

ARKANSAS COURT OF APPEALS

DIVISION IV
No. CA08-1201

DAMON WILSON

APPELLANT

V.

WAL-MART ASSOCIATES, INC. AND
CLAIMS MANAGEMENT, INC.

APPELLEES

Opinion Delivered APRIL 22, 2009

APPEAL FROM THE ARKANSAS
WORKERS' COMPENSATION
COMMISSION,
[NO. F703269]

AFFIRMED

RITA W. GRUBER, Judge

Damon Wilson appeals the June 27, 2008 decision of the Workers' Compensation Commission that his left-shoulder injury was compensable but that he was not entitled to related benefits until the date he filed notice of it. The injury was a gradual-onset injury that was caused by overuse of his left arm because of a previous, compensable injury to his right shoulder. Wilson contends on appeal that he was entitled to benefits for the left shoulder beginning on June 14, 2006, when appellees had actual notice of the injury through his medical records. We affirm.

With exceptions not pertinent here, "the employee shall report the injury to the employer on a form prescribed or approved by the Workers' Compensation Commission," and the employer is not responsible for benefits related to the injury "prior to receipt of the employee's report of injury." Ark. Code Ann. § 11-9-701(a)(1) (Repl. 2002). Failure to give

the notice shall not bar a claim, however, if the employer had knowledge of the injury. Ark. Code Ann. § 11-9-701(b)(1)(A) (Repl. 2002).

The provisions of our workers' compensation law are to be strictly construed. Ark. Code Ann. § 11-9-704(c)(3) (Repl. 2002); *Hapney v. Rheem Mfg. Co.*, 341 Ark. 548, 26 S.W.3d 771 (2000). Strict construction is narrow construction and requires that nothing be taken as intended that is not clearly expressed. *Sykes v. Williams*, 373 Ark. 236, --- S.W.3d ---- (2008). The doctrine of strict construction requires that the plain meaning of the language be employed. *Id.*

The history of this case includes two hearings before the administrative law judge. At a March 27, 2007 hearing to determine the compensability of Wilson's right-shoulder injury, Wilson testified as follows regarding events that began on June 1, 2004, when he felt a painful "pop" while picking up a case of oil to place on a conveyor belt. An accident report was filled out on that date, but Wilson did not immediately ask to see a doctor. When he later sought medical treatment because the pain did not quit, he was prescribed Celebrex and placed on three weeks' restrictions. The pain continued to cause problems when he went back to his regular job. He began using his left arm more, and he was assigned the job of driving an electric forklift to lessen the use of his right shoulder. He had right-shoulder surgery on October 28, 2005, and he returned to the driving job on January 23, 2006. Wilson said that left-shoulder surgery was later performed "due to interior instability," explaining that "this was sort of what was wrong" with his right shoulder "but different." The law judge concluded from the medical evidence, the accident report, and Wilson's

testimony that the right-shoulder injury was compensable and that appellees were liable for all reasonable and necessary medical treatment related to the injury.

The compensability of Wilson's left-shoulder injury was litigated at a September 11, 2007 hearing. Wilson contended that the injury had occurred because he had overused it as a result of his right-shoulder injury. Appellees responded that they had not received notice of the alleged injury until the filing of Wilson's AR-C form on April 3, 2007.

Medical records introduced at the second hearing included Dr. Michael Park's report of Wilson's June 14, 2006 office visit for follow-up after right-shoulder surgery. Dr. Park observed then that the left shoulder had become "more symptomatic and painful," and that examination revealed "increased translation anteriorly/inferiorly with a positive apprehension sign." Dr. Park stated, "I suspect that with use of this arm while having to with-hold the other side, pre and post operatively, he's progressing in his gradual instability on this side."

Wilson testified at the second hearing that he worked in his regular job for about thirteen months after injuring his right shoulder on June 1, 2004, and he overcompensated by using his left arm and shoulder. He explained that he used his non-dominant left hand for steering when he switched to driving the forklift, that the left shoulder began hurting six to seven months after the right-shoulder injury, that he mentioned it during a doctor's visit as soon as it became a problem, and that left-shoulder surgery was performed on November 7, 2006. He agreed that the first mention of his left-shoulder problem was in Dr. Park's medical note of June 14, 2006, when Wilson was being seen for his right shoulder. He testified that he never reported the left-shoulder problem to his supervisor, and he agreed that he did not

fill out any forms when it first developed.

The administrative law judge issued an opinion concluding that the left-shoulder injury was compensable but that appellees' responsibility for related medical treatment did not begin until the date Wilson filed his AR-C form giving notice of injury to the left shoulder. In an opinion of June 27, 2008, the Commission affirmed and adopted the decision of the law judge.

We will not reverse the Commission's decision unless we are convinced that fair-minded people with the same facts before them could not have reached the same conclusions reached by the Commission. *Smith v. County Market/Southeast Foods*, 73 Ark. App. 333, 44 S.W.3d 737 (2001). Where a claim has been denied, the substantial-evidence standard of review requires that we affirm if the Commission's opinion displays a substantial basis for the denial of relief. *Neal v. Sparks Reg'l Med. Ctr.*, 104 Ark. App. 97, --- S.W.3d ---- (2008).

Wilson argues on appeal, as he did below, that actual notice of his left-shoulder injury was received through the medical records of treatment for his right-shoulder, compensable injury. The Commission rejected this argument, noting the following evidence: Wilson did not report the left-shoulder problem to his supervisor or to anyone at Wal-Mart; he did not ask for any accommodation at work for his left-shoulder problems, nor did he talk to his supervisors about such problems; he signed his AR-C form on March 27, 2007; and a letter notifying respondents of the claim was sent out on April 3, 2007. Thus, the Commission's opinion displays a substantial basis for its decision that mere reference to left-shoulder problems, found in the medical report related to treatment for the right-shoulder injury, failed

to provide sufficient notice of the left-shoulder injury.

Affirmed.

PITTMAN and ROBBINS, JJ., agree.