

NOT DESIGNATED FOR PUBLICATION

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION
CLAIM NO. F804922 & F808157

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

OPINION FILED MARCH 18, 2011

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 CURTIS 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 August 16, 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 prehearing conference conducted on June 18, 2010, and contained in a pre-hearing order filed June 25, 2010, are hereby accepted as fact.
2. The claimant has proven by a preponderance of the evidence the existence of objective medical finding of low back injury.

3. The claimant has failed to prove by a preponderance of the evidence that his alleged May 10, 2008, low back injury was compensable.
4. The claimant has failed to prove by a preponderance of the evidence that his alleged August 6, 2008, low back injury was compensable.

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 concurs, in part, and dissents, in part.

CONCURRING AND DISSENTING OPINION

After my de novo review of the entire record, I concur, in part, with the majority's opinion that the claimant satisfied the requirement of objective findings of injury. However, I must respectfully dissent, in part, from the majority opinion, because I find that the claimant has proven his compensable injury and entitlement to medical benefits.

The parties stipulated that the claimant sustained a compensable injury to his cervical spine on May 10, 2008. The issue to be litigated was the compensability of his low back injury in May or August 2008.

I find the claimant to be a credible witness, whose testimony, when considered with the medical records, supports a finding of compensability. The claimant presented to the company doctor for a work injury which occurred on May 10, 2008, in the freezer when he was lifting boxes. The doctor noted on the next visit that he was only treating him for his neck and shoulder problems. In between the first and second visit to the company doctor, the claimant presented to the emergency room where he was discharged with pain medications, a shot to his back, and instructions to rest his leg and follow up with his physician. At the second visit, the company doctor noted that claimant's "continued" complaints of leg pain. The fact that the initial company doctor notes reflect only his neck and shoulder, and not

his back, is easily explained by the fact that the doctor was only authorized to treat his neck and shoulder. The claimant apparently did complain about his back to the company doctor, because on the second visit, he stated the claimant "continued" to complain of leg pain. Also, the claimant is not a doctor and is not charged with the responsibility for self-diagnosis. Likewise, back injuries can develop over time, and where multiple injuries occur, one may command the claimant's attention over the other.

The claimant had never had back pain prior to May 10. He did not report his lifting injury for six days, which is not an unreasonable length of time for a person, engaged in physical work, to give an injury time to resolve. When he realized the pain was not resolving by itself, he reported it. Interestingly, the respondents accepted the neck and shoulder claim, but argue that the claimant should not have waited six days to report his injury. This is disingenuous.

I also find that the claimant's August injury, in which he was struck in the hip by a line of ten shopping carts, causing new damage or aggravating his May injury, is an independent compensable injury which aggravated the claimant's pre-existing injury from the May 10 lifting injury.

The treatment of Dr. Malone, Dr. Knox and Dr. Eremieva was reasonable and necessary, as is the recommended care by Dr.

Eremieva for his disc protrusion and possible extrusion and annular tear at L5-S1.

For the foregoing reasons, I concur, in part, with the majority's opinion that the claimant satisfied the requirement of objective findings of injury. However, I must respectfully dissent, in part, from the majority opinion, because I find that the claimant has proven his compensable injury and entitlement to medical benefits.

PHILIP A. HOOD, Commissioner