

NOT DESIGNATED FOR PUBLICATION

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NOS. F311952, F311953, & F311905

JOHNNY M. HELTON, EMPLOYEE	CLAIMANT
WAL-MART, INC., SELF-INSURED EMPLOYER	RESPONDENT
CLAIMS MANAGEMENT, INC., INSURANCE CARRIER/TPA	RESPONDENT

OPINION FILED AUGUST 14, 2006

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

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

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

Decision of Administrative Law Judge: Affirmed and Adopted.

OPINION AND ORDER

Claimant appeals from a decision of the Administrative Law Judge filed March 17, 2006.

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

1. The stipulations agreed upon by the parties are reasonable and are approved.

2. The relationship of employee-employer existed on August 30, 2002; in October, 2002; and on April 27, 2003, when the alleged incidents occurred, and at all relevant times.
3. These claims have been controverted in their entirety.
4. Claimant's temporary disability rate is \$264.00.
5. If called to testify, Michelle Moss would corroborate Claimant's testimony.
6. Claimant's Motion to Recuse should be, and hereby is, denied. In other cases, the Commission has rejected the arguments made by Claimant in this case concerning the constitutionality of the Commission. Further, the rule of necessity mandates that I remain on this claim.
7. Claimant's challenges to the constitutionality of the Commission's adjudication process should be, and hereby are, rejected. There is no credible evidence of either bias or pressure on the Commission's administrative law judges by either the executive branch or private interests. Further, the Commission's adjudication process does not violate separation of powers,

procedural due process, or equal protection principles.

8. Claimant did not sustain his burden of proving by a preponderance of the evidence that he suffered compensable injuries to his neck and shoulder in October of 2002. Specifically, the record does not contain any objective findings in support of Claimant's alleged injury.
9. Claimant did not sustain his burden of proving by a preponderance of the evidence that he suffered a compensable low back injury on April 26, 2003. The testimony of Claimant and his supporting witness are directly contradicted by the testimony of three other witnesses as to his reporting of this alleged injury. Further, the initial reports of three separate doctors all fail to mention a specific work-related incident. Thus, claimant failed to satisfy his burden of proving that his injury arose out of and in the course of his employment.
10. Claimant did not sustain his burden of proving a compensable mental injury. He did not prove that a compensable physical injury caused his alleged mental injury; there is no proof in the record that Claimant's depression has ever been

diagnosed by a licensed psychiatrist or psychologist; and, there is no proof in the record that the alleged diagnosis meets the criteria established in the most current issue of the Diagnostic and Statistical Manual of Mental Disorders.

11. Because Claimant failed to prove any compensable injury, it is not necessary to discuss the remaining issues in this case.

The claimant alleges that he/she 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

Helton - F311952, F311953, -5-
& F311905

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 concurs, in part, and dissents, in part.

CONCURRING AND DISSENTING OPINION

I concur with the portion of the Majority's opinion denying the claimant's motion to recuse and rejecting the Claimant's constitutional challenges. However, I must respectfully dissent without opinion as to the Majority's finding that the claimant did not sustain compensable injuries on the dates in question.

SHELBY W. TURNER, Commissioner