

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F209192

MARY K. JONES, EMPLOYEE	CLAIMANT
WAL-MART STORES, INC., EMPLOYER	RESPONDENT
CLAIMS MANAGEMENT, INC., TPA	RESPONDENT

OPINION FILED APRIL 19, 2006

Hearing before Administrative Law Judge J. Mark White on February 2, 2006, in Texarkana, Miller County, Arkansas.

Claimant represented by Mr. Greg Giles, Attorney at Law, Texarkana, Arkansas.

Respondents represented by Mr. Todd Bassett, Attorney at Law, Fayetteville, Arkansas.

STATEMENT OF THE CASE

On February 2, 2006, the above-captioned claim came on for a hearing in Texarkana, Arkansas. A pre-hearing conference was conducted on November 14, 2005, and a Prehearing Order was entered that same day. A copy of the November 14, 2005, Prehearing Order has been marked as Commission Exhibit No. 1 and made a part of the record herein without objection. At the hearing, the parties confirmed that the stipulations, issues, and respective contentions, as amended, were properly set forth in the Prehearing Order.

The parties stipulated that the Arkansas Workers' Compensation Commission has jurisdiction of this claim; that this claim was the subject of a prior

Administrative Law Judge Order filed July 8, 2003 and affirmed and adopted by the Full Commission on September 30, 2003; and that the Commission granted the claimant a change of physician first to Dr. Shailesh Vora on May 17, 2004, and then to Dr. Reginald Rutherford on August 11, 2004. The stipulations, findings of fact, and conclusions of law contained within the July 8, 2003 Order are incorporated herein by reference.

The parties agreed that the issues to be presented were whether the claimant is entitled to permanent partial disability benefits; whether the claimant has sustained wage loss in excess of her permanent anatomical impairment; whether the claimant is entitled to additional medical treatment; whether an independent medical evaluation is reasonably necessary; and controversion and attorney's fees. At the hearing, the parties agreed to waive the issue of an independent medical evaluation.

The claimant contends that she should be awarded a permanent impairment rating associated with her compensable injury; that she should be awarded wage-loss disability benefits in excess of the anatomical rating; that she is in need of additional medical treatment; and that respondents should be ordered to pay attorney's fees as permitted by law.

The respondents contend that the claimant is entitled to no permanent

benefits; and that additional medical treatment is not reasonably necessary in connection with the compensable injury.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing 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 claimant and to observe their demeanor, the following findings of fact and conclusions of law are hereby made in accordance with Ark. Code Ann. § 11-9-704:

1. The Arkansas Workers' Compensation Commission has jurisdiction of this claim.
2. The stipulations agreed to by the parties are reasonable and are hereby accepted as fact.
3. The claimant has failed to prove by a preponderance of the evidence that she is entitled to permanent disability benefits.
4. The claimant has failed to prove by a preponderance of the evidence that additional medical treatment is reasonably necessary in connection with the compensable injury.
5. The respondents have controverted all benefits sought herein.

DISCUSSION

I. History

The claimant sustained an injury to her back on July 7, 2002, when she fell from a ladder. The respondents controverted her claim, but in a decision filed July 8, 2003, a prior administrative law judge found the claimant's injury to be compensable and awarded her one day of indemnity benefits. Notably, the judge found the claimant's healing period ended on August 8, 2002, when the claimant refused to participate in a work hardening program recommended by her doctor. The judge's decision was affirmed and adopted by the Full Commission on September 30, 2003.

Subsequent to the decision, the claimant sought a change of physician. One was granted to Dr. Shailesh Vora, but after the initial visit Dr. Vora asked that another doctor be assigned to treat the claimant. Thereafter the Commission designated Dr. Reginald Rutherford to treat the claimant. Dr. Rutherford recommended only a follow-up thoracic MRI; he recorded that the claimant declined the MRI, but at the hearing the claimant denied doing so. The claimant eventually had a thoracic MRI, but it revealed little if any change from the prior thoracic MRI.

Permanent Benefits

Permanent impairment is “any permanent functional or anatomical loss remaining after the healing period has been reached.” *Johnson v. General Dynamics*, 46 Ark. App. 188, 878 S.W.2d 411 (1994), citing *Ouachita Marine v. Morrison*, 246 Ark. 882, 440 S.W.2d 216 (1969). An injured employee is entitled to the payment of compensation for the permanent functional or anatomical loss of use of the body as a whole whether his earning capacity is diminished or not. *Id.*

The claimant acknowledges she has submitted no doctor’s report assigning her an impairment rating. Rather, the claimant asks that the Commission assign an impairment rating from the *AMA Guides* based on the medical records submitted herein.

It is true that where an assigned impairment rating is found by the Commission to be defective, the Commission is empowered to translate the medical evidence into a finding of permanent impairment using the *AMA Guides*. *Polk County v. Jones*, 74 Ark. App. 159, 47 S.W.3d 904 (2001); *Johnson v. General Dynamics*, 46 Ark. App. 188, 878 S.W.2d 411 (1994). However, the Court of Appeals has also firmly stated that in the absence of a physician’s report assigning a permanent impairment rating, a claimant is not entitled to permanent disability benefits or wage-loss benefits. *Wren v. Sanders Plumbing Supply*, 83 Ark. App. 111, 116 S.W.3d

461 (2003); *but see Johnson v. General Dynamics*, 46 Ark. App. 188, 878 S.W.2d 411 (1994). I recognize that *Johnson* appears to represent the precise opposite holding of *Wren*, but *Wren* is the Court's most recent statement on the subject and therefore binding on the Commission.

Given the holding of the Court of Appeals in *Wren v. Sanders Plumbing Supply*, I must conclude that the claimant has failed to prove by a preponderance of the evidence that she is entitled to permanent disability benefits.

Additional Medical Treatment

An employer must promptly provide for an injured employee such medical treatment as may be reasonably necessary in connection with the injury received by the employee. Ark. Code Ann. § 11-9-508(a). What constitutes reasonably necessary medical treatment is a question of fact. *Ark. Dept. of Correction v. Holybee*, 46 Ark. App. 232, 878 S.W.2d 420 (1994).

The claimant has seen a number of physicians for her work injury as well as a plethora of other medical conditions. There are no treatment recommendations outstanding at this time, and it appears that all previously suggested treatment options have been exhausted. At this juncture, it does not appear from the medical records that additional treatment would be of any benefit. I find that the claimant

has failed to prove by a preponderance of the evidence that additional medical treatment is reasonably necessary in connection with the compensable injury.

AWARD

The claimant has failed to prove by a preponderance of the evidence that she is entitled to permanent benefits or additional medical treatment. Therefore, this claim for benefits must be, and it hereby is, denied and dismissed.

IT IS SO ORDERED.

HON. J. MARK WHITE
Administrative Law Judge