

NOT DESIGNATED FOR PUBLICATION

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION
CLAIM NO. F909841

LESLIE BURTON, EMPLOYEE	CLAIMANT
WAL-MART ASSOCIATES, INC., SELF-INSURED EMPLOYER	RESPONDENT
WAL-MART ASSOCIATES, INC., CLAIMS MANAGEMENT, INC., CARRIER/TPA	RESPONDENT

OPINION FILED AUGUST 10, 2011

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

Claimant represented by the HONORABLE FREDERICK S. "RICK" SPENCER, Attorney at Law, Mountain Home, Arkansas.

Respondents 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 April 29, 2011.

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 October 15, 2009.
3. This claim has been controverted in its entirety.

4. The claimant failed to prove that she sustained a compensable gradual onset injury to her left elbow in October of 2009, while working for the respondent-employer. Specifically, I find that the claimant has failed to satisfy the rapid repetitive-motion requirement.

5. All other issues not litigated herein are reserved under the Arkansas Workers' Compensation 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.

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 the claimant has a compensable gradual onset left elbow injury.

The test for what constitutes "rapid repetitive motion" was set out by the Arkansas Supreme Court in Malone v. Texarkana Public Schools, 333 Ark. 343, 969 S.W.2d 644 (1988) as a two-pronged test: (1) the tasks must be repetitive, and (2) the repetitive motion must be rapid. It should be noted, however, that the Courts have found that the "rapid repetitive motion" does not have to be the exact same motion, it can be different tasks. See Baysinger v. Air Systems, Inc., 55 Ark. App. 174, 934 S.W. 2d 230 (1996); See also Kildow v. Baldwin Piano & Organ, 58 Ark. App. 194, 948 S.W. 2d 100 (1997).

The claimant's tasks in the jewelry department consisted of replacing watch batteries and links, jewelry repairs, locking, unlocking, and opening display cases, answering the phone, pricing and scanning items with a scanning device, cleaning and scrubbing display cases, setting up display cases, unloading and stocking freight placed in her department, and occasionally helping other departments with the same. When replacing watch batteries and links, the procedures were different, but both were hand intensive and involved holding the watch in one hand and using a small screwdriver to take off the

cover and then pop out the link or battery.

Although she did none of these tasks for eight hours per day, the claimant's work was confined to these tasks, all of which were repetitive, hand and forearm intensive, and generally needed to be accomplished quickly. Based on these facts, and the law stating that the "rapid repetitive motion" does not have to be the same task, I find that the claimant has proved "rapid repetitive motion" and I would award benefits for a compensable gradual onset left elbow injury.

For the aforementioned reasons, I must respectfully dissent.

PHILIP A. HOOD, Commissioner