

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F610949

**EVA L. FRAZIER,
EMPLOYEE**

CLAIMANT

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

RESPONDENT

**CLAIMS MANAGEMENT, INC.,
CARRIER/TPA**

RESPONDENT

OPINION FILED JUNE 29, 2007

Hearing before Administrative Law Judge Dale Douthit in El Dorado, Union County, Arkansas.

The claimant was represented by Honorable James Bennett, Attorney at Law, El Dorado, Arkansas.

Respondents were represented by Honorable Jeremy Swearingen, Attorney at Law, Little Rock, Arkansas.

STATEMENT OF THE CASE

On April 3, 2007, the above-captioned claim came on for a full hearing at El Dorado, Arkansas. A Prehearing Order was filed on March 12, 2007, and the parties agreed the Prehearing Order would be made a part of the record as Commission Exhibit No. 1, subject to any modifications made at the full hearing.

At the hearing, the parties stipulated to the following:

1. The Arkansas Workers' Compensation Commission has jurisdiction over this claim.
2. The employee/employer/carrier relationship existed at all relevant times, including September 30, 2006.

3. The parties agreed to applicable compensation rates of \$151.00 per week for both temporary total disability and permanent partial disability.

4. This claim has been controverted in its entirety.

5. All issues not outlined herein are reserved.

At the hearing, the parties agreed to litigate the following issues:

1. Whether claimant sustained compensable injuries to her right shoulder, right hip, right elbow, and neck on September 30, 2006.

2. If compensability is overcome, whether claimant is entitled to associated medical treatment.

3. Ruling on Motion to Deem Requests for Admissions admitted.

Claimant contended that she sustained compensable injuries to her right hip, right shoulder, right elbow, and neck on September 30, 2006. Claimant contended that as a result of her compensable injuries, she is entitled to all associated medical expenses.

Respondents contended that claimant's alleged injury did not arise out of and in the course of her employment with the respondents; specifically, but not exclusively, the claimant was not performing employment services at the time of the alleged injury. Respondents also contended claimant has no objective medical findings of a shoulder, elbow, or hip injury. Respondents contended no additional medical treatment is reasonably necessary in relation to the claimant's alleged injuries.

DISCUSSION

At the onset of the hearing, respondents wanted a ruling on their Motion to Deem Requests for Admissions Admitted. Claimant's counsel did not dispute the fact that respondents submitted Requests for Admission to the claimant on January 25, 2007. Claimant's counsel also did not dispute the fact that the Requests for Admissions were not answered by the claimant and submitted to respondents' counsel until March 5, 2007. Claimant's counsel stated he had trouble getting the claimant in to answer the Requests for Admissions, but that, in his opinion, respondents had not been prejudiced by the delay.

Respondents correctly argued Rule 36 of the Arkansas Rules of Civil Procedure with regard to the Requests for Admissions. However, Ark. Code Ann. § 11-9-705(a)(1) states, in part:

. . . . The Arkansas Workers' Compensation Commission shall not be bound by technical or statutory rules of evidence or by technical or formal rules of procedure....

The purpose of Ark. Code Ann. § 11-9-705(a)(1) is to allow a simplified forum for parties to present evidence which is equitable and expeditious. Here, claimant provided the respondents her answers almost thirty (30) days prior to the full hearing in this matter. I find the respondents were not unduly prejudiced by the claimant's delay and that Ark. Code Ann. § 11-9-705(a)(1) quoted herein applies. Therefore, I find respondents Motion to Deem Requests for Admissions Admitted should be and here is denied.

Claimant has alleged compensable injuries to her right elbow, right shoulder, right hip, and neck. The Commission has stated in Henry Weaver v. Precision Packaging, Full Commission Opinion Filed February 2, 1995 (E40088), that pursuant to Act 796 of 1993, the following must be shown in order to establish compensability of an injury occurring after July 1, 1993:

- (1) proof by a preponderance of the evidence of an injury arising out of and in the course of his employment;
- (2) proof by a preponderance of the evidence that the injury caused internal or external preponderance of the evidence physical harm to the body which required medical services or resulted in disability or death;
- (3) medical evidence support by objective findings, as defined in Ark. Code Ann. § 11-9-102(16), establishing the injury;
- (4) proof by a preponderance of the evidence that the injury was caused by a specific incident and is identifiable by time and place of occurrence.

There was no dispute between the parties about the fact that the claimant fell inside the employer's store on September 30, 2006. There was also no dispute about the fact that the claimant was clocked in at the time of her fall. Respondents made lengthy arguments, however, that the claimant was not performing employment services at the time of her fall. I disagree, and find that the claimant was performing employment services at the time of her fall.

The claimant testified that she ate lunch in the employee's break room on September 30, 2006. Claimant testified that upon completion of her meal, she clocked back in and proceeded to the front of the store to inquire of her supervisor as to which department she was to report.

The Arkansas Supreme Court in Moncus v. Billingsley Logging, 366 Ark. 383 (2006), opinion delivered May 18, 2006, recited that the determination for employment services is whether the employee was directly or indirectly advancing the interests of their employer at the time of the injury. I find that the claimant was advancing the interests of her employer at the time of her fall. She was inside the employee's premises, on the clock, and walking to her supervisor to be instructed as to which department she was to report. Respondents made much ado about the fact that the claimant's daughter was walking beside her and argued they were going to the portrait studio instead of to claimant's supervisor. Respondents then argued claimant was going outside to smoke or possibly finish her lunch. All of the respondents' alternative reasons for the claimant's intent at the time of her fall are merely speculations. The fact is that the claimant ate at the employee's break room, finished eating, clocked back in, and then left the break area to report to a supervisor. In route from the break room to the front of the store, claimant slipped and fell. I find the claimant was clearly performing employment services at the time of her fall on September 30, 2006.

Claimant testified that after her fall, her supervision did not offer to take her to the emergency room, but instead told her she would have to wait until Monday to see the company doctor. The claimant instead elected to take herself to the emergency room. At the emergency room, x-rays were taken of the claimant's right shoulder, right hip, right elbow, right arm, and lumbar spine.

The respondents argued that claimant has no objective medical findings of a right hip, right shoulder, or right elbow injury. In this regard, respondents are correct. At first glance, the emergency room records seem to show objective evidence of “contusions” to the claimant’s right shoulder, right hip, and right elbow. However, upon close review of the emergency room reports, it shows the “contusions” are a diagnosis rather than an observation. When one thinks of a contusion, a bruise which is black or purple comes to mind. However, the emergency room report at page six of Claimant’s Exhibit 1 shows that the area of contusions are noted with the diagnosis “MT” which according to the chart on the same page, means mild tenderness. Mild tenderness is not an objective finding. The emergency room physician had an opportunity to note swelling (S) or ecchymosis (E) (which generally refers to purple or black bruising); however, no observation of swelling, lacerations, abrasions, or ecchymosis was noted at the emergency room. It appears from the emergency room records that the diagnosis for contusions was based solely on the claimant’s complaints of tenderness with regard to her right shoulder, right hip, and right elbow. Based on the medical evidence contained in the record, I can find no medical evidence of injury supported by objective findings with regard to the claimant’s right hip, right shoulder, or right elbow. Therefore, the claimant has failed to prove by a preponderance of the evidence that she sustained compensable injuries to her right hip, right shoulder, or right elbow.

The claimant has shown medical evidence supported by objective findings of a neck injury. The first medical report at the emergency room on the day of the accident states the claimant was complaining of "neck pain." (Cl. Ex. 1, page 4) Following the claimant's visit to the emergency room on September 30, 2006, the claimant started treating with Dr. Greg Smart. In Dr. Smart's October 9, 2006 report, he noted the claimant's continued complaints of neck pain and prescribed Skelaxin for "spasm." (Cl. Exh. 1, page 18). Again, on October 16, 2006, Dr. Smart's report noted the claimant's continued neck pain and continued to prescribe her Skelaxin. (Cl. Exh. 1, page 19).

On October 9, 2006, Dr. Smart recommended a cervical spine series be obtained, which was performed that day. The cervical x-rays revealed "mild straightening of the usual lordosis with osteophytes at C4, 5 and 6." (Cl. Ex. 1, page 21). In his October 23, 2006 report, Dr. Smart continues to note the claimant's neck pain and continues to prescribe Skelaxin and light-duty work (Cl. Ex. 1, page 20). Based on the medical evidence, I find the claimant has shown a compensable neck injury which is supported by objective findings. Further, I find the claimant has proven all the elements listed above regarding compensability by a preponderance of the evidence with regard to the claimant's neck injury of September 30, 2006. Therefore, I find the claimant has proven by a preponderance of the evidence that she sustained a compensable neck injury on September 30, 2006 while working for the respondents.

Employers shall promptly provide for an injured employee such medical treatment as may be reasonable necessary in connection with the injury received. (Ark. Code Ann. § 11-9-505(a)). What constitutes reasonably necessary medical treatment is a question of fact for the Commission. This is a medical claim only. I find the medical treatment provided by the emergency room at Medical Center of South Arkansas to have been reasonably necessary and related to the claimant's compensable injury. It is clear that the claimant had neck pain at her arrival at the ER, and that a neck injury has been shown by objective evidence. Even though the ER did tests on areas other than the claimant's neck, I find that treatment to have been reasonably necessary at the time in order to accurately assess the extent of the claimant's injuries. Clearly, the claimant took a hard fall and the treatment provided at Medical Center of South Arkansas on September 30, 2006 was reasonably necessary and related to the claimant's compensable event on September 30, 2006. I further find that all treatment from Dr. Greg Smart contained in the medical records to have been reasonably necessary and related to the claimant's compensable injury. Therefore, respondents are liable for all treatment contained in the record from Dr. Smart and Medical Center of South Arkansas. I do not find the treatment provided by Interfaith Clinic to have been reasonably necessary in connection with the claimant's compensable neck injury.

As stated, this is a medical only claim at this point and under current Arkansas Workers' Compensation laws, claimant is not entitled to an award of attorney's fees on medical treatment awarded.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

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:

1. The Arkansas Workers' Compensation Commission has jurisdiction over this claim.
2. The stipulations agreed to by the parties and recited herein are reasonable and necessary and are hereby accepted as fact.
3. The claimant has failed to prove by a preponderance of the evidence that she sustained compensable injuries to her right hip, right shoulder, and right elbow on September 30, 2006.
4. The claimant has proven by a preponderance of the evidence that she sustained a compensable neck injury while employed by the respondents on September 30, 2006.
5. Claimant has proven by a preponderance of the evidence that the medical treatment contained in the record from Dr. Greg Smart and Medical Center of South Arkansas was reasonably necessary and related to her compensable injury and therefore the responsibility of the respondents.
6. Respondents' Motion to Deem Requests for Admissions Admitted is denied.

7. As this is a medical award only, no attorney's fees apply.

AWARD

Respondents are directed and ordered to carry out the Findings of fact and Conclusions of Law recited herein.

IT IS SO ORDERED.

HONORABLE DALE DOUTHIT
Administrative Law Judge