

NOT DESIGNATED FOR PUBLICATION

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F410419

EVELYN RUSHING, EMPLOYEE	CLAIMANT
WAL-MART STORES, INC., EMPLOYER	RESPONDENT
CLAIMS MANAGEMENT, INC., INSURANCE CARRIER	RESPONDENT

OPINION FILED JULY 24 2006

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

Claimant represented by the HONORABLE PHILIP M. WILSON, Attorney at Law, Little Rock, Arkansas.

Respondents represented by the HONORABLE ANDREW IVEY, Attorney at Law, Little Rock, Arkansas.

Decision of Administrative Law Judge: Affirmed and Adopted.

OPINION AND ORDER

Respondents appeal an opinion and order of the Administrative Law Judge filed February 13, 2006. In said order, the Administrative Law Judge made the following findings of fact and conclusions of law:

1. The Workers' Compensation Commission has jurisdiction of this claim in which the relationship of employer-employee-carrier existed on August 2, 2004 at which time the claimant was earning sufficient wages to entitle her to a compensation rate of \$199.00/\$154.00.
2. The claimant has proven by a preponderance of the credible evidence that she sustained a

compensable injury, caused by a specific incident, arising out of and in the course of her employment which produced physical bodily harm, supported by objective findings, requiring medical treatment or producing disability, pursuant to Ark. Code Ann. §11-9-102.

3. The respondents are directed to pay all reasonable and necessary medical expenses within thirty days pursuant to WCC Rule 30.

4. The respondents are directed to pay temporary total disability benefits from September 15, 2004 to July 7, 2005 as the claimant remained in her healing period, unable to work.

5. The respondents are directed to pay permanent partial disability benefits for a 5% rating to the body as a whole as assessed by Dr. Peek.

6. This claim has been controverted and the claimant's counsel is entitled to the maximum attorney's fees to be paid in accordance with A.C.A. §11-9-715, §11-9-801, and WCC Rule 10.

Pursuant to the Full Commission decisions of Coleman v. Holiday Inn, (November 21, 1990) (D708577), and Chamness v. Superior Industries, (March 5, 1992) (E019760), the claimant's portion of the controverted attorney's fee is to be withheld from, and paid out of, indemnity benefits, and remitted by the respondent, directly to the claimant's attorney.

As a reminder, Ark. Code Ann. §11-9-715 was amended by Act 1281 of 2001, limiting attorney's fees on medical benefits and services for injuries after July 1, 2001.

7. If they have not already done so, the respondents are directed to pay the court reporter's fees and expenses within thirty days.

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 made by the Administrative Law Judge are correct and they are, therefore, adopted by the Full Commission.

We therefore affirm the February 13, 2006 decision of the Administrative Law Judge, including all findings of fact and conclusions of law therein, and adopt the opinion 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.

OLAN W. REEVES, Chairman

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, it is clear that the claimant's condition is the result of her long term back problems rather than her August 2, 2004, work-related injury. The medical report from Dr. Davis, some five weeks after her fall, stated that the claimant only reported to Dr. Davis that she had recurrent back problems and

arthritis. She did not reveal to Dr. Davis at that time that she had sustained an injury on August 2, 2004, and did not attribute her back pain to the fall in any of her September 9, 2004, September 14, 2004, or September 20, 2004, office visits. The claimant did not report the August 2, 2004, fall to Dr. Davis until September 28, 2004, when she called his office to tell them she was filing a workers' compensation claim since she fell off a ladder on August 2, 2004.

The medical evidence demonstrates that the claimant has a long-standing history of back problems dating back as early as 1990. The claimant presented in May of 2003 with low back pain and arthritis as well as hip pain. Furthermore, Dr. Davis noted on September 9, 2004, that the claimant had a history of some recurring back pain and has been treated for arthritis. When the claimant completed her "request for leave of absence" with the respondent employer on September 22, 2004, she stated that she had recurrent low back pain. There is absolutely no mention of any work related injury. It is also of note that the claimant underwent a bone density study which revealed severe osteopenia in the lumbar spine area which is where the claimant has been complaining of pain. Although I acknowledge that the

claimant did have a fall from a ladder on August 2, 2004, the record simply fails to demonstrate that there is any relationship between the claimant's current condition and that fall. Accordingly, I must dissent from the majority's opinion.

KAREN H. MCKINNEY, Commissioner