

IN THE SUPREME COURT OF TENNESSEE
SPECIAL WORKERS' COMPENSATION APPEALS PANEL
AT NASHVILLE
February 2000 Session

MERLIN GENE CLETCHER v. WAL-MART STORES, INC.

**Direct Appeal from the Chancery Court for Macon County
No. 2247 Honorable C.K. Smith, Chancellor**

**M1998-00011-WC-R3-CV - Mailed October 24, 2000
Filed - November 28, 2000**

This workers' compensation appeal has been referred to the Special Workers' Compensation Appeals Panel in accordance with Tenn. Code Ann. Section 50-6-225(e)(3) for hearing and reporting findings of fact and conclusions of law. The employer, Wal-Mart, contends the trial court erred when it held 1) that Dr. Dan Jackson's treatment of Plaintiff's workers' compensation injury was reasonable and necessary, 2) that Dr. Jackson, a chiropractor, was and should remain an authorized provider, and 3) that Defendant should pay for all future medical-related charges that Dr. Jackson deems reasonable and necessary for the treatment of the compensable injury which is the subject of this action. After careful review of the record, it is the opinion of this Panel that the decision of the trial court should be affirmed.

Tenn. R. App. P. 3; Judgment of the trial court AFFIRMED.

Gayden, Sp. J., delivered the opinion of the Panel, in which Drowota, J. and Loser, Sp. J. joined.

Jeffrey P. Boyd and B. Chadwick Rickman, Allen, Kopet & Boyd, Jackson, Tennessee for the Appellant, Wal-Mart Stores, Inc.

E. Guy Holliman and William Joseph Butler, Farrar & Holliman, Lafayette, Tennessee for the Appellee, Merlin Gene Cletcher.

OPINION

On February 24, 1991, Plaintiff/Appellee Merlin Cletcher suffered a compensable injury to his neck and shoulder area arising out of and within the course and scope of his employment at Defendant/Appellant Wal-Mart. On March 3, 1994, the trial court issued an Order awarding Appellee 17% permanent partial disability benefits to the body as a whole. Further, the trial court ordered Appellant to pay Appellee's future reasonable and necessary medical expenses. At this time, Dr. Dan Jackson, a chiropractor, was and continued to be Appellee's approved treating

provider.

The present action was commenced in October 1996 when Appellee filed a motion to require Appellant Wal-Mart to show cause as to why it had not paid certain medical expenses incurred by Appellee. At a January 16, 1998 hearing on the issue, Appellant questioned whether Dr. Jackson's treatment of the thoracic spine area was reasonable and necessary for the treatment of Appellee's original compensable injury to the neck and shoulder.

As instructed by the trial court, Dr. Jackson drafted a letter to Appellant's insurer explaining why the treatment of the thoracic spine area was reasonable and necessary for the treatment of Appellee's compensable injury. Subsequently, by Order of the trial court, Appellee was examined on October 13, 1998 by Dr. David Dagen, a chiropractor retained by the insurer. At a hearing held on October 29, 1998, Dr. Dagen opined that some of Dr. Jackson's treatments were for a pre-existing condition; he also conceded, however, that Dr. Jackson was in a better position to make that determination. After considering the depositions of both doctors, exhibits, and arguments from counsel, the trial court held that the charges billed to Appellant by Dr. Jackson were reasonable and necessary and related to the treatment of Appellee's compensable injury. The trial court also held that Dr. Jackson was an authorized treating medical provider and did not find good cause to remove him as such for Appellee's continuing chiropractic needs related to this work injury. Furthermore, the trial court ordered Appellant to pay all future charges by Dr. Jackson found to be reasonable and necessary and extending from the original workers' compensation injury.

Tenn. Code Ann. Section 50-6-225 (e)(2) instructs that, "Review of findings of fact by the trial court shall be de novo upon the record of the trial court, accompanied by a presumption of the correctness of the finding, unless the preponderance of the evidence is otherwise."

After careful review of the record and consideration to arguments from counsel, it is the opinion of this Panel that the preponderance of the evidence supports the trial court's ruling. Therefore, the decision of the trial court is affirmed. Costs of this appeal are taxed to Appellant.

HAMILTON V. GAYDEN, JR., SPECIAL JUDGE

IN THE SUPREME COURT OF TENNESSEE
SPECIAL WORKERS' COMPENSATION APPEALS PANEL

MERLIN GENE CLEATHER v. WAL-MART STORES, INC.

**Chancery Court for Macon County
No. 2247**

No. M1998-00011-WC-R3-CV - Filed - November 28, 2000

JUDGMENT

This case is before the Court upon the entire record, including the order of referral to the Special Workers' Compensation Appeals Panel, and the Panel's Memorandum Opinion setting forth its findings of fact and conclusions of law, which are incorporated herein by reference.

Whereupon, it appears to the Court that the Memorandum Opinion of the Panel should be accepted and approved; and

It is, therefore, ordered that the Panel's findings of fact and conclusions of law are adopted and affirmed, and the decision of the Panel is made the judgment of the Court.

Costs will be paid by the appellant, for which execution may issue if necessary.

IT IS SO ORDERED.

PER CURIAM