

NOT DESIGNATED FOR PUBLICATION

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION
CLAIM NO. F910776

CARY LINDEMUTH, EMPLOYEE	CLAIMANT
WAL-MART, EMPLOYER	RESPONDENT
CLAIMS MANAGEMENT, CARRIER/TPA	RESPONDENT

OPINION FILED OCTOBER 21, 2010

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

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

Respondents represented by the HONORABLE SUSAN FOWLER, Attorney at Law, Little Rock, Arkansas.

Decision of Administrative Law Judge: Affirmed and Adopted.

OPINION AND ORDER

Claimant appeals from a decision of the Administrative Law Judge filed July 13, 2010.

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

1. The stipulations agreed to by the parties at the pre-hearing conference conducted on April 7, 2010, and contained in a pre-hearing order filed that same date, are hereby accepted as fact.
2. The parties' stipulation that claimant earned an average weekly wage of \$626.58 which would entitle

him to compensation at the rate of \$418.00 for total disability benefits and \$314.00 for permanent partial disability benefits is also hereby accepted as fact.

3. Claimant has failed to prove by a preponderance of the evidence that he suffered a compensable injury to his back on or about July 6, 2009.

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.

A. WATSON BELL, Chairman

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 claimant proved he sustained a compensable back injury on or about July 6, 2009, and I would award benefits accordingly.

HISTORY

The claimant is a 53-year-old man who began working for the respondent on December 2, 2005. His position was loading and unloading trucks. His job included a great deal of bending over to unload boxes off pallets and off the floor. This task was performed as quickly as the claimant could go. The claimant had been employed doing this type of work for most of his adult life, and had no problems doing the physically demanding job until approximately two weeks before July 6, 2009. At that time, he began to experience back and hip pain that radiated down his leg.

At first, the claimant thought he could be having symptoms that were related to his rheumatoid arthritis (RA), but there was a difference in the pain because it radiated down his hip to his leg, and was of a different character. The claimant testified that usually the RA only affected his joints, such as his hands, shoulders and feet, not his hips. On July 7, 2009, the claimant's back and hip pain became so severe he had to leave work, and had to have his father take him to the emergency room. At the time, he was also experiencing pain that he thought was

chest pain. At the emergency room, there were no cardiac problems found, but he was treated with medication for his pain. He was then seen consistently after July 8, 2009, by nurse practitioner, Mr. Price, at the Bella Vista Medical Care. The claimant was treated conservatively with injections, medications, and a round of physical therapy.

Because the claimant's back pain and hip pain did not get better, an MRI was ordered. The MRI showed a herniated disc at L4-5, and protrusion at L5-S1. Mr. Price referred the claimant to neurosurgeon Dr. Richard Kyle, who in his October 20, 2009 report recommended the continuation of conservative treatment. When this conservative treatment continued to fail to alleviate the claimant's pain, Dr. Kyle recommended surgical decompression. The surgery was performed on November 30, 2009. By January 11, 2010, the claimant was released to work with a 25-pound lifting restriction.

DISCUSSION

The claimant credibly testified at the hearing that he began to feel pain in his back and hip two weeks before July 6, 2009. On July 6th, his pain became sharp. At that time, he was not certain of the pain's genesis. As he explained, the pain he normally felt due to his RA was in his joints in his hands, shoulders, and feet. The pain he was experiencing in July was back pain, and hip pain that radiated down his right leg. The

claimant had performed his physically demanding job of loading and unloading trucks for most of his adult life, had never had that type of pain, and had no problem doing his jobs. It is significant that when the claimant was seen for back pain at the hospital on May 9, 2009, before the July injury, the record clearly states, "The pain is present in the lumbar spine. The pain quality is described as aching and cramping. The pain does not radiate." Clearly, before the injury, the pain was not radiating but, after the injury, the pain was radiating.

On May 9th, the pain was attributed to the claimant's RA. It is important to keep in mind that, at that time, the pain was also described as aching and cramping, not as sharp. It is also described as being only in his back, and not radiating down his leg. More importantly, in May there was no diagnosis of, or MRI showing, herniated discs. This was found after the claimant was seen for his work injury in July. The July 31, 2009 MRI clearly showed his pain was not related to his RA, but rather to "right paracentral disc protrusion/herniation at L4-L5, and mild right paracentral disc protrusion at L5-S1."

Clearly, this claimant would not have been able to work with disc herniations while performing such a physical job. He had worked there for four years before the injury, and had never had any problems. It is also clear that he was not able to perform his job after the injury at work. While the claimant may

have had pain in the past, it was obviously not the same kind of pain as he was experiencing after the injury. The records after the injury from Bella Vista Medical Center state that the claimant continued to have radicular pain down his leg. They also all report pain in his back and hip. This was not seen in the records before the injury date. It should be reiterated, the May 2, 2009 Mercy Medical Center specifically states, "The pain does not radiate."

In Dr. Kyle's record of October 20, 2009, he states: "There is a small central to right side HNP at L4-5. This may well be the source of his pain." It also states in the history section of the November 30, 2009 surgery notes:

Patient is a pleasant 52-year-old male with new onset right hip pain July 2009. The pain progressed to right leg pain to the right lateral calf. He has been unable to work and failed conservative management. He had an MRI that revealed stenosis in HNP on the right L:4-L5. This is consistent with his complaints and findings."

It was confirmed that the herniation was the cause of the back and hip pain when, after the decompression surgery, the claimant's pain in his hip and leg ceased. The claimant testified that the surgery helped the leg pain immediately. The claimant had no problem working before the surgery, he had never had that type of pain, and there was no injury outside his work. His treating physician opined that the herniation was the cause

of his problems. This was clearly caused by his lifting and bending at work. Based on the medical record and the claimant's credible testimony, I find that the claimant sustained a compensable back injury on or about July 6, 2009, and I would award benefits accordingly.

For the aforementioned reasons I must respectfully dissent.

PHILIP A. HOOD, Commissioner