

**MISSISSIPPI WORKERS' COMPENSATION COMMISSION**

**MWCC NO. 11 04293-K-8072-C**

**JUAN D. McLaurin**

**CLAIMANT**

**V.**

**WAL-MART ASSOCIATES, INC.**

**EMPLOYER**

**AND**

**NATIONAL UNION FIRE INSURANCE COMPANY  
OF PITTSBURGH, PA.**

**CARRIER**

**APPEARING FOR CLAIMANT:**

**Garner J. Wetzel, Esquire, and  
James K. Wetzel, Esquire, Gulfport, Mississippi**

**APPEARING FOR EMPLOYER AND CARRIER:**

**Sandra T. Doty, Esquire, Jackson, Mississippi**

***ORDER OF ADMINISTRATIVE JUDGE***

On May 10, 2011, the claimant, Juan McLaurin, filed a petition to controvert alleging that on April 25, 2011, he received a work-related injury to his head, neck, shoulders, back, and legs when he "was cleaning a restroom and slipped and fell, landing on his back and hit his head on the cement floor, jarring his whole body" at the Wal-Mart Store on Highway 49 in Gulfport, Mississippi. The employer and carrier paid for the initial doctor's visits but did not pay any disability benefits and then stopped paying medical benefits after investigating and concluding that Mr. McLaurin did not have an accident on April 25, 2011. A hearing was held in the Harrison County Justice Court Building in Gulfport on April 11, 2012. The matter was held in abeyance pending submission of proposed orders and findings of facts by the parties.

### ***STIPULATIONS***

The parties stipulated that Mr. McLaurin's average weekly wage on April 25, 2011, was \$226.36.

### ***ISSUES***

The issues to be resolved by the Administrative Judge are as follows:

(1) Whether the claimant, Juan McLaurin, received a work-related injury to his head, neck, shoulders, back, and legs on April 25, 2011, as alleged in the petition to controvert; and

(2) If so, the existence/extent of occupational disability resulting from the work injury.

### ***EXHIBITS***

The following exhibits were received into evidence:

#### For the claimant:

1. Medical records and authenticating affidavit from Dr. Eugene McNally, the Family Clinic, Gulfport, Mississippi.

2. Medical records and authenticating affidavit from Dr. Eric H. Wolfson, Spinal and Neurological Surgery of South Mississippi, Gulfport.

#### For the employer/carrier:

3. Pre-injury wage statement for Juan McLaurin.

4. Surveillance video preserved and maintained by the store showing Juan McLaurin's activities on the date of the alleged incident.

5. Deposition of Dr. Eric H. Wolfson taken on February 2, 2012.

6. Medical records and authenticating affidavit from Crossroads Recovery Center (Gulf Coast Mental Health Center).
7. Medical records and authenticating affidavit from Dr. Eugene McNally.
8. Medical records and authenticating affidavit from Biloxi Regional Medical Center.
9. Medical records and authenticating affidavit from Memorial Hospital at Gulfport.
10. Medical records and authenticating affidavit from Baptist Memorial Hospital - Desoto, Southaven, Mississippi.
11. Medical records and authenticating affidavit from Memorial Physician's Clinic, Gulfport.
12. Medical records and authenticating affidavit from Dr. Eric H. Wolfson, Spinal & Neurological Surgery of South Mississippi, Gulfport.
13. Medical records and authenticating affidavit from Garden Park Medical Center, Gulfport.
14. Collective exhibit of photographs of the front bathroom area in the Wal-Mart Store, Gulfport, taken by the employer/carrier's attorney on February 3, 2012.
15. Associate Incident Log Form dated April 26, 2011, and documents evidencing job offers from the employer to Juan McLaurin.
16. Office note of Dr. Eric H. Wolfson, dated March 19, 2012, with MRI results attached.
17. Deposition of Dr. Chelsea Grow, taken April 2, 2012.

General exhibits:

18. First Report of Injury, prepared April 26, 2011, by John Pierotich.
19. B-52 form, Employer's Notice of Controversion, dated May 4, 2011.
20. Deposition of the claimant, Juan McLaurin, taken December 14, 2011.

***REVIEW OF THE TESTIMONY AND RELATED DOCUMENTARY EVIDENCE***

The claimant, Juan Deoto<sup>1</sup> Martez McLaurin, is 27 years old and a resident of Gulfport, Mississippi. He was born and raised in Gulfport, and he graduated from Gulfport High School in 2004 in special education.

At the hearing, Mr. McLaurin walked with the assistance of a cane. He also wore a brace on his right hand/wrist.

Mr. McLaurin is married to Alexis McLaurin and has four children, two boys and two girls, ranging in age from one to eight years old at the time of the hearing. Mr. McLaurin testified that his wife is studying criminal justice through an online college program. Mrs. McLaurin and the children all came to the hearing.

After high school, Mr. McLaurin went to the Gulfport Job Corps Center and graduated in six months, qualified as a certified nurse assistant. After the Job Corps training, Mr. McLaurin worked as a cook at Wendy's in Gulfport for about six months. He was employed at Food Giant in Gulfport as a food stocker for about six months. He worked at the President Casino as a dishwasher for about two years while working for a temp agency. He left that job when Katrina hit the Gulf Coast in 2005. He moved to Olive Branch, Mississippi, in 2005 after Katrina, and he lived there about a year. He

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<sup>1</sup>Or De'Onte, as stated at his deposition. (Exhibit 20, p. 3).

worked about eight months as a housekeeper at the Hampton Inn in Olive Branch. Later, he was employed at the Ann Taylor Factory Outlet Mall in Gulfport selling clothing for about seven months.

In about January of 2010, Mr. McLaurin moved with his wife and (then) three children to Panama City, Florida, when his wife was transferred. She worked for Wal-Mart as a cashier or door greeter. Beginning in August 2010, Mr. McLaurin was also employed at Wal-Mart in Panama City, working as a stocker in the produce department until he moved back to Gulfport. He began working at the Wal-Mart Store in Gulfport in October 2010 and worked there over the course of about six months until April 25, 2011.

When asked about prior injuries, Mr. McLaurin testified that in 2006 he was involved in a motor vehicle accident in Olive Branch, Mississippi. He had no injuries in the accident but suffered seizures after the accident. He has not filed a civil lawsuit nor had a prior workers' compensation claim.

Mr. McLaurin, however, has suffered with a lot of different medical conditions, including bipolar disorder and schizophrenia, first diagnosed in 2008 by a Gulfport mental health center. He has had seizures since he was ten or eleven years old and has received treatment for seizures throughout his lifetime. Mr. McLaurin testified he also suffers from insomnia, high blood pressure, epilepsy, diabetes, and hiatal hernia. He takes a long list of medicines. He said his wife helps him fill out medical questionnaires at doctors' offices.

Mr. McLaurin has been awarded Social Security disability benefits. Since November 2009, he has received about \$600 a month in benefits. Mr. McLaurin said it was because he has seizures, bipolar disorder, and schizophrenia.

At Wal-Mart in Gulfport, Mr. McLaurin worked four or five days a week, and his schedule varied from day to day. He first worked on the night shift and then switched to days because of health problems with seizures. At first he was denied accommodations, then he talked to the store manager, Tisha Green. She told him when a job came available on the day shift she would put him into that job, and subsequently she did. Mr. McLaurin testified that store management knew ahead of time that he had seizures because he had told the night managers about it.

By April 2011, Mr. McLaurin was working a day shift under the supervision of John Pierotich. Mr. McLaurin did general cleaning of the entire store, including maintaining the floors and bathrooms.

Mr. McLaurin testified that he enjoyed his work at Wal-Mart. He said he had no problems with his employers, except for absences at the Gulfport store for medical reasons and following the birth of his child. By the date of the alleged accident, he had had a verbal warning and was told if he missed any more time he would be terminated.

According to Mr. McLaurin, on April 25, 2011, he came back to work after a lunch break, at around 1:00 p.m. At his deposition, taken December 14, 2011, he reported that he got the cleaning cart, cleaned the back bathrooms, and worked his way up to the front bathrooms and started to clean the women's bathroom. At the hearing, he said he went directly to the front bathrooms and did not clean the back bathrooms first. He said he saw some kids coming out of the women's bathroom. Then he got the cart from the closet between the two bathrooms in the front of the store.

He testified that at about 1:15 p.m., he knocked on the women's bathroom, yelled "maintenance" and heard no one respond. He went in the bathroom with the cart to

clean, propping the door with a mop to block the door so customers could not come in. He also pushed the cart in front of the door to keep it closed.

At his deposition, Mr. McLaurin said he got his cleaning products and started walking toward the bathroom stalls when he slipped and fell. At the hearing, Mr. McLaurin testified that first he cleaned up the trash, putting the trash beside the cart. Then he got two cleaning products off the cart, Windex and toilet bowl cleaner, a can in each hand. He moved to the mirrors so that he could clean them, but, while walking to the mirrors, he slipped and fell, using his right hand to catch himself. He said he dropped the can of cleaning product out of his right hand in order to do that. He actually fell backwards and caught himself with his right hand, hurting his hand. He said he was able to catch himself with his right hand while still on both feet and bending backwards, not hitting his back or his buttocks on the ground at all. He did not drop the can of cleaning product from his left hand, and his bottom did not hit the floor because he was supporting his weight with his right hand.

Then, when he was getting up from the backwards position, his left foot slipped from under him and he fell the second time. He was still in the water on the floor. He had set the two cans of cleaning products down, put his weight on his left hand, reached for the counter, and held on with his right hand to pull himself up, when his left leg or both legs slipped from under him and he fell backwards. He said he landed completely flat on his back and hit his head.

According to Mr. McLaurin, he lost consciousness for one to two minutes, then gained consciousness while he was alone in the bathroom. He had a walky-talky with him and called for help from a customer service manager, but nobody responded. He

said the cashiers were at the ends of the stores but not in the middle near the bathrooms. He said there was no customer service stand near the bathrooms.

Mr. McLaurin testified he moved himself out of the water and crawled backwards to the garbage can, and he leaned up against the wall by the garbage can. He could not recall how long he sat there before he got back up. But he got up, walked over to the cleaning cart to get the mop and proceeded to mop up the water from the floor. He thought he was fine, and he finished cleaning the bathroom. The cart was in front of the door the whole time.

In another version of the story, he testified he moved the cart away from the door and a patron came in and helped him up off the floor and to his feet. At his deposition, he said it was a white female but he could not remember what color hair she had. He said that was after he tried to call for help on the walky-talky and no one from customer service came in to help him. In his deposition, Mr. McLaurin said the patron who came in hoisted him up by the elbow, and the patron left the bathroom right after she helped him up. He had pulled himself out of the water toward the trash can, then moved to the cleaning cart and pulled it out of the doorway to the center of the floor.

Mr. McLaurin testified at the hearing he was in the bathroom for about 30 minutes in all before seeing anyone. He got the door pushed open, got up, and moved the cart out of the way. A patron came in and helped him up. At the hearing, he could not remember how long it was before the patron came in, nor what the patron looked like, nor how the person helped him up. He could not recall if anyone else came into the bathroom. Mr. McLaurin could not remember if the patron who helped him said she was going to get help for him, as he had testified at his deposition.



But he remembered that he thought he was fine and got up and finished his work in the bathroom. He said he cleaned the toilet bowls, sinks and mirrors, and mopped the whole bathroom. He could not remember how long it took him to clean up the bathroom after he got up, but he finished his shift that day. At his deposition, he said it took him about 15 minutes to clean the bathroom. At his deposition, he also said he sat on the floor and leaned on the cleaning cart for about ten minutes.

On cross examination, Mr. McLaurin had problems recalling exact details about the incident. He could not remember whether he rested or not, although at his deposition he said he rested for ten minutes. He could not remember details about the walky-talky, other than that he had one that day. At one point he said he left it on the cart after he cleaned the bathroom. Mr. McLaurin kept interjecting that he had a hard time recalling exactly what happened except that he fell completely backwards and hit everything from his head all the way down his body.

When asked about reporting the incident, Mr. McLaurin testified he actually tried to find someone but did not see anyone to whom he could report the incident. In another variation, he testified he thought he was fine so he did not report what had happened. He said he swept the store after the incident.

Mr. McLaurin thought his shift ended at 4:00 or 5:00 p.m., and then he went home. He said he felt pretty fine that evening but was aching a little. He did not feel bad until the next morning, when he had aching and tingling in his legs and soreness in the back of his head and neck. His back ached like someone was stabbing him, and his right hand was aching.

That was when he phoned the store and talked to the store manager, Tisha Green, to report the incident. She told him to come in to file an accident report. Later in the day he went to the store and talked about it to his supervisor, John Periotich.

Mr. McLaurin testified that before this incident at Wal-Mart on April 25, 2011, he never had back pain. Then he said he had mild back pain after a slip-and-fall accident in January 2011, but not severe back pain and no back pain radiating into his legs until after April 25, 2011. He said he suffered a fall in January 2011 while working at the same Wal-Mart store. He slipped and fell when he was waxing the floors on the night shift. He had some minor back pain for about a week and saw his family doctor, Priscilla "Penny" Renwick, nurse practitioner for Dr. Tamboli. She prescribed back patches for the pain. Mr. McLaurin said that he got better with exercises and pain patches. He did not report an injury. He was able to continue working from January until April 25, 2011.

When asked about a medical record from Nurse Renwick who noted that Mr. McLaurin presented to her on April 21, 2011 – four days before the alleged accident at Wal-Mart – with complaints of lower back pain, Mr. McLaurin said he was seeing Nurse Renwick for chest pains. He could not explain why Nurse Renwick noted he had described back pain as 10 out of 10 on a pain scale when he was bending over, moving, and twisting.

At the hearing, Mr. McLaurin walked with the assistance of a cane and wore a brace on his right wrist/hand. Nothing was ever mentioned about the brace on his hand, but he was asked about the cane. Mr. McLaurin testified that no one prescribed the cane but he got it a day or two after he saw Dr. McNally on April 26, 2011. When asked about taking the cane with him on November 16, 2009, when he saw his neurologist Dr.

Chelsea Grow, Mr. McLaurin denied that he did so. He said he did not have a cane back then, although Dr. Grow's nurse reported that he ambulated with a cane on that visit.

When questioned about headaches, Mr. McLaurin said he had had headaches before. He said, however, that the fall on April 25, 2011, made them worse.

When asked about smoking, Mr. McLaurin testified he started about three weeks before the hearing after stopping the year before. He said that medical records documenting he was a smoker were incorrect.

When asked if he had ever had a car accident at work on lunch break during the time he worked at the Gulfport Wal-Mart, Mr. McLaurin responded "No." He said he never reported having such an incident, although the store manager testified that he had reported it to her.

At the hearing, the employer/carrier showed the store's security video from the afternoon of April 25, 2011. The video, received into evidence as Exhibit 4, was taken in the front of the store, the camera directed at the alcove for the front bathrooms. The men's bathroom door is shown on the right; the women's, on the left; and the supply closet door, in between. The video clip showing the front bathroom alcove begins at about 12:18:59 p.m. and ends at about 2:18:58 p.m. The video shows that the area was fairly busy that day, with numerous patrons in and out of the two bathrooms.

At about 1:10:54 p.m., Mr. McLaurin enters the frame and walks to the supply closet. At about 1:11:30 p.m., he pulls the cleaning cart out of the supply closet and pushes it into the men's bathroom at about 1:11:45 p.m. At about 1:13:00 p.m., a male patron goes into the men's bathroom, but at about 1:13:40 p.m., a man and boy are unable to push open the men's bathroom door and they leave the area. At about 1:14:30

p.m., the patron who had gone into the bathroom comes out. At about 1:17:42 p.m., a man unsuccessfully tries to push open the men's bathroom door.

At about 1:17:56 p.m., a woman enters the women's bathroom. At about 1:18:20 p.m., a second woman goes into the women's bathroom. Mr. McLaurin is still in the men's bathroom when the two women go into the bathroom. At about 1:18:30 p.m., Mr. McLaurin pushes the cleaning cart out of the men's bathroom. He comes out of the men's bathroom about 1:19:10 p.m., holding a mop.

At about 1:19:30 p.m., one of the women comes out of the bathroom, but another remains inside. At about 1:19:40 p.m., Mr. McLaurin knocks on the women's bathroom door and apparently hears from the woman still in there. The video shows Mr. McLaurin standing in the hallway with the cleaning cart biding his time for two minutes while waiting for the second woman to leave. At about 1:21:30 p.m., the second woman exits the bathroom.

At about 1:21:40 p.m., Mr. McLaurin goes into the women's bathroom, taking the cleaning cart in with him. The bathroom door closes behind him about 1:21:48 p.m. At about 1:23:18 p.m., a girl, perhaps a teen or tween, begins to strenuously push on the women's bathroom door. Another woman with a child comes to the bathroom door. Mr. McLaurin walks out of the bathroom to let the girl, woman, and child in at about 1:23:50 p.m., leaving the cart in the bathroom. While waiting outside the bathroom door, Mr. McLaurin takes a walky-talky out of his right pocket, talks briefly to someone, then puts the walky-talky back into his pocket. The three patrons come out of the women's bathroom at about 1:24:45 p.m.

Mr. McLaurin does not go back into the women's bathroom. At 1:24:48 p.m., Mr. McLaurin reaches in to bring the cleaning cart out of the women's restroom and proceeds to put it in the storage closet. At about 1:25:08 p.m., he leaves the bathroom area and walks to another part of the store. He does not return to the area again.

According to the security video, Mr. McLaurin was in the women's bathroom with the cart for approximately two minutes before letting the women go in. The women were in there approximately one minute. Then from the hall he pulled the cart out and put it away, taking approximately 30 seconds, and he left the bathroom area less than a minute after the women walked out of the bathroom.

On cross examination, Mr. McLaurin was asked how in two minutes or less in the women's bathroom he could have picked up trash and put it beside the cart; gotten cleaning products off the cart; walked to the mirror; slipped; put the cleaning products down, catching himself with his hand; slipped a second time, landing flat on his back and losing consciousness for one to two minutes; then regained consciousness; tried to call for help on the walky-talky; moved himself out of the water; then moved the cart away from the door to allow a patron to come in and help him up; then rested by the cart for five to ten minutes; and then mopped the water off the floor and finished the cleaning of the bathroom; then left the bathroom and put the cart away in the closet. He had no good answer and had great difficulty remembering anything when pressed.

Another security video shows a vestibule where people were sitting and standing with carts at about 1:30 p.m. that day. John Pierotich, the supervisor, walks from the store's main interior to the vestibule at 1:31 p.m. Mr. Pierotich is shown in the vestibule in a blue shirt, and another employee is in a yellow-green vest. Then Mr. McLaurin is

shown helping Mr. Pierotich put down rubber rain mats in the vestibule. They work in the same area in close proximity to each other for several minutes.

Mr. McLaurin was asked why he did not report the bathroom accident to Mr. Pierotich then. Mr. McLaurin responded that he thought he was fine that day.

Other security video clips show Mr. McLaurin as he works putting down the rubber rain mats/runners. Beginning about 1:26 p.m., he carries each mat to the entryway vestibule. The rolled up rubber mats appear to be heavy. He puts down the mats and rolls them out with his feet. He bends and stoops over to the floor and pulls the mats to position them, apparently without any difficulty. He also bends and stoops to secure the mats with tape.

On April 26, 2011, John Pierotich took Mr. McLaurin to see Dr. McNally. Mr. McLaurin testified that Dr. McNally did not touch him but looked at his back. Mr. McLaurin testified that he was afraid of Dr. McNally. Dr. McNally prescribed Lortab pain medication. Mr. McLaurin went back to the store with Mr. Pierotich and had the prescription filled. Then he went home, in excruciating pain.

Mr. McLaurin saw Dr. McNally a second time and told the doctor he was still hurting. Dr. McNally told him to come back again. Dr. McNally wanted to put him on light duty, but Mr. McLaurin said he could not do light-duty work because he was in so much pain. Mr. McLaurin testified he got the cane then because the pain was so bad.

After the first visits, Mr. McLaurin did not go back to Dr. McNally. Mr. McLaurin said he got legal help and was referred to Dr. Eric Wolfson whom he saw on May 17, 2011. Dr. Wolfson ordered an MRI scan, but Wal-Mart would not pay for the test or treatment. Eventually, about nine months later, Mr. McLaurin had the MRI scan.

He saw Dr. Wolfson on March 19, 2011, for a second visit. Dr. Wolfson recommended he see a chiropractor.

Mr. McLaurin testified that has seen a chiropractor, Dr. Jeremy Jernigan, whose office is on Dubuys Road in Gulfport. At the time of the hearing, Mr. McLaurin had seen Dr. Jernigan about three times a week for four weeks.

Mr. McLaurin testified that his life has changed tremendously since the accident on April 25, 2011. He has not applied for work because of his injuries from the accident. He said it is hard to spend time with his kids, and because of the severity of back pain he cannot "be with his wife." He described sharp pain and tingling in his legs and stabbing pain in his lower back and neck. He testified he cannot even use his right hand; fortunately, he is left-handed. This injury has kept him from working – no one would hire him because of the level of his pain.

Around the house, Mr. McLaurin does minor chores like helping the kids with their homework. He cannot take out the trash because of his pain. He has no activities to keep himself occupied except just spending time around the house. His wife has a 2001 Mazda 626, but Mr. McLaurin does not have a car. He reads the Bible but does not watch too much television. He goes to the Church Rescue Mission on Sunday.

When asked about a typical day in his life, he said he wakes up at 5:00 or 6:00 a.m. His wife fixes breakfast. Three of the kids go off to school, and the one-year-old baby is at home during the day. Mr. McLaurin eats breakfast and takes his medicine, and he moves around the house to exercise. His wife fixes lunch, and he helps her every now and then. She does the laundry and buys the groceries. In the afternoon the kids come

home from school, and he helps them with homework. Mr. McLaurin helps his wife fix dinner, and he sets the table. He is teaching the kids how to wash dishes.

According to Mr. McLaurin, he has made frequent trips to the emergency room for gastrointestinal problems, hernia problems, chest tightness, and chest pain. Dr. Navin Barot is his gastroenterologist in Gulfport. Mr. McLaurin explained that he has a hiatal hernia and cannot eat spicy foods. Mr. McLaurin also sees a heart doctor for chest pain and testing. He has seen Dr. Antoine Rizk, cardiologist in Gulfport, twice. He said he controls his heart problem with diet and does not take medicine for it.

Dr. Chelsea Grow is his treating physician for the seizure condition. Mr. McLaurin told Dr. Grow that in January 2011 that he was having some back pain but he was fine until April 25, 2011, when he had the accident at Wal-Mart and started having more frequent seizures. According to Mr. McLaurin, Dr. Grow has prescribed some medication that is helping. Mr. McLaurin also takes headache medicine. He saw Dr. Grow about two weeks before the hearing, and he typically sees her about every six months.

Mr. McLaurin also takes medication for his various psychiatric problems. Mr. McLaurin goes to Gulf Coast Mental Health Center to see a psychiatrist, Dr. Ismin Zen, a therapist named Dr. Patrick Evans, and a case worker named Diane. Mr. McLaurin goes to the Mental Health Center twice a month. Dr. Zen prescribes Zyprexa for schizophrenia and bipolar disorder.

Mr. McLaurin said he was in a lot of pain just sitting for an hour and a half at the hearing, although he did not get up while testifying. He said he had been in pain since he



went to his attorney's office before the hearing. When asked about his pain level on a scale of 1 to 10, he said it was 20.

Tisha Green testified for the employer and carrier that she is store manager of Wal-Mart Store No. 969 in Gulfport. She has been the manager since September 2010. Her job duties include overall operations of the store.

Ms. Green said she is familiar with Juan McLaurin. About a week or so after she began her management duties, she noticed the tile on the floor needed some work to improve its cleanliness and shine. She looked for people to put on the cleaning crew, and she noticed that Mr. McLaurin wanted to transfer to Gulfport. He did not qualify because he had not worked long enough to qualify for a transfer, but she made special arrangements for him to come to the Gulfport store. She met with him personally and told him that she wanted clean floors and a clean building. She said everything was positive during the interview.

A week later, Mr. McLaurin's supervisor came to Ms. Green to advise that an associate was complaining he was not being paid properly. It was Juan McLaurin. The personnel manager asked Mr. McLaurin to explain what was going on. Mr. McLaurin said his check was not in his bank account, and he was not going to work for free.

Ms. Green called the benefits department on a home office hotline and spent quite a bit of time getting to the bottom of the problem. The explanation was that Mr. McLaurin had designated a bank in Florida where Wal-Mart was to send his check for direct deposit. Mr. McLaurin and his aunt in Florida shared the bank account, and the aunt would not give him his money because of a dispute over something that had happened while he was in Florida. Right away, Ms. Green said, she was "kind of leary of

his credibility” because he had her go to all the trouble to find out what happened to his check when he knew all along what had happened to it.

According to Ms. Green, when Mr. McLaurin first came to the Gulfport Wal-Mart it was for the night shift, since the floor maintenance crew only cleans at night. Mr. McLaurin accepted the job electronically online before taking the position. When he first came to the store, Ms. Green did not know about any of his health problems. She said between October and December 2010, his attendance was poor. He called in sick or came to work and had to leave before the end of his shift.

Then in December 2010, Mr. McLaurin asked to take some time off, telling Ms. Green his wife was having a baby and had complications and needed his help. He did not qualify under Wal-Mart guidelines to take any time off. Because of his situation, however, Ms. Green created an exception so that he could take some time off to care for his wife – from some time in December 2010 to some time in January 2011. He took that leave of absence and then took another leave of absence to be with his family when the baby was born. Ms. Green gave him two leaves of absence, although he did not qualify for either. She testified that she tried to help him.

After the baby arrived, Mr. McLaurin requested additional time for leave of absence. He did not return after the second leave of absence had expired. Ms. Green had to call him to find out what was going on. He said he planned to come back to work. That same night, Mr. McLaurin left his shift at the lunch break and did not come back. The next day he called and said he had a car accident, his back and his head hurt, and he needed a week off. Ms. Green granted the time off because he said he had had a car accident.

Mr. McLaurin did not return to work after that week, and Ms. Green called him to see if he was coming back to work. She said he continued to stay out. The first week he did not call in, then he started calling the store's 1-800 system to report that he was out sick. He was absent out several more days and then a couple more weeks. Ms. Green called him again and told him he had to bring in some documentation showing that he was hurt from the car accident and taken off work. His doctor filled out the form for why he was out from the beginning of February 2011 until the middle or last days of March 2011.

Eventually Mr. McLaurin agreed to return to work. He was still on the night shift. Ms. Green came to meet with him at 10:00 p.m. and got there before he did. Mr. McLaurin arrived in plain clothes rather than work attire. He had said he was going to work but was in regular clothes. Then he told her, "I can't work on this shift anymore because of medicine and epilepsy." Ms. Green said she asked him why he did not tell her that before, and he did not have an answer. Ms. Green testified that she and Mr. McLaurin had had several conversations and he had not shared information about his disabilities.

Ms. Green told Mr. McLaurin she would get him on day-shift work when a shift came available. She was able to assign him to day maintenance work in April 2011, about a week after their conversation. He did not correct his attendance patterns, however. He started taking days off and leaving early, continuing the same old behavior he had exhibited on the night shift. His supervisors talked to him about his excessive absences.

This was about two weeks before the alleged accident on April 25, 2011. On April 26, 2011, at about 10:00 a.m., Mr. McLaurin called Ms. Green to tell her he had fallen in the restroom. Ms. Green asked him what time it had happened and told him to come in to see her. She asked if he wanted to go to a doctor, but he did not say "yes" right away. Ms. Green said she waited around for him but finally went to lunch about 2:00 p.m. Mr. McLaurin came when she was at lunch, and he talked to John Pierotich who took him to the doctor.

Ms. Green said she has spoken to Mr. McLaurin once since then, during his accident review. She said it is standard procedure to make sure what happened so that it will not happen again. She wanted to discuss the specifics of the accident with Mr. McLaurin. He told her he had fallen in the restroom and could not find anyone to whom he could report the incident. Ms. Green said the conversation did not last long. She heard Mr. McLaurin's wife in the background telling him what to say.

Ms. Green offered Mr. McLaurin a job at a position that was not strenuous. She testified that he declined the job, saying he did not want to do that job and was not going to work. She sent him written notice of an offer for temporary alternative duty on May 10, 2011, the offer to remain in effect until May 20, 2011, at 5:00 p.m. He received the notices (Exhibit 15) but did not respond.

John Pierotich testified for the employer and carrier that he is assistant manager of Wal-Mart Store No. 969 on Highway 49 in Gulfport. He has been assistant manager for about four years and had the same position in April 2011. Mr. Pierotich's job duties include supervision of the maintenance department, cashiers, front desk, and bathrooms.

He remembers Juan McLaurin whose job was to clean the restrooms, sales floor, and vestibule.

According to Mr. Pierotich, Mr. McLaurin had had attendance problems and had logged six absences. Wal-Mart had a policy of allowing seven absences before termination. Mr. McLaurin worked there a few days and was scheduled for at least two more weeks when he did not show up.

Mr. Pierotich testified Mr. McLaurin came to him on April 26, 2011, to report an accident. The two of them filled out an incident report that has been received into evidence as part of Exhibit 15. Mr. McLaurin reported he fell when he slipped in some water in the front women's bathroom. He stated that he was "getting ready to cleaning the front women bathroom. Slip in water, fell on my back." He said no one was in the bathroom but he told an associate at the time when he could not find any manager. He suggested the store give a key to lock the front bathroom because people can come in and push over the mop water.

Mr. Pierotich asked Mr. McLaurin if he needed to go to the doctor, and then it became an "accident" instead of "incident." Mr. Pierotich took Mr. McLaurin to Dr. McNally that same day around 3:00 p.m. Mr. Pierotich said he did not have occasion to talk to Mr. McLaurin again after he took him to Dr. McNally's office on April 26, 2011. Mr. Pierotich said Mr. McLaurin talked to Ms. Green on a later occasion and refused the light duty position offered by Ms. Green.

Mr. Pierotich explained what was happening on the video taken in the vestibule of the store on the afternoon of April 25, 2011. It was raining, which required rubber mats to be put down and mopping done for safety. Mr. Pierotich said Mr. McLaurin helped

carry the rubber rugs out to lay on the floor and helped tape them down. Mr. McLaurin did not mention that he had had an accident in the bathroom. He had no apparent physical difficulty lifting the rugs that were 12-foot rubber runners with carpeted mounts and weighing about 40 pounds each. Mr. McLaurin did not complain and did not seem to have any trouble with the mats.

Mr. Pierotich also talked about the location of customer service podiums in the store. He said there is a customer service podium between register 25 and register 26. There is always someone there at register 25 because it is the one register that is open 24 hours a day for the sale of tobacco. The video picture of register 25 shows in the background the restroom sign over the front restrooms. Mr. Pierotich explained that it is about 15 to 20 feet from the front restrooms to the customer service podium.

#### ***THE MEDICAL EVIDENCE***

The medical records of Baptist Memorial Hospital – Desoto in Southaven, Mississippi, were received into evidence. These records include records for September 2, 2006, when Juan McLaurin, then age 21, reported to the hospital after a two-car motor vehicle accident. He came in immobilized and wearing a cervical collar. He complained primarily of left leg pain, acute stomach pain, and head pain. The examining doctor noticed no bruising. A CT scan of the abdomen and pelvis showed only slightly diffusely thickened urinary bladder wall of uncertain significance, a CT scan of the head was negative, X-rays of the left leg were negative, and X-rays of the cervical spine showed no acute abnormality. He was found to have acute cystitis.

The medical records of Gulf Coast Mental Health Center were received into evidence. The records contain a summary of activity from October 2008 until August 6,

2010. Mr. McLaurin was referred to the Mental Health Center on November 11, 2008, for aftercare following a suicide attempt and cutting on his arms. He was hallucinatory and delusional, but he made a good response to medication. His family history included schizophrenia in two sisters and his father's side of the family. The diagnosis was paranoid schizophrenia, and alcohol dependence. Mr. McLaurin reported the substance abuse had begun three years earlier when he was 20 years old.

The medical records of Memorial Hospital at Gulfport were received into evidence. These records include a report of Juan McLaurin presenting to the hospital on August 23, 2009, at about 3:00 p.m., complaining of dizziness after not eating but drinking two cups of coffee a day for three weeks. His employer was Food Giant in Gulfport.

Mr. McLaurin presented to Memorial Hospital at Gulfport on October 8, 2009, because he was having seizures. He also had low blood pressure and weakness.

Mr. McLaurin went to the emergency department at Memorial Hospital at Gulfport on October 11, 2009, with multiple complaints of sharp headaches, left ear pain, and upper leg numbness.

Dr. Chelsea Grow testified by deposition taken April 2, 2012. Dr. Grow first treated Juan McLaurin for seizures and headaches on November 6, 2009. Mr. McLaurin had been seeing a Dr. Voulters, a neurologist. Dr. Grow's nurse said Mr. McLaurin told that he had one seizure since his last visit and had headaches every day. The nurse noted Mr. McLaurin walked with a cane.

Mr. McLaurin indicated he had two to three headaches a week and breakthrough seizures. Dr. Grow questioned whether Mr. McLaurin had conversion disorder or

seizures. Dr. Grow said conversion disorder was the diagnosis for someone with psychiatric disorders who appeared to have seizure activity but was not truly epileptic. Dr. Grow wanted to obtain a medication list from Mr. McLaurin's psychiatrist, Dr. Zen. Dr. Grow said Mr. McLaurin had psychiatric disorders – bipolar disorder and schizophrenia.

The records of the Gulf Coast Mental Health Center indicate Mr. McLaurin presented to the Mental Health Center in late November 2009 for paranoid condition and hallucinations, which were reduced by medication. It was noted he was unable to cope without the assistance of his spouse. The diagnoses were schizophrenia, paranoid type, and alcohol dependence.

The Gulf Coast Mental Health Center record dated August 6, 2010, indicates Juan McLaurin had presented to the clinic for admission because he was “hearing stuff and seeing things.” The diagnoses were schizophrenia, paranoid type, and alcohol dependence.

The records of Memorial Hospital at Gulfport show that Juan McLaurin presented to the emergency department on March 8, 2011, for complaints of severe headache pain in his forehead that was 10 on a scale of 1 to 10. He used Medicaid of Mississippi and stated he was disabled. He had had a mild seizure the night before and a severe one three days earlier. He reported he had been having the headache for two to three weeks, and he began to notice vision loss in his right eye a week earlier. A CT scan of the brain showed no acute intracranial abnormalities.

Dr. Grow examined Mr. McLaurin on March 15, 2011, for complaints of headache and seizure, as well as insomnia. Mr. McLaurin said his headaches had



worsened over the last month. Dr. Grow noted Mr. McLaurin had generalized seizures brought on predominantly by missing medicines. Dr. Grow ordered an EEG to further evaluate the seizures, and the EEG was performed on July 11, 2011.

The medical records of Dr. Eugene McNally, the Family Clinic in Gulfport, Mississippi, were received into evidence. The records include a report from Nurse Practitioner Priscilla Renwick, dated April 21, 2011. On that day, Juan McLaurin saw Nurse Renwick for chief complaints of gradual onset of pleuritic severe substernal chest pain of one month's duration. Mr. McLaurin told Nurse Renwick the chest pain occurred about four times a week, each episode lasting three hours, worsened by emotional stress and improved by rest. He told the nurse he was a cigarette smoker. He complained of shortness of breath, palpitations, diaphoresis [sweatiness], lightheadedness, and abdominal pain.

Mr. McLaurin also complained to Nurse Renwick on April 21, 2011, that he had a sudden onset of constant episodes of severe symmetrical and bilateral lower back pain, described as sharp and aching. Mr. McLaurin rated the pain as 10 out of 10. He said the symptoms resulted from a bending over motion and twisting at work about three months earlier. He gave a family history of major depression, anxiety disorder, and chemical dependency. Mr. McLaurin also complained of headache, difficulty walking, and sudden onset of constant episodes of moderate sexual dysfunction, beginning about a month earlier. Sedentary lifestyle, smoking, and stress were noted as risk factors.

Mr. McLaurin also complained to Nurse Renwick about depression and moderate suicidal ideation that had started about three years earlier and reportedly were caused by emotional stress. Nurse Renwick noted a pertinent medical history of bipolar disorder

and schizophrenia and a family history that included successful suicide, bipolar disorder, substance abuse, and sexual molestation when a child.

Mr. McLaurin told Nurse Renwick the symptoms were worsening. He said he had “night terrors of killing someone ‘cutting someone’s brain out.’ Has discussed with wife and has appointment with mental health counselor tomorrow.” (Exhibit 11, p. 18). Nurse Renwick diagnosed lower back pain, bipolar disorder, and anxiety symptoms. She prescribed Fexmid for low back pain.

The medical records of Memorial Hospital at Gulfport indicate that Juan McLaurin reported to the emergency department on April 22, 2011, at about 1:30 p.m. He complained of weakness, chest pain, and diarrhea.

The medical records of Biloxi Regional Medical Center indicate Juan McLaurin reported to the hospital emergency department on April 22, 2011, at about 4:00 p.m. He complained of steady pain in the epigastric area for three days with mild nausea. Mr. McLaurin said his pain was 10 on a scale of 1 to 10, crushing and radiating from his chest to his neck and comforted by nothing. After examination, the physician diagnosed gastroesophageal reflux disease and released him with a prescription for Prilosec.

Dr. McNally’s notes, which are handwritten and difficult to decipher, indicate that Dr. McNally first saw Mr. McLaurin on April 26, 2011, for complaints of low back pain after he slipped on some water in the restroom at work at Wal-Mart the day before. Dr. McNally noted that Mr. McLaurin stood crouched on a chair saying he could not sit straight.

On April 28, 2011, Mr. McLaurin returned to see Dr. McNally saying he was hurting more than when he fell. He appeared to be tender in the lumbosacral area. Mr. McLaurin was a “no show” on May 3, 2011.

The medical records of Garden Park Medical Center in Gulfport show that Juan McLaurin presented to the emergency room on May 4, 2011. Mr. McLaurin said he was unemployed but used group insurance from Wal-Mart. He reported that the hospital visit was employment related, that he had fallen and injured his back and hit his head when he stepped in water in the bathroom on April 25, 2011. Mr. McLaurin complained of mild pain with injuries to his head, and low back. X-rays of the lumbar spine showed no fracture except minimal compression deformities of uncertain age and normal alignment. A CT scan of the head showed no acute changes or abnormality or evidence of ischemic infarct, hemorrhage, or abnormal mass. Mr. McLaurin was prescribed Extra Strength Tylenol and advised to follow up with Dr. McNally.

Mr. McLaurin returned to see Dr. McNally on May 5, 2011, reporting that he was not better. Dr. McNally recommended sedentary work and a second opinion.

The medical records of Dr. Eric H. Wolfson, neurosurgeon at the Spinal and Neurological Surgery of South Mississippi, were received into evidence, and Dr. Wolfson testified by deposition taken February 2, 2012. Dr. Wolfson saw Juan McLaurin for one visit in 2011, on May 17, 2011. Mr. McLaurin had reported on the intake form, signed May 14, 2011, that he had pain in his head, neck, back, and legs. He gave a history of epilepsy/seizures, diabetes, back trouble, high blood pressure, and ulcer. He also said he had a hernia repair when he was 17 years old. He noted he took Keppra, Lortab 5, Zyprexa, and Prilosec.

On the intake form, Mr. McLaurin checked “yes” on the personal history questions to reflect that he had an unexplained change in weight, joint stiffness or swelling, headaches, dizziness, blurred vision, hearing difficulties, short of breath with exertion, wheezing, chest pain, high blood pressure, shortness of breath at night, abdominal pain, nausea/vomiting, constipation/diarrhea, loss of appetite, bloody or tarry stools, unexplained weight change, frequent urination, urinary urgency or hesitance, palpitations or nervousness, easy bruising, arthritis or joint pain, swollen warm joints, morning stiffness, numbness, weakness, and seizures. He answered “yes” to the questions asking if he had neck pain radiating into both arms to the fingertips, along with numbness.

Mr. McLaurin also reported he had low back pain since April 25, 2011 when he had an accident and slipped and fell in a wet area of the bathroom at work. Dr. Wolfson noted Mr. McLaurin said he hit his head on the concrete and was unconscious for five minutes.

Mr. McLaurin also told Dr. Wolfson he had not had any treatment. He said the pain radiated to both legs to the feet, left worse than right, increasing with standing or sitting. He said there was numbness associated with his pain. Mr. McLaurin also complained of neck pain radiating to both arms. On the graphs of the body on the intake questionnaire, Mr. McLaurin indicated various sensations of burning, stabbing, and pins and needles all over his body, front and back.

Dr. Wolfson noted Mr. McLaurin walked with an antalgic, abnormal gait with the help of a cane and that he had difficulty rising to standing from sitting. Mr. McLaurin categorized his pain level to Dr. Wolfson as 10 out of 10. He related as other problems:

epilepsy/seizures, diabetes mellitus, back trouble, high blood pressure, ulcer, bipolar disorder, and schizophrenia. Dr. Wolfson noted Mr. McLaurin was 5'6" tall and weighed 206 pounds.

Upon examination, Dr. Wolfson found Mr. McLaurin to have decreased range of motion of the cervical spine and pain on palpation of both sides of the lumbar spine, with perispinous muscle spasms on both sides. Dr. Wolfson found him otherwise intact. Dr. Wolfson diagnosed concussion, low back pain, lumbar radiculopathy, neck pain, and cervical radiculopathy, based on the physical examination and history of the fall given by Mr. McLaurin.

Dr. Wolfson ordered an MRI scan of the cervical spine and also the lumbar spine. He suggested chiropractic care, depending on the results of the diagnostic testing. Dr. Wolfson also said Mr. McLaurin was unable to return to work at that time, until Dr. Wolfson had the opportunity to look at the films.

Mr. McLaurin presented to the Memorial Hospital Physicians Clinic on May 25, 2011, to see Nurse Renwick for followup and complaints of low blood sugar. He walked with a cane. Mr. McLaurin related he fell in the bathroom at work on April 25, 2011, and was seen by the employer's doctor, Dr. Eugene McNally. Mr. McLaurin reported that Dr. McNally released him to return to work but Mr. McLaurin thought he was unable to return to work so he retained an attorney and went to see Dr. Wolfson. Mr. McLaurin reported he had had a seizure the night before. Nurse Renwick diagnosed bipolar disorder, anxiety symptom, lower back pain, chronic paranoid schizophrenia, seizure disorder, and lumbar strain.

Dr. Grow testified she saw Juan McLaurin again on June 20, 2011. Mr. McLaurin reported

a fall at work in early April. He reported loss of consciousness for a couple of minutes. He regained consciousness, he was dizzy. He felt unsteady. He said he was able to complete his job, however, worsening headaches, constant – I put in quotes, so that was his report – ten minutes duration each headache. They were over the vertex and occiput.

(Exhibit 17, p. 37). Dr. Grow explained the vertex is the top of the head, and the occiput is the base of the head at the neck. Mr. McLaurin also told Dr. Grow he had been seeing Dr. Wolfson for his back pain. Mr. McLaurin complained also of intermittent memory loss and “more seizures reported in sleep,” and said he had not worked since April 25, 2011. (Exhibit 17, p. 37).

He told Dr. Grow he had more seizure activity since the accident – eight seizures per week in his sleep after the accident and only two seizures per week in his sleep before the accident. When asked what a seizure would be like when he was asleep, Dr. Grow said he would not have awareness of the seizures in his sleep and apparently was not having awareness of them when he was awake either. The seizures were reported by his wife or someone else. Dr. Grow noted that at the March visit it was determined Mr. McLaurin had multiple seizures when he was not compliant with his medication schedule. The headaches were developed along with the seizures.

When asked if she saw any evidence of trauma to his head, Dr. Grow responded “No.” She said there was no way to measure headaches and she based that diagnosis purely on the patient’s subjective complaints. Dr. Grow said she had no way to assess whether loss of consciousness had occurred.

On June 20, 2011, Dr. Grow examined Mr. McLaurin's gait and noticed it was normal with normal stability. He had normal muscle strength and tone without atrophy. She examined his leg strength and found it normal with normal range of motion.

Dr. Grow commented on the EEG taken July 1, 2011. Mr. McLaurin gave a one-week history of forgetfulness, depressed mood, and general weakness. The technician noted that Mr. McLaurin did not have seizure activity during the testing. Dr. Grow found the EEG to be abnormal, meaning that it showed Mr. McLaurin had a predisposition to have seizures. Dr. Grow also noted the records showed a seven-year history of smoking half a pack of cigarettes a day.

Juan McLaurin presented to the Memorial Hospital Physicians Clinic on July 21, 2011, for complaints of stabbing chest pain for a week and pressure in the mid-chest and up into his neck, sweating, and cold chills. Mr. McLaurin reported he had two aunts die of heart problems. He was actively having anxiety, bipolar disorder, history of epilepsy, headache, idiopathic insomnia, lower back pain, lumbar strain, chronic paranoid schizophrenia, seizure disorder and visual disturbances.

The medical records of Memorial Hospital at Gulfport include a report from Rehabilitation Services that Juan McLaurin had been referred to physical therapy by Nurse Renwick but had only come to therapy twice, cancelling or not showing up for all other appointments. The therapist asked Nurse Renwick for advice.

On July 28, 2011, at 8:30 a.m., Juan McLaurin presented to the Memorial Hospital Physicians Clinic to see Nurse Renwick for complaints of chest pain and gradual onset of constant episodes of severe substernal heartburn radiating to the back. Mr. McLaurin described the pain as 9 on a scale on 1 to 10. He reported his symptoms

were caused by increased caffeine and a spicy meal. He gave a history of hiatal hernia and gastroesophageal reflux disorder. He also reported problems with anxiety, bipolar disorder, history of epilepsy, headache, idiopathic insomnia, lower back pain, lumbar strain, chronic paranoid schizophrenia, seizure disorder and visual disturbances. An X-ray of the chest showed no acute pulmonary pathology. The diagnoses assigned were lower back pain, esophageal reflux, gastritis, hiatal hernia, and bipolar disorder. Mr. McLaurin was advised about what foods to avoid and advised to quit smoking.

Dr. Grow testified that she saw Juan McLaurin again on September 20, 2011, as a followup on the complaints of chronic, daily headaches. He had been taking Keppra, anti-seizure medication, for about a year. He had no new spells of seizures but described severe headaches three times a week and worsening with dull, throbbing, constant pain. Dr. Grow prescribed a headache preventive medication.

Dr. Wolfson's records include the report of Dr. Ross Barnett, radiologist, dated March 12, 2012, on the MRI scans of the lumbar spine and cervical spine. Dr. Barnett diagnosed small disc bulges at L4-S1 with associated facet hypertrophy but reported he did not see any focal disc protrusion or herniation. He also noted slight left C3-4 uncovertebral spurring and early foraminal narrowing but no focal disc protrusion or herniation. Dr. Barnett noted "Otherwise unremarkable cervical spine MRI." (Exhibit 16, page 5).

Dr. Wolfson saw Mr. McLaurin a second time on March 19, 2012, for follow up after reviewing the MRI scans. Mr. McLaurin complained of pain in his neck and low back, butt, and thighs that was 10 out of 10. He also reported he had had chiropractic treatment, physical therapy, and medications, none of which were successful in



decreasing his pain. Dr. Wolfson ordered routine chiropractic evaluation and treatment three times a week for four weeks. Dr. Wolfson told him to follow up in two months or as needed.

Dr. Grow testified she saw Juan McLaurin again on April 2, 2012, for complaints of migraines, seizures, and insomnia, saying he only got two hours of sleep a night. Mr. McLaurin said he was seeing Dr. Zen and taking Zyprexa for bipolar disorder and schizophrenia. He reported worsening in his psychiatric state with more thoughts of harming himself at times. Mr. McLaurin reported ten seizure spells in the past month, stating he had them when he did not take his medicine. She changed medication.

When asked if Dr. Grow thought his seizures were exacerbated or increased because of the fall at work in April 2011, Dr. Grow said she could not say for certain. When asked about his complaints that the headaches had worsened since the accident, Dr. Grow responded that all she knew were the subjective complaints from Mr. McLaurin. Dr. Grow indicated the only change she saw in Mr. McLaurin after April 25, 2011, was in his subjective complaints of worsening of his headaches. He also complained of more seizures, but he also was having compliance issues with the medication.

When asked about the etiology of Mr. McLaurin's seizure disorder, Dr. Grow said the EEG showed a pattern of primary generalized epilepsy, a type of seizure disorder that can start in adolescence. When asked about the etiology of Mr. McLaurin's ongoing headaches, Dr. Grow said they were chronic daily headaches and tension-type headaches. Dr. Grow testified she had no reason to think Mr. McLaurin was malingering or not giving a good history of what had occurred to him.

## *DECISION*

After considering the pleadings, prehearing statements, stipulations, lay and medical evidence, the demeanor of the witnesses at the hearing, and the applicable law, the Administrative Judge finds as follows:

1. Mr. McLaurin's average weekly wage on April 25, 2011, was \$226.36, as stipulated by the parties.

2. Mr. McLaurin has not met his burden of proof in this claim. The great weight of the evidence shows that he did not receive a work-related injury at Wal-Mart on April 25, 2011, as he alleged in the petition to controvert. For more than a year, Mr. McLaurin related the elaborate story of his slip and fall in the women's bathroom at Wal-mart, claiming he injured his back and head when he fell to the concrete floor and (at least at the hearing but not on the petition to controvert) that he injured his right hand as well.

At the hearing, there were variations in the story each time he told it or answered a question on cross examination, and he resorted to answering the questions by saying that he could not remember anything. He generally conveyed the idea, however, that he entered the women's bathroom at about 1:15 p.m., with the cleaning cart. He blocked the door with a mop and also positioned the cart in front of the door so that no one could enter the bathroom while he cleaned. He first picked up the trash and put it beside the cleaning cart. Then he took two cans of cleaning products off the cart – one in each hand – and walked toward the mirrors. He then slipped in a wet spot, falling backward but catching himself with his right hand, after dropping the cleaning product from that hand, without hitting his buttocks or back on the floor. Then one or both feet slipped out from under him and he slipped in the water and fell backwards, landing flat on his back and

hitting his head so hard that he knocked unconscious for a couple of minutes – or five minutes as he told Dr. Wolfson.

According to Mr. McLaurin, he subsequently gained consciousness, took the walky-talky and called for help from a customer service representative, and waited while no one responded. He may have moved the cart from the door so that the customer service representative could open the door and come in. Then he crawled backwards to the garbage can and leaned up against the wall and rested a few minutes, maybe 10 minutes, before he got back up. Then a female patron came in and helped him off the floor and left, perhaps to get help. Then he mopped up the water from the floor and continued his work to finish cleaning the entire bathroom – the toilet bowls, sinks, and mirrors – and mopped the entire floor. It may have taken him 15 minutes to finish the cleaning.

Afterward, he thought he was fine and so finished his shift that ended at about 4:00 or 5:00 p.m. He did not see anyone to whom he could report the injury, meaning he did not see his supervisor, John Pierotich.

The employer/carrier played a security video taken in Wal-Mart that afternoon, however, that showed Mr. McLaurin entering the women's bathroom with the cleaning cart at about 1:22 p.m. One minute later, at about 1:23 p.m., a girl began to push and push against the bathroom door, apparently quite anxious to get inside the bathroom. The door was not locked but just blocked by the cart, and she kept pushing. Mr. McLaurin came out of the bathroom and let her in a few seconds before 1:24 p.m. He did not appear to be in any distress, physical or mental, nor did he appear to be flustered.

Another woman went inside the bathroom with her young child as soon as Mr. McLaurin came out. The girl, woman, and child left the bathroom about a minute later.

Then Mr. McLaurin reached in the women's bathroom to pull the cleaning cart out, and he immediately put it in the storage closet. He did not enter the bathroom again, and he walked away from the bathroom area at 1:25 p.m. and did not return that afternoon.

The video shows that he was in the women's bathroom for approximately two minutes and no more – and only one minute before the girl vehemently pushed on the door to get him to come out and let her in. When he came out to let the women into the bathroom, he looked to be as fine as before he had gone in the bathroom. The objective evidence on the video makes his story of the slip and fall and being knocked unconscious, et cetera, seem too fantastic to believe.

Furthermore, Mr. McLaurin claimed that he saw no one to whom he could report the incident. There are registers about 15 to 20 feet from the front bathroom doors, one of which is always kept open by an associate for the sale of tobacco. Additionally, another video clip shows Mr. McLaurin working in the same area with his supervisor, John Pierotich, and another co-worker, at about 1:30 p.m., that is, approximately five minutes after the alleged slip and fall in the bathroom. Mr. McLaurin said nothing to Mr. Pierotich about an alleged accident, although they conversed about something as they put rubber runners down in the vestibules because of a sudden rain.

Then other video clips show Mr. McLaurin lugging the heavy rolled-up rubber rain mats to two different entryway vestibules at the store. Mr. Pierotich testified the mats weight about 40 pounds each. Mr. McLaurin took several of them to the vestibules,

using his feet and legs to roll the mats out and then bending and stooping to position them properly and tape them down. One closeup of Mr. McLaurin shows him to be smiling and greeting a customer. None of the video frames show Mr. McLaurin exhibiting any physical difficulty whatsoever as he did this fairly strenuous work.

The medical records reveal that four days before the alleged accident at Wal-Mart, Mr. McLaurin complained to Nurse Practitioner Renwick about low back pain that was 10 on a scale of 1 to 10, with episodes having started three months earlier. He talked about the back pain causing him difficulty in lifting, bending, and twisting, yet on the security video from April 25, 2011, there is no indication of back pain or difficulty moving about and doing his work. At the hearing, Mr. McLaurin denied having made complaints about his back four days before the alleged incident.

The objective testing later ordered by Dr. Wolfson, after Dr. Wolfson heard the elaborate story of the slip and fall and being knocked unconscious at Wal-Mart, led Dr. Wolfson to prescribe four weeks of chiropractic treatment for a lumbar strain and nothing more. Mr. McLaurin has made many complaints of back pain in the year before the hearing, but there is no objective evidence to support these complaints.

The medical evidence discloses that Mr. McLaurin, although only 27 years old, has many chronic medical problems. Through the years in visits to various medical providers he gave stories of the worst kind of symptoms and debilitating problems. His history includes bipolar disorder, paranoid schizophrenia, hallucinations, suicidal and perhaps even homicidal ideation, seizure disorder, epilepsy, severe headaches, insomnia, esophageal reflux disease, hiatal hernia, and alcohol dependence. Additionally, on the intake questionnaires completed for Dr. Wolfson on May 17, 2011, Mr. McLaurin

claimed to suffer from an unexplained change in weight, joint stiffness or swelling, headaches, dizziness, blurred vision, hearing difficulties, shortness of breath with exertion, wheezing, chest pain, high blood pressure, shortness of breath at night, abdominal pain, nausea/vomiting, constipation/diarrhea, loss of appetite, bloody or tarry stools, unexplained weight change, frequent urination, urinary urgency or hesitance, palpitations or nervousness, easy bruising, arthritis or joint pain, swollen warm joints, morning stiffness, numbness, weakness, and seizures, and radiating pain from his neck. None of these difficulties were apparent on the security video from Wal-Mart.

At Wal-Mart, Juan McLaurin displayed an unwillingness or inability to go to work on a regular basis. Clearly he has psychological/psychiatric issues, and, just as clearly, he did not suffer a work-related injury on April 25, 2011, as described in the petition to controvert.

**ORDER**

**IT IS, THEREFORE, ORDERED** that Juan McLaurin's claim for workers' compensation benefits is hereby denied and dismissed.

**SO ORDERED, on** SEP 18 2012.

  
**LINDA A. THOMPSON**  
**ADMINISTRATIVE JUDGE**



**MWCC NO. 11 04293-K-8072-C**

**ATTEST:**  


**COMMISSION SECRETARY**