

# ARKANSAS COURT OF APPEALS

DIVISION I  
No. CA 08-1444

DONNA BOWLING

APPELLANT

V.

WAL-MART ASSOCIATES CLAIMS  
MANAGEMENT, INC.

APPELLEE

**Opinion Delivered** May 27, 2009

APPEAL FROM THE ARKANSAS  
WORKERS' COMPENSATION  
COMMISSION [NO. F507020]

AFFIRMED

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**COURTNEY HUDSON HENRY, Judge**

Appellant Donna Bowling appeals the decision of the Arkansas Workers' Compensation Commission denying her claim requesting an MRI as recommended by her new treating physician. For reversal, appellant asserts that substantial evidence does not support the Commission's finding that this diagnostic study was not reasonably necessary for the treatment of her compensable injury. We affirm.

Appellant began her employment at Wal-Mart in October 2004. While working in the delicatessen on July 1, 2005, she sustained an injury when a forty-pound box of frozen chicken fell from a shelf onto her right shoulder. Appellant did not seek immediate treatment, but she went to the emergency room the next day because the pain in her shoulder had not subsided. X-rays of appellant's right shoulder revealed no acute pathology, and she was diagnosed with a contusion of the right shoulder. The doctor at the emergency room released appellant to return to work with a three-pound lifting restriction and cautioned her to refrain

from raising her arm above the shoulder. On July 5, 2005, a nurse practitioner evaluated appellant's right shoulder and assessed her condition as a contusion. The nurse practitioner prescribed medication and released her to work with a ten-pound weight restriction and no pushing, pulling, or overhead reaching.

Appellee subsequently controverted the compensability of appellant's right-shoulder injury. Appellant then sought treatment from her family physician, who ordered an MRI scan. The MRI of appellant's right shoulder revealed degenerative changes of the AC joint but detected no rotator-cuff tear. Appellant's physician referred her to Dr. Raye Mitchell, an orthopedic surgeon. In a clinic note dated July 27, 2005, Dr. Mitchell interpreted the MRI as showing significant AC arthrosis and impingement. He also diagnosed appellant with rotator-cuff tendonitis but did not believe that her rotator cuff was torn. Dr. Mitchell administered an injection and prescribed physical therapy.

Appellant returned to Dr. Mitchell on August 31, 2005. In a clinic note of that date, Dr. Mitchell wrote that appellant might have rotator-cuff pathology that was not revealed on the MRI. He diagnosed right subacromial impingement and AC arthropathy and recommended distal clavicle resection surgery. Dr. Mitchell performed this surgery on September 12, 2005. During the procedure, he inspected appellant's rotator cuff and found that it was abraded but not torn. On October 27, 2005, Dr. Mitchell reported that appellant was progressing well, that her pain had resolved, and that she exhibited full range of motion in her shoulder. He released her to return to work at regular duty.

On January 4, 2006, an administrative law judge issued an opinion finding that appellant sustained a work-related injury to her right shoulder. Specifically, the law judge found that Dr. Mitchell's observation of an abraded rotator cuff constituted an objective finding sufficient to support the compensability of the injury. Accordingly, the law judge held appellee responsible for the payment of appellant's medical expenses, including the surgery, and temporary total benefits from the date of the surgery until October 27, 2005, when Dr. Mitchell released appellant to return to work. Appellee did not pursue an appeal of the law judge's decision.

Appellant saw Dr. Mitchell again on April 19, 2006, with complaints of difficulty working above her shoulder. Dr. Mitchell noted that appellant had full range of motion in her right shoulder. Based on his observation during surgery that the rotator cuff was intact, he opined that her symptoms were related to the deltoid muscle and not the cuff. Dr. Mitchell assigned a four-percent impairment rating which he attributed to appellant's pre-existing degenerative condition of the AC joint and not the injury caused by the box of chicken falling on her shoulder.

Appellant subsequently requested, and the Commission granted, a one-time change of physician to Dr. Christopher Arnold. Dr. Arnold examined appellant on August 17, 2006, and formed the impression of right-shoulder weakness following the previous surgery. He recommended an MRI out of concern that she might have experienced more injury to the rotator cuff and that it might now be torn. Appellee refused to pay for the MRI, and

appellant submitted a claim arguing that she was entitled to the MRI to determine whether she had a tear in her rotator cuff.

After a hearing on appellant's claim, the law judge found that the MRI was not reasonable and necessary for the treatment of appellant's compensable injury. The law judge considered the evidence that appellant's pre-surgery MRI revealed no rotator-cuff tear and that Dr. Mitchell observed no tear during the surgery. The law judge also noted that Dr. Arnold's medical report indicated that appellant may have suffered another injury to her rotator cuff that could have resulted in a tear. Based on these factual findings, the law judge concluded that any tear that might exist was not causally related to appellant's original compensable injury. Appellant appealed that decision, and the Commission affirmed and adopted the law judge's decision.

Appellant now appeals the Commission's decision to this court. She contends that substantial evidence does not support the Commission's determination that the MRI was not reasonable and necessary for the treatment of her compensable injury.

Our workers' compensation law states that an employer shall provide medical services that are reasonably necessary in connection with the injury received by the employee. Ark. Code Ann. § 11-9-508(a) (Supp. 2007); *Curtis v. Big Lots*, \_\_\_ Ark. App. \_\_\_, \_\_\_ S.W.3d \_\_\_ (Apr. 15, 2009). The employee has the burden of proving by a preponderance of the evidence that medical treatment is reasonable and necessary. *Stone v. Dollar Gen. Stores*, 91 Ark. App. 260, 209 S.W.3d 445 (2005). What constitutes reasonable and necessary medical

treatment is a question of fact to be determined by the Commission. *Bohannon v. Wal-Mart Stores, Inc.*, 102 Ark. App. 37, 279 S.W.3d 502 (2008).

In appeals involving claims for workers' compensation, this court views the evidence and all reasonable inferences deducible therefrom in the light most favorable to the Commission's decision and affirms the decision if it is supported by substantial evidence. *Kimbell v. Ass'n of Rehab Indus. & Bus. Companion Prop. & Cas.*, 366 Ark. 297, 235 S.W.3d 499 (2006). Substantial evidence is evidence that a reasonable mind might accept as adequate to support a conclusion. *Dorris v. Townsends of Ark., Inc.*, 93 Ark. App. 208, 218 S.W.3d 351 (2005). Where the Commission denies a claim because of the claimant's failure to meet her burden of proof, the substantial-evidence standard of review requires that we affirm if the Commission's decision displays a substantial basis for the denial of relief. *Kimbell, supra*.

As in *Goyne v. Crabtree Contracting Co., Inc.*, \_\_\_ Ark. \_\_\_, \_\_\_ S.W.3d \_\_\_ (Mar. 18, 2009), the controlling issue in this case is whether the recommended testing was reasonable and necessary for the treatment of appellant's compensable injury. When the evidence is viewed in the appropriate light, we conclude that the Commission's decision is supported by substantial evidence. Dr. Arnold recommended the MRI at issue to determine whether appellant had a tear in her rotator cuff one year after appellant's work-related injury. The record, however, reflects that appellant did not sustain a rotator-cuff tear when the box of chicken fell onto her shoulder, as both the previous MRI and Dr. Mitchell's observation during surgery confirmed the absence of a rotator-cuff tear. The record contains no evidence linking any possible tear to the compensable injury, and Dr. Arnold's office note suggests that,

if there was a tear, it was caused by a subsequent event. Consequently, the Commission's decision displays a substantial basis for the conclusion that an MRI was not reasonable and necessary for the treatment of the compensable injury.

Affirmed.

PITTMAN and MARSHALL, JJ., agree.