

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F412812/F612506

LAVADA PARKER	CLAIMANT
WAL-MART ASSOCIATES, INC.	RESPONDENT
CLAIMS MANAGEMENT, INC. INSURANCE CARRIER	RESPONDENT

OPINION FILED OCTOBER 3, 2007

Hearing before ADMINISTRATIVE LAW JUDGE ELIZABETH DANIELSON in Springdale, Washington County, Arkansas.

Claimant represented by EVELYN BROOKS, Attorney, Fayetteville, Arkansas.

Respondents represented by ANDREW IVEY, Attorney, Little Rock, Arkansas.

STATEMENT OF THE CASE

A hearing was held on September 11, 2007, in Springdale, Arkansas.

A pre-hearing conference was held in this claim, and as a result a pre-hearing order was entered in the claim on April 26, 2007. This pre-hearing order set forth the stipulations offered by the parties, the issues to litigate and the contentions thereto.

The following stipulations were submitted by the parties and are hereby accepted:

1. The Arkansas workers' Compensation Commission has jurisdiction of this claim.

2. On all pertinent dates, the relationship of employee-employer-carrier existed between the parties.

3. The claimant would be entitled to a weekly compensation rate of \$322.00 for temporary total disability and \$242.00 for permanent partial disability as of November 30, 2004.

4. The claimant would be entitled to a weekly compensation rate of \$365.00 for temporary total disability and \$274.00 for permanent partial disability as of November 7, 2006.

By agreement of the parties the issues to litigate are limited to the following:

1. Compensability of the claimant's right upper extremity, right thumb, left hip, and low back.

2. Related medical.

The claimant withdrew the request for benefits for the claimant's alleged knee injury which is case number F603012 and reserve these issues for a later hearing.

In regard to the foregoing issues the claimant contends that she was injured on February 28, 2006. Her right knee was injured while setting modulars. The claimant contends that she was injured on November 7, 2006. Her left hip and low back were injured when she twisted while moving cases of antifreeze.

In regard to the foregoing issues the respondents contend that the claimant is not entitled to the requested benefits for the right arm, elbow and wrist injury (F412812), because the claimant cannot establish that she sustained accidental injuries resulting in objective findings of injury to her right upper extremity, which arose out of and in the course of her employment with the respondent-employer, on or about November 30, 2004. Respondents contend that the claimant is not entitled to the requested benefits for the right knee injury (F603012), because the claimant cannot establish that she sustained accidental injuries resulting in

objective findings of injury to her right knee, which arose out of and in the course of her employment with the respondent-employer, on or about February 28, 2006. Respondents contend that the claimant is not entitled to the requested benefits for the left hip/low back injury (F612506), because the claimant cannot establish that she sustained accidental injuries resulting in objective findings of injury to her left hip/low back, which arose out of and in the course of her employment with the respondent-employer, on or about November 7, 2006. Respondents respectfully reserve the right to supplement this response upon the completion of discovery.

The documentary evidence submitted in this matter consists of the Commission's pre-hearing order marked Commission's Exhibit No. 1. The claimant submitted three packets of information marked Claimant's Exhibit No. 1, Claimant's Exhibit No. 2, and Claimant's Exhibit No. 3. The respondents submitted two packets of medical information marked Respondents' Exhibit No. 1 and Respondents' Exhibit No. 2. All these exhibits were admitted without objection.

DISCUSSION

The claimant testified that she was forty-nine years old and had been working for Wal-Mart for approximately eighteen years. The claimant testified that for the majority of the time that she has worked for the respondent she has been a department manager. The claimant testified that as a department manager she uses a handheld computer, moves freight constantly, moves counters, uses hooks to move them, and numerous other things, anything to do with

merchandise in the store. The claimant testified that she has been required to use a handheld computer almost every since she became a department manager. The claimant testified that she works an eight-hour shift and she would estimate that she uses her handheld computer seven to sometimes eight hours during the day. The claimant testified that these handheld computers are to place orders as well as to do price changes. The claimant testified that her department may get anywhere from 500 to 1000 to perhaps 1500 price changes in a day. The claimant explained that she had to sign into the computer, make sure the labels are in the unit and she was constantly using her hands working the handheld computer entering information. The claimant further explained that she would use her left hand to hold the computer and use her right hand, thumb and forefingers to enter the information. The claimant testified that when she is not using her handheld computer she is putting up freight. The claimant explained that the respondent uses rolling racks on which to move the merchandise into her work area. The claimant explained that after the racks are pulled out the merchandise is taken off the racks and put away. The claimant testified that this merchandise is usually in boxes so the boxes have to be opened. The claimant testified that in her area the merchandise to be stocked would be hunting clothing, cases of antifreeze, five gallon buckets of oil, and batteries. The claimant explained that there may be days when a truck has come in when they may unload freight almost all day long and rarely use the handheld computer but usually the night crew puts up the majority

of the merchandise and she is checking and changing prices with her computer during the day. The claimant explained that of course merchandising has to be done in her area when things are sold or the shelves are depleted. The claimant testified that there is nothing during her day that does not require the use of her hands.

The claimant testified that on November 30, 2004, they had gone through their blitz day which is the day after Thanksgiving and they had sold through a lot of their merchandise. The claimant testified that there was a lot of merchandise that needed to be moved around in her area. The claimant stated that there were large game tables such as pool tables, foosball tables, and ice hockey tables which needed to be moved. The claimant testified that she was not able to pick up one of these tables by herself so she had another associate come to help and as they were picking it up she felt a pain in her wrist that went up into her right arm. The claimant testified that she told the associate to hold on just a minute and they sat the table down. The claimant testified that she tried to shake the pain off but when they picked the table up she had the same pain and it was real constant. The claimant testified that this pain went into her elbow down through her wrist and into the ball of her thumb. The claimant testified that they sat the table back down and she went to the personnel office to report to Tammy Fisk what had happened. The claimant testified that the respondent sent her to the doctor there in Huntsville who really did nothing for her. The claimant testified that the doctor opened the door, looked at her and told her that she had tendinitis

and sent her back to work. The claimant testified that she did not immediately go back to another doctor but since the pain did not subside she knew that she needed to do something so she went to another doctor. The claimant testified that she asked the respondent to send her to another doctor but at that time there were no other doctors in the Huntsville area so there was no one else to send her to. The claimant testified that after November 30 she continued to have pain in her hand, arm, and thumb and she had problems picking up things and holding onto things, noting that she would drop items at times. The claimant testified that the pain would shoot up her arm and down into her thumb. The claimant testified that she has never had any problems with carpal tunnel before but she has had a problem with her right thumb some five years earlier. The claimant testified that for her right thumb problems she was prescribed a splint which she wore for a period of time until her symptoms went away and that she has not had any problems with her right thumb for the next four years.

The claimant testified that after being seen by the Huntsville doctor she was seen by Dr. James Moore who had her tested for carpal tunnel and then did surgery on her wrist. The claimant testified that she was off work for four to six weeks following her carpal tunnel surgery.

The claimant testified that in November 2006 she was lifting a case of antifreeze and had turned to set it down and felt a really sharp pain in her back. The claimant testified that she immediately set the case down and sat down herself. The claimant

testified that she was talking to another associate when this event happened and that the associate talked her into going to the office to tell them what had happened. The claimant testified that the case of antifreeze which she was lifting weighed approximately forty-eight to fifty pounds and it was not unusual for her to be lifting something of that weight. The claimant testified that the pain she was experiencing was in what she considered to be her left hip so that is what she reported to the respondent. The claimant testified that the respondents sent her to the Lowell Clinic where she was seen by the doctor two different times. The claimant testified that her pain persisted but she was told by the respondent that they would not authorize any further medical treatment. The claimant testified that she went on her own to see Dr. Powell who prescribed physical therapy. The claimant testified that she attended physical therapy sessions for four to six weeks and that these sessions were helpful. The claimant testified that the left hip pain became much better but her discomfort moved into her low back. Again the claimant testified that after the physical therapy, the pain in her left hip and in her groin area got better. The claimant testified that during this period of time she was off work. The claimant testified that she did return to work and did work for a little while but that the respondents sent her home because she did not have a release from her doctor. The claimant testified that when she returned to see Dr. Powell after her physical therapy sessions he released her to return to work and she in fact did return to work but her problems continued. The

claimant testified that the pain was in her low back and she had difficulty bending over certain ways or picking up things or lifting heavy items. The claimant testified that prior to November 2006 she has never been seen by a specialist for her back, missed any work, seen by a chiropractor, or been prescribed medications for her back. The claimant testified that Dr. Powell referred her to Dr. Tony Raben. The claimant testified that Dr. Raben has given her two injections, the second shot did ease some of her discomfort. The claimant testified that her pain is the same as it was before the last procedure and she experiences pain most everyday. The claimant testified that she has been working up until just shortly before this hearing. The claimant testified that she slipped in some water in front of the milk cooler in the stockroom at the respondents business and fell. The claimant testified that she hurt the same spot on her back that was hurt before. The claimant testified that her symptoms have increased and are worse than they were before her fall.

On cross examination, the claimant agreed that in her deposition she had testified that prior to November 2006 she had not had any low back problems. The claimant was reminded that she had sought treatment for low back pain prior to November 7, 2006, some four months before her incident. The claimant agreed with the respondents' attorney's statement. The claimant testified that the low back problems she was having before was just from getting up and down and was not anything major like the pain she currently was

experiencing. The claimant agreed that when she was seen by Dr. Raben she did not advise him of any low back pain history.

The medical records set forth that the claimant was seen at the Ozark Orthopedic and Sports Medicine Clinic on March 22, 2004, for a bone density study. Dr. Carl Kendrick writes that as compared to the previous studies, there has been a gain of 5.8 percent in the density in the claimant's hip and a gain of zero in her lumbar spine. Dr. Kevin Richter writes on November 30, 2004, that he has seen the claimant for complaints of an injury she sustained that day while working for the respondent moving heavy game tables. Dr. Richter indicated that the claimant had no previous injury to her arm and after examination, Dr. Richter assessed the claimant with having forearm strain/tendinitis for which he prescribed Lodine, ice, and to use a wrist splint while working. The doctor also recommended that she limit her lifting to ten pounds with her right upper extremity for the next week. Dr. James Moore writes on January 17, 2005, that he has seen the claimant who reports that she was moving heavy tables on November 30, 2004, and had sharp pain in the base of her right thumb. Dr. Moore notes that the claimant reports that she had a thumb spica splint at one time for osteoarthritis in her CMC joint. The doctor writes that the claimant reports that she did well with that until this event and now she has tingling in her right MF and RF noting that she has had a handheld computer for the past sixteen years at her work and that she is right-handed. On physical examination, Dr. Moore notes that the claimant has pain and crepitus in her CMC

joint right thumb and the claimant's x-ray of her right thumb shows arthritic CMC joint. Dr. Moore diagnosed the claimant with having osteoarthritis in her CMC joint right thumb and right carpal tunnel syndrome. Dr. Moore recommended that the claimant undergo a nerve conduction study. Dr. Michael Morse writes to Dr. James Moore on January 18, 2005, that the claimant has prolongation of the motor distal latency but not of the sensory action potential in the median nerve. Dr. Morse notes that this can occasionally occur in carpal tunnel syndrome. Dr. Moore also writes that the claimant has 10 m/sec delay across the elbow which implies some compression of the ulnar nerve across the elbow. Dr. Moore writes on January 24, 2005, that the claimant was scheduled for LRTI procedure right thumb CMC joint and carpal tunnel release right hand. Dr. Moore notes that the claimant can return to one handed work after ten days. Dr. Moore operated on the claimant's right thumb and wrist on February 25, 2005. Dr. Moore writes on March 4, 2005, that the claimant's wound is fine and she has sensation in her fingers noting that there is decreased sensation distal to her thumb. Dr. Moore notes that her sutures were removed and she was referred to Occupational Therapy for orthoplast thumb spica splint. Dr. Moore notes that due to the claimant's right-hand surgery she will need to be off work for the next week. On follow up Dr. Moore writes on March 18, 2005, that the claimant's thumb looks good and that she reports no night numbness and she has good range of motion with her fingers. Dr. Moore recommended that she continue with her splint one week and she should remain off work until she is seen on March

28, 2005. Dr. Moore writes on March 25 that the claimant has smooth range of motion in her CMC joint and that her sensation is better. The doctor recommended that the claimant wean herself off her splint and continue with grip strengthening. Dr. Moore recommended that the claimant return to work March 28, 2005, but for the first month she should do light duty with her right hand with no heavy lifting. On June 3, 2005, Dr. Moore notes that the claimant's right thumb looks good, she has a smooth range of motion in her CMC joint and her sensation is good as well as she has a full range of motion. Dr. Moore recommended that the claimant return to see him as needed.

The claimant was seen by Cathleen Vandergriff on November 7, 2006, reporting that she was picking up a case of antifreeze and felt a painful stretch in her left hip. Dr. Vandergriff notes that the claimant complains of left hip and left lower back pain which happened that day. After examination, Dr. Vandergriff assessed the claimant with having left hip strain and prescribed medication, range of motion exercises, use ice and heat to the area of pain, and she can return to work with limited duties. The limited work restrictions consisted of a maximum lifting limit of ten pounds, to alternate sitting and standing, no squatting, bending, or stooping. X-rays of the claimant's left hip revealed no fractures or dislocations. Dr. Vandergriff writes on November 14, 2006, that the claimant reports that she is no better and notes that climbing stairs and squatting causes increased pain and she was unable to tolerate the prescribed medication. Again the claimant was

assessed with having left hip strain, was sent to physical therapy for evaluation and treatment and returned to work with the same restrictions. Dr. James Moore writes on January 5, 2007, that he has seen the claimant in regard to a rating but overall she is doing fine noting some pain in the base thumb area after using it a lot. Dr. Moore indicates that he will make a rating based on the A.M.A. Guides to the Evaluation of Permanent Impairment, Forth Edition, in regard to the claimant's CMC resection arthroplasty right thumb and he will give no impairment rating in regard to the claimant's carpal tunnel syndrome. On April 11, 2007, the claimant underwent an MRI of her lumbar spine which revealed a disc protrusion in the left para central region that slightly narrows the neuroforamina. Dr. David Brown notes that he sees no definite impingement of the nerve root and that correlation is needed. Dr. Brown writes that the claimant has very mild bulging of the L5-S1 disc. The claimant was seen by Dr. Cyril Raben on April 11, 2007, for her low back pain. After examination, Dr. Raben recommended the claimant undergo an MRI and prescribed pain, spasm, and inflammation medications. The claimant was seen by Dr. Raben after her MRI on April 23, 2007, where it is noted that the doctor has reviewed her MRI which showed a left sided herniation at L4-5. Dr. Raben notes that the claimant's leg pain is on the right and is associated with numbness on the dorsum of her right foot. Dr. Raben reports that the claimant's back pain is worse. After examination, Dr. Raben assessed the claimant with having lumbar spine degenerative disc disease as well as lumbar spine disc

herniation. Dr. Raben referred the claimant to Dr. Johnson for an EMG nerve conduction study. The claimant underwent an EMG on April 24, 2007, which was a normal study of her right lower extremity and corresponding lumbosacral para spinal musculature. Dr. Johnson writes that there is no electro diagnostic testing to suggest radiculopathy, plexopathy, generalized peripheral neuropathy, or peripheral nerve entrapment syndrome or injury. The claimant was seen by Dr. Raben on May 8, 2007, and after review of the claimant's EMG nerve conduction study and examination Dr. Raben recommended epidural steroid injections, to continue her medications, undergo physical therapy, and to return to work with restrictions of no prolonged standing or prolonged sitting, no working in a bent over position, frequent breaks, frequent change of position, and no repetitive bending with a lifting limitation of five to ten pounds. In a letter addressed to the respondents' attorney dated May 22, 2007, Dr. James Moore writes that when he saw the claimant on January 17, 2005, her main complaint was right thumb pain which she injured on November 30, 2004, while moving some objects at work. Dr. Moore sets forth that the claimant reported that she had obtained a thumb spica splint at one time in the past because of osteoarthritis in her thumb joint but states that she has done well up until the time of her injury on November 30, 2004. Dr. Moore writes that examination on January 17, 2005, revealed pain and crepitus in the carpometacarpal joint at the base of her right thumb. Dr. Moore writes that he discussed with the claimant that her thumb problem was of long-standing origin but had

been aggravated by her injury on November 30, 2004. As to the claimant's carpal tunnel Dr. Moore writes that this problem was confirmed objectively by a nerve conduction study and this problem was addressed at the same time that the claimant underwent thumb surgery. Dr. Moore writes that in his opinion the claimant has no permanent impairment secondary to work related problems specifically her carpal tunnel or thumb problems.

The claimant was seen by Dr. Mark Powell on March 8, 2007, due to her complaints of left hip pain sustained from a work related injury on November 11, 2006. After examination and review of the claimant's x-rays which were normal, Dr. Powell recommended that the claimant undergo an MRI of her pelvis. On March 29, 2007, Dr. Powell writes that the claimant's MRI of her pelvis revealed no evidence as to the source of the claimant's left hip pain and no evidence of a vascular necrosis or fracture. Dr. Powell recommended physical therapy to include aquatic therapy and referred her to Dr. Raben. Dr. Powell also recommended that the claimant remain off work until seen by Dr. Raben. Dr. Powell writes on May 10, 2007, that the claimant has been seen by Dr. Raben and diagnosed with a herniated disc of the lumbar region and that she has completed her physical therapy. Dr. Powell notes that the claimant is requesting a release to return to work and Dr. Powell in fact did release the claimant to regular duty on May 14, 2007.

The respondents' medical records set forth that the claimant was seen and treated by Dr. Peter Heinzelmann on May 9, 2001, for

complaints of right thumb swelling and pain. X-rays taken of the claimant's right thumb show a slight dorsal subluxation of the first metacarpal. After examination, Dr. Heinzelmann diagnosed the claimant with early osteoarthritis of the CMC joint right thumb and recommended that she use a thumb spica splint and prescribed anti-inflammatory medications. Dr. Heinzelmann adds an addendum to his office note stating that the claimant operates a handheld computer at work and also does a lot of unpacking and handling of store goods. Dr. Heinzelmann notes that the claimant reports that her thumb is definitely more painful during and after her work activities as apposed to when she is away from work for a day or two.

In Dr. Cyril Raben's deposition taken on August 27, 2007, the doctor testified that following the claimant's EMG nerve study which was normal he assessed the claimant with what he believed to be radiculitis associated with an annular tear. Dr. Raben agreed that this diagnosis was in association with his diagnosis of the claimant having a herniated disc as well as disc degeneration. Dr. Raben testified that he is not surprised that Dr. Vandergriff did not find any findings consistent with an acute injury when she first saw the claimant on the day of her injury on November 7, 2006. Dr. Raben explained that the natural history of an internal disc disruption is a progressive accelerated change with time. Dr. Raben stated several times that based on the claimant's history, a specific injury on November 7, 2006, while lifting a heavy case she felt sudden back pain as well as the findings on her MRI of

degenerative disc disease and a herniated disc would lead him to conclude that the November 7 event was the cause of her herniation and or exacerbation of her degenerative disc disease.

On cross examination by the claimant's attorney, Dr. Raben stated that the only thing he has to go on is the claimant's history of reported injury. Dr. Raben stated that according to the claimant's history this is the acute and proximal cause of her need for medical treatment within a reasonable degree of medical certainty. Dr. Raben was asked, "Speaking of objective findings in Dr. Vandergriff's November 7 report would you expect with this kind of injury to find a bruise or swelling that same day?" Dr. Raben responded, "Probably not." Dr. Raben was again asked by the claimant's attorney, "If you take what the claimant reported at face value that she had twisted and felt this pain lifting this antifreeze, would you think that the reasonable medical thing to do, if the symptoms did not resolve, would be to provide an MRI?" Dr. Raben responded, "Yes."

Dr. Raben was asked if based on the records he had reviewed at the time of the deposition was there anything in these records that would lead him to believe that the claimant's injury did not occur on November 7 when she lifted the antifreeze and Dr. Raben responded, "No." Dr. Raben was also asked to review Dr. Vandergriff's November 14, 2006, report which indicates that the claimant says that climbing stairs, squatting on her left causes increased pain, would that be consistent with an annular tear and Dr. Raben responded, "Yes."

After a complete review of this entire record, I find that the claimant has proven by a preponderance of the evidence that she sustained an exacerbation of a pre-existing thumb condition as well as carpal tunnel syndrome on November 30, 2004, while working for the respondent. The claimant has testified to a specific incident of lifting heavy gaming tables with another associate and after experiencing pain in her right hand and arm she reported this incident to the respondent. Tests revealed that the claimant had a right thumb joint problem as well as mild carpal tunnel syndrome. The medical records have set forth and the claimant has testified that five years prior to her November 30 injury she had sought treatment for her right thumb. These problems with conservative treatment resolved and it was not until the lifting incident on November 30, 2004, that the claimant exacerbated her pre-existing condition necessitating medical treatment. The respondents, therefore, should pay for all medical treatment for the treatment of this claimant's right thumb and right carpal tunnel problems. The claimant also has proven by a preponderance of the evidence that she sustained a compensable low back injury while lifting a case of antifreeze on November 7, 2006. Again the claimant testified to a specific incident which resulted in her reporting an injury immediately to the respondents. The respondents initially accepted this claim as a medical only and provided a couple of doctor's visits for the claimant to Dr. Vandergriff. An MRI of the claimant's low back indicates a herniation as well as degenerative disc disease and Dr. Raben has clearly stated that based on the

claimant's history of a specific incident, lifting a heavy case of antifreeze, and the objective findings as found on the claimant's MRI he would state within a reasonable degree of medical certainty that this event and her resulting injury were the cause of her need for medical treatment. Therefore, the respondents should pay for all reasonable and necessary medical treatment for this claimant's low back injury.

FINDINGS & CONCLUSIONS

1. The Arkansas workers' Compensation Commission has jurisdiction of this claim.

2. On all pertinent dates, the relationship of employee-employer-carrier existed between the parties.

3. The claimant would be entitled to a weekly compensation rate of \$322.00 for temporary total disability and \$242.00 for permanent partial disability as of November 30, 2004.

4. The claimant would be entitled to a weekly compensation rate of \$365.00 for temporary total disability and \$274.00 for permanent partial disability as of November 7, 2006.

5. The claimant has proven by a preponderance of the evidence that she sustained a right thumb right wrist injury while working for the respondent on November 30, 2004. See discussion above.

6. The claimant has proven by a preponderance of the evidence that she sustained a compensable low back injury while working for the respondent on November 7, 2006. See discussion above.

7. The respondents should pay for all reasonable and necessary medical treatment for this claimant's right hand and wrist

compensable injuries as well as her compensable low back injury. See discussion above.

ORDER

The claimant has proven by a preponderance of the evidence that she sustained a compensable right thumb and right wrist injury while working for the respondent on November 30, 2004.

The claimant has proven by a preponderance of the evidence that she sustained a compensable low back injury while working for the respondent on November 7, 2006.

The respondents should pay for all reasonable and necessary medical treatment for this claimant's compensable injury to her right wrist and thumb as well as to her low back.

IT IS SO ORDERED.

ELIZABETH DANIELSON
ADMINISTRATIVE LAW JUDGE