

**NOT DESIGNATED FOR PUBLICATION**

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F301331

VALDEMAR JIMENEZ,  
EMPLOYEE

CLAIMANT

WAL-MART STORES, INC.,  
EMPLOYER

RESPONDENT

CMI,  
INSURANCE CARRIER

RESPONDENT

OPINION FILED JANUARY 5, 2004

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

Claimant represented by HONORABLE JAY TOLLEY, Attorney at  
Law, Fayetteville, Arkansas.

Respondents represented by HONORABLE J. DAVID WALL, Attorney  
at Law, Fayetteville, Arkansas.

Decision of the Administrative Law Judge: Affirmed and  
adopted.

OPINION AND ORDER

The claimant appeals from a decision of the  
Administrative Law Judge filed June 20, 2003. The  
Administrative Law Judge entered the following findings of  
fact and conclusions of law:

1. The stipulations agreed to by the parties at  
the pre-hearing conference conducted on April  
2, 2003, and contained in a pre-hearing order  
filed that same date, are hereby accepted as  
fact.
2. The parties' stipulation that claimant earned  
an average weekly wage of \$492.00 which

results in compensation rates of \$328.00 for total disability benefits and \$246.00 for permanent partial disability benefits is also hereby accepted as fact.

3. Claimant has failed to prove by a preponderance of the evidence that he suffered a compensable injury to his back on July 2, 2002.

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.

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OLAN W. REEVES, Chairman

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KAREN H. MCKINNEY, Commissioner

Commissioner Turner dissents.

DISSENTING OPINION

\_\_\_\_\_ I must respectfully dissent from the opinion of the majority finding that Claimant failed to prove by a preponderance of the evidence that he sustained a compensable back injury and denying his request for temporary total disability benefits.

The record reflects that Claimant fell off of a cat walk on July 2, 2002 while working for Respondent. Claimant immediately complained of pain in his groin, right wrist, right leg below the knee, and low back and sought treatment. Respondent controverted Claimant's request for benefits for low back pain. Claimant testified that he incurred a lumbar sprain in August, 2000, but did not experience any low back pain again until the July, 2002 incident. Further, MRI results evidenced injury to Claimant's back.

\_\_\_\_\_Based on Claimant's credible testimony concerning the immediate onset and progression of his back pain following the July, 2002 work accident and the objective evidence of injury, I find that Claimant has proven by a preponderance of the evidence that he sustained a compensable back injury and is entitled to temporary total

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disability benefits. Accordingly, the opinion of the Administrative Law Judge should be reversed.

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SHELBY W. TURNER, Commissioner