

NOT DESIGNATED FOR PUBLICATION

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F703269

DAMON WILSON, EMPLOYEE	CLAIMANT
WAL-MART ASSOCIATES, INC., EMPLOYER	RESPONDENT
CLAIMS MANAGEMENT INC., TPA	RESPONDENT

OPINION FILED JUNE 27, 2008

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

Claimant represented by HONORABLE EVELYN BROOKS, Attorney at Law, Fayetteville, 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 October 5, 2007.

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 June 14, 2006, the relationship of employee-employer-carrier existed between the parties.

3. The AR-C was signed by the claimant on March 27, 2007, received at the Commission on April 2, 2007, and a letter from Carl Bayne was sent to the parties on April 3, 2007.

4. The claimant has proven by a preponderance of the evidence that he sustained a compensable left shoulder injury while working for the respondent.

5. The respondents did not get notice of the claimant's left shoulder claim until April 3, 2007.

6. The respondents should pay for all reasonable and necessary medical treatment for this claimant's compensable left shoulder injury subsequent to April 3, 2007.

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 Hood concurs, in part and dissents, in part.

CONCURRING & DISSENTING OPINION

I must respectfully concur in part and dissent in part from the majority opinion. The majority, by affirming and adopting the Administrative Law Judge, finds that the claimant proved by a preponderance of the evidence that he sustained a compensable right shoulder injury. I agree. However, the majority also finds that the respondent should prevail on a notice defense, thereby barring, the claimant from receipt of any benefits until April 3, 2006, the date

the AWCC mailed the respondent a copy of the C form filed by the claimant. I disagree. Based on a de novo review of the record, I find that the respondent had actual notice of the claimant's injury. Therefore, due to Ark. Code Ann. §11-9-701(b)(1), which states that if the respondent has actual notice of the injury the respondent cannot avail themselves of the notice defense set out in Ark. Code Ann. §11-9-701(a)(1), I must respectfully dissent on this issue.

The preponderance of the evidence of record clearly shows that the respondent had copies of Dr. Park's medical records, relating both to the claimant's left shoulder injury, and the previously litigated right shoulder injury. Dr. Park's record dated June 14, 2006, states:

His left shoulder is becoming more symptomatic and painful....I suspect that with use of this arm while having to with-hold the other side, pre and post operatively, he's progressing in his gradual instability on this side.

I find, that as the claimant properly gave notice of the right shoulder injury, and as the respondent controverted and defended against the right shoulder injury,

utilizing medical records which contain descriptions of the left shoulder injury and its work-relatedness, the respondent simply cannot, in good faith, assert that it did not have actual notice of the left shoulder injury.

In conclusion, I find the evidence shows that the claimant has proved the compensability of his left shoulder injury and is entitled to reasonably necessary medical treatment for this injury. I also find that as the respondent had actual notice of the claimant's left shoulder injury, the respondents cannot avoid liability for all reasonably necessary medical treatment, including treatments the claimant received prior to April 3, 2006.

For the aforementioned reasons I must respectfully concur in part and dissent in part.

PHILIP A. HOOD, Commissioner