

NOT DESIGNATED FOR PUBLICATION

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F209057

KANDIDA R. PLUMMER, EMPLOYEE CLAIMANT

WAL-MART INC., A SELF-INSURED EMPLOYER RESPONDENT NO. 1

SECOND INJURY FUND RESPONDENT NO. 2

OPINION FILED JANUARY 17, 2006

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

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

Respondent No. 1 represented by HONORABLE CURTIS NEBBEN, Attorney at Law, Fayetteville, Arkansas.

Respondent No. 2 represented by HONORABLE TERRY PENCE, 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 July 14, 2005.

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 employee-employer relationship existed on July 29, 2002, and at all other relevant times.

3. Claimant's average weekly wage was \$335.00; her temporary total disability rate is \$223.00; and her permanent partial disability rate is \$167.00.

4. Respondents have controverted this claim in its entirety.

5. Claimant underwent two heart surgeries subsequent to July 29, 2002, that were not related to her work.

6. If called, the testimony of Michael Plummer and Vicky Evans would be the same as Claimant's testimony.

7. Claimant's testimony is not credible. Her statements at the hearing and at her deposition sometimes conflict with the medical records; other items in the record call her credibility into question.

8. Claimant did not sustain her burden of proving a compensable specific incident injury. She did not identify a specific incident identifiable by time and place of occurrence; instead, she testified that her left elbow "slowly started hurting" and that her injury "just slowly developed."

9. Claimant did not sustain her burden of proving a gradual onset injury arising out of and in the course of her employment. Her initial medical records do not relate her injury to her employment; one July 30, 2002 medical

record reports that she "fell on porch landing on elbow 2 days ago." She did not relate her work to her injury until almost a month later.

10. In the alternative, Claimant did not sustain her burden of proving that her injury was caused by rapid repetitive motion. Her tasks of pulling out pallets, unloading their contents, and then shelving and straightening the items in the cases or boxes, are different and separated in time and could be interrupted by a shopping customer. Even if her tasks were repetitive, there is no testimony in the record upon which to make a determination of rapidity. Thus, Claimant did not meet her burden of proving rapid and repetitive motion.

11. Because Claimant did not establish a compensable injury, she is not entitled to medical or temporary total disability benefits.

12. Because no indemnity benefits are awarded herein, Claimant is not entitled to an attorney's fee.

The claimant alleges that 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 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.