

NOT DESIGNATED FOR PUBLICATION

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F405934

LAVONA COOMBES, EMPLOYEE

CLAIMANT

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

RESPONDENT

OPINION FILED MARCH 14, 2006

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

Claimant represented by HONORABLE R. GUNNER DeLAY, Attorney at Law, Fort Smith, 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 May 27, 2005.

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 all relevant dates, including June 7, 2004, the relationship of employee-self insured employer existed between the parties.

3. On all relevant dates, the claimant earned wages sufficient to entitle her to weekly compensation benefits of \$330.00 for total disability and \$248.00 for permanent partial disability.

4. The claimant has failed to prove by the greater weight of the credible evidence that she sustained a "compensable injury" to her right knee, on or about June 7, 2004. Specifically, she has failed to prove by the greater weight of the credible evidence that her right knee difficulties were in any way causally related to either a specific employment related incident or to employment related activities requiring rapid repetitive motion.

5. The respondents have denied the occurrence of any compensable injury to the claimant's right knee and have controverted this claim in its entirety.

The claimant alleges that he sustained a compensable injury that is governed by the Arkansas Workers' Compensation Act, A.C.A. § 11-9-101 et seq. The claimant's alleged injury is, indeed, an injury that is covered by the Act; however, the claimant has failed to establish the elements necessary to prove a compensable injury by a preponderance of the evidence.

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 must respectfully dissent from the Majority's opinion affirming and adopting the Administrative Law Judge's May 27, 2005 opinion holding that the claimant had failed to prove by the greater weight of the credible evidence that she had sustained a compensable injury to her right knee on or about June 7, 2004. After my de novo review of the claimant's testimony and other supporting evidence, it is my opinion that the Administrative Law Judge's decision should be reversed.

The claimant has alleged that she suffered a compensable injury to her right knee on June 7, 2004. At that time, she was employed as a door greeter at a local Wal-Mart Store, was 63 years of age and had no prior history of knee problems. On the date in question, the claimant's shift began at 6:00 a.m. and ran through 3:00 p.m. According to her testimony, she felt a sudden onset of severe pain in

her knee when she twisted while pulling apart two shopping carts.

Three witnesses testified at the hearing. In addition to the claimant, the witnesses were Helen Heflin, who stated that she was the store's Assistant Manager and Sue Young, the Co-Manager. While there were some slight discrepancies, all of the witnesses were in general agreement. The claimant stated that her onset of symptoms began around 9:00 or 10:00 a.m. Ms. Heflin testified that she had noticed the claimant limping as early as 8:30 a.m. The claimant and Ms. Heflin testified that after Ms. Heflin noticed the claimant limping, she asked her about the possibility of an injury. These two witnesses stated that Ms. Heflin escorted the claimant to Ms. Young to begin the process of reporting an injury. However, Ms. Young stated that she was the one who observed the claimant limping at about 7:30 a.m., and initiated the claimant's process. In any event, Ms. Young had the claimant begin filling out a document titled, "Workers' Compensation Request for Medical Care." Under the portion of the form which indicates it's to

be completed by Wal-Mart, one of the questions is, "How did accident happen?" The answer printed into the space is "Unknown - thinks twisted by pulling carts." Even though Ms. Young signed this portion of the form, she stated that she is not the one who wrote down the information in that block. However, she did acknowledge that she had read it before signing it.

After the form was completed, the claimant was sent to see Dr. Keith Holder, the employer's company physician. The claimant saw Dr. Holder on June 7, 2004, the date of her injury. The initial clinic note prepared by Dr. Holder indicates the time is 11:50 a.m. Dr. Holder's report indicates that the claimant was an employee of Wal-Mart who "usually pulled carts apart, pushing, pulling, and twisting." He stated that the claimant reports that she had a sudden onset of pain in her right calf and popliteal area of the right knee. Dr. Holder stated that he observed no evidence of bruising or edema and that she had a tender, but stable, knee. He provided her some medication and

recommended a cane and a heel lift and released her to return to work at sedentary duty.

The claimant returned to her place of employment and returned to them the "Workers' Compensation Request for Medical Care" form. A portion of that form was filled out by Dr. Holder indicating that she was released to return to sitting work only and indicating that she had a knee strain and that he was recommending that she use a cane and a heel lift. After delivering the form, the claimant stated that, while in the parking lot returning to her car, she had a sudden onset of severe pain in her knee. According to her, the pain was so severe that she could no longer walk and was, in fact, in tears. One of her co-employees brought her a motorized scooter (the type that is usually provided for customers) for her to ride in to get to her car. At approximately this time, Ms. Young, Ms. Heflin, and other coworkers were leaving to go to lunch. They observed the claimant having difficulties and she was approached by Ms. Young. According to Ms. Young, she was concerned about

the claimant's condition and offered to either drive her home or to call her daughter to assist her.

After leaving the store, the claimant once again went to Dr. Holder's office. The treatment note related to this visit is dated June 7, 2004, at 4:10 p.m. According to the Narrative Summary section of this report, Dr. Holder stated that the claimant advised him that when returning to Wal-Mart, her knee popped while getting out of her car and while she was able to walk into the store without symptoms, she was having difficulty putting weight on her right leg and was unable to get out of the wheel chair and walk to the examination table. Dr. Holder noted that the claimant was reporting a significant amount of pain but did not see any swelling. He placed her on crutches, directed her to get her medications filled, and released her to return to work under his prior restrictions.

When the respondent controverted the claimant's entitlement to benefits, she sought treatment from Dr. James Long, a Fort Smith orthopedist. In a progress note dated June 21, 2004, Dr. Long set out the claimant's symptoms and

diagnosed her with "a possible degenerative tear of the medial meniscus."

After a period of conservative treatment, Dr. Long performed arthroscopic surgery on her knee on July 14, 2004. In an operative report of that date, the doctor set out his findings that the claimant had a Grade 3 to Grade 4 degenerative change of the medial compartment articular cartilage on the femoral condyle and tibial plateau. After the arthroscopic surgery, the claimant continued to have problems with her knee. Even though subsequent procedures are not documented in the medical record, the claimant testified that Dr. Long later performed a total knee replacement on her.

In my opinion, the claimant's testimony was sufficiently credible to establish a specific incident. The claimant's testimony was that she twisted her knee while pulling a shopping cart out for a customer. Contrary to the language relied upon by the Majority that "the claimant's testimony is contradicted by all of her previous statements..." I do not find that the record contained any

previous statements by the claimant that contradict her testimony. Apparently, the Majority is accepting statements made by Ms. Young and Ms. Heflin to the effect that the claimant had told them that she didn't know how she injured her knee. However, the witnesses recollections of what the claimant told them is in variance with their own conduct on the date of the injury. For example, Ms. Young testified that she initially saw the claimant limping, and according to her, she asked the claimant what happened. She stated that the claimant advised her that she did not know. However, Ms. Young later contradicted her self when cross-examined about the Form that she and the claimant filled out:

Q. So you read where it says, "How did accident happen?" and it says, "Unknown. Thinks twisted by pulling carts," you were aware of that and signed off on it?

A. Uh-huh. *Because she had told me that earlier.* (emphasis added).

Likewise, Ms. Heflin also indicated that she saw the claimant limping. She stated the claimant told her that her knee was hurt but did not indicate that it was job

related. However, Ms. Heflin admitted that the claimant later approached her indicating that her knee was hurting and that she needed to go to the doctor. Ms. Heflin then escorted her to Ms. Young so that she could be taken to the doctor. In this regard, Ms. Heflin testified that she "saw Sue and told her that Lavona needs to go to a doctor and asked her to fill out the papers." The papers she was referring to was the workers' compensation form earlier referred to. Ms. Heflin also testified that she went with the claimant to the doctor's office because, "we have to deliver the post drug testing to them ourselves."

If it were true that the claimant did not tell Ms. Heflin or Ms. Young that her knee was injured in a job related accident, I do not understand why these two ladies would have had her fill out a Workers' Compensation report form and see to it that she got immediate treatment from the doctor the respondent used to treat their workers with job related injuries. Further, Ms. Heflin stated that the reason she was going to the doctor with the claimant was for drug testing reasons. Obviously, had Ms. Young and Ms. Heflin

believed that the injury was not job related, they would not have treated it as a job related injury. Clearly, the claimant indicated to them in some fashion that her injury occurred while she was performing her job. Otherwise, there would have no reason for these two witnesses to have said and done the things that they did. Further, the job related nature of the claimant's injury is supported by Dr. Holder's initial report. While he did not directly quote from the claimant, he does associate pulling carts with her injury by juxtaposing a description of her job duties with her complaints of a sudden onset of pain in her knee. Likewise, Dr. Long, in his progress note of June 21, 2004, also discusses that the claimant does a lot of pushing and pulling of shopping carts.

I find that the claimant's testimony about injuring her knee while pulling and twisting on shopping carts is not only credible, but is supported by the actions of Ms. Young and Ms. Heflin and the medical reports of Drs. Holder and Long. While it could be argued that the claimant's knee injury is the result of some preexisting

joint condition, I note there is no medical evidence to support this contention. However, even if there were, I believe that this case is controlled by Parker v. Atlantic Research Corporation, ___ Ark. App. ___, ___ S.W.3d ___ (Arkansas Court of Appeals, June 30, 2004). In that case, this Commission held that a worker with a preexisting degenerative abnormality could not meet the major cause requirement of the Workers' Compensation Act. However, the Court of Appeals reversed that finding and held that the claimant's job related activities did play a role in her injury and that the claim was therefore compensable. Another relevant case which involved an injury very similar to the one here, is Crawford v. Single Source Transportation, ___ Ark. App. ___, ___ S. W. 3d ___ (Arkansas Court of Appeals, June 30, 2004). In that case, the claimant had suffered an injury to his knee when he stepped out a cab in his dump truck. The evidence in Crawford did not demonstrate that the claimant had fallen or suffered a substantially traumatic injury to his knee, and the Commission held that he, accordingly, did not have a compensable injury but a

preexisting idiopathic condition that became asymptomatic when he got out of his truck. However, the Court of Appeals reversed that decision and held that the injury was occasioned by the claimant's job related activity, that is, stepping down from his dump truck.

In the present claim, I find that the claimant's knee injury occurred while she was pulling apart shopping carts and twisted her knee. While it is possible that she did have some preexisting degenerative joint disease, it is apparent to me that the precipitating factor in her disability and need for medical treatment was her job related injury. Since the occurrence of this injury is supported not only by the claimant's testimony but other evidence in the record, I find that she did suffer a compensable injury.

For the foregoing reasons, it is my opinion that the Administrative Law Judge's decision should be reversed.

SHELBY W. TURNER, Commissioner