

**NOT DESIGNATED FOR PUBLICATION**

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION  
CLAIM NO. F702154/F905950

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|-------------------------------------|------------|
| DONNA NELSON, EMPLOYEE              | CLAIMANT   |
| WAL-MART ASSOCIATES, INC., EMPLOYER | RESPONDENT |
| CLAIMS MANAGEMENT, CARRIER          | RESPONDENT |

OPINION FILED JULY 19, 2010

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

Claimant represented by the HONORABLE JERED MEDLOCK,  
Attorney at Law, Fort Smith, Arkansas.

Respondent represented by the HONORABLE CURTIS L. NEBBEN,  
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 December 21, 2009.

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 August 26, 2009, and contained in a pre-hearing order filed August 28, 2009, are hereby accepted as fact.
2. The claimant has failed to prove by a preponderance of the evidence that she is entitled to additional medical treatment or

temporary total disability benefits as a result of the February 19, 2007 compensable injury.

3. The claimant has failed to prove by a preponderance of the evidence that she suffered a compensable injury while employed by the respondent on September 17, 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.

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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, based on the claimant's credible testimony and the medical opinion of Dr. C. Jay Arendall, that the claimant sustained compensable herniated disc injuries when she fell in the walk-in freezer on September 17, 2007.

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).

I find that the claimant has shown, by a preponderance of the evidence, that she sustained a compensable specific incident back injury on September 17, 2007, when she fell in the walk-in cooler. The claimant testified at the hearing:

Q: And can you tell us what happened in September of 2007?

A: I was unloading some boxes off of a cart in the freezer and I had picked up a box and turned around, and my feet just flew out from under me, and I fell on my behind.

Q: Where were you?

A: I was in the freezer.

Q: Is that a regular part of your job?

A: Yes.

Q: Carrying boxes in and out of the freezer?

A: Yes, every day deal.

Q: Did you have any medical treatment from that injury?

A: Yes. I went to my doctor the next day.

The medical records show that the claimant reported a fall to Dr. C. Jay Arendall on September 19, 2007. The claimant stated that she hurt her lower back and hips in the fall. Dr. Arendall prescribed Flexeril and a Medrol Dose Pack, and took the claimant off work for a week. The claimant eventually came under the care of Dr. George Tompkins, who ordered an MRI. The MRI revealed herniated discs at the L4-5 and L5-S1 level. Following that MRI report, Dr. Tompkins referred the claimant to Dr. Luke Knox, a neurosurgeon. On August 22, 2008, Dr. Knox performed a surgery to repair the claimant's herniated discs.

On April 13, 2009, Dr. Arendall stated:

Based upon my examination, the history obtained, treatment rendered, and after reviewing the medical records of Dr. Keith Holder, Dr. George Tompkins, and Dr. Luke Knox, it is my medical opinion, to a reasonable degree of medical certainty, that Donna Nelson sustained the herniated discs as reflected on the 9 June 2008 MRI as a result of either the 19 February 2007 accident or more probably because of the 17 September 2007 fall. The fall of 17 September 2007 caused an increase in her pain, discomfort and radicular symptoms which eventually resulted in her quitting her job at Wal-Mart on November 18, 2007. Both accidents occurred while she was working for Wal-Mart. Her radicular symptoms and the nature and location of her injury after her September 17, 2007

fall are consistent with the finding of the June 9, 2008 lumbar MRI reflecting the herniated discs and the physical findings of and history obtained by Dr. Knox as reflected in his letter of June 20, 2008.

In conclusion, the claimant's credible testimony and the testimony of Dr. Arendall clearly meets the burden of proving by a preponderance of the evidence that the claimant sustained compensable herniated disc injuries when she fell in the walk-in freezer on September 17, 2007.

For the aforementioned reasons I must respectfully dissent.

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PHILIP A. HOOD, Commissioner