

NOT DESIGNATED FOR PUBLICATION

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F712377

WAYNE OWENS,
EMPLOYEE

CLAIMANT

WAL-MART ASSOCIATES, INC.,
EMPLOYER

RESPONDENT

CLAIMS MANAGEMENT, INC.,
INSURANCE CARRIER

RESPONDENT

OPINION FILED JUNE 10, 2010

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

Claimant represented by the HONORABLE STEVEN SHARUM,
Attorney at Law, Fort Smith, Arkansas.

Respondents represented by the HONORABLE J. DAVID DIXON,
Attorney at Law, Springdale, Arkansas.

Decision of Administrative Law Judge: Affirmed and
Adopted.

OPINION AND ORDER

Claimant appeals an opinion and order of the
Administrative Law Judge filed December 22, 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 July
29, 2009, and contained in a pre-hearing order
filed July 30, 2009, are hereby accepted as
fact.
2. The claimant has proven by a preponderance of
the evidence the existence of objective
medical findings of a right rotator cuff tear.

3. The claimant has failed to prove by a preponderance of the evidence that the objective findings of rotator cuff derangement is causally related to his alleged rotator cuff injury.
4. The claimant has failed to prove by a preponderance of the evidence that he suffered a compensable work related injury.
5. The claimant has failed to prove his entitlement to benefits 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 December 22, 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.

A. WATSON BELL, Chairman

KAREN H. MCKINNEY, Commissioner

Commissioner Hood dissents.

DISSENTING OPINION

After my de novo review of the entire record, I concur with the majority opinion that the claimant proved by a preponderance of the evidence the existence of objective findings of a right rotator cuff tear. However, I must respectfully dissent from the majority opinion findings that the claimant failed to establish by a preponderance of the evidence that the objective findings of rotator cuff derangement are causally connected to work-related injury, that he suffered a compensable work related injury, and that he is not entitled to benefits in this matter. I find that the

claimant suffered a compensable injury to his rotator cuff for which he is entitled benefits.

For the claimant to establish a compensable injury as a result of a specific incident, 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).

The issue in this case is whether there is a causal connection between the claimant's rotator cuff injury and his employment. I find that the claimant proved by a preponderance of the evidence that there is a direct causal relationship between the claimant's employment, specifically the employment services he was

performing on or about November 20, 2007, and his rotator cuff injury.

The claimant testified that on or about November 20, 2007, while working a night shift, he experienced right shoulder pain while wrestling shopping carts into position while he was returning them from the parking lot to the store. He immediately reported the pain to his employer. He received some treatment. After he was diagnosed with bursitis, his claim was denied. The pain improved but did not resolve. The claimant also testified that he awakened on January 18, 2008 with severe pain in his shoulder, and that morning, he fell against the doorframe. The fall did not cause the pain. The claimant explained that he went home and to bed around seven or eight o'clock in the morning after his shift, and when he awakened:

... I couldn't move my arm. And I instructed my wife, you know, I yelled to her and at that time I had fallen against the doorframe because I had just woke up and I had been using the bathroom and I instructed her that something's wrong, I need to the hospital because I'm unable to move my arm.

He went to the emergency room. He explained that he did fall against the door, but he "was already in pain." Nothing new happened that day. He did not hurt his right shoulder in any other incident than on

November 20, 2007 with the shopping carts. He explained that he fell against the doorframe on January 18, but he did not hit his right shoulder. He did report that he had pain in his shoulder at the emergency room, because it was already hurting. It was severe pain, and he could not move his arm over his head. That pain did not come only after his fall.

His wife testified that from November 20, the claimant had pain in his shoulder every day. On January 18, when he got out of bed, he told her he was in extreme pain and could not move his arm and he had stumbled and fallen against the doorframe of the bathroom. His wife testified that she told the emergency room staff that he had pain in his shoulder since November, that his arm was hurting that morning, and that he fell against the doorframe that morning.

The emergency room document, Quick Registration Form, indicates that the claimant presented with a complaint of "severe pain in right shoulder, unable to move or raise arm." The document, ED Triage, notes a "fall" and a "fall with right shoulder pain. Another document, Emergency Department Record Standard, states that the chief complaint was "fall last pm, complains of right shoulder pain." Another emergency

room document stated that the claimant fell, that he had pain in his right shoulder, that he tripped and that it occurred at home.

The claimant saw Dr. McDonald on January 21, 2008, complaining of right shoulder pain and that he could not lift his arm. He reported no injury and no new activity. He mentioned that he had been to the emergency room on January 18. He reported to Dr. Walton on January 23, 2008 with shoulder pain. He had improved but had increased pain "last Thursday" which would have been January 17. He went to the emergency room. He reported no "falls or times when he thought he could have injured his shoulder but he was pushing carts in November when his shoulder started hurting."

The claimant credibly testified that he suffered right shoulder pain since November 20 and that he suffered no other injury to his right shoulder after that date. The fall described in the emergency room is a "red herring." The very first record from the emergency room only mentions shoulder pain, and no fall. However, in describing the events of the morning, the fact that the claimant stumbled or tripped and fell against the doorframe was mentioned, and the emergency room staff appears to have focused on it. However, the

claimant's testimony and his wife's testimony are consistent in that the fall was not the significant event. The important events that occurred on January 18 were that the claimant's pain was severe and that he could not move his arm. Dr. McDonald and Dr. Walton, in the office visits within three to five days after the emergency room visit do not mention a fall at all. The focus was on continued, but currently severe, pain. I credit the claimant's testimony and the records of Dr. McDonald and Dr. Walton to find that there was no fall which involved the claimant's right shoulder.

Furthermore, the claimant's testimony was that he experienced pain and limitations upon his activities from the time of his initial pain on November 20. His claim was not accepted after a diagnosis of bursitis. A determination that the claimant, injured in November, whose claim was denied and who continued to experience pain and limitations, had a completely resolved injury in less than two months because he did not seek medical attention until he could not stand the pain anymore and could not use his arm is not supported by the evidence.

I find that the claimant has proved his entitlement to workers' compensation benefits for the compensable injury to his right shoulder. I would award

reasonable and necessary medical benefits, including all treatment of his right shoulder from November 20, 2007 to date, specifically including surgical treatment.

There is no question that the claimant has remained within his healing period, from the date of his injury until he was finally released in June 2009. He required two rotator cuff repairs in 2008. The claimant's pain was "pretty much gone," and he wanted to return to work in June 2009. I would award temporary total disability benefits from January 23, 2008, when he was taken off work by Dr. Walton to February 2, 2008, when he was returned to work light duty by Dr. Walton. Temporary total disability benefits are also indicated for the period from the date of surgery, March 5 to May 10, 2008 when Dr. Smith released the claimant to work with no restrictions, and for the period from August 20, 2008 to June 22, 2009, when Dr. Smith took him off work.

After my de novo review of the entire record, I concur with the majority opinion that the claimant proved by a preponderance of the evidence the existence of objective findings of a right rotator cuff tear. However, I must respectfully dissent from the majority opinion findings that the claimant failed to establish by a preponderance of the evidence that the objective

findings of rotator cuff derangement is causally connected to his work-related injury, that he suffered a compensable work related injury, and that he is not entitled to benefits in this matter. I find that the claimant suffered a compensable injury to his rotator cuff for which he is entitled benefits.

PHILIP A. HOOD, Commissioner