

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F409608

BONNIE MILLS, EMPLOYEE	CLAIMANT
PIGGOTT COMMUNITY HOSPITAL, SELF-INSURED EMPLOYER	RESPONDENT
MUNICIPAL LEAGUE WC TRUST, TPA	RESPONDENT

OPINION FILED AUGUST 2, 2005

Hearing before ADMINISTRATIVE LAW JUDGE ANDREW L. BLOOD, on July 15, 2005, at Jonesboro, Craighead County, Arkansas.

Claimant represented by the HONORABLE JIM R. BURTON, Attorney at Law, Jonesboro, Arkansas.

Respondent represented by the HONORABLE J. CHRIS BRADLEY, Attorney at Law, North Little Rock, Arkansas.

STATEMENT OF THE CASE

A hearing was conducted in the above-styled claim to determine the claimant's entitlement additional workers' compensation benefits.

On May 3, 2005, a pre-hearing conference was conducted in this claim, from which a Pre-hearing Order of the same date was filed. The Pre-hearing Order reflects stipulations entered by the parties, the issues to be addressed during the course of the hearing, and the parties' contentions relative to the issues. The Pre-Hearing Order is herein designated a part of the record as Commission Exhibit #1.

The testimony of Bonnie Mills, the claimant, coupled with medical reports and other documents comprise the record in this claim. Claimant noted that efforts to secure the medical

records of Dr. Steven A. Kulik, Jr., the treating orthopedic surgeon, had been unsuccessful as of the date of the hearing despite repeated requests. The parties were directed to obtain the medical records subsequent to the hearing, for inclusion in the record. To date there has not been a written request for assistance of the Commission from either party regarding securing the records of Dr. Kulik.

DISCUSSION

Bonnie Mills, the claimant, with a date of birth of December 3, 1970, is a highschool graduate. Claimant commenced her employment with respondent in home health care in April 2002. Prior to working in the home health department of respondent, claimant worked in its kitchen.

Claimant's routine duties as a home health worker for respondent included going to the homes of clients and performing services. Claimant noted that she has had up to five (5) clients, however now sees three (3). The testimony of the claimant reflects that her duties ranged from providing baths, to grocery shopping, and meal preparation.

There is no evidence in the record to reflect that claimant experienced restrictions, limitations, or problems relative to her right lower extremity prior to August 27, 2004. Further, claimant denied having any instability relative to her right ankle prior to August 27, 2004.

The occurrence of the claimant's August 27, 2004, accident is not disputed. Claimant's testimony reflects that as she was leaving the residence of one client, she stepped on a make-shift sidewalk and her ankle flipped and she fell to the ground. Claimant received initial medical treatment relative to her right ankle at the emergency room of Piggott Community Hospital. At the time of her examination by emergency medical personnel, claimant's right ankle was tender

and swollen. (RX. #1, p. 12).

Claimant was seen at the Piggott Family Medical Clinic on September 3, 2004, relative to her right ankle by Ms. Judy Wells, a nurse practitioner. The entry in the September 3, 2004, office note regarding the visit reflects:

Still tender to touch, some swelling - no obvious deformity, some increased pain since yesterday when ankle tried to turn on her. (RX. #1, p. 11).

Ms. Wells assessed the claimant's complaint as a fracture of the right fibula. The September 3, 2004, note also reflects a referral to Dr. Day "thru w/c 9/16/04. 10am."

On September 16, 2004, claimant was evaluated by Dr. Thomas E. Day, a Jonesboro orthopedic physician, relative to her August 27, 2004, right ankle injury. After noting a history of the claimant's injury and medical treatment received relative to same, Dr. Day recorded the results of his examination of the claimant and observations relative to the radiographs. The report reflects:

X-RAY EXAM: Films that she brings with her show nondisplaced crack to the distal fibula on the right. Films repeated today show no evidence of fracture and no displacement from previous.

ASSESSMENT: She has a distal fibular fracture and a moderate ankle sprain. This is all healing well. (RX. #1, p. 10).

Claimant was directed by Dr. Day to continue using the walking boot, remain off work for 4-6 more weeks, and to return for follow-up appointment in 2-3 weeks. Claimant was again seen by Dr. Day on October 1, 2004, during which time she continued to have pain in her ankle. While Dr. Day recorded that the x-rays showed no evidence of fracture, mild swelling was still present and claimant continued to complain of discomfort. The October 1, 2004, office note of Dr. Day

concluded:

PLAN: I'll refer her for some therapy treatments to work on ROM and strengthening. She can wean herself out of the boot and back into her brace. She'll return in a few weeks. At that time, we should be able to allow her to return to regular work. Until then, she can do restricted duty that requires having a sit down job available. (RX. #1, p. 9).

The medical in the record reflects that claimant underwent the physical therapy as recommended by Dr. Day. (RX. #1, p. 6-7). During an October 22, 2004, visit, Dr. Day noted regarding the claimant:

She is still having some discomfort in her ankle but it has improved. She's now wearing her removable ankle brace. She's tried to wean herself out of it but has a feeling of instability at the ankle when she did this. (RX. #1, p. 5).

Dr. Day recorded that the claimant continued to have some swelling and was quite tender anterolaterally at the ankle. The October 22, 2004, office note of Dr. Day reflects plans to have the claimant continue using the brace as long as she felt she needed it. Claimant was returned to work two weeks following the October 22, 2004, visit to Dr. Day.

When next seen by Dr. Day on November 18, 2004, claimant had returned to work, however twisted her ankle after a couple of days and was having worsening pain. The November 18, 2004, clinic note reflects, in pertinent part:

PHYSICAL EXAM: She's tender anterolaterally at the ankle. There is mild swelling. She has good ROM. There is no evidence of instability.

X-RAYS: Films show the fracture to be healed.

IMPRESSION: She appears to have a recurrent sprain. I think that due to her injury and her size, she is going to have a long protracted recovery.

PLAN: At this point, we'll just need to keep her off work or at least in a sit down type position for quite awhile until she can get to feeling more normal. We'll restrict her activities at work and I'll have her return in 6 wks. (RX. #1, p. 4).

The credible testimony of the claimant reflects that she continued to experience a sensation of instability relative to her right ankle subsequent to her injury. Further, the claimant testified that she relayed her concerns to her medical providers, to include Dr. Day. The November 18, 2004, entry in the clinic note of Dr. Day regarding having the claimant do a sit down job "until she can get to feeling more normal", is corroborative of the claimant's testimony.

Claimant was seen in follow-up by Dr. Day on December 30, 2004, during which time the physical exam yielded mild swelling and tenderness at the anterolateral ankle. In addition to releasing the claimant to return to work effective January 4, 2005, the December 30, 2004, clinic note concluded:

If she has continued problems, I'd recommend referral to a foot and ankle specialist. (RX. #1, p. 3).

Claimant testified that in January 2005, after she had returned to work she again experienced a giving away in her right ankle. The testimony of the claimant reflects that the episodes or instability occurred without warnings. As a consequence of such an episode on January 14, 2005, claimant testified that she telephoned Dr. Day's office, and that an appointment was scheduled for her with Dr. Steven A. Kulik, Jr., for February 14, 2005.

On Saturday, February 12, 2005, claimant testified that as she went to retrieve a phone from her husband's vehicle, her ankle "gave way" and popped. Claimant asserts that she experienced swelling in the ankle and thought that she had broken it. Denies that February 12, 2005, incident was the result of her stepping in a hole, or that she relayed such a history to either

of her medical providers.

Following the February 12, 2005, incident, claimant was seen at the emergency room of Piggott Community Hospital, for treatment. The emergency room report reflects, with respect to history of present illness:

Pt. stepped in a hole & twisted her R ankle. H/O injury to this same ankle in August. (RX. #1, p. 2).

In addition to furnishing emergency medical treatment and diagnosing her complaint as a “ankle sprain”, claimant asserts that she was directed by the attending emergency room treating physician to keep her scheduled appointment with the ankle specialist, Dr. Kulik.

Claimant denies that she called Dr. Day’s office following the February 12, 2005, episode, and emergency room treatment. The credible testimony of the claimant reflects that the February 14, 2005, scheduled appointment with Dr. Kulik had been scheduled long before the February 12, 2005, emergency room visit.

The medical in the record reflects that the claimant was seen by Dr. Steven A. Kulik, Jr., a Little Rock orthopedic surgeon, on February 14, 2005. The office note relative to the afore visit reflects, in pertinent part:

HISTORY: Ms. Mills is a 34-year-old female that complains of right ankle pain and instability. She was at work and apparently twisted her ankle 8/27/04. She has had conservative care ever since by Dr. Day. She continues to have pain and instability.

The medical history sheet was reviewed and is in the chart.

* * *

PHYSICAL EXAMINATION: Vital signs are stable, well developed and well nourished. The patient is ambulating with a limp. The right ankle is tender anteriorly, over the lateral ankle ligaments and over the peroneal tendons. She has a negative anterior draw. Talar

tilt is difficult to tell due to her pain. It appears to be about the same as the opposite side. Pulses and light touch appear to be intact.

RADIOGRAPHS: Show an old avulsion fracture of the tip of the fibula.

ASSESSMENT: Right chronic ankle instability, rule out osteochondral lesion of the talus versus peroneal tendon tear.

RECOMMENDATION:

1. An MRI to evaluate for an occult osteochondral lesion of the talus or peroneus tendon tear.
2. Continue with boot or air cast splint.
3. Take her off work since she continues to twist this.
4. Follow up after MRI. (RX. #1, p. 1).

The testimony of the claimant reflects that she underwent the MRI in March 2005, and later had surgery on April 8, 2005, under the care of Dr. Kulik. Claimant was released to return to work by Dr. Kulik on June 16, 2005. Claimant testified that since her surgery she has not experienced the instability in her right ankle. Claimant has been able to discharge her employment duties since being released by Dr. Kulik on June 16, 2005. Claimant did not receive any temporary total disability benefits subsequent to February 14, 2005.

After a thorough consideration of all of the evidence in this record, to include the testimony of the claimant, review of the medical reports and other documentary evidence, along with the application of the appropriate statutory provisions and case law, I make the following:

FINDINGS

1. The Arkansas Workers' Compensation Commission has jurisdiction of this claim.
2. On August 27, 2004, the relationship of employee-employer existed between the parties.
3. On August 27, 2004, the claimant earned wages to entitle her to weekly compensation benefits of \$150.00, for temporary total/permanent partial disability.

4. On August 27, 2004, the claimant sustained an injury to her right ankle arising out of and in the course of her employment.

5. The claimant was temporarily totally disabled for the period February 12, 2005, through June 16, 2005, in addition to that period preceding January 4, 2005, as a result of her compensable injury of August 27, 2004.

6. Medical treatment rendered to the claimant on February 12, 2005, at the emergency room of Piggott Community Hospital was reasonable and necessary relative to the claimant's August 27, 2004, compensable right ankle injury, and of an emergency nature pursuant to Ark. Code Ann. §11-9-514 (b).

7. The respondent shall pay all reasonable hospital and medial expenses arising out of the injury of August 27, 2004.

8. The respondent has controverted the payment of all workers' compensation benefits in this claim subsequent to February 12, 2005.

CONCLUSIONS

On August 27, 2004, the claimant suffered an injury to her right ankle within the course and scope of her employment with respondent. Claimant received appropriated medical and indemnity workers' compensation benefits relative to the August 27 2004, injury through February 12, 2005. On February 12, 2005, while walking in her yard at home en route to retrieve a cell phone from a vehicle, claimant suffered a fall which required further medical treatment and resulted in an additional period of total incapacitation.

Claimant asserts entitlement to additional temporary total and medical benefits as a result of the February 12, 2005, fall. Respondent deny the existence of a nexus between February 12,

2005, fall of the claimant and the compensable August 27, 2004, right ankle injury, such that further workers' compensation benefits are warranted.

The present claim is one governed by the provisions of Act 796 of 1993, in that claimant asserts entitlement to additional workers' compensation benefits as a result of an injury having been sustained subsequent to the effective date of the afore provision. In order to prove a compensable injury as a result of a specific incident which is identifiable by time and place of occurrence, a claimant must establish by a preponderance of the evidence: an injury arising out of and in the course of employment; that the injury caused internal or external harm to the body which required medical services or resulted in disability or death; medical evidence supported by objective findings, as defined in Ark. Code Ann. § 11-9-102 (16), establishing the injury; and that the injury was caused by a specific incident and identifiable by time and place of occurrence. Ark. Code Ann. §11-9-102 (4) (A) (i). Should a claimant fail to establish by a preponderance of the evidence either of the requirements for establishing the compensability of the claim, compensation must be denied. *Mikel v. Engineered Specialty Plastic*, 56 Ark. App. 126, 938 S.W.2d 876 (1997).

The compensability of the claimant's August 27, 2004, right ankle injury is not disputed. The credible evidence in the record reflects that subsequent to her injury claimant continued to experience a sensation of instability in the right ankle. The medical reflects that claimant relayed the afore to her treating physicians, to include Dr. Day during the December 30, 2004, visit. Further, Dr. Day held out the prospects of having the claimant seen by a foot/ankle specialist if she continued to have problem. In furtherance of the afore, the credible evidence reflects that when claimant experienced an episode on January 14, 2005, she contacted Dr. Day's office and

an appointment was scheduled for her to be seen by Dr. Steven Kulik, on February 14, 2005.

Respondent asserts that any difficulties suffered by the claimant on and after Saturday, February 12, 2005, were attributable to an independent intervening event, and not the compensable August 27, 2004, injury. Ark. Code Ann. §11-9-102 (4) (B) (ii) and (iii), provides that a compensable injury does not include:

(ii) Injury incurred while engaging in or performing, or as the result of engaging in or performing, any recreational or social activities for the employee's personal pleasure;

(iii) Injury which was inflicted upon the employee at a time when employment services were not being performed, or before the employee was hired or after the employment relationship was terminated.

Prior to the February 12, 2005, fall, claimant had complained of instability in her right ankle which she attributed to residuals of her compensable August 27, 2004, injury. The afore complaints of the claimant had been documented in the medical records of her treating physician, Dr. Day. More importantly, the evidence preponderates that as a result of the claimant's documented complaints of instability in the affected ankle, Dr. Day had scheduled an appointment for her to be seen by a specialist, Dr. Kulik, on February 14, 2005.

The occurrence of an incident on Saturday, February 12, 2005, at the claimant's residence involving her right ankle is not disputed. While walking in her yard claimant suffered instability in the right ankle which resulted in her falling and requiring emergency medical treatment at Piggott Community Hospital. Contrary to the entry in the emergency room medical records, the credible evidence reflects that the February 12, 2005, fall of the claimant was the product of instability in her right ankle, a residual of her August 27, 2004, compensable injury, and as such

a compensable consequence of her compensable injury. *Oak Grove Lumber Co. v. Highfill*, 62 Ark. App. 42, 968 S.W.2d 637 (1998).

The claimant has sustained her burden of proof by a preponderance of the evidence that she suffered a compensable consequence of her August 27, 2004, compensable right ankle injury on February 12, 2005, which resulted in an additional period of temporary total incapacitation and further medical treatment which reasonably necessary and related to her compensable injury. Respondent has controverted the claimant's entitlement to corresponding temporary total disability and medical benefits subsequent to February 12, 2005.

AWARD

Respondent is hereby ordered and directed to pay to the claimant temporary total disability benefits at the weekly rate of \$150.00, for the period beginning February 12, 2005, and continuing through June 16, 2005, as a result of the August 27, 2004, compensable injury. Said sums accrued shall be paid in lump without discount.

Respondent is further ordered and directed to pay all reasonable, necessary, and related medical, hospital, nursing, and other apparatus expenses to include those associated with the February 12, 2005, emergency room visit, and claimant's medical treatment under the care of Dr. Steven Kulik, as well as medical related milage, growing out of the August 27, 2004, compensable injury.

Maximum attorney fees are herein awarded to the claimant's attorney on the controverted indemnity benefits herein awarded, pursuant to Ark. Code Ann. §11-9-715.

This award shall bear interest at the legal rate pursuant to Ark. Code Ann. §11-9-809, until paid.

Matters not addressed herein are expressly reserved.

IT IS SO ORDERED.

Andrew L. Blood, Administrative Law Judge