

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F402542

DEBBIE A. ROGERS, EMPLOYEE	CLAIMANT
WAL-MART STORES, INC., EMPLOYER	RESPONDENT
CLAIMS MANAGEMENT, INC., INSURANCE CARRIER/TPA	RESPONDENT

OPINION FILED APRIL 12, 2006

Hearing before Chief Administrative Law Judge David Greenbaum on March 10, 2006, at Jonesboro, Craighead County, Arkansas.

Claimant appeared, *pro se*.

Respondents represented by Ms. Susan M. Fowler, Attorney-at-Law, Little Rock, Arkansas.

STATEMENT OF THE CASE

A hearing was conducted March 10, 2006, to determine whether the claimant was entitled to additional workers' compensation benefits.

A prehearing conference was conducted in this claim on February 1, 2006, and a Prehearing Order was filed on said date. At the hearing, the parties announced that the stipulations, issues, as well as their respective contentions were properly set out in the Prehearing Order. In addition, at the hearing, based upon the undisputed testimony of Robin Roby, the employer's personnel manager, it was determined that the claimant earned \$10.61 per hour under a contract of hire for thirty-five (35) hours, and that her average weekly wage on March 7, 2004, was \$374.97. (Tr.8, 67-68)

It was undisputed that the employment relationship existed between the parties at all relevant times, including March 7, 2004; that the claimant earned sufficient wages to entitle her to compensation rates of \$250.00 per week for temporary total disability and \$188.00 per week for permanent partial disability; that the claimant sustained a compensable injury to her left forearm as the result of a specific incident identifiable in time and place of occurrence when she fell off a ladder at work on said date; that respondents paid various medical and related expenses allegedly for the left forearm injury while controverting any additional injuries.

By agreement of the parties, the primary issue presented for determination was whether, in addition to the claimant's admitted left forearm injury, she sustained an injury to her coccyx and/or low back as the result of the March 7, 2004, admitted incident. If overcome, claimant's entitlement to associated benefits must be determined.

Claimant contended, in summary, that as the result of her fall on March 7, 2004, she sustained an injury to her tail-bone and/or low back which required medical treatment; that respondents should be held responsible for all outstanding hospital, medical, and related expenses, together with continued, reasonably necessary medical treatment, including, but not limited to possible surgery to remove a portion of her tail-bone. In addition, the claimant maintained that she was entitled to disability benefits for the time she was required to miss work in order to

obtain medical treatment.

The respondents contended that the claimant could not prove that she sustained either a low back and/or coccyx injury supported by objective findings, and controverted compensability of any injuries in addition to the left forearm injury.

The record in this claim is composed solely of the transcript of the March 10, 2006, hearing containing numerous exhibits.

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

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. The Arkansas Workers' Compensation Commission has jurisdiction over this claim.
2. On March 7, 2004, the claimant sustained compensable injuries arising out of and during the course of her employment with Wal-Mart Stores, Inc., at which time her earnings were sufficient to entitle her to compensation rates of \$250.00 per week for temporary total disability and \$188.00 per week for permanent partial disability.
3. The claimant has proven, by a preponderance of the evidence, that, in addition to her admitted left forearm injury, she also sustained injuries to her

low back and coccyx which required medical services and resulted in disability and which is confirmed by medical evidence supported by objective findings, and which was caused by the same, admitted incident identifiable by time and place of occurrence on March 7, 2004.

4. Respondents are responsible for all outstanding hospital, medical, and related expenses for treatment of the claimant's low back and coccyx injury, including, but not limited to reimbursement of any out-of-pocket expenses and co-payments not paid by the claimant's health insurance provider, and respondents remain responsible for continued, reasonably necessary medical treatment, including, but not limited to referral to a neurosurgeon for a possible coccygectomy following further, conservative treatment and, if warranted, following further evaluations.
5. Respondents are entitled to a credit or offset equal to dollar-for-dollar, the amount of medical benefits the claimant has previously received for the same medical services under the employer's group health service plan pursuant to A.C.A. §11-9-411.
6. The claimant has proven, by a preponderance of the evidence, that she is entitled to additional temporary total disability benefits for the dates she was taken off work while receiving additional medical treatment, specifically, for the following dates: August 13, 16, and 17, 2004; February 10 – 25, 2005, as well as temporary partial disability for any dates immediately before

January 27, 2005, at which time she was permitted to work part-time, no more than four (4) hours per day.

7. Issues not addressed herein are specifically reserved for future determination.

DISCUSSION

The relevant facts in this case are basically undisputed. Despite respondents' contentions that the claimant only sustained a compensable injury to her left forearm as the result of the admitted incident on March 7, 2004, the overwhelming weight of evidence reflects that the claimant's primary complaint and injury involved her low back and tail-bone. Admittedly, the claimant sustained a bruise to her forearm when she fell off a ladder, striking her left forearm on a shelf. However, it is undisputed that the claimant landed on her tail-bone, and that all of her medical treatment following the admitted incident related to the complaints of injuries to the low back and tail-bone. As will be reflected further below in the medical evidence, all of the claimant's disability and need for treatment related to the low back and tail-bone. In fact, the claimant was never taken off work related to her minor bruise injury to the upper extremity. Initially, respondents paid approximately four (4) weeks of temporary total disability, as well as medical and related expenses; however, all of the disability and medical expenses related to the low back and tail-bone. The record reflects that on or about April 8, 2004, respondents controverted additional benefits because an insurance

adjuster erroneously concluded that there was not sufficient objective documentation of an injury to pay additional benefits. At that point, the claimant was required to obtain follow-up care and treatment through her group health insurance provided in part by the employer. The claimant continued working for the employer with the exception of several dates that she was taken off work for additional medical treatment. The claimant was working for the employer at the time of the within hearing. The record further reflects that the claimant was involved in an independent intervening accident on June 13, 2005, which resulted in injuries to her shoulder, as well as her thoracic spine. The claimant apparently underwent two (2) surgeries on her shoulder and missed approximately eight (8) months of work following the June, 2005, injury which is not the subject of the immediate claim. The June, 2005, injury is not work-related. Rather, the claimant has requested outstanding medicals and continued medicals for the prior injury, as well as disability benefits which pre-date the June 13, 2005, non-work related injury.

The claimant, Debbie A. Rogers, is forty (40) years old. She has a high school education and two (2) years of college. The claimant began working for Wal-Mart on June 18, 1993. The claimant's injury occurred on March 7, 2004. The claimant testified that while stocking some shelves in her department, she missed a step near the top of a step-ladder and fell to the floor, landing on her tail-bone while striking her arm on a shelf while falling. The incident was immediately reported to upper management, both Mike Watson, the assistant manager, and Jason

Huffmaster, the store manager. Again, the incident itself is undisputed. Also, it is undisputed that the claimant's initial and primary complaint involved her tail-bone and low back. Further, it is undisputed that the claimant has, at all times since March 7, 2004, continued to complain of pain related to both her low back and tail-bone.

The claimant subpoenaed a witness, Roberta Hanshaw, to testify as a corroborating witness. Ms. Hanshaw was unable to appear due to a medical emergency involving her husband. However, respondents agreed that if Ms. Hanshaw was called to testify, she would corroborate the claimant's testimony concerning her on-going physical problems and complaints related to the March 7, 2004, admitted incident and injury. The claimant did call another co-worker, Wilma Hogland, as a corroborating witness. Again, respondents do not dispute the source of the claimant's complaints. The sole defense raised by respondents is that the claimant cannot prove a low back and/or coccyx injury supported by objective findings, and controvert compensability of said injuries. Accordingly, a review of the medical history is essential to address the issues presented.

The claimant was initially examined and treated at the Lawrence County Memorial Hospital emergency room on the date of her fall. X-rays revealed a slight ventral angulation of the coccyx while noting that no frank fracture line was evident. (Cl. Ex. A, p.43)

Despite respondents' assertion that the claimant could not prove a coccyx

injury supported by objective findings, an x-ray finding confirming a slight ventral angulation of the coccyx is objective medical evidence. Further, the x-ray did not rule out a fracture, but, rather noted that no clinically evident fracture line was demonstrated.

The claimant was next examined and treated at the Lawrence County Family Clinic where she was evaluated by Dr. Shawn Peyton on March 9, 2004. Dr. Peyton was identified by the claimant as respondents' workers' compensation doctor. Dr. Peyton took multiple x-rays, specifically, a x-ray of the forearm, pelvis, and coccyx. X-rays of the forearm and pelvis were read as normal; however, Dr. Peyton's discharge diagnosis was low back pain with sciatica, as well as a coccyx fracture. She recommended an MRI and follow-up on March 16, 2004. The claimant was taken off work pending the MRI and follow-up visit. (Cl. Ex. A, pp.34-37)

Respondents then sent the claimant to Dr. David Dowling, an orthopedic surgeon with OrthoMemphis, P.C., in Memphis, Tennessee. The claimant was initially examined and evaluated by Dr. Dowling on March 19, 2004, twelve (12) days after her admitted injury. Dr. Dowling's assessment was lumbar strain and contusion, post-fall with right radicular symptoms. The claimant returned to Dr. Dowling on March 26, 2004, reporting improvement with the use of medication, Decadron, at which time the claimant's leg was not bothering her as much, but continued problems sitting with tail-bone pain. Dr. Dowling diagnosed lumbosacral and sacral coccygeal contusion and sprain related to the fall. He recommended

returning the claimant back to work on a part-time basis with restrictions to return in approximately two (2) weeks. (Cl. Ex. A, pp.12-13) Thereafter, Dr. Dowling was contacted by the claims adjuster on April 8, 2004. It is apparent that he was confused concerning why the carrier had denied the claimant's workers' compensation claim. Apparently, he agreed that, at that point in time, there was no objective structural problems with the claimant. He further opined that he did not feel the claimant had sustained a tail-bone fracture. Accordingly, he advised the claimant that additional medical treatment would continued under the claimant's private insurance and that he would help coordinate physical therapy through private insurance. (Cl. Ex. A, pp.14, 18)

The record reflects that Dr. Dowling eventually referred the claimant to her family physician, Dr. David Daud. Dr. Daud subsequently referred the claimant to Dr. Sunil Gera, a pain management specialist, who treated the claimant with epidural steroid injections. Eventually, the claimant came under the care of Dr. Paul Vellozo, physician in the same clinic as Dr. Daud, after Dr. Daud moved to Jonesboro. It is interesting to note that in a report dated January 26, 2005, addressed To Whom it May Concern, Dr. Daud pointed out that an MRI previously ordered showed nerve irritation in the claimant's low back. (Cl. Ex. A, p.16)

The claimant has continued to receive conservative treatment in the form of medications from her family physician, as well as SI joint steroid injections by Dr. Gera and/or Dr. Calin Savu at the Pain Center in Jonesboro, Arkansas. Dr. Savu

indicated, in a report dated February 16, 2006, that if the current interventions did not improve the claimant's condition, she would be referred to a neurosurgeon for consideration of a coccygectomy. (Cl. Ex. A, p.6)

Rather than conduct a further analysis of the medical evidence, suffice it to say that I find that the claimant has proven, by a preponderance of the evidence, that she sustained a low back and coccyx injury as the result of her March 7, 2004, fall which has been confirmed by medical evidence supported by objective findings. The initial x-rays reflect a ventral angulation of the coccyx. Dr. Peyton's x-rays reflected a fracture of the coccyx. Even Dr. Dowling, respondents' hand-selected physician, felt that the claimant sustained an injury which warranted treatment. Admittedly, he did not clinically observe any objective findings of injury twelve (12) days after the event; however, the law does not require continued, objective findings in order to warrant continued medical treatment. X-rays are not always perfect. Two (2) different x-rays can reveal different findings. Further, the conclusion of one physician that there is no obvious fracture does not translate into the absence of a fracture. Whether or not the claimant's tail-bone was actually fractured is of little consequence. There was objective evidence of injury involving the coccyx. The claimant has continued to complain of problems involving her tail-bone. She has continued to work. I do not believe that the claimant would consider undergoing a coccygectomy if her complaints were not real. I found the claimant to be a credible witness. Her complaints are corroborated by multiple witnesses. The claimant has

proven entitlement to additional benefits.

In view of the foregoing, I find that respondents are responsible for payment and/or reimbursement of all outstanding hospital, medical, and related expenses, including reimbursement to the claimant for out of pocket expenses. As reflected by the stipulations, respondents have controverted compensability of the low back and coccyx. Accordingly, medical treatment does not have to be by an authorized, treating physician so long as the treatment is reasonably necessary and related to the admitted injury.

The only remaining issue concerns claimant's entitlement to additional temporary total disability.

The record reflects that respondents paid the claimant four (4) weeks of temporary total disability following the compensable injury until terminating all treatment and disability on or about April 8, 2004. At that point, the claimant had returned to gainful employment for the employer herein. The only evidence offered by the claimant for additional temporary total disability was reflected by off-work slips by Dr. Dowling, taking the claimant off work on August 13, 16, and 17, 2004; and by Dr. Gera for the period beginning February 10, 2005, through February 25, 2005. In another off-work slip, Dr. Gera had previously allowed the claimant to work part-time beginning on an undetermined date through February 27, 2005. Based upon the employer's payroll records, the claimant would be entitled to temporary partial disability benefits for the dates that she worked half-time and temporary total

for dates aforementioned when she did not work. See, Ark. Code Ann. §11-9-520.

See, also, (Cl. Ex. B, pp.2-6)

AWARD

Respondents, Claims Management, Inc., is hereby directed and ordered to pay and to reimburse the claimant for all outstanding hospital, medical, and related expenses as the result of her March 7, 2004, compensable injury and respondents remain responsible for continued, reasonably necessary medical treatment.

Additionally, respondents are directed and ordered to pay, to the claimant, temporary total and/or temporary partial disability benefits consistent with the foregoing findings of fact and conclusions of law.

This Award shall bear interest at the legal rate until paid.

IT IS SO ORDERED.

DAVID GREENBAUM
Chief Administrative Law Judge