

NOT DESIGNATED FOR PUBLICATION

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F509893

KELLY OTTO CLARK, EMPLOYEE	CLAIMANT
WAL-MART STORES, INC., EMPLOYER	RESPONDENT
CLAIMS MANAGEMENT, INC., INSURANCE CARRIER/TPA	RESPONDENT

OPINION FILED AUGUST 12, 2003

Upon review before the FULL COMMISSION, Little Rock, Pulaski County, Arkansas.

Claimant represented by HONORABLE FREDERICK S. "RICK" SPENCER, Attorney at Law, Mountain Home, Arkansas.

Respondent represented by HONORABLE CURTIS NEBBEN, Attorney at Law, Fayetteville, Arkansas.

Decision of Administrative Law Judge: Affirmed and Adopted.

OPINION AND ORDER

The claimant appeals from a decision of the Administrative Law Judge filed September 10, 2002.

The Administrative Law Judge entered the following findings of fact and conclusions of law:

1. The claimant failed to prove by a preponderance of the evidence that he suffers from any psychological problems that are causally related to his June of 1995 fall.

We have carefully conducted a de novo review of the entire record herein and it is our opinion that the Administrative Law Judge's decision is supported by a preponderance of the credible evidence, correctly applies the law, and should be affirmed. Specifically, we find from a preponderance of the evidence that the findings of fact made by the Administrative Law Judge are correct and they are, therefore, adopted by the Full Commission.

Thus, we affirm and adopt the decision of the Administrative Law Judge, including all findings and conclusions therein, as the decision of the Full Commission on appeal.

IT IS SO ORDERED.

OLAN W. REEVES, Chairman

JOE E. YATES, Commissioner

Commissioner Turner dissents.

DISSENTING OPINION

_____ I must respectfully dissent from the majority opinion finding that claimant did not sustain a compensable psychological injury.

On June 11, 1995, claimant sustained an admittedly compensable injury when he slipped and fell at work. He apparently landed on his back and hit his head. Claimant testified that he was knocked unconscious for a period of time and woke up lying in a puddle of blood. The blood apparently came from a nosebleed as well as cuts on his jaw. Respondent paid benefits through November 1995, when Dr. Sutterfield, the company physician, released claimant from his care.

An Administrative Law Judge previously found that claimant failed to prove that he sustained a compensable psychological injury. The Full Commission affirmed and adopted that opinion. However, the Court of Appeals reversed and remanded for additional findings as to whether claimant sustained a compensable mental injury. The Administrative Law Judge's first decision discounted Dr. Money Penny's opinion on a finding that Dr. Money Penny assumed that the mental injury was caused by organic brain damage. The Court noted that Dr. Money Penny opined that claimant was also suffering from a mood disorder and a somatoform disorder. Since the Commission had made no findings on this second part of Dr. Money Penny's opinion, the Court remanded for additional findings. The

Administrative Law Judge and now the Full Commission have again denied benefits on findings that even though claimant suffered from a variety of psychological conditions, the conditions preexisted the compensable injury and claimant was subjected to other stressors in his life during this period of time. Claimant has filed the present appeal.

There appears to be only one opinion on this matter in the record. As noted by the Court, Dr. Money Penny has diagnosed claimant as suffering from a mood disorder and a somatiform disorder. Dr. Money Penny's report indicates that he arrived at these diagnoses by using the DSM-IV. I don't believe it is seriously disputed that claimant does, in fact, suffer from psychological difficulties. Dr. Money Penny's report satisfies the requirements of Ark. Code Ann. § 11-9-113 (Repl. 2002) that the mental injury or illness be diagnosed by a licensed psychologist and that the diagnosis is established through criteria in the most current issue of the DSM. Alisha F. Urquhart v. Arkansas Department of Correction, Full Commission Opinion filed January 14, 2002 (F000925).

The next question is whether claimant's psychological condition is causally related to the compensable physical injury. I can find only one opinion on

this issue. Dr. Moneypenny clearly opined that claimant's psychological problems are causally related to the physical injury he sustained in June 1995. Dr. Cathey, apparently the only other psychologist or psychiatrist who has evaluated claimant, did not render an opinion one way or the other. Without any credible evidence to the contrary, Dr. Moneypenny's opinion constitutes a preponderance of the evidence sufficient to support a finding that claimant's psychological problems are causally related to the compensable injury. Accordingly, the opinion of the Administrative Law Judge should be reversed.

SHELBY W. TURNER, Commissioner