

**NOT DESIGNATED FOR PUBLICATION**

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION  
CLAIM NO. F712298

GABRIEL RAMIREZ, EMPLOYEE	CLAIMANT
WAL-MART ASSOCIATES, INC., EMPLOYER	RESPONDENT
CLAIMS MANAGEMENT, CARRIER/TPA	RESPONDENT

OPINION FILED JUNE 3, 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 J. DAVID DIXON,  
Attorney at Law, Springdale, Arkansas.

Decision of Administrative Law Judge: Affirmed and Adopted.

OPINION AND ORDER

Claimant appeals from a decision of the  
Administrative Law Judge filed August 14, 2009.

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

1. On all relevant dates, the relationship of employee/self-insured employer/third-party administrator existed between the parties.
2. On all relevant dates, the claimant earned wages sufficient to entitle him to weekly compensation benefits of \$440.00 for total

disability and \$333.00 for permanent partial disability.

3. The claimant sustained a compensable injury to his left wrist in the form of left carpal tunnel syndrome.
4. There is no dispute, at present, over the claimant's entitlement to benefits for his left carpal tunnel syndrome.
5. The claimant has failed to prove that he sustained a "compensable injury" to his left shoulder as a result of his employment with the respondent. Specifically, he has failed to prove the actual existence of any physical injury or damage to his left shoulder by medical evidence, which is supported by objective findings, as required by Ark. Code Ann. § 11-9-102(4)(D).
6. The claimant has failed to prove that he sustained a "compensable injury" to his neck or cervical spine as the result of his employment with the respondent. Specifically, he has failed to prove the occurrence of any physical injury to this portion of his body that arose out of and occurred in the course of his employment with the respondent, that caused internal or external physical harm to his body and that required medical services or resulted in disability, as required by Ark. Code Ann. §11-9-102(4)(A)(ii)(b) and §11-9-102(4)(E)(ii).
7. The respondent has denied the occurrence of any compensable injuries to the claimant's neck or cervical spine and his left shoulder and have controverted the claimant's entitlement to any benefits for such injuries.

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 concurs, in part and dissents, in part.

**CONCURRING & DISSENTING OPINION**

I specifically concur with the majority that the claimant did not prove a compensable shoulder injury due to a lack of objective findings. 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 gradual onset neck injury while performing his job duties for the respondent, and I must respectfully dissent from the majority on this issue.

The claimant's injury to his neck was plainly related to the work he was performing for the respondent. He had never had problems with his neck before, and had never seen a specialist for any problems for his neck or shoulder until after experiencing problems at work. In the beginning of the claimant's treatment, the focus was obviously on his left carpal tunnel and elbow problems, although the claimant consistently and unwaveringly complained about his neck and shoulder problems. Once the hand and elbow issues had been resolved, the focus was then to find the cause of the neck and shoulder problems. As the claimant explained at the hearing, when his wrist and fingers got better, his neck and shoulder were worse. The

very first medical record, dated November 9, 2007, shows that the claimant stated that he was having pain in his left arm and shoulder. In Dr. Tucker's December 5, 2007 record, it shows that the claimant reported pain radiating into his shoulder and neck. In fact, in most of the medical records, there is some mention of the upper extremity problems. After the claimant underwent carpal tunnel release in July 2008, Dr. Sites continued to note that the pain in the left shoulder and neck were still bothering the claimant. Specifically, he stated that the problems became worse, "since going back to work and lifting up to 20 pounds overhead." By October 13, 2008, the claimant was having a return of all of his left extremity problems, including the severe pain in his neck and left shoulder, which never went away. In his June 9, 2008 letter, Dr. Sites' impression is that the claimant has possible double crush syndrome with cervical component. He goes on to state that, should the claimant have double crush syndrome, he would have ongoing symptoms, and he would need additional treatment.

Based on the above-outlined evidence, I find that the claimant has proved by a preponderance of the evidence

that he sustained a compensable gradual onset neck injury.  
For the aforementioned reasons I must respectfully dissent.

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PHILIP A. HOOD, Commissioner