BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F712377

WAYNE OWENS
CLAIMANT

WAL-MART ASSOCIATES, INC.
RESPONDENT

CLAIMS MANAGEMENT, INC.
CARRIER

OPINION FILED DECEMBER 22, 2009

Hearing before ADMINISTRATIVE LAW JUDGE ERIC PAUL WELLS in Springdale, Washington County, Arkansas.

Claimant represented by STEVEN SHARUM, Attorney, Fort Smith, Arkansas.

Respondents represented by J. DAVID DIXON, Attorney, Springdale, Arkansas.

STATEMENT OF THE CASE

On September 24, 2009, the above captioned claim came on for a hearing at Fort Smith, Arkansas. A pre-hearing conference was conducted on July 29, 2009, and a pre-hearing order was filed on July 30, 2009. A copy of the pre-hearing order has been marked Commission's Exhibit No. 1 and made a part of the record without objection.

At the pre-hearing conference the parties agreed to the following stipulations:

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's weekly compensation rates are $201 for temporary total disability and $154 for permanent partial disability.

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


2. Related medical.


4. Attorney's fees.

Claimant's contentions are:

"Reported injury and was sent home the next day sent to company DR @ Preferred South. I was denied Workers' Comp in bad faith by Wal-Mart twice once without good medical evaluation. 2nd time based on ER report only."

Respondents' contentions are:

"The Respondents contend that the Claimant did not suffer a compensable injury. The Respondents respectfully reserve the right to amend this Prehearing Questionnaire."

The claimant, in this matter, is a forty-three-year-old male employed by the respondent as a maintenance worker. His duties included operating a floor scrubber, floor buffer, cleaning bathrooms, emptying garbage, vacuuming, and safety sweeping the store. The claimant alleges that he suffered a compensable injury either the late night of November 20, 2007, or in the early morning of November 21, 2007.
It is the claimant's testimony that he had extra time before he had to begin his normal duties, so at the direction of his supervisor, Boyd Wagoner, the claimant went to the parking lot to gather up shopping carts. The claimant then alleges that while negotiating his first set of approximately ten carts, he felt a "sharp pain" in his right shoulder.

The claimant then stopped moving carts and reported his right shoulder pain to his supervisor. The claimant did not fill out any type of incident report at that time and completed his janitorial duties and went home at the end of his shift.

The claimant then stated he went home and went to bed. Upon waking up the next day with continued shoulder pain, the claimant went to work at 10:00 p.m. and reported his injury to another store assistant manager named Grace.

At that time, the claimant filled out an incident report and was allowed to leave work for the day. The claimant was given the instruction to return and see someone in personnel if he continued to have problems. The claimant was allowed to seek medical treatment at Sparks Preferred Clinic South on November 23, 2007.

The claimant saw Dr. Laura Adams and, according to medical records, gave the following chief complaints, “R shoulder pain injured pulling carts 11-20-07.” After x-rays and examination of the claimant, he was diagnosed with subacromial bursitis. Medical records from that visit indicate Dr. Adams’ plan of treatment was recommending Aleve, a sling for three days, and if the claimant’s pain worsened or persisted to see another doctor.
The claimant's testimony is that after his doctor visit of November 23, 2007, he returned to work. Although he was not on light duty it is his position that it was hard on him to use his right arm to mop and sweep. Also, that he was not able to completely control the floor buffer or floor scrubber when he operated them. The claimant's position is that this situation remained until January 18, 2008.

On January 18, 2008, the claimant stated that while at home “I did fall against the door, but I was already in pain already.” Medical records from Sparks Regional Medical Center Emergency Room on January 13, 2008, indicate that the claimant fell and had right shoulder pain. The emergency department Triage report states, “Diagnosis: Fall”..."Chief Complaint Description: Fall with Right Shoulder Pain"..."Primary Pain Intensity:9...” This document is found in Claimant's Exhibit No. 1, Page 5.

Another medical document from the claimant's January 18, 2008, emergency department visit states:

“The claimant is a 41 years old Male who presents with fall. The occurrence was 1 day(s) prior to arrival. The course of pain is constant. Location of pain: Right shoulder. The other degree of pain is moderate. The mitigating factor is negative. Immobilization sling. Fall description tripped. Intoxication: negative. The location where the accident occurred was home.”

This document is found in Claimant's Exhibit 1, Page 10. The claimant's shoulder was immobilized and he was diagnosed with a sprain and strain of the upper right arm and shoulder.
On January 23, 2008, the claimant was seen at River Valley Musculoskeletal Center. The following is an excerpt from a medical report of that visit:

“Mr. Owens is a 42-year-old white male that has had two times of recurrent episodes with his shoulder, the first of which was back in November and the second of which was last Thursday. He has not had any falls or any times when he felt that he could have injured his shoulder but he was pushing carts in November when his shoulder started hurting. He was seen at Preferred South and given anti-inflammatories and states that he did get better until last Thursday. He was seen at Sparks Emergency Room at that time. X-rays were negative for any fractures and he was given a subacromial shot from what it sounds like to him. He states that the shot did not relieve his pain at all. He was also given anti-inflammatories again and he is still doing worse.

IMPRESSION: Right shoulder pain, possible rotator cuff derangement.

PLAN: We are going to get an MRI to rule out this rotator cuff derangement with possible tear and also to assess this proximal humeral bone to rule out any type of malignant process or osteonecrotic process. He does not have a history consistent with a rotator cuff tear but this one shot that was given to him appears to be given in the correct place but again he had no effect from it. If the MRI is normal, we will most likely give him a shot. He is kept off of work until seen.”

On January 30, 2008, the claimant was seen again at River Valley Musculoskeletal Center and medical records indicated impressions of:

“Rotator cuff tear and abnormal signal of proximal humerus.”

The following plan was stated:
“PLAN: We are going to resubmit this for Dr. Brown to pay special attention to the proximal humerus. We discussed this with Dr. Smith and we are going to start him on therapy for rotator cuff strengthening and then keep him on light duty for approximately two weeks. After that he can go back to full duty and we will see him back in four weeks to discuss how his shoulder is doing. If he seems to have this problem resolved no surgery will be discussed, but if his pain comes back after going back to full duty we will discuss probably rotator cuff repair.”

On February 5, 2008, the claimant is seen at River Valley Rehabilitation Center and a report from that visit gives the following excerpt:

“HISTORY: This is a 42-year-old male complaining of right shoulder pain, limited active range of motion, and reports that the MRI revealed a rotator cuff tear. He reports that he is right upper extremity dominant. Original onset is approximately November 2007 without known specific cause, however, progressive increase in pain and limited active range of motion. Pain medication remains necessary and beneficial. Past medical history includes five or six previous surgeries including previous appendix removal, gallbladder removal, right knee, right foot, and left hand surgery.

FUNCTIONAL LIMITATIONS: Continuous right shoulder pain, limited active range of motion. Remains working for Wal-Mart in Greenwood in the maintenance department and he further reports that he is presently on light duty for two weeks. He reports that his job duties involve various skills, however, he has to operate a floor buffer which requires the use of both arms and he has been unable to do that. Also, he presently is unable to clean the restrooms due to required use of both arms. Required pain medication. Difficulty sleeping, resting, and difficulty finding a position of comfort.”
On February 27, 2008, the claimant is again seen at River Valley Rehabilitation Center. At that time, the claimant was informed of his need for right shoulder arthroscopy with arthroscopic cuff repair and probable subacromial decompression.

On March 5, 2008, the claimant underwent the following operative procedures:

“OPERATIVE PROCEDURE:
1. Right shoulder arthroscopy.
2. Arthroscopic debridement of rotator cuff tear.
3. Arthroscopic rotator cuff repair.
4. Arthroscopic distal clavicle excision.
5. Arthroscopic acromioplasty with bursectomy.

The claimant also had the following post operative diagnosis:

1. Rotator cuff tear, right shoulder.
2. Acromioclavicular joint arthritis.”

The following is an excerpt from surgeon Steven Smith's operative description:

“There was a full-thickness rotator cuff tear along the region of the supraspinatus. We debrided the greater tuberosity. We then debrided the undersurface of the cuff. We then turned our attention to subacromial. There was a very thick bursitis, which we debrided using an ArthroCare wand. We established a lateral portal. We did an acromioplasty using cutting-block technique.”

The central issue in this matter is whether the claimant's rotator cuff tear is a compensable injury. There is no doubt that the claimant has the required objective findings of derangement in his right shoulder. The question here is, does the claimant's alleged shopping cart moving incident have a causal connection to his right rotator cuff tear?
It is the claimant’s burden to prove this causal connection and here he has failed to do so. I do believe that the claimant had shoulder pain associated with the moving of shopping carts in November 2007, but I find it is more likely that the pain was due to the claimant’s bursitis than a rotator cuff tear. This bursitis was diagnosed by Dr. Adams and was described as a “very thick bursitis” in the claimant’s operative report.

After the shopping cart incident and following medical treatment, the claimant was able to work and function. He sought no further medical treatment until his fall of January 18, 2008.

It is much more likely that the claimant’s fall on January 18, 2008, caused his full-thickness rotator cuff tear rather than the shopping cart incident. The claimant’s pain was greater and his need for medical treatment was as well. This is evidenced both through the claimant’s seeking of medical treatment and the medical records. Thus, the claimant has failed to meet his burden in proving a compensable injury in this matter.

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 A.C.A. §11-9-704:
FINDINGS OF FACT & CONCLUSIONS OF LAW

1. The stipulations agreed to by the parties at the pre-hearing conference conducted on July 29, 2009, and contained in a pre-hearing order filed July 30, 2009, are hereby accepted as fact.

2. The claimant has proven by a preponderance of the evidence the existence of objective medical findings of a right rotator cuff tear.

3. The claimant has failed to prove by a preponderance of the evidence that the objective findings of rotator cuff derangement is causally related to his alleged rotator cuff injury.

4. The claimant has failed to prove by a preponderance of the evidence that he suffered a compensable work related injury.

5. The claimant has failed to prove his entitlement to benefits in this matter.

ORDER

Pursuant to the above findings and conclusion, I have no alternative but to deny this claim in its entirety.

IT IS SO ORDERED.

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ERIC PAUL WELLS
ADMINISTRATIVE LAW JUDGE