

# NOT DESIGNATED FOR PUBLICATION

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F809043

WILFORD E. LAMKINS, EMPLOYEE	CLAIMANT
WAL-MART STORES, INC., EMPLOYER	RESPONDENT
CLAIMS MANAGEMENT, INC., INSURANCE CARRIER	RESPONDENT

OPINION FILED NOVEMBER 18, 2011

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

Claimant appears pro se.

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 an opinion and order of the Administrative Law Judge filed July 21, 2011. In said order, the Administrative Law Judge made the following findings of fact and conclusions of law:

1. The Arkansas Workers' Compensation Commission has jurisdiction over this claim.
2. The stipulations agreed to by the parties are hereby accepted as fact.
3. The claimant has failed to prove, by a preponderance of the evidence, that he sustained an injury arising out of and during the course of his employment with Wal-Mart Associates, Inc., as the result of th admitted

incident reported on September 5, 2008, which has been established by medical evidence supported by objective findings as defined in Ark. Code Ann. §11-9-102(16), establishing an injury.

4. The claimant has failed to prove, by a preponderance of the credible evidence, that the injury to the claimant's right shoulder was a compensable consequence of over-compensating for the alleged left shoulder injury reported on September 5, 2008.
5. The claimant has failed to prove, by a preponderance of the credible evidence, that his physical problems, need for medical treatment and disability are causally related to an injury sustained while working for the employer herein.

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 July 21, 2011 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 dissents.

**DISSENTING OPINION**

I must respectfully dissent from the majority opinion. Ark. Code Ann. §11-9-704(a)(3) states: "If any party is not represented by a lawyer, the administrative law judge shall define the issues to be heard." Here, the Administrative Law Judge characterized the claimant's right shoulder injury as a compensable consequence of the claimant's left shoulder injury, which was also denied by the respondent. However, after a de novo review of the record, I find that the evidence

suggests that the claimant's right shoulder injury should have been analyzed as a gradual onset aggravation injury. The employer takes the employee as it finds him, and employment circumstances that aggravate pre-existing conditions are compensable. Heritage Baptist Temple v. Robison, 82 Ark. App. 460, 120 S.W. 3d 150 (2003); Pearline Williams v. L&W Janitorial, Inc. 85 Ark. App. 1, 145 S.W. 3d 383 (2004). In order to prove a gradual onset shoulder aggravation injury, in addition to providing new objective findings, which the claimant has shown, the claimant must prove rapid repetitive motion. Ark. Code Ann. §11-9-102(4)(A)(ii)(a). The claimant's testimony tends to indicate that the claimant could prove rapid repetitive motion, had the Administrative Law Judge defined it as an issue to be heard:

Q: And as an overnight stocker, then you take it off the pallets and put it on the shelves?

A: Take it off the pallets, put it on six wheelers or carts, take them over to the aisle, put them down next to where they go so we can stage them for putting them up. I throw about eight to twelve thousand pounds of freight a night.

Furthermore, the Administrative Law Judge did not allow the claimant's witness, Mr. Ricky Burt, to testify based

on the erroneous assumption that testimony regarding the left shoulder incident was all that was needed from him and had been stipulated to by the respondents. Mr. Burt, who worked as a stocker with the claimant, should have been allowed to testify on rapid repetitive motion. The left shoulder injury is significant only in that the claimant testified it caused him to favor his right arm, testimony that also could have been bolstered by Mr. Burt.

As the Administrative Law Judge failed to consider the factors necessary for a gradual onset aggravation injury claim, I find the majority has erred in affirming and adopting an Opinion where the Administrative Law Judge did not properly define the issues to be heard.

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PHILIP A. HOOD, Commissioner