

# NOT DESIGNATED FOR PUBLICATION

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F800955

ABILIO CARPIO,  
EMPLOYEE

CLAIMANT

WAL-MART ASSOCIATES, INC.,  
EMPLOYER

RESPONDENT

CLAIMS MANAGEMENT, INC.,  
INSURANCE CARRIER

RESPONDENT

OPINION FILED DECEMBER 4, 2009

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

Claimant appears Pro Se.

Respondents represented by the HONORABLE TOD BASSETT,  
Attorney at Law, Fayetteville, Arkansas.

Decision of Administrative Law Judge: Affirmed and  
Adopted.

## OPINION AND ORDER

Claimant appeals an opinion and order of the  
Administrative Law Judge filed July 6, 2009. In said  
order, the Administrative Law Judge made the following  
findings of fact and conclusions of law:

1. The stipulations agreed to by the parties at the prehearing conference conducted on February 18, 2009, and contained in a pre-hearing order filed February 23, 2009, are hereby accepted as fact.
2. The claimant failed to prove that his neck difficulties are the result of a compensable work related injury on October 24, 2007.

3. The claimant failed to prove that he is entitled to any impairment rating regarding his neck difficulties.
4. The claimant failed to prove he is entitled to additional medical treatment regarding his right knee and right elbow.
5. The claimant failed to prove that he is entitled to temporary total disability from January 24, 2008, to a date yet to be determined.
6. The claimant's attorney is not entitled to a fee in this matter.

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.

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

these compensable injuries by a preponderance of the evidence.

Therefore we affirm and adopt the July 6, 2009 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.

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A. WATSON BELL, Chairman

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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. Specifically, I agree that the claimant has failed to prove that he is entitled to additional medical treatment regarding his right knee and right elbow. I also agree that the claimant has failed to prove that he is entitled to temporary total disability from January 24, 2008 until a date yet to be determined. However, after a de novo review of the record, I find that the

claimant has proved by a preponderance of the evidence that he sustained a compensable work related neck injury on October 24, 2007. I also find that the claimant is entitled to the 7% rating assigned to the claimant by Dr. Knox for his compensable neck injury, and therefore must respectfully dissent from the majority opinion on these issues.

For the claimant to establish a compensable injury as a result of a specific incident which is identifiable by time and place of occurrence, the following requirements of Ark. Code Ann. §11-9-102(4) (A) (i) (Repl. 2002), must be established: (1) proof by a preponderance of the evidence of an injury arising out of and in the course of employment; (2) proof by a preponderance of the evidence that the injury caused internal or external physical harm to the body which required medical services or resulted in disability or death; (3) medical evidence supported by objective findings, as defined in Ark. Code Ann. §11-9-102 (4) (D), establishing the injury; and (4) proof by a preponderance of the evidence that the injury was caused by a specific incident and is identifiable by time and place of occurrence. Mikel v. Engineered Specialty Plastics, 56 Ark. App. 126, 938 S.W.2d 876 (1997).

On October 24, 2007 the claimant was finishing loading a truck when a packet of cans wrapped in plastic fell on his head, and then a single can hit the claimant squarely on the head. After the plastic wrapped cans and the single can hit him on the head the claimant fell between the back part of the trailer and a concrete dock, hitting his tailbone, knees and elbow. The claimant immediately reported the incident to his supervisor and was sent to the emergency room where his abrasions were treated. On October 26, 2007, Dr. Konstantin Berestnev noted that that in addition to his other body parts, the claimant was complaining of neck pain and had pain on extremes of motion and some pain to palpation of the lower cervical spine. The claimant continued to treat with Dr. Berestnev, who on November 12, 2007 noted limited cervical spine motion and cervical spine pain. Dr. Berestnev stated:

The claimant demonstrates signs consistent with a cervical strain without radiculopathy. He does describe a cervicogenic type headache. He would benefit from physical therapy to decrease his symptoms and improve his function.

The claimant underwent physical therapy but his neck complaints did not resolve.

An MRI report dated April 3, 2008 states:

IMPRESSION:

Right lateral disc herniation at C5-C6 displaces the nerve root, leading to moderate right lateral recess stenosis. It extends into the neural foramen causing mild neural foraminal narrowing.

On April 27, 2008, after reviewing the MRI report, Dr. Berestnev recommended referring the claimant to a neurosurgeon.

On September 15, 2008, the claimant saw Dr. D. Luke Knox at the Northwest Arkansas Neurosurgery Clinic, P.A.. Dr. Knox referred him for electrical studies, which on November 24, 2008 Dr. Knox stated were "unrevealing." On November 25, 2008, Dr. Knox reviewed the claimant's MRI scan and stated that he wanted another MRI done to get a better look at the C5-6 and C6-7 levels. An MRI report dated December 16, 2008 states:

IMPRESSION:

This cervical MRI demonstrates mild degenerative disc disease at C6-7 and C5-6 disc spaces. I see no definite impingement of nerve root or spinal stenosis enough to cause bilateral radiculopathies.

On January 16, 2009, Dr. Knox stated that the claimant was not a surgical candidate and assigned him a 7% permanent partial disability rating. Dr. Knox also

opined that cervical epidural steroids may be of benefit to the claimant.

Based on the claimant's account of the incident, which I would note is essentially undisputed by the respondent, and the medical record clearly indicating that the claimant sustained and was treated for a neck injury immediately following the can incident, I find that the claimant is entitled to benefits for a compensable neck injury.

The majority, by affirming and adopting the opinion of the Administrative Law Judge, creates a causal connection between the claimant's neck injury and an automobile accident that occurred in 2006. When faced with an undisputed incident so close in time to the claimant's neck injury, i.e., the can incident, for the majority to instead assume a link between the neck injury and a previous motor vehicle accident in February 2006 is nothing more than speculation and conjecture, which, which, even if plausible, cannot take the place of proof. Ark. Dept. of Correction v. Glover, 35 Ark. App. 32, 812 S.W.2d 692 (1991). Dena Construction Co. v. Herndon, 264 Ark. 791, 575 S.W.2d 155 (1979). The claimant treated with a chiropractor in 2006 for approximately two months. No MRI was ever ordered, which

is notable because the chiropractor did refer the claimant for an MRI for his right knee. The claimant's neck pain complaints in 2006, unlike those of the right knee, were not significant enough for the claimant to be referred for an MRI. The claimant continued to work construction for the City of Bentonville after the car accident in 2006. Obviously, any neck injury the claimant may have sustained in February 2006 was resolved before the can incident in October 2007, well over a year later.

In conclusion, I find that the claimant sustained a compensable neck injury in the can incident on October 24, 2007. I find that he is entitled to all benefits related to his compensable neck injury, including the 7% permanent partial disability rating assigned by Dr. Knox. For the aforementioned reasons I must concur, in part, and dissent, in part, from the majority opinion.

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PHILIP A. HOOD, Commissioner