

**NOT DESIGNATED FOR PUBLICATION**

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F801700

LORI HATFIELD, EMPLOYEE	CLAIMANT
WAL-MART ASSOCIATES, INC., EMPLOYER	RESPONDENT
CLAIMS MANAGEMENT, INC., INSURANCE CARRIER	RESPONDENT

OPINION FILED OCTOBER 21, 2009

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

Claimant represented by HONORABLE EVELYN BROOKS, Attorney at Law, Fayetteville, Arkansas.

Respondent No. 1 represented by HONORABLE TOD BASSETT, 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 19, 2009.

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

1. The Arkansas Workers' Compensation Commission has jurisdiction of the within claim.

2. The employee-employer-carrier relationship existed at all relevant times, including February 11, 2008.

3. The claimant sustained a compensable injury on said date to her left knee.

4. Claimant's average weekly wage at the time of her injury was \$730.80. This entitles her to a temporary total disability rate of \$487.00, and a permanent partial disability rate of \$365.00.

5. Some medical benefits have been paid on the left knee.

6. Additional benefits have been controverted.

7. The parties stipulated that the respondents are entitled to a statutory credit under Ark. Code Ann. §11-9-807 for the full wages paid to the claimant against any potentially awarded temporary total disability compensation.

8. The claimant has failed to prove by a preponderance of the credible evidence that she sustained a compensable left shoulder injury, arising out of and in the course of her employment with the respondent-employer on February 11, 2008.

9. The claimant reserves the issue of additional medical treatment for her knee and all other issues not litigated herein under the Act.

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.

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A. WATSON BELL, Chairman

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KAREN H. McKINNEY, Commissioner

Commissioner Hood dissents.

**DISSENTING OPINION**

I must respectfully dissent from the majority opinion. After a de novo review of the record, I find that the claimant has proved by a preponderance of the evidence that she sustained a compensable left shoulder injury on February 11, 2008, and I would award benefits accordingly.

HISTORY

The claimant is a forty-nine year old woman who had been employed by the respondent for approximately fifteen years. Her most recent position was that of assistant manager. On February 11, 2008, while attempting to move pallets inside so that they would not get wet and iced over, she was jerked off her feet by a pallet. She landed on her left knee and then her back. The claimant testified that, during this accident, both of her arms were jerked and her left shoulder was injured; however, immediately after the accident, her main concern was her left knee. She testified that the pain in her knee was so excruciating that it felt like exploding fireworks. The claimant testified that she immediately reported the accident and approximately forty-five minutes later, paperwork regarding the incident was filled out. She was not, however, asked if she needed to see a doctor or sent to a doctor at that time. The claimant testified that she went to her family doctor, Dr. Charles Horton, on her own. She testified that the lump on her knee was so severe that he sent her to St. John's Hospital for x-rays.

The claimant later returned to emergency room because of her severe pain and swelling. She was seen by

Dr. Shannon Card, and another x-ray was taken at a different angle to assess what was causing the severe pain and swelling of the knee. After this treatment, she filled out more papers at work and was finally sent to see Dr. Thomas Leslie. At that time a drug test was performed, an x-ray of the shoulder was taken, and he examined her knee. She made it clear at that time that her shoulder was also bothering her. The shoulder pain became so severe that she could not raise her left arm or use it at all, so she went back to Dr. Horton. He gave her injections to try to alleviate some of the pain. He also referred her to Dr. Terry Sites, a specialist. Dr. Sites had an MRI taken and gave her pain medication. Her shoulder continued to cause her problems and on June 18, 2008, Dr. Sites performed surgery on her shoulder. The claimant testified at the hearing that after the shoulder surgery her shoulder had improved, but she still suffered from numbness.

#### DISCUSSION

The majority is incorrect in finding that the claimant did not prove by a preponderance of the credible evidence that there is a causal connection between her work activities and her left shoulder injury. By affirming and

adopting the Administrative Law Judge's decision, the majority incorrectly dismisses the opinion of the claimant's treating physician, Dr. Horton, and totally ignores the opinion of the claimant's treating neurosurgeon, Dr. Terry Sites. They both opined that the left shoulder injury was caused by the work-related injury on February 11, 2008. Dr. Horton specifically agrees with Dr. Sites that this was a work-related injury, and states in his May 28, 2009, report:

It is my professional opinion concerning this patient that the severe pain in the left shoulder and right hip bone were secondary to the accident that she suffered as an employee at Wal-Mart with a pallet jack incident. It has been found by the orthopaedic surgery that she has a rotator cuff tear and this is not a pre-existing condition and it is consistent with the accident that she had. She did not have these kind of problems prior to this incident and she has been working there for awhile, at least 15 years.

He could not have stated his opinion as to causation any more clearly. The only reason given to support the decision to dismiss Dr. Horton's opinion is, basically, that at the time of the accident, the claimant

reported her knee as the main injury, and that she had briefly complained of pain in her shoulder related to her neck and back accident in a 2005 work accident.

When the claimant made her first report, it was only 45 minutes after the accident, and she was simply more concerned about the knee than her shoulder. At that time, her knee pain was so severe she thought she had suffered major injury to the knee. She testified that she did not recognize that the shoulder injury was severe at that point. Clearly, all injuries do not immediately have severe pain, and if there is another more devastating injury, one would not tend to complain of a seemingly lesser injury first. In fact, it was a mere 72 hours after the accident when the claimant complained in the medical records about her shoulder. After that, she continually complained to her doctors about her shoulder injury. The claimant testified that the shoulder injury was so bad that it got to the point where she could not raise the arm because of pain and numbness in her shoulder. It was clearly documented as early as February 14<sup>th</sup> that she was complaining about the shoulder. When she went to see Dr. Thomas Leslie on that day, she complained about not only her knee, but also her shoulder. The record of that date states, "Ms. Hatfield is

a lady that fell at Wal-Mart and hurt her knee and complains about her left shoulder hurting along with this." "Fall with soft tissue damage to the knee and the shoulder." "She will not be using the arm for the next few days." Not only was the shoulder mentioned, but it was also related to her fall at work.

The majority, by affirming and adopting the decision of the Administrative Law Judge, relies heavily on the fact that the claimant had an injury a few years earlier at work to her neck, shoulder, and mid-back, and that this new shoulder injury must somehow be related to the old accident. However, the shoulder pain the claimant had in 2005 was related to her neck and back problems, not a shoulder injury. Even the respondent agreed that there was no injury to the shoulder in 2005. Clearly, there was no treatment, there was no time missed from work, there was no shoulder surgery performed, until after the 2008 injury at work.

The majority also ignores the treating neurosurgeon's opinion as to causation. In Dr. Sites' record of May 19, 2008, he stated that she was referred to him for ongoing left shoulder pain, and he explains that the accident at her work was the cause of the injury.

Specifically, he states, "It is more-likely-than-not that the left shoulder pain is a result of her injury on 02-11-08." His opinion as to causation is clear. It is important to remember that the claimant does not have to prove this causal relationship between her shoulder injury and the work to an absolute certainty. She only needs to show the existence of this relationship is likely or probable. Dr. Sites clearly states that he thinks that it is more than likely. In fact, both of the claimant's treating physicians think the injury was caused by the work injury in 2008.

When Dr. Sites opined that the cause of the injury was the work, he was aware of the claimant's past problems with her back in 2005, but notably does not relate the two problems. The injury in 2005 was not to the claimant's shoulder, but rather her neck and back. It is also notable that she never missed any work or had restrictions or had treatment at that time due to her shoulder, as she did after the 2008 injury. Clearly, her shoulder was not injured in 2005, but was injured in the 2008 accident. When the claimant returned to Dr. Sites in May of 2008, it was shown, by the MRI taken, that she was suffering from a superior labral tear which was never shown to be present in 2005.

The majority, by affirming and adopting the decision of the Administrative Law Judge, finds that there was no existence of a causal relationship between a specific employment-related incident, even after hearing two doctors' opinions stating otherwise. In order to prove a compensable injury and its cause, it is only necessary for the claimant to show that the employment incident played some causal role in producing or contributing to her left shoulder injury. It was found in Clark v. Ottenheimer, 229 Ark. 393, 314 S.W.2d 497 (1958):

If the claimant's disability arises soon after the accident and is logically attributable to it, with nothing to suggest any other explanation for the employee's condition, we may say without hesitation that there is no substantial evidence to sustain the commission's refusal to make an award.

The only reasonable conclusion is that the injury was caused by the 2008 fall. Simply, it was only after the accident in 2008 that her left shoulder required treatment and surgery. Again, had she had problems with her shoulder before that accident, it would have required treatment before the injury in February of 2008.

It is clear that the claimant's treating physician and her orthopaedic surgeon both agreed that the problems with her left shoulder were not caused by anything other than the 2008 injury at work. These two opinions of the treating physicians must be given much weight when considering whether this was a compensable injury. The majority incorrectly and totally disregards Dr. Sites' opinion as to causation. This is a respected orthopaedic surgeon, who had reviewed the claimant's medical history, and had treated the claimant for this injury. His opinion that this was a compensable injury is valid and important, and should have been given great weight.

For the aforementioned reasons I must respectfully dissent from the majority opinion.

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PHILIP A. HOOD, Commissioner