

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

WCC NO. F107476

WOODROW SWAIM, EMPLOYEE	CLAIMANT
WAL-MART ASSOCIATES, INC., SELF-INSURED EMPLOYER	RESPONDENT NO. 1
CLAIMS MANAGEMENT, INC., THIRD PARTY ADMINISTRATOR	RESPONDENT NO. 1
SECOND INJURY FUND	RESPONDENT NO. 2

OPINION FILED AUGUST 14, 2003

Hearing conducted before Administrative Law Judge C. MICHAEL WHITE in Batesville, Independence County, Arkansas.

The claimant was represented by Tom Thompson, Attorney at Law, Batesville, Arkansas.

The respondents no. 1 were represented by Patrick Spivey, Attorney at Law, Little Rock, Arkansas.

The respondent no. 2 was represented by Judy Rudd.

OPINION AND ORDER

A hearing was held in this matter on May 16, 2003. A prehearing conference was conducted on March 11, 2003, and a prehearing order was filed on March 11, 2003. A copy of the prehearing order has been marked as Commission Exhibit No. 1 and made a part of the record without objection.

During the prehearing conference, the parties agreed to the following stipulations:

1. The employee/employer/carrier relationship existed on April 9, 2000;

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2. The claimant was earning wages sufficient to entitle him to a total disability compensation rate of \$228.00 and a partial disability compensation rate of \$174.00;
3. The claimant is not pursuing vocational rehabilitation because he contends he is not capable of performing any employment activities.

During the prehearing conference, the parties also agreed that the issues to be litigated at the hearing were limited to the following:

1. Whether the claimant sustained an injury to his right foot that is compensable under the Arkansas Workers Compensation Law, under Act 796 of 1993;
2. Whether the claimant's right foot fracture was an idiopathic injury, which is not causally connected to his employment and is not compensable;
3. If the claimant's right foot fracture is found to be compensable, whether the condition which ultimately resulted in the amputation of his right toe is causally related to his employment;
4. If the claimant's right foot fracture is found to be compensable, whether his entitlement to permanent disability benefits is limited to the schedule set forth in Ark. Code Ann. § 11-9-521;
5. Whether the claimant is permanently and totally disabled;
6. Whether the Second Injury Fund has any liability in this claim.

From a review of the record as a whole, to include the testimony of the claimant, as well as the medical records and other documentary evidence, the following findings of fact and conclusions of law are made in accordance with Ark. Code Ann. § 11-9-704 (Cumm. Supp. 1997):

FINDINGS AND CONCLUSIONS

1. The Arkansas Workers' Compensation Commission has jurisdiction over this claim;
2. The stipulations agreed to by the parties and set forth above are hereby accepted as fact;
3. A preponderance of the evidence establishes that the claimant's right foot fracture was idiopathic in nature;
4. The claimant failed to prove by a preponderance of the evidence that his right foot fracture arose out of and in the course of his employment;
5. The claimant failed to prove by a preponderance of the evidence the elements necessary to establish the compensability of his right foot fracture.

DISCUSSION

The claimant worked in the respondent's produce department as a stocker. On April 9, 2000, he was walking backward, pulling a pallet jack loaded with a pallet of produce, when he felt a "pop" in his right foot. He took off his shoe and saw a "little 'A' sticking up. . . . and then on the bottom of [his] foot, about as big as a dime, was a blue circle." He testified that it was hurting but that he didn't give it much attention. However, when a supervisor arrived at the store, he reported the incident. When he ultimately received medical treatment, it was discovered that he had sustained a fracture of his foot. The claimant suffers from diabetes, and he developed an infection in the foot,

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which resulted in a partial amputation. The claimant testified that he was not doing anything different to pull the pallet jack than he ever did, and he testified that he did not know what caused the fracture. In this regard, he testified that he didn't step off of anything or twist his foot.

Since the claimant contends that he sustained an injury after July 1, 1993, this claim is controlled by the Arkansas Workers' Compensation Law as amended by Act 796 of 1993. Consequently, to establish the compensability of the claim, the claimant must satisfy the requirement for establishing one of the five categories of compensable injuries recognized by the amended law, including the requirements common to all categories of injuries. See, Jerry D. Reed v. Con Agra Frozen Foods, Full Workers' Compensation Commission, Opinion filed Feb. 2, 1995 (Claim No. E317744). Since the claimant in the present claim alleges that he sustained an injury as a result of a specific incident which is identifiable by time and place of occurrence, the requirements of Ark. Code Ann. § 11-9-102(4)(A)(i) (Cumm. Supp. 1997) are controlling, and the following requirements must be satisfied:

- (1) proof by a preponderance of the evidence of an injury arising out of and in the course of his employment (see, Ark. Code Ann. § 11-9-102(4)(A)(i) (Cumm. Supp. 1997); Ark. Code Ann. § 11-9-102(4)(E)(i) (Cumm. Supp. 1997); see also, Ark. Code Ann. § 11-9-401(a)(1) (Cumm. Supp. 1997));
- (2) proof by a preponderance of the evidence that the injury

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caused internal or external physical harm to the body which required medical services or resulted in disability or death (see, Ark. Code Ann. § 11-9-102(4)(A)(i) (Cumm. Supp. 1997));

(3) medical evidence supported by objective findings, as defined in Ark. Code Ann. § 11-9-102(16), establishing the injury (see, Ark. Code Ann. § 11-9-102(4)(D) (Cumm. Supp. 1997));

(4) proof by a preponderance of the evidence that the injury was caused by a specific incident and is identifiable by time and place of occurrence (see, Ark. Code Ann. § 11-9-102(4)(A)(i) (Cumm. Supp. 1997)).

If the claimant fails to establish by a preponderance of the evidence any of the requirements for establishing the compensability of the injury alleged, he fails to establish the compensability of the claim, and compensation must be denied. Reed, supra.

An idiopathic injury is one which begins with an origin which is personal to the claimant. Idiopathic injuries do not arise out of the employment unless the employment contributes to the risk or aggravates the injury. Moore v. Darling Store Fixtures, 22 Ark. App. 21, 732 S.W.2d 496 (1987).

In the present claim, I find that the claimant's injury was idiopathic. As discussed above, he was simply pulling the pallet jack when he heard a pop. The claimant was diagnosed with diabetes in the early 1990's, and he had experienced problems with his feet prior to this time. In fact, he had previously

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experienced problems with his left foot that also resulted in a partial amputation of that foot. Consequently, I find that the claimant failed to prove by a preponderance of the evidence that his right foot fracture arose out of and in the course of his employment. Accordingly, I find that the claimant failed to prove by a preponderance of the evidence the elements necessary to establish a compensable injury.

ORDER

Accordingly, based on my review of the entire record and for the reasons discussed herein, I find that this claim must be, and hereby is, denied and dismissed.

IT IS SO ORDERED.

C. MICHEL WHITE
ADMINISTRATIVE LAW JUDGE