

NOT DESIGNATED FOR PUBLICATION

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION
CLAIM NO. G003208

JEFFREY HILL, EMPLOYEE CLAIMANT

WAL-MART ASSOCIATES, INC.,
SELF-INSURED EMPLOYER RESPONDENT

CLAIMS MANAGEMENT, INC.,
CARRIER/TPA RESPONDENT

OPINION FILED APRIL 19, 2011

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

Claimant appeared *pro se*.

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 November 29, 2010.

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

1. The employer/employee relationship
existed on or about April 10, 2010.
2. The claimant had an average weekly wage of \$440.75
per week entitling him to a compensation rate of
\$294.00 per week for temporary total disability
and \$221.00 per week for permanent partial
disability.

3. This claim has been controverted in its entirety.
4. The claimant has failed to establish by a preponderance of the evidence that he sustained a compensable injury.

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

After my de novo review of the entire record, I must respectfully dissent from the majority opinion. I would award the claimant medical and indemnity benefits, because I find that the claimant sustained a compensable bilateral gradual onset hand injury.

The claimant sought benefits for injuries to his hands and wrists. To prove compensability pursuant to Ark. Code Ann. §11-9-102(4), the claimant must first show proof by a preponderance of the evidence of an injury arising out of and in the course of employment. The claimant has consistently related his hand and wrist pain to his employment. He specifically reported that he developed tingling and numbness at work, while preparing chickens for the rotisserie, on April 10, 2010. He worked in the deli, slicing meats. There is no question that he was performing employment services when his pain arose.

The claimant must also show that the injury caused internal or external physical harm to the body which required medical services or resulted in disability or death. The claimant did have degenerative changes in his wrists. However, the claimant did not have problems with his hands prior to this injury, other than hitting his hand with a hammer, "years ago," and two weeks prior to the injury, when he had trouble with ill-fitting gloves. On April 10, 2010, and onward, the claimant did

have spasms and swelling in his hands, as well as pain, numbness and tingling, which prevented him from continuing work in his hand-intensive occupation.

Medical evidence of the injury, including objective findings, must also be demonstrated. The claimant has satisfied the requirement of objective findings of injury, with a diagnosis of spasms with a prescription for Flexeril on April 10, 2010, x-ray evidence of cystic degenerative change on April 17, 2010, and bilateral hand edema on April 21, 2010.

Finally, the claimant has to show that he suffered a gradual onset injury, by demonstrating that the injury was caused by rapid repetitive motion, and that the injury was the major cause of the disability or need for treatment. Ark. Code Ann. Secs. 11-9-102(4)(A)(ii)(a) and (E)(ii). A diagnosis of carpal tunnel syndrome automatically satisfies this section, but the medical record makes clear that the claimant did not have carpal tunnel syndrome.

The standard set out in Malone v. Texarkana Pub. Schs., 333 Ark. 343, 969 S.W.2d 644 (1988), for analyzing whether an injury is caused by rapid repetitive motion, is a two-pronged test: (1) the tasks must be repetitive, and (2) the repetitive motion must be rapid. As a threshold issue, the tasks must be repetitive, or the rapidity element is not reached. Westside High School v. Patterson, 79 Ark. App. 281, 86 S.W.3d 412 (2002).

Arguably, even repetitive tasks and rapid work, standing alone, do not satisfy the definition; the repetitive tasks must be completed rapidly. Westside High School, supra.

The evidence showed that the claimant would be slicing deli meat for customers approximately 75% of his shift, during which time he would move his hand back and forth, using the slicing machine, until enough meat was cut. The claimant testified that one complete pass of his hand, moving the meat in the slicer, took less than three seconds, and that slicing a two-pound order would take approximately five minutes. He also had to clean various things in his department, including floors and the rotisserie machine, using a scrub brush and a circular motion. The floor would take up to an hour to clean, according to respondents' witnesses. The medical evidence showed that the claimant's symptoms were consistent with an overuse injury.

The claimant has also satisfied the requirement that he show that his bilateral hand injury was the major cause of his disability. The claimant testified that he could not work because of pain, spasm and numbness in his hands. He was taken off of work by his doctor. There is no other cause for his inability to work.

I would award the claimant medical and indemnity benefits, because I find that the claimant sustained a compensable bilateral hand injury.

For the foregoing reasons, I must respectfully dissent from the majority opinion.

PHILIP A. HOOD, Commissioner