

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. H002529

ANN WELLS, Employee	CLAIMANT
WALMART ASSOCIATES, INC., Employer	RESPONDENT
WALMART CLAIMS SERVICES, Carrier/TPA	RESPONDENT

OPINION FILED JANUARY 5, 2022

Hearing before ADMINISTRATIVE LAW JUDGE GREGORY K. STEWART in Harrison, Boone County, Arkansas.

Claimant represented by F.S. "RICK" SPENCER, Attorney, Mountain Home, Arkansas.

Respondent represented by CURTIS L. NEBBEN, Attorney, Fayetteville, Arkansas.

STATEMENT OF THE CASE

On November 29, 2021, the above captioned claim came on for hearing in Harrison, Arkansas. A pre-hearing conference was conducted on July 14, 2021 and a pre-hearing order was filed on July 16, 2021. A copy of the pre-hearing order has been marked as Commission's Exhibit #1 and made a part of the record without objection.

At the pre-hearing conference the parties agreed to the following stipulations:

1. The Arkansas Workers' Compensation Commission has jurisdiction of the within claim.
2. The employee/employer relationship existed between the parties on April 24, 2020.
3. The respondent has controverted this claim in its entirety.

At the time of the hearing the parties agreed to stipulate that claimant earned an average weekly wage of \$316.53 which would entitle her to compensation at the rates of \$211.00 for total disability benefits and \$158.00 for permanent partial disability benefits.

At the pre-hearing conference the parties agreed to litigate the following issues:

1. Compensability of injury to claimant's left hip on April 24, 2020.
2. Medical.
3. Temporary total disability benefits from April 25, 2020 through a date yet to be determined.
4. Attorney's fee.

At the time of the hearing claimant chose to reserve as issues her entitlement to temporary total disability benefits and an attorney fee.

The claimant contends she sustained a compensable injury to her left hip while in the course and scope of her employment. At the time of her injury, claimant had clocked in from lunch and was walking back to her cash register when she slipped and fell causing a fracture to her left hip. Claimant contends she is entitled to reasonable and necessary medical treatment. Claimant reserves all other issues.

The respondent contends the claimant did not sustain an injury arising out of and in the course of her employment as defined by the Arkansas Workers' Compensation Act.

From a review of the record as a whole, to include medical reports, documents, and other matters properly before the Commission, and having had an opportunity to hear the testimony of the witness and to observe her demeanor, the following findings of fact and conclusions of law are made in accordance with A.C.A. §11-9-704:

FINDINGS OF FACT & CONCLUSIONS OF LAW

1. The stipulations agreed to by the parties at a pre-hearing conference conducted on July 14, 2021 and contained in a pre-hearing order filed July 16, 2021 are hereby accepted as fact.

2. Claimant has met her burden of proving by a preponderance of the evidence that she suffered a compensable injury to her left hip on April 24, 2020.

3. Claimant is entitled to payment for all reasonable and necessary medical treatment provided for her compensable left hip injury.

FACTUAL BACKGROUND

The claimant is a 75-year-old woman who worked for the respondent as a cashier in its store in Flippin. Claimant testified that on April 24, 2020, she had clocked back into work after lunch and was walking with her supervisor who was informing her of the register where she was to work when she fell to the floor. (This fall is visible on a video submitted by respondent as Respondent's Exhibit #1.) An ambulance was called and claimant was taken to Baxter Regional Medical Center where she was diagnosed with a left hip fracture. Claimant underwent surgery that same day by Dr. Thomas Knox to repair the fracture.

Claimant has filed this claim contending that she suffered a compensable injury to her left hip on April 24, 2020, and she requests payment of medical benefits.

ADJUDICATION

Claimant contends that she suffered a compensable injury to her left hip on April 24, 2020, when she fell while walking towards her cash register with her supervisor.

Claimant's claim is for a specific injury, identifiable by time and place of occurrence. In order to prove a compensable injury as the result of a specific incident that is identifiable by time and place of occurrence, a claimant must establish by a preponderance of the evidence (1) an injury arising out of and in the course of employment; (2) 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 establishing an injury; and (4) the injury was caused by a specific incident identifiable by time and place of occurrence. *Odd Jobs and More v. Reid*, 2011 Ark. App. 450, 384 S.W. 3d 630.

After reviewing the evidence in this case impartially, without giving the benefit of the doubt to either party, I find that claimant has met her burden of proving by a preponderance of the evidence that she suffered a compensable injury to her left hip while working for respondent on April 24, 2020.

Initially, there seems to be little question that claimant has met her burden of proving three of the elements of compensability. First, I find that claimant's fall was caused by a specific incident and is identifiable by time and place of occurrence. Claimant testified that she fell while on her way to the cash register after clocking in after lunch on April 24, 2020. This incident is also documented in the video submitted by respondent. Based upon this evidence, I find that claimant has proven that her injury was caused by a specific incident and is identifiable by time and place of occurrence.

Second, I find that claimant's injury caused internal physical harm to her body that required medical services and that she has offered medical evidence supported by objective findings establishing the injury. After her fall claimant was taken to the hospital by ambulance where an x-ray revealed a left intertrochanteric hip fracture. Claimant

underwent a surgical procedure to repair this fracture. Based upon this evidence, I find that claimant has proven that her injury caused internal physical harm to her body and required medical services and that she has offered medical evidence supported by objective findings establishing an injury.

The primary issue in this case involves whether claimant's injury arose out of and in the course of her employment. Respondent initially contends that claimant was not performing employment services at the time of her fall on April 24, 2020. A.C.A. §11-9-102(4)(B)(iii) specifically excludes from the definition of "compensable injury" an injury that occurred at a time when the employee was not performing employment services. An employee is performing employment services when they are doing something that is generally required by their employer. *White v. Georgia-Pacific Corporation*, 339 Ark. 474, 6 S.W. 3d 98 (1999). The test is "whether the injury occurred within the time and space boundaries of the employment, when the employee [was] carrying out the employer's purpose or advancing the employer's interest directly or indirectly." *Piefer v. Single Source Transportation*, 347 Ark. 851, 69 S.W. 3d 1 (2002) and *Curtis v. Lemna*, 2013 Ark. App. 646, 430 S.W. 3d 180.

I find that claimant has met her burden of proving by a preponderance of the evidence that she was performing employment services at the time of her fall. Claimant testified that at the time of her fall she had clocked in after lunch and was on the way to her work station. Claimant stated that she was walking with her supervisor who was instructing her on the cash register where she was to work. No witness was called by respondent to contradict this testimony. Given claimant's testimony which I find to be credible that she had clocked in, was walking to her work station, and was receiving

instructions from her supervisor as to the register where she was to work, I find that claimant was carrying out her employer's purpose and advancing her employer's interest directly or indirectly. Specifically, I find that claimant was performing employment services at the time of her fall on April 24, 2020.

Respondent also contends that in order for an injury to arise out of and in the course of employment, there must be a risk of employment in the fall. Respondent contends that there was not a risk of employment when claimant fell, but that she simply tripped over her own two feet and fell.

Essentially, respondent contends that claimant's injury was idiopathic in nature. The Arkansas Supreme Court has distinguished injuries suffered from unexplained causes from injuries sustained from idiopathic causes:

We first note that injuries sustained to an unexplained cause are different from injuries where the cause is idiopathic. An idiopathic fall is one whose cause is personal in nature, or peculiar to the individual. 1 LARSON, *Workers' Compensation Law*, §§12.11 (1998); see also *Kuhn v. Majestic Hotel*, 324 Ark. 21, 918 S.W. 2d 158 (1996); *Little Rock Convention Center & Visitors Bur. v. Pack*, 60 Ark. App. 82, 959 S.W. 2d 415 (1997); *Moore v. Darling Store Fixtures*, 22 Ark. App. 21, 732 S.W. 2d 496 (1987). Because an idiopathic fall is not related to employment, it is generally not compensable unless conditions related to employment contribute to the risk by placing the employee in a position, which increases the dangerous effect of the fall. LARSON, *supra*.

ERC Contractor Yard & Sales v. Robertson, 335 Ark. 63, 71, 977 S.W. 2d 212, 216.

Respondent contends that claimant simply tripped over her own two feet and fell as a result. Claimant testified that she did not have any explanation as to why she fell, but did believe there was some wetness on the floor because after she had fallen she

noticed that her jeans were wet. After reviewing the claimant's testimony as well as the documentary evidence and the video submitted, I find that claimant's fall was an unexplained fall. I do not find that claimant suffered an idiopathic fall which was caused by something personal to her. Instead, I find that claimant's fall was an unexplained fall and therefore pursuant to Arkansas law is compensable.

Accordingly, I find that claimant has met her burden of proving by a preponderance of the evidence that her injury arose out of and in the course and scope of her employment with the respondent. Claimant was performing employment services at the time of her fall and her fall was an unexplained fall, not an idiopathic one.

In summary, I find that claimant has met her burden of proving by a preponderance of the evidence that she suffered a compensable injury to her left hip in the form of a fracture which occurred when she fell while walking to her work station and talking to her supervisor on April 24, 2020.

Having proven that she suffered a compensable injury, claimant is entitled to payment of all reasonable and necessary medical treatment provided in connection with her compensable left hip injury.

AWARD

Claimant has met her burden of proving by a preponderance of the evidence that she suffered a compensable injury to her left hip on April 24, 2020. She is entitled to payment of all reasonable and necessary medical treatment provided in connection with that compensable injury.

Pursuant to A.C.A. §11-9-715(a)(1)(B)(ii), attorney fees are awarded “only on the amount of compensation for indemnity benefits controverted and awarded.” Here, no indemnity benefits were controverted and awarded; therefore, no attorney fee has been awarded. Instead, claimant’s attorney is free to voluntarily contract with the medical providers pursuant to A.C.A. §11-9-715(a)(4).

The respondent is responsible for payment of the court reporter fee for preparation of the hearing transcript in the amount of \$514.57.

IT IS SO ORDERED.

GREGORY K. STEWART
ADMINISTRATIVE LAW JUDGE