

NOT DESIGNATED FOR PUBLICATION

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F302442

STEPHANIE STEGALL, EMPLOYEE

CLAIMANT

WAL-MART ASSOCIATES, INC.,
A SELF-INSURED EMPLOYER

RESPONDENT

OPINION FILED JUNE 2, 2005

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

Claimant represented by HONORABLE STEVEN McNEELY, Attorney at Law, Little Rock, Arkansas.

Respondent represented by HONORABLE CAROLINE L. CURRY, Attorney at Law, Little Rock, Arkansas.

Decision of Administrative Law Judge: Affirmed and Adopted.

OPINION AND ORDER

The claimant appeals from a decision of the Administrative Law Judge filed August 9, 2004.

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

1. The parties stipulate to the existence of an employee/employer relationship on or about 2-23-02 and 11-17-02.
2. The parties stipulate that claimant sustained an injury to her right arm/shoulder on 11-17-02 and that respondents have accepted the 11-17-02 claim (F214611) and have paid ceratin benefits.

3. The alleged 2-23-02 neck injury is controverted in its entirety.

4. The claimant's average weekly wage in February of 2002 was \$496.30 equating to a TTD rate of \$331.00.

5. The claimant has failed to prove by a preponderance of the credible evidence that she sustained an injury using a different double jack on February 23, 2002, as she asserts.

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

KAREN H. MCKINNEY, Commissioner

Commissioner Turner dissents.

DISSENTING OPINION

I respectfully dissent from the majority opinion which affirms the Administrative Law Judge's finding that Claimant did not sustain a compensable injury to her neck during her employment with Respondent. I find that Claimant sustained a compensable neck injury as a result of a specific incident, which she reported her injury and her supervisors did not provide prompt medical care and that Respondent has controverted this claim in its entirety. Therefore, I would reverse the Administrative Law Judge's findings.

Claimant was working as an equipment operator in the distribution center of Wal-Mart. Her job duties included

taking freight to and from the dock while driving powered equipment. On the day of her injury, Claimant testified that a co-worker, Rose McCullough, asked her to switch equipment with her. Claimant agreed and drove her co-worker's double jack to pick up some freight. Claimant testified that she backed into some freight, picked it up and as she turned to take the freight to its destination she had a difficult time turning the handle on the equipment. She stated that as she was turning the handle, she felt a sharp pain in her shoulder, arm and neck.

Claimant reported her injury the very next morning, February 23, 2002, to her manager, Tony Osborne, and her operational manager, Butch Kearney. Although she reported that she had injured her neck, Claimant was not given any forms to fill out. The next weekend, Claimant informed her manager, Johnny Lee Tims, that she had injured her neck and he asked Claimant if she had reported the injury. The Claimant stated that she had reported it to Mr. Osborne and Mr. Kearney. Mr. Tims instructed her to tell them again. Claimant attempted to report her injury a second time and was told that she probably had "a crick" in her neck and that it could last up to two weeks.

Claimant's operational manager, Mr. Kearney, testified that he learned about Claimant's neck injury the next morning by Mr. Osborne. He stated that Mr. Osborne told him that "there may be an issue with reporting an accident." However, he testified that Mr. Osborne told him that it was simply a "crick" in Claimant's neck. However, neither Mr. Kearney, nor Mr. Osborne followed up with Claimant to determine whether the injury was work related. The Administrative Law Judge stated in his opinion, that Claimant was a "passive participant" when her supervisors failed to document her work injury and provide prompt medical treatment.

Claimant sought treatment for her neck on March 4, 2002 from Dr. Timothy Killough. The clinic notes from that date state that Claimant was seen for neck pain caused by operating a double jack at work. She underwent x-rays and was prescribed medication and given a follow-up appointment. She was then referred to Dr. Terry Green, a neurosurgeon, who scheduled Claimant for an MRI on March 18, 2002. The MRI revealed "Chronic spondylosis with small posterior disc protrusions at C3-4 and C4-5 and a large disc extrusion into the right neural foramen at C5-6." At that time, Claimant

was scheduled for an anterior cervical diskectomy and arthrodesis at C5-6. Claimant had surgery on March 26, 2002.

Employers must promptly provide medical services which are reasonably necessary for treatment of compensable injuries. Ark. Code Ann. § 11-9-508(a) (Repl. 2002). However, injured employees have the burden of proving by a preponderance of the evidence that the medical treatment is reasonably necessary for the treatment of the compensable injury. Norma Beatty v. Ben Pearson, Inc., Full Workers' Compensation Commission Opinion filed February 17, 1989 (Claim No. D612291). When assessing whether medical treatment is reasonably necessary for the treatment of a compensable injury, we must analyze both the proposed procedure and the condition it is sought to remedy. Deborah Jones v. Seba, Inc., Full Workers' Compensation Commission Opinion filed December 13, 1989 (Claim No. D512553). Also, the respondent is only responsible for medical services which are causally related to the compensable injury.

The Administrative Law Judge disregarded Mr. Kearney's testimony that there were concerns about a work related injury right after the incident that caused Claimant's injury. However, the Claimant credibly testified

that she told her supervisors about her condition and that she believed it was work related and her statements were corroborated by the information she gave to her medical providers. Although management believed Claimant merely had a crick in her neck, this testimony is contradicted by the objective medical finding that she had a herniated disc at C5-6.

In order to prove a compensable injury, a claimant must prove, among other things, a causal relationship between his employment and the injury. McMillan v. U.S. Motors 59 Ark. App. 85, 953 S.W.2d 907 (1997). Objective medical evidence is necessary to establish the existence and extent of an injury, but not essential to establish the causal relationship between the injury and a work-related accident. Horticare Landscape Mgmt. v. McDonald, 80 Ark. App. 45, 89 S.W.3d 375 (2002). Objective findings are defined at Ark. Code Ann. § 11-9-102(16) as those findings which cannot come under the voluntary control of the patient.

I find that the Administrative Law Judge also erred in denying benefits when he gave too much weight to the facts that Dr. Green did not check a "yes" or "no" block

concerning the work relatedness of Claimant's injury and the fact that the Claimant drew short term disability benefits. The Administrative Law Judge equates this to an opinion by Dr. Green that Claimant's condition was not work related and disregards the objective medical evidence. Even if Claimant received short-term disability benefits, that fact does not negate a finding that her injury was work related.

By relying on the fact that Claimant received short term disability benefits, the Administrative Law Judge has nullified Ark. Code Ann. § 11-9-411, which states that:

"Any benefits payable to an injured worker...shall be reduced in an amount equal to, dollar-for-dollar, the amount of benefits the injured worker has previously received for the same medical services or period of disability, whether those benefits were paid under a group health care service plan of whatever form or nature, a group disability policy, a group loss of income policy, a group accident, health, or accident and health policy, a self-insured employee health or welfare benefit plan, or a group hospital or medical service contract."

The Administrative Law Judge reasoned that Hartford would not have paid benefits if Claimant's injury was work-related and therefore her injury is non-

compensable. In other words, since Claimant was paid by a private disability policy for her injury, then her condition is not work-related and therefore not compensable. This reasoning is flawed and should not be the basis for denying the Claimant compensation for her compensable injury. Hartford would have the right to seek payment from Respondent based on Ark. Code Ann. § 11-9-411.

Since the Claimant had a specific incident injury at work, reported her injury and because there were objective medical findings of an injury, which ultimately resulted in a need for surgery, I would reverse the Administrative Law Judge and award Claimant the benefits to which she is entitled.

For the foregoing reasons, I respectfully dissent from the majority's affirmance of the Administrative Law Judge's opinion.

SHELBY W. TURNER, Commissioner