

**BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION**

**CLAIM NO. G 902784**

**BETTY A. LEWIS, EMPLOYEE**

**CLAIMANT**

**v.**

**WALMART ASSOCIATES, INC., EMPLOYER**

**RESPONDENT #1**

**WALMART CLAIMS SERVICES, CARRIER/TPA**

**RESPONDENT #1**

**DEATH & PERMANENT DISABILITY  
TRUST FUND**

**RESPONDENT #2**

**OPINION FILED FEBRUARY 28, 2023**

Hearing before Administrative Law Judge, James D. Kennedy, on the 18<sup>TH</sup> day of January 18<sup>th</sup>, 2023, in Mountain Home, Baxter County, Arkansas.

Claimant is represented by Mr. Frederick S. "Rick" Spencer, Attorney-at-Law, Mountain Home, Arkansas.

Respondent is represented by Mr. R. Scott Zuerker, Attorney-at-Law, Fort Smith, Arkansas.

The Death and Disability Trust Fund is represented by Mr. David L. Pake, Little Rock, Arkansas.

**STATEMENT OF THE CASE**

A hearing was conducted on the 18<sup>th</sup> day of January, 2023, and the parties agreed at the time of the hearing to narrow the issues to determining the compensability of a work-related, left hip/leg and low back injury; reasonable and necessary medical treatment; reimbursement of out-of-pocket medical expenses; and attorney fees, with all other issues reserved. The Trust Fund waived its right of appearance. The parties stipulated that the Arkansas Workers' Compensation Commission had jurisdiction of the claim; that the employer/carrier/employee relationship existed on April 16, 2019, and at all relevant times; and that the claimant earned an average weekly wage of \$733.08,

sufficient for temporary total disability and permanent partial disability rates of \$489.00/\$368.00, respectively. The employer controverted the claim in its entirety. A copy of the Prehearing Order was marked “Commission Exhibit 1” and made part of the record without objection.

The claimant’s and respondents’ contentions are all set out in their respective responses to the prehearing questionnaire and made a part of the record without objection. The witnesses consisted of Edward Lewis, the husband of the claimant, and Betty A. Lewis, the claimant. From a review of the record as a whole, to include medical reports and other matters properly before the Commission, and having had an opportunity to observe the testimony and demeanor of the witnesses, the following findings of fact and conclusions of law are made in accordance with Ark. Code Ann. §11-9-704.

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

1. The Arkansas Workers’ Compensation Commission has jurisdiction over this claim.
2. That an employer/employee relationship existed on April 16, 2019, and all relevant times.
3. The claimant earned an average weekly wage of \$733.08, sufficient for temporary total disability and permanent partial disability rates of \$489.00/\$368.00, respectively.
4. That the claimant proved, by a preponderance of the evidence, that she suffered a compensable left hip/leg and low back injury and is entitled to reasonable and necessary medical for the treatment, which includes the payment of any reasonable and necessary, out-of-pocket medical expenses paid by the claimant.
5. The claimant is entitled to attorney fees pursuant to Ark. Code Ann. §11-9-715. This Award shall bear interest at the legal rate pursuant to Ark. Code Ann. §11-9-809.
6. If not already paid, the respondents are ordered to pay for the cost of the transcript forthwith.

## **REVIEW OF TESTIMONY AND EVIDENCE**

The Prehearing Order along with the prehearing questionnaires of all the parties were admitted into the record without objection. The claimant submitted medical records and the deposition of Dr. Lon Burba as exhibits that were admitted without objection. The respondents also submitted medical exhibits and the deposition of the claimant, plus a CD video and all were admitted without objection. The parties also submitted a joint exhibit which consisted of eighteen (18) pages of a synopsis of the medical records.

The claimant's husband, Edward Lewis, was the first witness to testify. He testified he had been married to the claimant for fourteen (14) years and she had worked for the respondent for twenty-five (25) years. (Tr.pp. 6-7) The claimant had no issues with her back, hip, or while walking prior to her injury at Walmart. He became aware of her injury on the day of the injury when she called him from home, before going to Sherwood Urgent Care. He got to the clinic first and met her there. She was talking about her pain, how she had gone home and sat on the couch and couldn't get up and had difficulty walking. "She kept complaining about her back and her neck all the time." In regard to before and after the injury, he stated that the difference was, "before she had the injury she was active, she was in quilt groups, she was in like three or four different quilt groups and she was also doing crocheting. She was all the time active." She was unable to do those things after the accident. She couldn't sleep due to the pain. (Tr.pp. 8-10) He went on to state he quit his job and retired to drive her to the doctors and care for her and the home. He also remembered she had been in a cooking group prior to her injury. (Tr.p. 11) She never complained about her back and neck prior to the injury. He stated that they would walk together, walking about five (5) miles in an hour and thirty (30) to forty (40) minutes,

after work two (2) times a week on average. (Tr.p. 12) After the accident she received sixteen (16) shots, and sometimes after the shots, she was unable to do anything. (Tr.p.13) The sixteen (16) or seventeen (17) shots gave her a slight relief. “Now she’s fair.”

Under cross-examination, Mr. Lewis admitted he remembered when the claimant fell in the bathroom and hurt her leg and strained, “her, I think it’s MCI or MCL.” He also admitted going with her to the doctors. (Tr.pp.14-15)

On re-direct, he remembered her telling the doctors she had slipped in the bathroom and had pain in her leg and knee area. (Tr.p.16) He stated now, if we go to Little Rock, we have to stop more than usual because when she would get still she couldn’t walk. He helped her from the car to the exam room. If she walked by herself, she would get shaky and “couldn’t stand.” (Tr.p. 17)

The claimant was then called and testified she had worked for Walmart for twenty-five (25) years and worked in different jobs. She was working at CAP, a stocker, when she was injured. Her job was to place freight on the shelves. (Tr.pp.18-19) She was stocking groceries when she was injured. She would sometimes lift over fifty (50) pounds. (Tr.p.20) The cart that was involved was an upright metal cart with little blue baskets in it that could weigh anywhere from one hundred (100) pounds or above depending on how many groceries the on-line person put on it. She stated she was prescribed the cane she had with her on the day of the hearing because she had balance issues. (Tr.p.21)

When the injury happened, “it was like a snap instant, and it was like, I don’t know that I blinked for a snap, and I remember I thought I got shifted, it happened so fast.” “When I got injured, I remembered a sharp pain. And after that sharp pain, I thought it

would just go away, but it didn't." So when I went and sat down, I took a fifteen (15) minute break and I barely could get up. She went on to provide that she felt the pain in her lower back and hip. She thought she would walk it off but couldn't. (Tr.p.22) She talked to the personnel lady and management took the report on a tablet more like an ipad. Her shift had ended so she was told to go home and place an ice pack on it and call if it got worse. She called back to the store and was told that she had to report back to the store and they had to get the paperwork and stuff together and then took her to the Sherwood Urgent Clinic. (Tr.p.23) She made two (2) visits to the Sherwood Clinic and was placed on light-duty restrictions. Due to the restrictions, she worked as a phone operator. She then later returned to work and was told workers' compensation had denied her claim and she had to return to her regular duty, and that she knew her limitations. She then returned to her regular job. She had a real bad issue when walking and this went on with her job till August 30<sup>th</sup>. She thought that she was fifty-eight (58) at the time of her injury and was now sixty-two (62). (Tr.pp.24-25) She also testified she had obtained a college degree in Early Childhood Development, and had performed volunteer work with her degree but worked at Walmart for better pay. It was her understanding her claim was denied due to her old injuries. She agreed she never had any major problem with her back or hip in walking or standing, prior to the injury. She went on to state the cart struck her on the left side. She did not realize she had been spun around until she saw the video of the injury. (Tr.pp.26-27)

She stated she was told to go to her own doctor and went to Dr. Kevin Falwell, her family physician. He sent her to a sports doctor who was the same one she went to when she injured her knee after the slip and fall in the bathroom. He sent her for an x-ray of

her hip and lumbar area. (Tr.p.28) She returned to him for the x-ray results and he referred her to a pain doctor. She then returned to her family doctor and requested a referral somewhere else and was sent to Dr. Burba. (Tr.p.29) She felt Dr. Burba knew the most about her and her balance problems. (Tr.p.30) After her injury in April, she worked until August of 2019. She denied working since leaving Walmart. (Tr.pp.32-33)

Under cross-examination, the video was reviewed and it appeared that the claimant was stocking the packaged lunch meat isle with the video starting at 11:36:08 (Tr.p.36) The video was restarted at 11:50:40 and was then jumped to 11:52:01 and the claimant stated she thought the blue cart in the video was the cart in question. (Tr.pp.38-39) She agreed the video showed the cart striking her between 11:52 and 11:52:21. She continued working in the area until 11:55:48. She stated she could remember immediate pain and felt something pop. (Tr.pp.40-41) It did not immediately impact her ability to work, “even though I had pain I kept working because I was trying to get the freight out before it stayed out there too long.” When it spun me around so fast, it was like I lost conscious or something for a second. (Tr.p.42) She felt more pain when she put weight on her leg while going to her break, and after sitting down limped more when she got back up.

The video provided that the claimant left the view of the camera at 11:58:48 and returned at 12:05, when she continued to stock. The video showed her going through a doorway to receiving at 12:05:30, and the claimant testified she had to go in a cooler to get out the freight which she needed to work with. (Tr.pp.43-44) She came back into view on the video at 12:07, and felt that at that time, she had not told anyone about her injury. (Tr.p.45) She agreed she never reappeared on screen after 12:07:50-ish because she

went on break. The more she walked, the more it hurt, and she figured she needed to report it. (Tr.p.46)

The claimant was then questioned about an earlier injury when she fell in a shower and was treated by Dr. Angel. She denied falling in the shower but stated she slipped while getting out. She denied hurting her back at the time. She was questioned why Dr. Angel requested a MRI of her back, and the claimant responded that he didn't request a MRI of her back at that time but only requested a MRI of her back when the Walmart injury occurred. She was then questioned about the medical record of April 16, 2018, exactly one year prior to being hit by the cart at Walmart, that requested an MRI of the lumbar spine and her leg. She recalled an x-ray of her back and a MRI of her knee. She did not remember tenderness in her back. She was also questioned about going to the Sherwood Clinic in June of 2018 complaining of back pain. She responded that she did not recall the dates but did recall that it was for a sprained muscle and if she received a steroid injection, it was for a sinus infection. (Tr.pp.48-49)

She was also questioned about seeing a physician's assistant whose report provided her left hip pain began gradually overtime, and she denied the statement. (Tr.p.50) In regard to a statement to Dr. Burba, she stated she had been, "struck by a cart at work." She also agreed she continued to work at Walmart until August 30, 2019, when she was terminated. She admitted receiving short-term disability benefits and then later long-term disability benefits, which she was no longer drawing. She also admitted being approved for social security disability benefits. (Tr.p.52) She had to return a portion of the long-term disability payments when she was approved for social security disability. (Tr.p.53)

On re-direct, the claimant testified that Walmart wanted over \$20,000 back from their self-insured, long-term disability policy and she had to pay it back. (Tr.p.54)

The medical and documentary evidence presented herein has been reviewed in its entirety, including the introduced video at the times described in the testimony and the relevant parts are discussed below.

The claimant introduced seventy-six (76) pages of medical that was admitted without objection. The respondents introduced thirty-five (35) pages of medical records that were also admitted without objection. A joint synopsis of the medical records was introduced by the parties to assist the Commission. A progress note from Dr. Jeffery Angel dated April 16, 2018, provided that the claimant presented for a follow-up for left knee pain. The claimant had fallen in the bathroom on February 6, 2018, twisting her knee. Her pain developed suddenly, and she was treated with physical therapy. (Resp. Ex. 1, p. 1)

A report from Amanda Cowell, APN, of Sherwood Urgent Care dated June 11, 2018, provided the claimant presented with a headache and back pain. A steroid injection was given along with a Z-pack. (Resp. Ex. 1, pp. 2-4)

The claimant presented to Dr. Falwell, her family practice physician on May 7, 2019, with a complaint of lower back pain, less than a month after the April 16, 2019, work-related cart incident. The report provided the claimant received an x-ray of the lower back and hip which appeared normal. The claimant received steroids and muscle relaxers. (Cl. Ex. 1, pp. 1-3) The claimant returned to Dr. Angel on May 22, 2019. An MRI provided for degenerative disc disease in regard to the back and the MRI of the femur was negative. (Resp. Ex. 1, pp. 5-7) The claimant returned to Dr. Falwell on July 30,



2019, with a complaint of head and sinus congestion and lower back pain. The report provided that the hip had a full range of motion, but with tenderness. She did not want injections but was scheduled for physical therapy. (Resp. Ex. 1, pp. 8-10) She returned to Dr. Falwell on August 19, 2019, with a complaint of low back pain and also described episodes of right upper limb numbness. Physical therapy was not helping and she requested a referral to neurology. (Cl. Ex. 1, pp. 4-6)

A letter dated August 30, 2019, from Dr. Burba, who the claimant was referred to by Dr. Falwell, provided she, “was hit by a cart in the left hip and back and since then has had a burning sensation in the hip and abdominal area that radiates into the legs and toes.” The letter also mentioned numbness in the right arm and that her balance was off. The letter also referred to swelling in all the claimant’s joints. (Cl. Ex.1, pp.7-8) (Resp. Ex. 1, pp.11-12) An MRI dated September 26, 2019, of the left hip and pelvis, provided no significant left hip cartilage femoral stress reaction, fracture, or osteonecrosis. There was mild blunting of the labrum. Mild left trochanteric bursitis was noted without significant gluteal tendinopathy or a gluteal tendon tear. Additionally mild bilateral gluteal tendinosis along with mild gluteal tendinosis without a tear, was noted. No abnormality was detected along the sacral plexus and proximal sciatic nerves. (Cl.Ex.1, p.9) The claimant also received a fluoroscopically guided left hip injection by Dr. William Henry on October 30, 2019. (Cl. Ex.1, p.13)

The claimant made four (4) visits to Kenneth Weaver, PAC, from October 11, 2019, through December 19, 2019. During these visits, she received fluoroscopically guided injections and the final report provided there was unspecified generalized left hip pain

with a stable exam and no evidence of pathology during the physical exam or other modalities of evaluation. (Cl. Ex.1, pp.10-19) (Resp. Ex. 1, pp.13-15)

A chart note from Dr. Burba dated March 3, 2020, provided the claimant had three (3) different sources of pain in her left leg: (1) Compression at the anterior superior iliac of the superficial femoral cutaneous nerve which had roots from the lumbosacral spine. (2) Intertrochanteric bursitis demonstrated by the orthopedic surgeon on the MRI. (3) A herniated disc and the root probably played a role as well. (Cl. Ex. 1, p. 20) (Resp. Ex. 1, p. 20)

The claimant had a telehealth visit with Dr. Burba during the COVID pandemic on April 22, 2020, and later on May 19, 2020. The April report provided there was mild L4-5 foraminal stenosis and L4 radiculitis and left bursitis. The report went on to provide that several different pain medications were recommended but the claimant declined. The claimant was set up with Dr. Schlesinger for epidural steroids. The May report provided that a pain consult with Dr. Roman, who will perform epidurals, was arranged. (Cl. Ex.1, pp. 21-24)

The claimant presented to Dr. Roman on June 16, 2020. The report provided the claimant maintained she suffered low back pain but there was no pain tenderness and her muscle tone was appropriate and symmetric. He opined that the MRI was not overwhelming and did not indicate surgery. Dr. Roman's final diagnosis was lumbar radiculopathy, low back pain, lumbar disc disease, multilevel facet disease, and current long-term use of medication. (Cl. Ex. 1, pp. 25-26)

On June 26, 2020, the claimant had another telehealth visit with Dr. Burba. Under impression, the report provided most of her problems were the result of degenerative disc

disease, made worse by trauma causing sciatica. This probably resulted from lumbosacral plexitis due to the trauma of the cart hitting her while at work and related to her fibroid tumors. (Cl. Ex.1, pp. 27-28)

The claimant returned to Dr. Roman on July 6, 2020, for a facet joint injection. (Cl. Ex.1, pp. 29-30) On July 29, 2020, he performed a rhizotomy at L3-4, L4-5, and L5-S1. The report went on to provide that the MRI showed mild to moderate loss of disc height with a bulge at the L3-4 level and L4-5 level. The symptoms were correlative with an L3-4 dermatome distribution which correlated with the EMG findings. His final diagnosis was lumbar radiculopathy, low back pain, lumbar disc disease, lumbar spondylosis, multilevel facet disease, and chronic long-term use of medications. (Cl. Ex. 1, pp. 31-32)

The claimant returned to Dr. Burba on August 13, 2020, who opined that the chronic pain syndrome was due to trauma, radiographic evidence of intertrochanteric bursitis, and gluteal tendinosis, along with fibroid tumors, with bilateral tarsal tunnel syndrome and L-4 radiculitis on the left causing sciatica. (Cl. Ex. 1, pp. 33-34)

The claimant returned to Dr. Roman three (3) times from August 24, 2020, through December 7, 2020, for transforaminal epidural injections and a trochanteric hip injection. (Cl. Ex.1, pp. 35-46) The claimant received a bone scan ordered by Dr. Burba on December 9, 2020, and the report provided for a normal whole-body scan. (Resp. Ex. 1, p. 20) The claimant then had another telehealth visit with Dr. Burba on December 11, 2020. This report provided that the claimant suffered from chronic pain syndrome, intertrochanteric bursitis, tendinosis, fibroid tumors, and possible demyelinating poly neuropathy, with a mononeuritis multiple distribution, and that the changes were mild, with lumbosacral radiculitis. (Cl. Ex 1, pp. 47-48)

The claimant returned to Dr. Roman on December 21, 2020, January 9, 2021, and March 16, 2021. She received a transforaminal epidural injection of the neural foramen at L5-S1 on the left side on December 21, 2020. A clinic note dated March 16, 2021, provided the claimant suffered from left hip pain, greater trochanteric bursitis of the left hip, long-term medication use, lumbar spondylosis, lumbar disc bulges at L3-4, and L4-5 along with low back pain. (Cl.Ex.1, pp. 49-53) (Resp. Ex. 1, p. 21)

The claimant had a follow-up visit with Dr. Tucker on March 30, 2021, and an extensive lumbar work up did not lead to relief of the hip pain. The injections provided some relief, but the physical therapy was unbearable. On April 6, 2021, the claimant followed up with Dr. Tucker and the report provided that the claimant obtained no relief from the intra-articular injection but that the greater trochanteric bursa injection provided for a few days of relief. (Resp. Ex. 1, pp. 22-28)

The claimant again visited Dr. Burba on May 20, 2021. The report provided the claimant had chronic pain syndrome of the left hip and back secondary to trauma as described in the previous notes. The report also found the claimant very tender over the intertrochanteric bursa. Dr. Burba went on to state that he did not see any definitive neurologic issue to treat. (Cl. Ex. 1, pp. 54-55) (Resp. Ex. 1, pp. 29-30)

The claimant returned to Dr. Roman on June 15, 2021, and the report provided the claimant was hit by a shopping cart and the MRI of the left hip showed no fracture, no hip dislocation, and no significant arthritis. She had some disc disease and still complained of hip pain. His final diagnosis was left hip pain, greater trochanteric bursitis of the left hip, long-term use of medications, lumbar radiculopathy, and lumbar disc disease. (Cl. Ex. 1, p. 56)

Another MRI of the left hip was obtained on July 2, 2021, due to the left hip pain, and it provided for mild to moderate osteoarthritis with a small physiological fluid in both hips and moderate chondral thinning at the hips. (Resp. Ex. 1, p. 31) Dr. Tucker stated on July 6, 2021, that the claimant reported absolutely no relief from the greater trochanter bursal injection or the physical therapy. There were no signs of bursitis or inflammation of the greater trochanter area. (Resp. Ex.1, pp.32-35)

The claimant had another telehealth visit with Dr. Burba on August 20, 2021. The report provided the claimant's EMG revealed an early demyelinating motor and sensory polyneuropathy with a mononeuritis multiplex type distribution and chronic denervation at multiple sites in the LS spine, possibly related to degenerative disc disease. Her MRI of the left femur was unremarkable. He again mentioned her fibroids and opined she was unable to work due to her pain. (Cl. Ex. 1, pp. 57-58) The claimant again returned to Dr. Roman on October 5, 2021, who provided the same diagnosis as previously stated and mentioned the opiate use of tramadol. (Cl. Ex. 1, p. 59) The claimant continued to return to Dr. Burba with an office visit on October 5, 2021, and a return visit to Dr. Roman on November 24, 2021, for injections. (Cl. Ex. 1, p. 60)

On October 29, 2021, Dr. Burba signed a document which provided, "It is my opinion with a reasonable degree of medical certainty (51% or greater) that the injuries she sustained while working for Walmart, when she was struck by an on-line grocery cart on April 16, 2019, necessitates the medical treatment I am providing." (Cl. Ex. 1, p. 63)

The claimant then returned to Dr. Roman on November 11, 2021, for another epidural injection. The report provided for lumbar radiculopathy, lumbar disc disease at

the L3-L5, and lumbar spondylosis along with greater trochanteric bursitis of the left hip. (Cl. Ex. 1, pp. 61-62)

The claimant continued to follow-up with Dr. Burba on February 21, 2022. (Cl. Ex. 1, pp. 64-65) The report provided the claimant returned with tenderness over the left intertrochanteric bursa with appreciable swelling. The report also stated that they would repeat inflammatory markers to insure there was no underlying autoimmune process and there would be continued pain control with Dr. Roman.

In regard to Dr. Roman, the claimant had follow-up visits on February 21, April 1, May 25, August 30, April 29, 2022, and November 29, 2022. The final diagnosis of record by Dr. Roman provided for lumbar radiculopathy of the left L5-S1, low back pain, lumbar disc disease at L4-L5, and L5-S1, cervical disc disease, lumbar spondylosis, generalized osteoarthritis, and long-time use of medications including tramadol. (Cl. Ex. 1, pp. 66-67, 68-76)

It was also noted that the last MRI of record was on March 17, 2022. The report provided there was mild left hip osteoarthritis with tearing at the anterior superior labrum with no paralabral cyst. Additionally there was mild right hip osteoarthritis and right greater trochanteric bursal distension/bursitis along with possible fibroids. (Cl. Ex. 1, pp. 68-69)

The claimant also introduced the deposition of Dr. Burba taken on June 8, 2022, which included medical records. He testified he was board certified by the American Board of Psychiatry and Neurology but stated that it was really Adult Neurology and a sub-certification of the American Board of Psychiatry and Neurology, and that he does no psychiatry, only adult neurology. He went to medical school at Oklahoma University and

graduated in 1976. He had seen the claimant a number of times and about a third of the time, they were in person due to the fact that this was in the middle of the pandemic. (Cl. Ex. 2, pp. 5-6) He had quickly scanned the claimant's chart prior to the deposition. The last time he had seen the claimant was February 21, 2022, with some later telephone calls. Dr. Burba provided nothing had changed about the claimant's condition or her treatment on the last February visit. (Cl. Ex. 1, pp. 8-9)

He was questioned about the "To-Whom-It-May Concern" letter, and he agreed the letter had been drafted by the claimant's attorney and he signed it. It provided for an abnormal EMG/NCV and a positive Laesigue's and also an MRI of the cervical spine. He agreed it provided with a reasonable degree of medical certainty that the injuries the claimant sustained while working for the respondent and was struck by an online grocery cart on April 16, 2019, necessitated the medical treatment he had provided. He went on to opine that the worst of her injuries was the unresolved intertrochanteric bursitis of the left hip. The MRI showed bursitis in that area, and it had not resolved over this long period of time. Generally, bursitis would resolve but this one hadn't. "Objectively, I can feel heat in that intertrochanteric bursa through the skin. I can feel fluctuation or sort of an edematous or swollen feeling there, and there's crepitus in the joint when you move the leg around. So it's not just her complaining about it." (Cl. Ex. 2, pp. 10-12) He felt ninety percent (90%) of her problems were due to the accident. He admitted she had some degenerative disc disease but stated everyone suffered from that. She had some low-grade neuropathy and a few disc protrusions. She also had some mild-grade tendinosis and sometimes this happened secondary to an injury, due to other joints and muscles compensating for the area that was inflamed. "The joint itself did not show

rheumatoid arthritis or cancer or any of the other medical issues that we normally see in this age group, and so this - - this looks like a pure traumatic injury to the left hip and primarily in the trochanteric bursa.” (Cl. Ex. 2, pp.13-14) Under further questioning, he admitted he did not see the accident happen. “I don’t know -- you know, in my mind, you know, a cart bumping against a hip, you know, to cause this kind of thing, I just can’t conceive of -- if why this continues to go on, unless that cart was really moving or that cart was really heavy or -- or had a massive unexpected blow where she was unprotected. You know, there must have been a lot of energy transfer to cause this degree of inflammation in that joint.” Dr. Burba agreed that he was operating on the assumption that there was “a lot of energy transfer.” (Cl. Ex. 2, pp.18-19)

Under questioning by the claimant’s attorney, Dr. Burba agreed that a trauma could trigger the problems that he was seeing with the claimant. (Cl. Ex. 2, p. 21)

Under further direct-examination by the respondent’s attorney, Dr. Burba was questioned about the claimant being hit by a heavy cart and “it knocked her for a loop.” His response was “I don’t know that. I don’t know if -- you know, if she was wedged between something that kept her from moving, you know, if she, had like a crush injury; or if -- you know, if she was in a very fragile position, like reaching and stretching on one foot, you know, and leaving her unable to protect herself; if she saw it, ahead of time, coming so she could take evasive action and got more a glancing blow than a direct hit. All of those things play a role, and I don’t know the answer to that question.” (Cl. Ex. 2, p. 21) Dr. Burba was also questioned about the claimant’s other health issues. He stated that her polyneuropathy was unrelated to the accident. (Cl.Ex.2, p.33) He was questioned if his findings were based upon the history that he was given about the accident. He



responded that it was based upon the history and, “also the objective markers, the MRI scan, the EMG, and especially, the physical exam.” (Cl. Ex. 2, p. 36)

The respondents exhibit 1 which contained the medical they introduced is discussed above. The respondents also submitted a deposition taken on December 5, 2019, of the claimant into the record without objection. The claimant was fifty-nine (59) years old at the time of the deposition with her birthday on November 3, 1960. (Resp. Ex. 2, p.7) She worked on the cap team at the time of the accident at Walmart. The cap team worked in different areas displaying freight and climbing up and down ladders. The claimant stated she was working grocery at the time of the accident. (Resp. Ex. 2, pp.18-20) She was bent over stocking dairy sandwich meat at the time of the accident. She would down stack the meet to a pallet and then down stack the meet to a “rocket cart.” She was bent over at the waist stocking the meat and got hit by an “online grocery cart.” The cart is metal with individual baskets and larger than the carts the customers grab. (Resp. Ex. 2, pp. 27-29) The cart hit her in the leg and she called it to the attention of the online order filler pushing the cart. It hit her in the leg, thigh, and hip while she was bent over, hitting her more to the side. She thought the person pushing the cart did not notice he hit her, but when she got his attention, he stated he was sorry. She sat there for a minute and attempted to regroup because she was shocked. She stated she felt a sharp pain or pop and then went to take her break and when she stood up from the break, she had trouble getting up. It was her hip and lower back. She hurt in her hip and back while sitting during the break. She then went and reported the accident to her personnel manager. (Resp. Ex. 2, pp. 31-35)

She went home after work that afternoon and when the pain worsened, she called work and was told to return and was taken to Sherwood Urgent Care. At Urgent Care, she was seen by Amanda Crowell, a nurse practitioner, who ordered an x-ray but did not provide any medication. She was not taken off work and returned to work light-duty. (Resp. Ex. 2, pp. 36-39) The claimant never returned to Sherwood Urgent Care after the second visit and then went to her family physician, Dr. Falwell, and continued to have problems. He recommended an orthopedic physician, Dr. Angel. She also admitted to receiving four (4) to six (6) weeks of physical therapy. (Resp. Ex 2, pp. 41-42) Dr. Angel referred her to a pain clinic but she didn't get to go, so she returned to her family doctor who referred her to an orthopedic doctor in Little Rock. She also remembered going to a "nerve" doctor in Little Rock who performed a nerve conduction study and she thought the physician was Dr. Burba. Dr. Burba then sent her to a different orthopedist, Dr. Weaver, who performed a hip injection. The injection relieved some of the pressure and pain but did not solve the problem. She would receive a few hours of relief from the injections and some improvement the next day. (Resp. Ex. 2, pp. 43-46)

The claimant testified she was having pain in her neck, lower back, and her buttocks on her left side at the time of the deposition. "And my whole -- and my hip, and my thigh part of my leg, my whole left leg down to my knee and my toes, if I can recall all of it." (Resp. Ex 2, p.50) She admitted being able to perform house cleaning, cooking, laundry, and driving. (Resp. Ex. 2, p.52) She could not recall having trouble with her neck prior to April 16<sup>th</sup>, but admitted seeing a doctor for her back. She stated she had a fall as a teenager. She had never seen a doctor for her left hip, but had seen a doctor for

her left knee in 2018 when she slipped and fell in the bathroom, getting ready for work and spraining her MCL. (Resp. Ex. 2, pp. 53-54)

The respondent also admitted a DVD of the actual incident involving the claimant being hit by the cart that was recorded on in store cameras. It was admitted as Exhibit 3 without objection. The video was reviewed multiple times from the claimant's first appearance on the video at approximately 11:35:38 until approximately 12:07 when the claimant went for break. The claimant initially appeared in the video at 11:35:38, apparently walking out of a door to the cart that she was going to use stocking the shelves. She started stocking at approximately 11:36:20, making multiple trips between her cart and the store display case. At 11:37:10, she stood on one leg and even crawled on top of the front ledge of the display case, getting on both knees on the ledge, to place items where she had trouble reaching. Although the video is somewhat jerky due to the method of filming or storage, she appeared to ambulate well with a fluid gait and solid stance. At 11:52:20, the cart in question was pulled past the claimant and the rear of the cart fishtailed and struck the claimant in what appeared to be a light and glancing blow to the claimant's left side. The claimant continued to work but after multiple viewings, it was observed that her gait and stance changed slightly after the incident.

### **DISCUSSION AND ADJUDICATION OF ISSUES**

In regard to the primary issue of compensability, the claimant has the burden of proving, by a preponderance of the evidence, that she is entitled to compensation benefits for the injury to her left hip/leg and low back under the Arkansas Workers' Compensation Law. In determining whether the claimant has sustained her burden of proof, the Commission shall weigh the evidence impartially, without giving the benefit of the doubt

to either party. Ark. Code Ann. § 11-9-704. *Wade v. Mr. Cavananugh's*, 298 Ark. 364, 768 S.W. 2d 521 (1989). Further, the Commission has the duty to translate evidence on all issues before it into findings of fact. *Weldon v. Pierce Brothers Construction Co.*, 54 Ark. App. 344, 925 S.W.2d 179 (1996).

From the medical reports submitted by both the claimant and the respondents, it appears that the claimant clearly suffered from various conditions in regard to her lower back and left hip/leg prior to the accident, plus additional issues that many people her age suffer. A pre-existing disease or infirmity does not disqualify a claim if the employment aggravated, accelerated, or combined with the disease or infirmity to produce the disability for which compensation is sought. *See, Nashville Livestock Commission v. Cox*, 302 Ark. 69, 787 S.W.2d 864 (1990); *Conway Convalescent Center v. Murphee*, 266 Ark. 985, 585 S.W.2d 462 (Ark. App. 1979); *St. Vincent Medical Center v. Brown*, 53 Ark. App. 30, 917 S.W.2d 550 (1996). The employer takes the employee as it finds him or her. *Murphee, supra*.

The claimant in a work-related incident, was hit a glancing and light blow by a cart. She went home after finishing her shift, but testified she was in pain and on the same day of the incident, contacted the respondent while she was at home, and was instructed to return to the workplace to fill out paperwork, and was then taken to Sherwood Urgent Care. The claimant was treated there and later received multiple MRI's that discovered a variety of health issues which included degenerative disc disease, lumbar spondylosis, multilevel facet disease, fibroids, arthritis, and bursitis. She also received treatment by multiple physicians but appeared to be primarily treated by Dr. Roman who provided multiple epidural injections and a rhizotomy, and Dr. Burba.

A compensable injury must be established by medical evidence supported by objective findings and medical opinions addressing compensability and must be stated within a degree of medical certainty. *Smith-Blair, Inc. v. Jones*, 77 Ark. App. 273, 72 S.W.3d 560 (2002). Speculation and conjecture cannot substitute for credible evidence. *Liaromatis v. Baxter County Regional Hospital*, 95 Ark. App. 296, 236 S.W.3d 524 (2006). More specifically, to prove a compensable injury, the claimant must establish, by a preponderance of the evidence: (1) an injury arising out of and in the course of employment; (2) that the injury caused internal or external harm to the body which required medical services or resulted in disability or death; (3) medical evidence supported by objective findings, as defined in Ark. Code Ann. §11-9-102 (16) establishing the injury and (4) that the injury was caused by a specific incident and identifiable by time and place of occurrence. If the claimant fails to establish any of the requirements for establishing the compensability of the claim, compensation must be denied. *Mikel v. Engineered Specialty Plastics*, 56 Ark. App. 126, 938 S.W.2d 876 (1997).

Dr. Burba signed a document stating, “It is my opinion with a reasonable degree of medical certainty (51% or greater) that the injuries she sustained while working for Walmart, when she was struck by an online grocery cart on April 16, 2019, necessitates the medical treatment I am providing.” This led to his deposition and in explaining his thoughts in regard to the document he signed, he stated his opinion was based upon the history and “also the objective markers, the MRI scan, the EMG, and especially, the physical exam.” In regard to the actual severity of the cart bump he stated, “I don’t know that. I don’t know if -- you know, if she was wedged between something that kept her from moving, you know, if she, had like a crush injury; or if -- you know, if she was in a

very fragile position, like reaching and stretching on one foot, you know, and leaving her unable to protect herself; if she saw it, ahead of time, coming so she could take evasive action and got more a glancing blow than a direct hit. All of those things play a role, and I don't know the answer to that question.” He opined that trauma could cause the problems that he was seeing in the claimant.

Here, the video of the incident was viewed multiple times and showed the claimant immediately before and after the incident. The claimant suffered what clearly appeared to be a light glancing blow to the left side of her body. After multiple reviews of the video, it is determined that it shows the fluidity of the claimant's gait along with her stance and her ambulation changed slightly after the incident and that this corresponds to the opinion issued by Dr. Burba, as well as the testimony by the claimant. Dr. Burba issued an opinion that was backed up by his deposition as to the cause of the claimant's problems and the Commission has the authority to accept or reject medical opinions. *Williams v. Ark. Dept. of Community Correction*, 2016 Ark. App. 427, 502 S.W. 3d 530 (2016)

Consequently, it is found that the claimant has satisfied the above requirements and has proven, by a preponderance of the evidence, she suffered a work-related injury to her left hip/leg and low back. In regard to medical treatment, the employer shall promptly provide for an injured employee such medical treatment as may be reasonable in connection with the injury received by the employee. Ark. Code Ann. §11-9-508(a). The employee has the burden of proving, by a preponderance of the evidence, that medical treatment is reasonably necessary. *Stone v. Dollar General Stores*, 91 Ark. App. 260, 209 S.W.3d 455 (2005) What constitutes reasonably necessary medical treatment is a question of fact for the Commission. *Wright Contracting Co. v. Randall*, 12 Ark. App.

358, 676 A.W.2d 750 (1984) Here the claimant has proven, by a preponderance of the evidence, that she suffered a compensable work-related injury to her left hip/leg and low back and it is found that she is entitled to reasonable and necessary treatment regarding the injury plus the payment of reasonable and necessary out-of-pocket medical expenses.

Based upon the available evidence, it is found that the claimant has satisfied the burden of proof to show she suffered a compensable work-related injury to her left hip/leg and low back on April 16, 2019, and is entitled to reasonable and necessary medical treatment plus the payment of any reasonable and necessary out-of-pocket medical expenses paid by the claimant.

The claimant and her attorney are entitled to the appropriate legal fees as spelled out in Ark. Code Ann. §11-9-715. This Award shall bear interest at the legal rate pursuant to Arkansas Code Annotated §11-9-809. If not already paid, the respondents are ordered to pay the cost of the transcript forthwith.

IT IS SO ORDERED.

---

JAMES D. KENNEDY  
Administrative Law Judge