

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F503078

GERMAN RODRIGUEZ

CLAIMANT

SIMMONS FOODS, SELF INSURED

RESPONDENT

S.B. HOWARD & COMPANY,
INSURANCE CARRIER

RESPONDENT

OPINION FILED OCTOBER 21, 2005

Hearing before ADMINISTRATIVE LAW JUDGE MICHAEL L. ELLIG in
Springdale, Washington County, Arkansas.

Claimant represented by EVELYN BROOKS, Attorney, Fayetteville,
Arkansas.

Respondents represented by TOD BASSETT, Attorney, Fayetteville,
Arkansas.

STATEMENT OF THE CASE

A hearing was held in the above styled claim on July 25, 2005,
in Springdale, Arkansas. The deposition of Dr. John Kendrick was
taken on August 19, 2005, and has been admitted as a subsequent
exhibit.

A pre-hearing order was entered in this case on May 19, 2005.
This pre-hearing order set out the stipulations offered by the
parties and outlined the issues to be litigated and resolved at the
present time. Prior to the commencement of the hearing, the parties
amended the stipulation concerning the appropriate weekly
compensation rates. A copy of the pre-hearing order with that
amendment noted thereon, was made Commission's Exhibit No. 1 to
the hearing.

The following stipulations were offered by the parties and are
hereby accepted:

1. On all relevant dates in January of 2005, the

relationship of employee-self insured employer-third party administrator existed between the parties.

2. The appropriate weekly compensation rates are \$227.00 for total disability and \$170.00 for permanent partial disability.
3. The claim is controverted in its entirety.

By agreement of the parties the issues to be litigated and resolved at the present time were limited to the following:

1. Whether the claimant sustained a compensable injury to his right foot during January of 2005.
2. The claimant's entitlement to the payment of medical expenses, temporary total disability from January 28, 2005 through a date yet to be determined, and attorney's fees.

In regard to these issues, the claimant contends:

"Claimant's fourth toe on his right foot was injured on January 3, 2005, when he was using chemicals during the course of his work. The chemicals mixed with the chicken blood on the floor ate through his skin and caused an infection."

In regard to these issues, the respondents contend:

"Claimant contends that the fourth toe on his right foot was injured on January 23, 2005, when he was using chemicals mixed with chicken blood on the floor which allegedly ate through his skin and caused an infection. Respondent denies that the claimant sustained a compensable accidental injury to any toe on his right foot on January 28, 2005, or on any other date for that matter. To the contrary, respondent contend that the claimant suffers from diabetes and that the personal non-work related disease was the sole cause for any and all medical treatment rendered to the

claimant's right foot on January 28, 2005, or on any date thereafter.

DISCUSSION

_____The central issue in this case is styled as whether the claimant sustained a compensable injury to his right foot during January of 2005. The burden rests upon the claimant to prove the compensability of his claim.

The claimant has failed to introduce any evidence that would show the occurrence of an employment related traumatic injury to his right foot in January of 2005. There is no evidence that he experienced any employment related laceration, abrasion, puncture, or contusion involving his right foot. There is no evidence that he experienced any employment related burn, either as the result of exposure to fire or chemicals.

The obvious basis of the claimant's case is that his employment activities and/or environment resulted in his contracting of an infection of the fourth toe of his right foot. Thus, his claim would appear to be based more on an occupational disease, rather than an occupational injury.

The medical evidence clearly shows that by February 1, 2005, the claimant had an advanced infection of the fourth toe of his right foot, which had become gangrenous. The claimant was hospitalized on that date and his toe was subsequently amputated by Dr. John Kendrick within a day or two thereafter (for some reason none of the initial hospital records contain a date of service for the services provided by Dr. Kendrick). At the time of the

amputation of the claimant's toe, Dr. Kendrick noted that the bones of the toe had essentially been destroyed and that the bone going into the claimant's forefoot (the metatarsal) had become necrotic or soft and splintered. Thus, by this time the claimant's infection had progressed to not only involve the skin and soft tissue, but to have also resulted in a bone infection or osteomyelitis.

The medical evidence further shows that the claimant is a diabetic. His diabetic condition is sufficiently advanced that it has resulted in a diabetic peripheral neuropathy. The medical evidence further shows that it has also resulted in occlusive peripheral vascular disease, particularly involving the area of his infection.

The evidence presented concerning the onset of the infection of the claimant's right fourth toe and the employment related events occurring in close temporal proximity thereto, is somewhat in conflict. The claimant contends that any conflict in this regard is simply the result of misunderstandings due to his inability to speak English. However, the evidence presented does not support this contention. Rather, it would appear that these conflicts are more likely attributable to intentional changes in the claimant's history, which are compounded by the fact that he is actually uncertain as to when this infection did actually first manifest itself.

At the hearing, the claimant testified that at approximately midnight on Thursday, January 27, 2005, he was dumping boxes that

contained "red water" and some of the "red water" spilled on his feet getting his tennis shoes "soaking wet". He did not notice any difficulties with his foot and finished his shift. When he got home during the early morning hours of Friday, January 28, 2005, he still did not notice any difficulties or problems with his right foot and went to bed. He testified that when he arose later on January 28, his foot was hurting him and there was some skin off of his fourth toe. However, he returned to work at the regular time on the afternoon or evening of January 28. It was his testimony that he attempted to report his difficulties and see the company nurse, but was unable to locate anyone. Therefore he simply finished his shift and went home. It was his testimony that when he went to work on the afternoon of the following day, January 29, 2005, he again attempted to report his difficulties to personnel and to see the plant nurse, but was unable to locate any one in these departments. He advised his supervisor that his foot was hurting and that he couldn't work. His supervisor told him to go to the plant nurse. When he told his supervisor that he had already attempted this, his supervisor advised him to go home, which he did. The following day, Sunday, January 30, 2005, was the claimant's regular day off. Finally, the claimant testified that when he reported to work on the afternoon of Monday, January 31, 2005, he went to the personnel department and was sent to the plant nurse. The plant nurse then arranged him an appointment with the company doctor on the following day, Tuesday, February 1, 2005 (this was the customary day for the company doctor to visit the

plant). When the claimant was seen by the company physician, he was referred to his personal physician and ultimately to the emergency room.

In his testimony, the claimant emphatically denied that he had experienced any difficulties with the fourth toe of his right foot or his right foot in general before Friday, January 28, 2005. He also specifically denied that he had placed any over-the-counter medication on his toe or foot, prior to Friday, January 28, 2005.

Rosa Torres, the "people service manager" for the respondent, testified that she had gone with the claimant to the nurse's station to translate for him on January 31, 2005. At that time, the claimant informed the plant nurse that he had an infection in his toes and showed his right foot to the nurse. He further told the nurse that this infection had incurred on Friday after he had been standing in dirty chicken water.

This history also appears to be the initial history given by the claimant to Dr. Kendrick (at the hearing the claimant testified that he may not have told Dr. Kendrick about the "red water" incident). In his report of March 17, 2005, Dr. Kendrick states:

"However, in the Wound Center as I have followed him he was able to tell me that he worked for Simmons Foods and during this time he was standing in what he called 'dirty chicken water'. He states that he told his supervisors that he was a diabetic and that he did not think that it was a good idea for him to be in this dirty chicken water.

I would certainly agree with Mr. Rodriquez and feel that Simmons Foods is indeed liable for the medical bills that Mr. Rodriquez has incurred. I can state with a degree of certainty than more likely than not his injury

was caused from his working conditions."

The initial emergency room records of the Northwest Health Center contained various histories surrounding the onset of the claimant's foot difficulties. The initial triage record notes a history of difficulties "since last week" and further notes that the claimant related swelling and redness in his right fourth toe since the previous Thursday. In a subsequent report, a history of pain and swelling is recorded of 7 days duration with no precipitating trauma. It is also significant to note that the physical examination of the claimant showed "brown lesions" down both legs, which were diagnosed as possibly being the result of diabetic ulcers. The most detailed history is contained in the history and physical of the claimant's admission on February 2, 2005. This report states:

"The patient is a 38 year old male patient who presents with a one week history of erythema (redness) to the lateral aspect of his right foot involving the fifth toe. This progressed over the next few days and involved the fourth toe as well. The patient denies must pain although he does have some swelling. He does describe a fever. He has no history of this. He was found in the emergency room to have diabetes mellitus also. The patient denies any history of polydipsia or polyuria. He does state that he was using a topical over the counter medication on his foot to try to alleviate the infection."

The initial emergency room records show that on examination, significant discoloration was noted involving both the claimant's fifth and fourth toes.

The various laboratory tests indicate that the claimant initially exhibited group B streptococcus agalactiae, group B

streptococcus that was non enterococcal and a rare prevotella disiens. Subsequent cultures, taken on February 15, 2005, reveal the presence of a staphylococcus epidermidis. None of these bacteria are shown to be particularly attributable to the poultry processing industry.

In an undated report to the claimant's attorney, Dr. Kendrick elaborates on his previous opinion that the claimant's infection was employment related. In this report he states:

"I feel that Mr. Rodriguez' occupational senario of chronically standing in dirty water would certainly lead to this infection in a diabetic.

The mechanism for allowing dirty water to cause infection in a diabetic foot is maceration of the skin (by prolonged exposure to water). It only takes a few hours for this to happen. The maceration then allows a direct opening through the skin where contamination can do its damage."

When Dr. Kendrick subsequently learned that the claimant's employment did not require him to stand for prolonged periods in "dirty water", he continued his opinion that the claimant's infection was still related to his employment. In his report of July 13, 2005, he states:

"Mr. Rodriques has diabetic neuropathy. He could easily have had a break in his skin and be unaware of it. It takes a very minor break in the skin with a diabetic to end up with an infection out of control, since diabetics are poorly equipped to fight infection.

This would be strictly conjecture, but I am sure that the infection started with a minor break in the skin. Since he has a diabetic neuropathy, he would have been totally unaware of it."

In his subsequent deposition, Dr. Kendrick concludes that the actual bacteria that precipitated the claimant's infection were more likely than not picked up while the claimant was at work and as a result of his work environment. In his deposition, Dr. Kendrick opined that it was the fact of the claimant getting his feet wet at work that was the cause of his infection, however and whenever it happened. He stated that the infection he observed could have started months before or less than 4 days prior to the amputation of the claimant's toe. Essentially, it was Dr. Kendrick's testimony in his deposition that regardless of who or when the bacteria was introduced into the claimant's right foot, this introduction was more likely than not due to the claimant's work and work environment.

After consideration of all the evidence presented, I simply cannot agree with the opinion of Dr. Kendrick. The claimant is unquestionably a diabetic, suffering from both a diabetic peripheral neuropathy and a diabetic peripheral circulatory insufficiency. These facts, in and of themselves, can result in skin lesions or ulcers. In fact, a total circulatory peripheral occlusion can, in and of itself, leave to gangrene, such as that experienced by the claimant. The claimant could have sustained an open lesion to the skin of his foot in any number of ways. The bacteria giving rise to the claimant's infection are not peculiar to the poultry processing industry. They are also not particularly peculiar to merely having "wet feet". While the claimant could have undoubtedly picked up the bacteria that produced the infection

involving his right foot at his place of employment, he could have also picked up the same infection in any number of places, including his home. Unlike Dr. Kendrick, I cannot find that the evidence presented in this case and the facts which it shows supports the conclusion that the mechanism of the claimant's infection more likely than not occurred while he was performing his employment activities and as a result of his employment environment. Therefore, I have no alternative but to find that the claimant has failed to prove that the infection and difficulties which he experienced with his right foot are "compensable" under the Arkansas Workers' Compensation Act, either as a "compensable injury" or as an "occupational disease". The present claim must be denied and dismissed in its entirety.

FINDINGS OF FACT & CONCLUSIONS OF LAW

1. The Arkansas Workers' Compensation Commission has jurisdiction of this claim.
2. On all relevant dates in January of 2005, the relationship of employee-self insured employer-third party administrator existed between the parties.
3. On all relevant dates in January of 2005, the claimant earned wages sufficient to entitle him to weekly compensation benefits of \$227.00 for total disability and \$170.00 for permanent partial disability, should such benefits have been appropriate.
4. The claimant has failed to prove by the greater weight of the credible evidence that the existence of a causal

relationship between his employment with this respondent in January of 2005, and the difficulties he subsequently experienced with his right foot, as the result of an extensive infection. Therefore, the claimant has failed to prove that his difficulties with his right foot represent either a "compensable injury" or a "occupational disease", as those terms are defined by the Act.

5. The respondents have denied that the claimant's right foot difficulties are "compensable" and have controverted this claim in its entirety.

ORDER

Based upon my foregoing findings and conclusions, I have no alternative but to deny and dismiss this claim in its entirety.

IT IS SO ORDERED.

MICHAEL L. ELLIG
Administrative Law Judge