bias. Claimant cites certain newspaper articles involving former Administrative Law Judge Eileen Harrison, as well as the affidavits of former Administrative Law Judge Michael White and former Administrative Law Judge Bill Daniels (both found in Claimant's Exhibit #3).

I find that the evidence relating to former Administrative Law Judge Eileen Harrison should be stricken. Claimant makes reference to certain newspaper articles in his brief that

were not admitted into the record. As such, they do not constitute evidence in this claim. I also note that the facts concerning Harrison have not been judicially determined. See Harrison v. Coffman, 35 F. Supp. 2d 722, 724, 727 (E.D. Ark. 1999). Thus, Claimant's references to Harrison will not be considered.

Regarding the affidavits of White and Daniels, it should be noted that neither of these individuals was informed of the basis for their dismissal. In section 13 of his affidavit, White states: "I was given no reason whatsoever for my termination when it happened or subsequently, only being told that I was an 'at will' employee and could be fired for no reason...." Similarly, when addressing his termination in section 14 of his affidavit, Daniels stated: "I was given no reason whatsoever for my termination when it happened or subsequently even though I continued to try to find out the reasons...." Neither White nor Daniels claims to have acted upon, or been influenced by, the pressure they perceived.

I find that the affidavits of White and Daniels constitute speculation and conjecture, and therefore cannot be considered as evidence. According to their affidavits, neither former employee knows why he was fired; both former employees speculate a great deal concerning the pressure they believe to be placed upon other ALJs. "Speculation and conjecture cannot substitute for credible evidence." Smith-Blair, Inc. v. Jones, 77 Ark. App. 273, 277, 72 S.W.3d 560, \_\_\_ (2002). Neither former employee identifies any concrete action that they, or any other of the ALJs, took in response to such pressure - which suggests such pressure either did not exist or was of no moment.

Finally, regarding any allegation of actual bias on my part, I again quote Claimant's Motion to Recuse: "It should be very clear that the undersigned believes that Judge Arey would not consciously intend to discriminate against the claimant in this case." Claimant

fails to present any evidence of actual or apparent bias. Contrary to his brief, Claimant has not submitted credible evidence of either bias or pressure on the Commission's ALJs, by either the executive branch or private interests.

**B. Separation of Powers**

Claimant notes that safeguards must be established to protect the decisional independence of the Commission's ALJs. If these safeguards are non-existent, or do not work, Claimant argues that there is a violation of the principle of separation of powers as established in Ark. Const. art. IV, § 2. Claimant cites information concerning Harrison as well as the affidavits of White and Daniels as evidence that safeguards either do not exist or have failed completely. Thus, Claimant argues, the entire adjudicative process of the Commission violates the separation of powers doctrine.

The short answer to this contention is that Claimant has not produced any evidence to support his claim. As noted above, the evidence concerning Harrison will not be considered; the affidavits of White and Daniels constitute speculation and conjecture, not evidence. There is simply no evidence before me to establish that there is a violation of separation of powers in the adjudicative process.

As a general proposition, the separation of powers concern raised by Claimant appears in a different context: it typically arises where an agency's employee participates in a proceeding as advocate while another employee of that same agency is the adjudicator. See Suzanne Antley, The "Appearance of Fairness" Versus "Actual Fairness": Which Standard Should the Arkansas Courts Apply to Administrative Agencies?, 16 U. Ark. Little Rock L.J. 587, 609 (1994). Antley notes concerns regarding "internal ex parte communications" and "quasi-judicial proceedings in which agency employees may appear

before one another.” Id. at 589-90. Of course, no other Commission employees are involved in the claim before me; thus, the separation of powers argument brought by Claimant is not applicable here.

Further, the Commission has held its adjudicative process to be free of separation of powers concerns. See Bland v. Baxter Reg'l Med. Ctr., Full Workers' Compensation Commission Opinion filed August 16, 2005 (F204378). There, the Commission specifically rejected “the affidavits of two former administrative law judges” as proof of the absence of institutional integrity. Id. As the Arkansas Supreme Court has observed, “[a]dministrative agencies may possess a combination of powers from the coordinate branches without violating the separation of powers principle.” Arkansas Motor Carriers Association v. Pritchett, 303 Ark. 620, 624, 798 S.W.2d 918, \_\_\_ (1990). As one commentator notes:

The Workers' Compensation Commission is the premier example of an administrative agency vested with the power to make factual determinations affecting the rights of private parties. Amendment 26 to the constitution authorizes the General Assembly to provide the “means, methods, and forum” for adjudicating the amount of compensation to be paid by employers for injuries or death of employees. This comprehensive grant of power to the General Assembly is the most obvious way to reconcile the functions of the Commission with separation of powers [limits]....

L. Scott Stafford, Separation of Powers and Arkansas Administrative Agencies: Distinguishing Judicial Power and Legislative Power, 7 U. Ark. Little Rock L.J. 279, 333 (1984). Claimant fails to demonstrate how the Commission’s “combination of powers” violates the separation of powers principle; the Commission has held that it does not.

### **C. Due Process**

Claimant next raises a due process claim. He notes that an administrative adjudicative process subject to external pressures violates the parties’ procedural due

process rights.

Again, the short answer to this contention is that Claimant has not produced any evidence to support his claim. The evidence concerning Harrison will not be considered; the affidavits of White and Daniels constitute speculation and conjecture, not evidence. Yet again, there is simply no evidence to establish that there is a violation of Claimant's procedural due process rights in the Commission's adjudicative process.

The Commission has held its adjudicative process to be free of due process concerns. See Bland, supra. In Bland, the Commission cited and quoted from Douglas v. International Paper Co., Full Workers' Compensation Commission Opinion filed August 18, 1994 (E213574 & E212573); that opinion states in part:

[T]he workers' compensation system is replete with safeguards. The primary focus of the due process safeguards is that everyone has a fair trial, not the best trial. The focus is on the opportunity to be heard. Under our workers' compensation system, a claimant is afforded much more than the minimal elements of due process. Claimants have the right to a hearing, can compel discovery, subpoena witnesses, and appeal an unfavorable decision.

Id. (citations omitted). The Commission has held that its adjudicative process comports with procedural due process requirements; Claimant presents no credible evidence to the contrary.

#### **D. Equal Protection**

Finally, Claimant raises an equal protection claim. He argues that the workers' compensation law is not applied equally, so that claimants are not afforded the same rights and privileges to adjudicate their claims as are afforded to respondents. He ascribes this constitutional violation to the influence of outside political and private pressures.

Once again, the short answer to this contention is that Claimant has not produced

any evidence to support his claim. There is simply no proof that claimants receive different treatment than respondents in the adjudication of claims.

The Commission has already rejected equal protection challenges made by other claimants in other cases. See Long v. Wal-Mart Stores, Inc., Full Workers' Compensation Commission Opinion filed January 25, 2006; Bland, supra. Indeed, the Arkansas Supreme Court has noted that workers' compensation laws are valid "as against general objections that they are unconstitutional, and as against the objections that they... deny equal protection and due process of law...." Young v. G. L. Tarlton, Contractor, 204 Ark. 283, 289, 162 S.W.2d 477, \_\_\_ (1942). Claimant presents no credible evidence to the contrary, nor does he present any reason to revisit these previous rulings.

## **DISCUSSION**

### **A. Compensability of October 2002 Injury**

Claimant worked as an associate in the garden center at Respondent's Mountain Home store. He was helping to move a box of Halloween costumes or decorations when he sustained an injury in October of 2002.

A box fell. We were handing down to each other, unloading a top shelf, and it hit me in the side of the head and turned my neck to the left. And, from that moment on, I couldn't turn my head back to the right side.

Claimant followed Respondent's procedure for reporting an injury and received treatment from the company doctor. He missed thirteen days of work but ultimately returned to full duty.

Terry Stover, a stock associate employed by Respondent at its Mountain Home store, testified on behalf of Respondent. Stover was working with Claimant to unload some

boxes from a bin when the October, 2002 incident occurred.

So we got a ladder, and I had got on top to get the boxes and hand [them] down to Mark. And we'd done a few boxes, and then we had one that we -- I was standing about the middle of the ladder. We were in within arm's reach, and I had grabbed the box and handed it down to him. And, when he did that, he said that his shoulder had hurt, but we had kept on working.

Stover noted that he was about half way up a six-foot ladder, and that Claimant was on the ground. He denied that any throwing was involved or that the box was actually dropped on Claimant's neck or shoulder.

The employee has the burden of proving a compensable injury. Carman v. Haworth, Inc., 74 Ark. App. 55, 59, 45 S.W.3d 408, \_\_\_ (2001). To be compensable, an injury must be established by medical evidence supported by objective findings. Ark. Code Ann. § 11-9-102(4)(D). "Objective findings" are those findings which cannot come under the voluntary control of the patient. Ark. Code Ann. § 11-9-102(16)(A)(i). Claimant must sustain his burden of proving the elements of a compensable injury by a preponderance of the evidence. Ark. Code Ann. § 11-9-102(4)(E)(i). "Preponderance of the evidence" means evidence of greater convincing force; the term does not mean preponderance in amount, but implies an overbalancing in weight. Smith v. Magnet Cove Barium Corp., 212 Ark. 491, 496-97, 206 S.W.2d 442, \_\_\_ (1947).

I find that Claimant has not sustained his burden of establishing a compensable injury occurring in October of 2002. Specifically, the record does not reflect any objective findings in support of an injury to Claimant's neck or shoulder. While Claimant testified to receiving medical treatment from the company doctor, none of those records are in evidence. There simply are no objective findings on record to sustain a finding of a compensable injury. Thus, this aspect of Claimant's claim must be denied.

## **B. Compensability of April 26, 2003 Injury**

Claimant alleges that he sustained a compensable injury to his low back on or about April 26, 2003.

[R]ight before lunch time, I believe it was, I was taking -- loading a van. And I picked up a wet bag of peat moss, and I kind of fell to my knees when I picked it up. And then I went ahead and loaded it into the van. And then I walked around outside for a minute, and I went inside and I told [another associate] that I was going to take a break; to watch for me. And I went inside and took a break, and then I went back out and finished my day out for work.

Claimant testified that he contacted a supervisor, Billy McGraw, the next morning and reported his injury. He then went to see his family doctor, Dr. Lonnie Robinson, instead of the company doctor. Within a few days Claimant also reported his injury to Larry Griggs and Hubert Pickett, who were employed by Respondent.

Several of Respondent's employees testified concerning this alleged injury. Although he conceded that he did not work around Claimant all the time, Stover denied that Claimant ever made any complaints of low back pain to him. McGraw, an assistant manager who supervised Claimant, denied that he ever received a report or complaint of a low back injury from Claimant. McGraw insisted that he would have completed an incident report if Claimant had called him the following morning. Pickett, another assistant manager at the time of Claimant's alleged injury, denied ever receiving a report of a low back injury from Claimant in April of 2003. Griggs, the store's risk control manager responsible for workers compensation issues, denied the existence of an incident report or accident report concerning Claimant's alleged injury in April of 2003; he also denied having any conversations with Claimant concerning a low back injury that month.

Despite the fourth stipulation, Claimant's fiancée testified in rebuttal. She recalled

that Claimant came to her house after work on April 26, 2003 “in extreme pain. He told me what had happened.” She related Claimant’s description of his injury while attempting to load the peat moss. She recalled that he placed a telephone call to a “Billy” the following morning; she overheard Claimant describing the injury and remarking that he would need to see a doctor. She also testified that she was present during Claimant’s conversation with Pickett.

Claimant first presented to Dr. Robinson on April 28, 2003. An office note of that date contains the following history:

43YO WM complaining of back and right leg pain w/numbness into the right leg. It’s a sharp pain with radiation in his back. It’s worse with movement and lifting. Been going on for some time, has gotten worse in the last couple of weeks. Lifts a lot at work at WalMart.

Dr. Robinson recorded impressions of back pain, sciatica, and lumbar radiculopathy. He did not report Claimant’s alleged work-related incident. This is interesting, in light of Claimant’s deposition testimony confirming that Dr. Robinson would ask what was causing Claimant’s problem each time Claimant presented to him.

Claimant later presented to Dr. Scott Schlesinger on May 13, 2003. Dr. Schlesinger’s letter to Dr. Robinson of that date reports that Claimant had “low back pain radiating down the right leg.... This started about six months ago.” There is no mention of a specific work-related incident in Dr. Schlesinger’s letter.

After an unsuccessful operation, Claimant presented to Dr. Jeffrey Kornblum on March 3, 2004. Dr. Kornblum recorded Claimant’s “complaints of severe low back, right leg pain. He notes symptoms started approximately two years ago when he was having trouble with low back, right leg pain for almost a year.” Again, Dr. Kornblum’s note does

not report a specific work-related incident in relation to Claimant's low back pain.

Claimant presented to Dr. Thomas Hart on October 18, 2004. Claimant reported lower back pain that began two and a half years ago, but he also made reference to a specific work-related incident: "One day he was lifting a bag of humus and he noticed the significant onset of back, buttock and right greater than left lower extremity pain complaints." Dr. Hart diagnosed failed back surgical syndrome and determined that Claimant needed to undergo discography.

Claimant must prove that he sustained a compensable injury as defined by Ark. Code Ann. § 11-9-102(4)(A)(i). Among other requirements, he must prove that his injury is one "arising out of and in the course of employment...." Id. "Arising out of the employment" refers to the origin or cause of the accident while the phrase "in the course of the employment" refers to the time, place, and circumstances under which the injury occurred. Gerber Products v. McDonald, 15 Ark. App. 226, 229, 691 S.W.2d 879, \_\_\_ (1985). Claimant must sustain his burden of proving a compensable injury by a preponderance of the evidence. Ark. Code Ann. § 11-9-102(4)(E)(i).

I find that Claimant failed to sustain his burden of proving by a preponderance of the evidence that his alleged low back injury arose out of and in the course of his employment on April 26, 2003. Obviously, the statements of Claimant and Moss concerning the reporting of his injury are directly contradicted by the testimony of McGraw, Pickett, and Griggs. Even if Claimant overcame that problem, it is significant that the initial reports of three separate doctors - Dr. Robinson, Dr. Schlesinger, and Dr. Kornblum - all fail to mention a specific incident at work as the cause of Claimant's low back condition. Almost one year after the alleged incident, in Dr. Kornblum's note of March 3, 2004, Claimant

reported that his symptoms “started approximately two years ago,” which would have been well prior to Claimant’s alleged injury in April of 2003. In light of the testimony of Respondent’s three other employees, as well as the failure of the three doctors to mention a specific incident connected with Claimant’s employment, I find that Claimant failed to satisfy his burden of proving that his injury arose out of and in the course of his employment.

**C. Compensability of Claimant’s Depression**

Claimant testified that since his alleged April 26, 2003 incident, a Dr. Dollins has been treating him for depression. Claimant suffered from depression prior to April 26, 2003, following the death of his son; Claimant testified that his treatment based on that unfortunate event ended “[v]ery close to a year, if not longer” prior to April of 2003.

Several medical records in Respondent’s Exhibit #1 note Claimant’s depression prior to April of 2003. It does not appear that any of these notes are authored by a licensed psychiatrist or psychologist. Several of these notes make reference to Claimant’s son. Dr. Michael Hagaman’s January 17, 2003 note makes reference to other causes for Claimant’s anxiety such as his daughter’s physical condition, his recent divorce, and the fact that Respondent “cut back on his hours and he’s finding it very difficult to pay his bills.”

A psychological evaluation dated November 11, 2004 can be found on page 32 of Claimant’s Exhibit #1, admitted into the record. It is signed by “Rebecca Ansel, LPC, Outpatient Therapist,” and her signature is dated August 29, 2005. This document makes reference to Claimant’s diagnosis of depression; it does not reference this diagnosis to the most current issue of the Diagnostic and Statistical Manual of Mental Disorders. Indeed, the document appears to be intended to summarize Claimant’s performance on two

psychological tests as a basis for recommending future vocational choices.

A mental injury is not a compensable injury unless it is caused by a physical injury to the employee's body. Ark. Code Ann. § 11-9-113(a)(1). This means that a physical injury must precede and cause the mental injury in order for the mental injury to be compensable; the mental distress must be the result of the Claimant's own physical injuries. Amlease, Inc. v. Kuligowski, 59 Ark. App. 261, 264-65, 957 S.W.2d 715, \_\_\_ (1997). Further, the claimed mental injury shall not be considered an injury arising out of and in the course of employment or compensable unless it is demonstrated by a preponderance of the evidence. Ark. Code Ann. § 11-9-113(a)(1). Finally, no mental injury is compensable unless it is diagnosed by a licensed psychiatrist or psychologist and unless the diagnosis of the condition meets the criteria established in the most current issue of the Diagnostic and Statistical Manual of Mental Disorders. Ark. Code Ann. § 11-9-113(a)(2).

I find that the Claimant has not sustained his burden of proving by a preponderance of the evidence that he suffered a compensable mental injury. First, Claimant did not prove that a compensable physical injury caused his mental injury. Second, there is no proof in the record that Claimant's depression has been diagnosed by a licensed psychiatrist or psychologist; there is no statement concerning the doctor's credentials found in the psychological evaluation in Claimant's Exhibit #1. Finally, there is no proof in the record that the diagnosis meets the criteria established in the most current issue of the Diagnostic and Statistical Manual of Mental Disorders.

#### **D. Remaining Issues**

It is not necessary to discuss Claimant's request for reasonable and necessary medical benefits or his request for an attorney's fee. Since Claimant did not establish a

compensable injury he is not entitled to medical benefits. See Ark. Code Ann. § 11-9-102(4)(F)(i). Likewise, this opinion does not award indemnity benefits; therefore, attorney's fees cannot be assessed. See Ark. Code Ann. § 11-9-715.

### **FINDINGS OF FACT AND CONCLUSIONS OF LAW**

1. The stipulations agreed upon by the parties are reasonable and are approved.
2. The relationship of employee-employer existed on August 30, 2002; in October, 2002; and on April 27, 2003, when the alleged incidents occurred, and at all relevant times.
3. These claims have been controverted in their entirety.
4. Claimant's temporary total disability rate is \$264.00.
5. If called to testify, Michelle Moss would corroborate Claimant's testimony.
6. Claimant's Motion to Recuse should be, and hereby is, denied. In other cases, the Commission has rejected the arguments made by Claimant in this case concerning the constitutionality of the Commission. Further, the rule of necessity mandates that I remain on this claim.
7. Claimant's challenges to the constitutionality of the Commission's adjudication process should be, and hereby are, rejected. There is no credible evidence of either bias or pressure on the Commission's administrative law judges by either the executive branch or private interests. Further, the Commission's adjudication process does not violate separation of powers, procedural due process, or equal protection principles.
8. Claimant did not sustain his burden of proving by a preponderance of the evidence that he suffered compensable injuries to his neck and shoulder in October of 2002. Specifically, the record does not contain any objective findings in support of Claimant's alleged injury.

9. Claimant did not sustain his burden of proving by a preponderance of the evidence that he suffered a compensable low back injury on April 26, 2003. The testimony of Claimant and his supporting witness are directly contradicted by the testimony of three other witnesses as to his reporting of this alleged injury. Further, the initial reports of three separate doctors all fail to mention a specific work-related incident. Thus, Claimant failed to satisfy his burden of proving that his injury arose out of and in the course of his employment.

10. Claimant did not sustain his burden of proving a compensable mental injury. He did not prove that a compensable physical injury caused his alleged mental injury; there is no proof in the record that Claimant's depression has ever been diagnosed by a licensed psychiatrist or psychologist; and, there is no proof in the record that the alleged diagnosis meets the criteria established in the most current issue of the Diagnostic and Statistical Manual of Mental Disorders.

11. Because Claimant failed to prove any compensable injury, it is not necessary to discuss the remaining issues in this case.

**ORDER**

Claimant failed to sustain his burden of proving that he suffered a compensable injury. Therefore, the above claim is respectfully denied and dismissed.

**IT IS SO ORDERED.**

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D. FRANKLIN AREY, III,  
Administrative Law Judge

DFA/ml