

FINAL AWARD DENYING COMPENSATION
(Affirming Award and Decision of Administrative Law Judge)

Injury No.: 07-000315

Employee: Vannessa Crumpler

Employer: Wal-Mart Associates, Inc.

Insurer: American Home Assurance

Date of Accident: Alleged January 5, 2007

Place and County of Accident: Alleged Springfield, Greene County, Missouri

The above-entitled workers' compensation case is submitted to the Labor and Industrial Relations Commission (Commission) for review as provided by section 287.480 RSMo. Having reviewed the evidence and considered the whole record, the Commission finds that the award of the administrative law judge is supported by competent and substantial evidence and was made in accordance with the Missouri Workers' Compensation Act. Pursuant to section 286.090 RSMo, the Commission affirms the award and decision of the administrative law judge dated May 12, 2008, and awards no compensation in the above-captioned case.

The award and decision of Chief Administrative Law Judge Victorine Mahon, issued May 12, 2008, is attached and incorporated by this reference.

Given at Jefferson City, State of Missouri, this 17th day of October 2008.

LABOR AND INDUSTRIAL RELATIONS COMMISSION

William F. Ringer, Chairman

Alice A. Bartlett, Member

John J. Hickey, Member

Attest:

Secretary

AWARD

Employee: Vanessa Crumpler

Injury No.: 07-000315

Dependents: N/A

Employer: Wal-Mart Associates, Inc.

Additional Party: N/A

Insurer: American Home Assurance

Hearing Date: April 8, 2008

Before the
DIVISION OF WORKERS'
COMPENSATION
Department of Labor and Industrial
Relations of Missouri
Jefferson City, Missouri

Checked by: VRM/MB

FINDINGS OF FACT AND RULINGS OF LAW

1. Are any benefits awarded herein? No.
2. Was the injury or occupational disease compensable under Chapter 287? No.
3. Was there an accident or incident of occupational disease under the Law? No.
4. Date of accident or onset of occupational disease: Alleged January 5, 2007.
5. State location where accident occurred or occupational disease was contracted: Springfield, Greene County, Missouri.
6. Was above employee in employ of above employer at time of alleged accident or occupational disease? Yes.
7. Did employer receive proper notice? Yes.
8. Did accident or occupational disease arise out of and in the course of the employment? No.
9. Was claim for compensation filed within time required by Law? Yes.
10. Was employer insured by above insurer? Yes.
11. Describe work employee was doing and how accident occurred or occupational disease contracted: Employee was working at the deli counter when she suffered a diabetic seizure.
12. Did accident or occupational disease cause death? No. Date of death? N/A.
13. Part(s) of body injured by accident or occupational disease: Employee claims no Permanent Partial Disability.
14. Nature and extent of any permanent disability: None.
15. Compensation paid to-date for temporary disability: None.
16. Value necessary medical aid paid to date by employer/insurer? None.

17. Value necessary medical aid not furnished by employer/insurer? None.
18. Employee's average weekly wages: \$338.00.
19. Weekly compensation rate: \$225.33.
20. Method wages computation: Stipulation.

COMPENSATION PAYABLE

21. Amount of compensation payable: None.
22. Second Injury Fund liability: None.
23. Future requirements awarded: None.

FINDINGS OF FACT and RULINGS OF LAW:

Employee: Vanessa Crumpler

Injury No.: 07-000315

Dependents: N/A

Before the
DIVISION OF WORKERS'
COMPENSATION
Department of Labor and Industrial
Relations of Missouri
Jefferson City, Missouri

Employer: Wal-Mart Associates, Inc.

Additional Party: N/A

Insurer: American Home Assurance

Hearing Date: April 8, 2008

Checked by: VRM/MB

INTRODUCTION

The parties appeared before the undersigned Administrative Law Judge for a Final Hearing on April 8, 2008, in Springfield, Greene County, Missouri. Venessa Crumpler (Employee) appeared in person and by attorney Randy Alberhasky. Wal-Mart Associates, Inc., and its insurer, American Homes Assurance (Employer), appeared by its counsel Jerry Harmison. The Second Injury Fund is not a party to this proceeding. Employee seeks payment of a medical bill in the amount of \$3,154.38. Employee seeks no Permanent Partial Disability, no Temporary Total Disability, or other benefits. Employee also seeks costs pursuant to § 287.560 RSMo Cum. Supp. 2005, due to the Employer's alleged unreasonable refusal to provide reimbursement for medical care. Employer has filed a motion for sanctions, citing § 287.560 RSMo 2000 and § 287.128 RSMo Cum. Supp. 2005. Employer alleges that the claim is fraudulent. Both motions are made a part of the Legal File.

STIPULATIONS

1. Employee Vanessa Crumpler was an employee of Wal-Mart Associates, Inc., on January 5, 2007, and was working on that date.
2. On January 5, 2007, Wal-Mart Associates, Inc., was an Employer within the meaning of the Workers'

Compensation Law and was fully insured by American Home Assurance.

3. Both Employee and Employer were operating under and subject to the Missouri Workers' Compensation Law on January 5, 2007.
4. Employee provided notice of her alleged accident and her claim was filed timely.
5. The alleged accident occurred in Springfield, Greene County, Missouri. Jurisdiction and venue are appropriate.
6. Employee's average weekly wage was \$338.00, yielding a Temporary Total Disability and Permanent Partial Disability rate of \$224.33. Employee, however, seeks no weekly disability benefits.
7. No medical or weekly benefits have been paid as of the date of the hearing.

ISSUES

1. Did Employee sustain an accident arising out of and in the course of her employment?
2. Did Employee sustain an injury that is medically and causally related to her work?
3. Is Employer liable for past medical expenses in the amount of \$3,154.38?
4. Is either party entitled to costs as a result of an unreasonable or fraudulent defense or prosecution?

EXHIBITS

Admitted Exhibits Offered by Employee:

- A. Medical Records – Cox Medical Center
- B. Medical Bills – Cox Medical Center
- C. Claim for Compensation
- D. Answer filed by Employer
- E. Attorney Contract
- F. Litigation Expenses

Admitted Exhibits Offered by Employer:

1. Deposition – Vennessa Crumpler
2. Request for Hearing

FINDINGS OF FACT

Employee has been a diabetic for 15 years and is insulin dependent. On January 5, 2007, Employee suffered an incident in which her blood sugar dropped too low. She collapsed at work, became unconscious, lost bladder control, and was shaking and foaming at the mouth. A customer, who also was a paramedic, called 911. Over the objections of her husband, Employee was transported to a nearby hospital where she was treated and released later that evening. Employee returned to work five days later with no additional injuries or disability. Employee seeks only reimbursement of the medical expenses she incurred on January 5, 2007, including the ambulance ride to the hospital.

Employee asserts that she is entitled to reimbursement of her medical expenses because 1) neither she or her husband requested any medical treatment; 2) Wal-Mart management authorized the medical treatment and assured Employee's husband that the bills would be paid; and 3) Employee suffered the diabetic episode only after Employer altered her work schedule and then refused to allow her to take her lunch break when necessary.

There is no dispute that when Employee first began working for Wal-Mart she had steady work hours, beginning and ending at the same time each day. When there was a change in management, Employee's hours were altered. But Charlotte Campbell, the lead Deli person, dispelled any notion that Employee's work schedule was erratic. Ms. Campbell explained that Employee normally worked days and her start time could fluctuate by an hour. Employee was required to take a lunch break within six hours and she additionally was provided two breaks, during which she could also eat. Employee admitted that even when she had a set work schedule, she had problems controlling her diabetes and previously had suffered a diabetic event while at work.

Employee began work at 6:00 a.m. on the morning of January 5, 2007. She would have been scheduled to take her lunch by Noon. Shortly before Noon, Employee advised her supervisor that she needed to eat something. Her supervisor, Charlotte Campbell, said that Employee could go to lunch as soon as her co-worker returned from her break, which was in about 15 minutes. Employee testified by deposition that, if her blood sugar is too low, she could eat a piece of candy to remedy the situation. Prior to Noon, Employee collapsed—without having made it to her lunch break.

Ms. Campbell said she observed Claimant on the floor, unconscious, jerking and shaking, with foam coming from her mouth. Employee had lost control of her bladder. A customer who was an off-duty paramedic came into the Deli area to tend to Employee. Ms. Campbell then called a “Code White” over the store intercom to alert the store’s management that there was a medical emergency.

Despite conflicting testimony, Charlotte Campbell credibly testified that she did not initiate a call to Employee’s mother or anyone else outside of the Wal-Mart store. Ms. Campbell did answer the telephone in the Deli area and spoke with Employee’s husband who was on the other end of the phone line. Ms. Campbell did not assure Employee’s husband or anyone else that Wal-Mart would pay for any medical bills. Ms. Campbell knew she had no authority to authorize any medical bills.

Shirley Piggott, an assistant manager in charge of safety, heard the “Code White” and responded to the Deli with other managers. She observed Employee who was incoherent, had lost control of her bodily functions, and was foaming from her mouth. It was Ms. Piggott who contacted Employee’s mother and asked that she contact Employee’s husband. Ms. Piggott did not call 911. As a result of the 911 call made by the customer/paramedic, an ambulance arrived about the same time that the store’s management had arrived in the Deli. This also was about the same time that Employee’s husband was on the phone with Charlotte Campbell.

When Ms. Campbell received the phone call in the Deli, she spoke briefly to Employee’s husband and then handed the telephone to a paramedic who was attending to Employee. Employee’s husband attempted to direct his wife’s medical care and asked the paramedic not to transport his wife to the hospital; but the ambulance paramedic ignored the husband’s request. The paramedics made the decision to transport Employee to the hospital. The personnel from Wal-Mart did not make the decision to transport Employee to the hospital.

Like Ms. Campbell, I find, based on all of the evidence, that Ms. Piggott also did not assure Employee’s husband that Wal-Mart would pay any bills. While there were other managers on the scene in the Deli after Employee had collapsed, there is no credible evidence identifying any one of these other managers as having assured Employee’s husband or mother that medical bills would be paid by Wal-Mart.

Employee still was incoherent when she left the store. Employee’s mother stated that she, also, asked that her daughter not be sent to the hospital. Employee’s mother, however, did not know that her daughter had lost bladder control or was foaming at the mouth.

Employee did not have health insurance because she did not believe she could afford the insurance premium. It was for this reason that Employee’s husband did not want Employee taken to the hospital and incur expenses for what he believed was a minor incident. Employee’s husband had been a diabetic and was familiar with the treatment for his wife’s condition. While he testified that he believed the whole incident was ridiculous, he admitted that when he arrived at the hospital his wife still was unconscious. Even though he personally attempted to administer some sugar to his wife, she would not cooperate. Employee’s husband admitted that the paramedic who was treating his wife did not take his treatment suggestions seriously. He further admitted that the paramedic ignored his request that his wife not be transported to the hospital.

CONCLUSION OF LAW

No accident within the course and scope of employment.

Section 287.020, RSMo Cum Supp. 2005, prescribes the standard for determining whether Employee sustained an injury by accident within the course and scope of employment for which she may obtain Workers’ Compensation benefits. That provision reads in applicable part as follows:

2. The word “**accident**” as used in this chapter shall mean an unexpected traumatic event or unusual strain identifiable by time and place of occurrence and producing at the time objective symptoms of any injury caused by a specific event during a single work shift. An injury is not compensable because work was a triggering or precipitating factor.

3. (1) In this chapter the term “**injury**” is hereby defined to be an injury which has arisen out of and in the course of employment. An injury by accident is compensable only if the accident was the prevailing factor in causing both the resulting medical condition and disability. The “**prevailing factor**” is defined to be the primary factor, in relation to any other factor, causing both the resulting medical condition and disability.

(2) An injury shall be deemed to arise out of and in the course of employment only if:

(a) It is reasonably apparent, upon consideration of all the circumstances, that the accident is the prevailing factor in causing the injury; and

(b) It does not come from a hazard or risk unrelated to the employment to which workers would have been equally exposed outside of and unrelated to the employment in normal nonemployment life.

(3) An injury resulting directly or indirectly from idiopathic causes is not compensable.

The plain language of the statute precludes an award of Workers' Compensation benefits for an injury resulting directly or indirectly from an idiopathic condition. An idiopathic condition means a condition that is "peculiar to the individual, innate." *Ahern v. P&H, LLC*, No. 90341 (Mo. App. E.D. March 25, 2008) (Slip Op. 4).^[1] Clearly, the evidence demonstrates that Employee collapsed because of an idiopathic condition, peculiar to herself: her diabetic condition. She does not claim any disability or other injury as a result of her fall. Based on the plain language of the statute, Employee is not entitled to benefits as a result of the incident that occurred at Wal-Mart on January 5, 2007.

Employee contends in her brief, however, that because Employer failed to affirmatively plead the issue of idiopathic condition, it is precluded from defending on that basis. Employee cites no statutory provision or caselaw which denominates "idiopathic condition" as an affirmative defense, and I can find no such authority. As set out above, § 287.020 RSMo, defines accident and injury, and establishes the requirements for compensability. Idiopathic causes are discussed in this same statute. An idiopathic cause is not an exception to *general* liability found in some *other* section of the Workers' Compensation Law or other statutes outside of that Law. Thus, it does not fall within the category normally designated as an "affirmative defense," such as notice or statute of limitations. *See Mo. Prac. 29, Workers' Compensation Law and Practice*, § 4.1, 2nd Ed. (indicating that only exceptions to general liability created in other sections or other statutes constitute affirmative defenses). Moreover, Employee's deposition taken March 31, 2008 (Employer's Ex. 1), clearly demonstrates that even before the hearing Employer's defense has been that the medical treatment administered on January 5, 2007, was not related to work, but was due to Employee's preexisting diabetic medical condition. There can be no serious claim that Employee was unaware of Employer's theory of defense prior to the hearing.

Employee did not sustain an injury that is medically and causally related to work.

Employee readily admitted that she only was claiming medical benefits for the treatment she received when she passed out at work due to her low blood sugar. She was not claiming that her need to go to the hospital was related to any other condition or that she sustained any other injury when she collapsed.

There is no medical evidence that Employee's low blood sugar was caused by Employer's refusal to immediately send Employee to lunch. The delay in going to lunch was 15 minutes or less. Employee conceded that her blood sugar was difficult to control. She had experienced diabetic events in the past, even when she had a steady work schedule. The variation in Employee's work schedule was not significant. And, Employer provided Employee with two 15-minute breaks at which she could consume food, in addition to her normal meal break. Thus, the evidence does not support a finding that Employee sustained an injury that is medically and causally related to work.

Employer is not liable for any medical expenses.

Section 287.140, RSMo, requires an employer to provide medical treatment as may be reasonably required to cure and relieve an employee from the effects of the work-related injury. Having found that Claimant sustained no injury that is medically and causally related to work, and no injury by accident that occurred within the course and scope of employment, Employer has no liability for medical benefits under § 287.140, RSMo.

Employee argues, however, that Employer "authorized" medical benefits and then reneged on the promise to pay. I have made the factual finding that neither Ms. Piggott, one of the store manager's, nor Ms. Campbell, the lead Deli employee, authorized the payment of Employee's medical bills. There is insufficient evidence that anyone else in authority with Wal-Mart authorized the payment of Employee's medical bills. Even assuming *arguendo* that there was such evidence, Employee cites no statutory or case authority for the proposition that the mere promise to pay a medical bill authorizes a Workers' Compensation Award for such benefits under Chapter 287 when the injury is otherwise not compensable.

No Costs Awarded

The appellate court's decision in *Ahern*, ED No. 90341, pertaining to idiopathic causes under the 2005 amended

version of the Workers' Compensation Law, was decided less than two weeks prior to the hearing in the instant case. Given the scant amount of case decisions interpreting the 2005 amendment to § 287.020 RSMo, I am reluctant to fault either party for bringing or defending a case involving idiopathic causes. I conclude that neither party has brought or defended this case without reasonable grounds.

To the extent that Employer's motion specifically alleges fraud, § 287.128.8 RSMo, provides that any person may file a complaint alleging fraud or noncompliance "with a legal advisor in the division of workers' compensation. The legal advisor shall refer the complaint to the fraud and noncompliance unit within the division." Given the mandatory directive of the statute, a copy of Employer's motion shall be forwarded to the Fraud and Noncompliance Unit within the Division of Workers' Compensation.

Date: May 12, 2008

Made by: /s/ Victorine R. Mahon

Victorine Mahon

Chief Administrative Law Judge

Division of Workers' Compensation

A true copy: Attest:

/s/ Jeff Buker

Jeff Buker

Director

Division of Workers' Compensation

[II](#) The undersigned Administrative Law Judge is aware that this case is not final. The initial motion for transfer or rehearing was just denied on April 29, 2008. But, the appellate court affirmed the Commission's decision, adopting the opinion of the Administrative Law Judge. These I also find persuasive and this is the only case precedent to date that has addressed the issue of idiopathic causes under the 2005 amendments to the Workers' Compensation Law.