

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F504139

JEREMY PUTMAN

CLAIMANT

O'REILLY AUTOMOTIVE, INC.

RESPONDENT EMPLOYER

INDEMNITY INSURANCE CO. OF NORTH AMERICA

RESPONDENT CARRIER

ORDER AND OPINION FILED OCTOBER 21, 2005

Hearing before Administrative Law JUDGE LINDA K. MARSHALL.

Claimant represented by the HONORABLE SHERRI ARMAN MCDONOUGH, Attorney at Law, Hot Springs, Arkansas.

Respondents represented by the HONORABLE WILLIAM C. FRYE, Attorney at Law, Little Rock, Arkansas.

STATEMENT OF THE CASE

The above claim came on for a hearing in Hot Springs, Arkansas on September 23, 2004. A prehearing conference was held on July 19, 2005 and a prehearing order was filed on July 20, 2005. A copy of the prehearing order was marked as Commission Exhibit No. 1 and made a part of the record without objection.

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

1. There was an employer-employer relationship on April 22, 2005.
2. The temporary total disability rate is \$193.

The claimant contends that he sustained a compensable specific incident injury on April 23, 2005, and is entitled to medical benefits and temporary total disability benefits from April 23, 2005 through June 14, 2005. The claimant further requests an evaluation for a permanent impairment rating and attorney's fees.

Respondents controvert the claim entirely and contend this is an idiopathic fall where the ankle went out. Respondents paid the bill for the ambulance but did not pay the emergency room bill.

ISSUES TO BE LITIGATED

1. Compensability.
2. Medical benefits.
3. Temporary total disability benefits.
4. Impairment evaluation.
5. Attorney's fees.

From a review of the record as a whole, to include medical reports, documents and other matters properly before the Commission, and having had an opportunity to hear the testimony of the witnesses and to observe their demeanor, the following findings of fact and conclusions of law are made in accordance with Ark. Code Ann. §11-9-704:

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. The Arkansas Workers' Compensation Commission has jurisdiction of this claim.
2. There was an employer-employee relationship on April 22, 2005.
3. The temporary total disability rate is \$193.
4. The claimant has proven by a preponderance of the credible evidence that he sustained a compensable injury, caused by a specific incident, arising out of and in the

course of his employment, which produced physical harm, supported by objective findings, requiring medical treatment or producing disability pursuant to Ark. Code Ann. §11-9-102.

5. The respondents are directed to pay all medical expenses within 30 days of receipt pursuant to Rule 30.

6. The claimant has proven by a preponderance of the evidence that an evaluation for permanent impairment is reasonable and necessary and the responsibility of respondents.

7. The claimant is entitled to temporary total disability benefits based on Dr. Robert Kleinhenz's and Dr. Martin Koehn's medical records, as he remained in his healing period and was totally unable to earn wages from April 23, 2005 through June 14, 2005.

8. The claimant's attorney is entitled to the maximum statutory attorney's fee on benefits awarded herein, one-half of which is to be paid by claimant and one-half to be paid by respondents in accordance with Ark. Code Ann. §11-9-715 and Arkansas Workers' Compensation Rules and Regulations, Rule 10.

DISCUSSION

The claimant, 27 years old, works at the respondent employer in counter sales. On April 22, 2005, the claimant was working as a delivery driver when he had an accident about 9:30 a.m. The claimant was asked to tell how the accident happened and he stated, in part:

I walked around down the stairs and to my truck. I opened the door and put my clipboard in the truck in the front seat. I still had my parts in my hand. I switched my parts from my

left hand to my right hand, walked to the bed side of the truck, turned to load the stuff in the truck, and – bang! – twisted on my ankle. (T., p. 8, lines 6-11.)

* * *

I heard a pop and fell to the ground. I mean it was just an intense pain. I crawled over into the truck, because I still had the door open, and pulled myself up in the truck and got on the CB and radioed inside for somebody to help. (T., p. 8, lines 23 - p. 9, line 1.)

The claimant was asked exactly what he was doing when he hurt his ankle and he testified that he was turning while loading his truck. The claimant advised Matt and Rick (supervisors) what had happened. The claimant went to the emergency room by ambulance and was x-rayed and sent home. Overnight, the ankle continued to swell and become more painful, sending the claimant back to the emergency room. The claimant was admitted to the hospital for a couple days. The medical records reveal that the claimant saw his family doctor about four times and had one call-in for medication and was allowed to return to work without restrictions on June 15, 2005. The claimant returned to work for the respondent employer and has returned to his family doctor one time, September 12, 2005.

The claimant verified that he had no previous problems with his right ankle. He verified that he had never had an episode before April 22, 2005, nor after that date when he fell for no particular reason. The claimant confirmed that he has a mild case of hemophilia, which is simply free bleeding. The claimant again described his accident as he was loading his truck and he turned and his ankle went out, he heard a loud pop and hit the ground. The claimant had a motorcycle accident in 1996, where he injured his left ankle but not the right ankle. Respondents introduced a 1997 and a 1985

medical report that mentioned right ankle swelling; however, the claimant had no recall of this.

Richard Scott Waters, manager for the respondent employer, testified he was notified the claimant had hurt himself and he saw the claimant's ankle swollen. Mr. Waters testified the claimant stated he was putting things in the truck and his ankle went out.

In order to prove a compensable injury as a result of a specific incident that is identifiable by time and place of occurrence, a claimant must establish (1) proof by a preponderance of the evidence of an injury arising out of and in the course of employment; (2) proof by a preponderance of the evidence that the injury caused internal or external harm to the body that required medical services; (3) medical evidence supported by objective findings establishing the injury; and (4) proof by a preponderance of the evidence that the injury was caused by a specific incident and identifiable by time and place of occurrence. Ark. Code Ann. §11-9-102(4) (Repl. 2003). If the claimant fails to establish by a preponderance of the evidence any of the requirements for establishing the compensability of the claim, compensation must be denied. *Mikel v. Engineering Specialty Plastics*, 56 Ark. App. 126, 938 S.W.2d 876 (1997).

Respondents contend the claimant sustained an idiopathic fall and was not compensable. An idiopathic injury at work is generally not compensable because the injury is personal in nature and, therefore, does not arise out of and in the course of the employment. See, generally, *Little Rock Convention & Visitors Bureau v. Pack*, 60 Ark. App. 82, 959 S.W.2d 415 (1997). When an employee sustains an "unexplained" injury

at work, the injury is generally compensable. The Court of Appeals explained the distinction in *Moore v. Darling Store Fixtures*, 22 Ark. App. 21, 732 S.W.2d 496 (1987):

When one suffers an injury at work, the cause is, obviously, either known or unknown. Larson's Treatise on Workers' Compensation Law states that the most common example of a situation in which the cause of the harm is unknown is the unexplained fall in the course of employment and that most courts confronted with that situation have seen fit to award compensation. 1 Larson, *The Law of Workmen's Compensation*, §10.31, at 3-87 (1985). However, injuries from idiopathic falls do not arise out of the employment unless the employment contributes to the risk or aggravates the injury by, for example, placing the employee in a position which increases the dangerous effect of the fall, such as on a height, near machinery or sharp corners, or in a moving vehicle. Larson §12.11.

The word 'idiopathic' is defined in Webster's Third New International Dictionary, Unabridged (1976), as (1) peculiar to the individual (2) arising spontaneously or from an obscure or unknown cause. Although the two concepts are frequently confused, Larson says 'unexplained fall cases begin with a completely neutral origin of the mishap, idiopathic fall cases begin with an origin which is admittedly personal and which therefore requires some affirmative employment contribution to offset the prima facie showing of personal origin. Larson §12.11, at 3-314.

Moore, 22 Ark. App. at 25, 732 S.W.2d at 498.

In the present case, the claimant has proven by a preponderance of the evidence that he sustained a compensable ankle injury on April 22, 2005. The claimant was a credible witness who gave a plausible account of his accident and the emergency room records provided a consistent account of the injury. The medical records document swelling of the tissue about the ankle joint. This satisfies the "objective findings" requirement of Ark. Code Ann. §11-9-102(16). The claimant described his ankle injury occurred when he was loading his truck and turned and he

hurt a pop and he fell. I find the claimant's injury to fall under the specific incident injury category rather than an idiopathic injury. The claimant testified he could not recall having any problems with his right ankle in the past, but he did have a previous injury to his left ankle with a motorcycle accident. While the claimant did have a mild case of hemophilia B, this is a free bleeding disorder and not related to sprains, balance or falls. The preponderance of the evidence provided the claimant was in the course of his employment and the incident arose out of his employment

Respondents are responsible for all reasonable and necessary medical the claimant has incurred resulting from care and treatment he has pursued for his ankle injury. Ark. Code Ann. §11-9-508 provides that the employer shall promptly provide an injured employee such medical, hospital and other reasonably necessary services that the claimant may receive for the injury. In the present case, the claimant received additional medical treatment for his ankle sprain with hemarthrosis since it was aggravated by underlying hemophilia. However, it is well settled that an employer takes an employee as he finds him and employment circumstances that aggravate pre-existing conditions are compensable. *St. Vincent Infirmary Med. Ctr. v. Brown*, 53 Ark. App. 30, 917 S.W.2d 550 (1996).

The claimant next contends he is entitled to temporary total disability benefits from April 23, 2005 through June 14, 2005. In order to be entitled to temporary total disability benefits, the claimant must remain in his healing period and be totally unable to earn wages. *Ark. State Hwy. & Transp. Dept. v. Breshears*, 272 Ark. 244, 613 S.W.2d 392 (1981).

In the present case, the claimant has proven by a preponderance of the

evidence that he remained in his healing period and was unable to earn wages from April 23, 2005 through June 14, 2005. The claimant's testimony and the medical evidence support the claimant's contention that he was unable to work and remained in his healing period. The April 23, 2005, report from Dr. Robert Kleinhenz advised the claimant should be off his feet with his leg elevated and was released to return to work full duty on June 15, 2005, by Dr. Martin Koehn. The claimant did return to work for the respondent employer and continued to work there at the time of the hearing.

The claimant next requested a follow-up evaluation for the purposes of an impairment rating. Dr. Martin Koehn opined on September 13, 2005, that the claimant would continue to have some stiffness and swelling of the ankle for the next 6 to 12 months and felt any permanency would be minimal. While there may not be any permanency, Dr. Koehn's last correspondence left the door open and seemed to give the claimant some additional time for his ankle condition to fully stabilize. I find the claimant has proven by a preponderance of the evidence that an additional evaluation would be reasonable and necessary to determine if any permanent impairment is assigned for the compensable injury. I further find respondents would be responsible for payment of the evaluation.

ORDER

The claimant has proven by a preponderance of the evidence that he sustained a compensable specific incident injury to his ankle on April 22, 2005. Respondents are responsible for all reasonable and necessary medical benefits, to include an evaluation for permanent impairment. The claimant has proven by a preponderance of the evidence that he remained in his healing period and was totally unable to work from

April 23, 2005 through June 14, 2005.

The claimant's attorney is entitled to the maximum statutory attorney's fee on benefits awarded herein, one-half of which is to be paid by claimant and one-half to be paid by respondents in accordance with Ark. Code Ann. §11-9-715 and Arkansas Workers' Compensation Rules and Regulations, Rule 10.

All sums herein accrued are payable in a lump sum without discount and this award shall bear interest at the maximum legal rate until paid.

IT IS SO ORDERED.

**LINDA K. MARSHALL
ADMINISTRATIVE LAW JUDGE**