NOT DESIGNATED FOR PUBLICATION

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F206808

JULIE STRATTON,
EMPLOYEE — CLAIMANT

WAL-MART STORES, INC.,
SELF-INSURED EMPLOYER — RESPONDENT

CLAIMS MANAGEMENT, INC.,
TPA — RESPONDENT

OPINION FILED FEBRUARY 19, 2004

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

Claimant represented by HONORABLE LEWIS D. SMITH, Attorney at Law, Little Rock, Arkansas.

Respondents represented by HONORABLE PATRICK L. SPIVEY, Attorney at Law, Little Rock, Arkansas.

Decision of the Administrative Law Judge: Affirmed and adopted.

OPINION AND ORDER

The respondents appeal from a decision of the Administrative Law Judge filed September 10, 2003. The Administrative Law Judge entered the following findings of fact and conclusions of law:

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

2. On January 25, 2002 the relationship of employee-employer existed between the parties.

3. On January 25, 2002 the claimant earned wages sufficient to entitle her to weekly

compensation benefits of $425.00/$319.00 for temporary total disability/permanent partial disability benefits.

4. On January 25, 2002, the claimant sustained an injury arising out of and in the course of her employment.

5. The claimant was temporarily totally disabled for the periods beginning January 28, 2002 through April 14, 2002 and June 18, 2002 and continuing through the end of her healing period or until such time as she is released to return to work.

6. The respondent shall pay all reasonable hospital and medical expenses arising out of the injury of January 25, 2002.

7. The respondent has controverted this claim in its entirety.

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. All accrued benefits shall be paid in a lump

sum without discount and with interest thereon at the lawful rate from the date of the Administrative Law Judge’s decision in accordance with Ark. Code Ann. § 11-9-809 (Repl. 2002).

Since the claimant’s injury occurred after July 1, 2001, the claimant’s attorney’s fee is governed by the provisions of Ark. Code Ann. § 11-9-715 as amended by Act 1281 of 2001. Compare Ark. Code Ann. § 11-9-715(Repl. 1996) with Ark. Code Ann. § 11-9-715 (Repl. 2002). For prevailing on this appeal before the Full Commission, claimant’s attorney is hereby awarded an additional attorney’s fee in the amount of $500.00 in accordance with Ark. Code Ann. § 11-9-715(b) (Repl. 2002).

IT IS SO ORDERED.

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OLAN W. REEVES, Chairman

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SHELBY W. TURNER, Commissioner

Commissioner McKinney dissents.

DISSENTING OPINION

I must respectfully dissent from the majority opinion finding that the claimant proved by a preponderance of the evidence that she sustained a compensable injury.

Based upon my de novo review of the record, I find that the claimant has failed to meet her burden of proof.

In my opinion, the claimant's testimony regarding the alleged incident on January 25, 2002, was not credible. There were no witnesses to the alleged incident. The only evidence regarding this alleged incident is the claimant's self-serving testimony which conflicts with the history she provided to her physicians. The claimant testified that she injured her lower back while attempting to avoid a stack of falling batteries. She testified that the batteries, which were stacked on top of a cabinet, began to fall towards her forcing her to move out of the way. At the hearing, the claimant testified that she backed up against the wall with force enough to avoid the batteries and then slid down the wall. The claimant then provided a completely different description to Dr. Germann. In his report dated February 22, 2002, Dr. Germann noted that the claimant "jumped back" to avoid the batteries. The claimant then provided a third description of her alleged injury when in her deposition she testified that she backed up to avoid the batteries because there was no room to jump. The claimant then testified that after she fell, she picked herself off the floor and was able to restack the batteries and wipe battery acid up off

the floor, all while experiencing a sharp, shocking pain. Ms. Tidwell, the store’s assistant manager, confirmed that the batteries were stacked neatly with no evidence of cracks or breaks.

Simply put, the claimant’s credibility is suspect at best. Questions concerning the credibility of witnesses and the weight to be given to their testimony are within the exclusive province of the Commission. White v. Gregg Agricultural Ent., 72 Ark. App 309, 37 S.W.3d 649 (2001). When there are contradictions in the evidence, it is within the Commission’s province to reconcile conflicting evidence and to determine the true facts. Id. The Commission is not required to believe the testimony of the claimant or any other witness, but may accept and translate into findings of fact only those portions of the testimony that it deems worthy of belief. Id.

The medical evidence demonstrates that the claimant did not seek medical treatment until three days after this alleged injury. The claimant sought treatment from Dr. Hatley. Dr. Hatley’s records indicate that the claimant’s back began to hurt after basically sneezing. Dr. Hatley’s records indicate that this sneeze was not a work-related injury and it caused the claimant’s physical

problems. The claimant testified that she chose to treat with Dr. Hatley because of his credentials and that he could provide the best medical care for her. Then, the claimant goes on to testify that she whole-heartedly disagreed with his medical records.

Furthermore, the claimant filed her initial visit with Dr. Hatley under her private group health insurance. The claimant was very much aware of workers' compensation procedures due to a previous job-related injury in 1988. The medical records reflect that the claimant had a possible diagnosis of a herniated disk at that time, but due to her size the physicians were unable to perform diagnostic testing to confirm the diagnosis. The claimant's injury in 1988 was severe enough to keep her off work for six years.

The claimant testified at her deposition that all the physical problems associated with her prior injury had resolved by 1997. However, the claimant was treated by Dr. Beverly Zelt as recently as 1999. Dr. Zelt administered epidural steroid injections for the claimant's pain after she presented with complaints of low back pain radiating down both legs since 1988. The claimant presented with very similar symptoms to Dr. Hatley on February 11, 2002.

In short, I find that the claimant has failed to provide by a preponderance of the evidence that she sustained a compensable injury on January 25, 2002. Therefore, for all the reasons set forth herein, I respectfully dissent from the majority opinion.

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KAREN H. McKINNEY, Commissioner