

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F611077

EMIT M. GRIMES, EMPLOYEE	CLAIMANT
WAL-MART STORES, INC., EMPLOYER	RESPONDENT
CLAIMS MANAGEMENT, INC., INSURANCE CARRIER/TPA	RESPONDENT

OPINION FILED APRIL 26, 2007

Hearing before Chief Administrative Law Judge David Greenbaum on March 23, 2007, at Jonesboro, Craighead County, Arkansas.

Claimant represented by Mr. Jim R. Burton, Attorney-at-Law, Jonesboro, Arkansas.

Respondents represented by Mr. Curtis L. Nebben, Attorney-at-Law, Fayetteville, Arkansas.

STATEMENT OF THE CASE

A hearing was conducted March 23, 2007, to determine whether the claimant sustained a compensable injury within the meaning of the Arkansas workers' compensation laws.

A prehearing conference was conducted in this claim on February 21, 2007, 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. A copy of the Prehearing Order was introduced as "Commission's Exhibit 1."

It was stipulated that the employment relationship existed between the parties at all relevant times, including September 28, 2006; that the claimant earned sufficient wages to entitle him to compensation rates of \$169.00 per week for

temporary total disability and \$154.00 per week for permanent partial disability; and that respondents had controverted the claim in its entirety.

By agreement of the parties, the primary issue presented for determination concerned compensability. If overcome, claimant's entitlement to associated benefits must be addressed.

Claimant contended, in summary, that he sustained a compensable neck and back injuries as the result of a specific incident identifiable in time and place of occurrence on September 28, 2006; that respondents should be held responsible for all medical and related treatment, together with continued, reasonably necessary medical treatment; that he was entitled to temporary total disability for the period beginning September 29, 2006, and continuing through the present, maintaining that his healing period had not yet ended, less credit for any dates that the claimant may have worked; and that a controverted attorney's fee should attach to any benefits awarded. The claimant reserved the issue of permanent disability.

The respondents contended that the claimant did not sustain an injury arising out of and during the course of his employment as defined under the Workers' Compensation Act, further maintaining that there was a lack of measurable and objective findings to support the injury claimed.

The claimant was the only witness to testify. The record is composed solely of the transcript of the March 23, 2007, hearing containing a joint medical exhibit consisting of twenty-eight (28) pages.

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 claimant and to observe his 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. The stipulations agreed to by the parties are hereby accepted as fact.
3. The claimant has proven, by a preponderance of the credible evidence, that he sustained compensable cervical and back injuries as the result of a specific incident identifiable in time and place of occurrence on September 28, 2006, which arose out of and during the course of his employment with Wal-Mart Stores, Inc., which caused internal physical harm requiring medical services and resulting in disability which was confirmed by medical evidence supported by objective medical findings, entitling the claimant to appropriate workers' compensation benefits.
4. Respondents are responsible for all outstanding medical and related expenses related to the claimant's September 28, 2006, injuries and remain responsible for continued, reasonably necessary medical treatment.
5. The claimant is entitled to temporary total disability benefits for the period

beginning September 29, 2006, and continuing through the date of the within hearing and until such time that the nature and extent of claimant's injuries can properly be diagnosed and treatment.

6. The claimant's healing period had not ended as of the date of the March 23, 2007, hearing.
7. Claimant's attorney, Mr. Jim R. Burton, is entitled to the maximum statutory attorney's fee pursuant to, and limited by, A.C.A. §11-9-715, respondents having controverted this claim in its entirety.
8. Claimant's entitlement to additional benefits, including permanent partial disability benefits, if any, has been specifically reserved.

DISCUSSION

The relevant facts in this case are basically undisputed. The claimant is twenty-three (23) years old. Prior to September 28, 2006, the claimant did not have any physical or health problems. He denied any prior workers' compensation or disability claims, automobile accidents, or being involved in any prior litigation. The claimant worked for the respondent at store 71 in Pocahontas, Arkansas, for approximately two (2) months prior to his work-related injury. The claimant worked the over-night shift, unloading product. The specific incident which resulted in the claimant's injuries, its prompt reporting, and the claimant's need for medical treatment following the incident is undisputed. Claimant's description of the accident is set out below:

A Well, we got a prior load. I believe it was a six or seven pallet load of product that night.

Q Do you know what kind of product it was?

A It was juice, milk, dairy products, butter, eggs.

Q Okay. Every kind of weekly produce you can think of, huh?

A Just about.

Q All right. Were you out on the loading dock or here were you?

A No, I was in the dairy cooler.

Q Okay. Were the pallets brought to you and then you stack them? Is that what was going on?

A What it is, they bring the pallets in on the second shift most of the time, and they'll stick them either in the dairy cooler or in the meat freezer.

Q Okay.

A And from there we'll take them and rearrange the pallets for which way we are going to off load, to undo the load to stock the merchandise.

Q Okay. And you were in the cooler, and what happened to you?

A They had a leaking cooler unit in there for several days and it did not get repaired, and I told my boss about it every morning and every night. The cooler was leaking pretty bad that night, and we cleaned it up once or twice that night.

Q Who's your boss.

A At that night it was Bobby Yates. He was my support manager, supervisor.

Q Okay. Who's Chuck Kercheval?

A He is an assistant manager.

Q Okay. But Bobby Yates was the one that was there?

A Yes. Both Chuck and Amanda were off that night.

Q Okay. So you had already informed Bobby Yates that there was this leak?

A Yes, and he informed upper management.

Q Okay, but it still hadn't gotten taken care of –

A No, sir.

Q – several days later?

A No, sir. It didn't get fixed until after I got hurt.

Q Okay. Go on with your narrative.

A And then from there we was taking and – we went and stocked one pallet, and we was getting ready to start the juice pallet. As I was pulling out the pallet from the back of the cooker, the water on the floor or the residue from the water made the floor slick. I was pulling and I lost my footing, and when I went down, I went down with a twist to try to hold on to the pallet jack from going all the way down to the ground. As I went down, I twisted towards the left a little bit trying to get my left leg up underneath me to support it, but both my feet went up underneath the pallet, and I went down and landed on my rear-end, back, neck and head, and my head hit the steel and my neck hit the steel.

Q Okay. Was this some kind of framing or something, a rack or something?

A What it is, it's a rack. It's a metal rack with shelves on it for us to put our overstock on.

Q Okay. So your head and neck hit the steel rack?

A Yes, sir.

Q Okay. And I'm assuming the floor is concrete or tile or something?

A It was concrete.

Q All right. And do you have any recollection in the overnight shift about what time this all happened?

A I believe it was right after midnight, which would be the 29th, because I believe it was at 1:00 o'clock in the morning when they called my wife and told her to come to the emergency room because I was being transported there.

Q Did you go to work at what, about 10:00?

A Yes, sir, I get there roughly about 9:00, 9:30 and start my shift at 10:00.

Q Okay.

A We get our breaks and lunches and stuff, and we go home at 7:00 in the morning usually.

Q So did you continue working, or did you get up and get a hold of your wife and get to the ER? What did you do next?

A After the fall I took and I got a hold of Bobby Yates, which was the support manager, and Rhonda to file an accident report. After I filed the accident report, I went back out. I thought I might be able to keep doing my job, and as I walked out there, I grabbed a box of juice, which was probably about 20 pounds, 20, 25 pounds, and turned to go take it to the shelf to stock it. As I was turning, my back and my neck, my total body went in pain. I dropped the box of juice on the ground and went practically down to my knees.

Q Okay. So you tried to continue working and just couldn't do it?

A Right.

Q Okay. Did you get some medical care that night?

A I went to the ER in – they told me that I probably have damaged or pulled muscles, maybe have nerve damage, that type of thing. They told me I probably – I had x-rays done that night. They said they didn't see nothing broken, and that I needed to go see the workmen's comp doctor for Wal-Mart, which was Dr. Holt, for follow-up. (Tr. 9-12)

After receiving emergency room treatment, the claimant was sent to the company doctor, Dr. Brent E. Holt, a general practitioner at the Pocahontas Medical Clinic, for follow-up care. The claimant was initially examined and treated by Dr.

Holt on September 29, 2006. Dr. Holt released the claimant to return to work on October 5, 2006, with significant restrictions for ten (10) days at which time it was anticipated that the claimant might be able to return to regular duty; however, on October 6, 2006, an adjustor for the third-party claims administrator, denied the claim in its entirety, maintaining that there were no physical findings to support an injury at which time the claimant was advised that any further medical treatment would be at the claimant's own expense. (Tr. 37-38)

The record reflects that the claimant was not employed long enough to qualify for health insurance. Because respondents controverted the claim in its entirety, he has been unable to obtain the follow-up care and evaluations recommended by his family physicians, specifically, an evaluation by a neurosurgeon. The claimant maintained that because of his financial situation, he has not been able to obtain the treatment recommended. The claimant has continued to receive conservative treatment with medications prescribed by his family physician pending approval of his claim. The claimant has not returned to any gainful employment since his injury.

For the claimant to establish a compensable injury as a result of a specific incident which is identifiable by time and place of occurrence, the following requirements of A. C. A. §11-9-102(4)(A)(i)(Repl. 2002), must be established:

1. Proof by a preponderance of the evidence of an injury arising out of and in the course of employment;
2. proof by a preponderance of the evidence that the injury caused internal or

external physical harm to the body which required medical services or resulted in disability or death;

3. medical evidence supported by objective medical findings, as defined in A. C. A. §11-9-102(16), establishing the injury; and,

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.

If the claimant fails to establish by a preponderance of the evidence any of the requirements for establishing the compensability of the injury alleged, he fails to establish the compensability of the claim, and compensation must be denied. *Mikel v. Engineered Specialty Plastics*, 56 Ark. App. 126, 938 S.W.2d 876 (1997).

Respondents contend that there is no medical evidence supported by objective and measurable findings to support the injury claimed. A review of the medical evidence is totally inconsistent with the conclusions reached by respondent's claims adjustor.

The record reflects that the claimant slipped and fell, striking his head, neck, and back on a concrete floor. The claimant's supervisor, Bobby Yates, took the claimant to the Randolph County Medical Center emergency room for treatment. Although x-rays taken at the Medical Center failed to reveal any fractures, the emergency room attendants noted cervical muscle spasms, diagnosed cervical and lumbar strain, treated the claimant with prescription medications, Toradol for pain, and Soma for muscle spasms, and released the claimant to obtain follow-up medical care from the company physician. (Jt. Ex. A, pp.6, 8, 10)

The claimant was next examined and evaluated by Dr. Brent E. Holt. Dr. Holt

gave the claimant an injection of Decadron, continued the Soma, and Lortabs, prescribed heat therapy, and kept the claimant off-work until further evaluation. The claimant returned to Dr. Holt for follow-up visit on October 2, 2006, at which time the claimant reported that he was physically no better and also reported increased problems with some paresthesias. Dr. Holt ordered an MRI because of the new paresthesias in the claimant's hands. At the same time of the follow-up evaluation, Dr. Holt released the claimant to return to work with restrictions on October 3, 2006, while noting that the claimant continued to report severe spasms up and down his back. (Jt. Ex. A, pp. 17-19)

An MRI of the cervical spine, taken October 4, 2006, revealed mild asymmetric bulge located to the left of midline at C6 – C7 without significant nerve root compression identified. (Jt. Ex. A, p.25)

Apparently, based upon the MRI, Dr. Holt issued a certificate permitting the claimant to return to work on October 5, 2006, which appears inherently inconsistent with the significant restrictions imposed upon the claimant just two (2) earlier. (Jt. Ex. A, pp.19, 27)

Respondents, in my opinion, without any reasonable cause, terminated the claimant's medical treatment after the October 2, 2006, visit to Dr. Holt, apparently based upon its reading of the MRI. Accordingly, the claimant was forced to obtain follow-up medical care from his family physicians. The claimant was next seen on October 9, 2006, by Dr. Melvin Nance at the Corning Area Health Care Clinic. Dr.

Nance observed extreme muscle spasm/spasticity in the area of the left trapezius, at which time he kept the claimant off work while recommending additional studies to determine the nature and extent of claimant's injuries. (Jt. Ex. A, p.28)

Rather than conduct a further analysis of the record in this cause, suffice it to say that the claimant has satisfied each and every element required to establish compensability of his claim. Respondents were not justified in terminating claimant's medical treatment. In so doing, respondents have frustrated the claimant's ability to seek the follow-up medical care necessary to ascertain the true nature and extent of his injury.

AWARD

Respondent, Claims Management, Inc., is hereby directed and ordered to pay, to the claimant, temporary total disability benefits at the rate of \$169.00 per week beginning September 29, 2006, and continuing through the date of the within hearing and until such time that the claimant's healing period can be established.

All benefits having accrued, respondent is to pay same in lump sum and without discount.

Respondents are further directed and ordered to pay and/or reimburse to the claimant, all outstanding medical and related expenses, and respondents remain responsible for continued, reasonably necessary medical treatment, including, but not limited to, any valid referrals by claimant's family and primary care physician.

Additionally, claimant's attorney, Mr. Jim R. Burton, is hereby awarded the

maximum statutory attorney's fee on this entire Award pursuant to, and limited by, Ark. Code Ann. §11-9-715, one-half (½) to be paid by the respondents and one-half (½) to be paid by the claimant, out of benefits awarded herein.

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

IT IS SO ORDERED.

DAVID GREENBAUM
Chief Administrative Law Judge