

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F501460

BARBARA TANKERSLEY, EMPLOYEE	CLAIMANT
SEA ARK MARINE, INC., EMPLOYER	RESPONDENT
COMMERCE & INDUSTRY INS. CO., CARRIER	RESPONDENT

OPINION FILED DECEMBER 30, 2005

Hearing before Administrative Law Judge J. Mark White on November 18, 2005, in Monticello, Drew County, Arkansas.

Claimant appeared *pro se*.

Respondents represented by Ms. Carol Worley, Attorney at Law, Little Rock, Arkansas.

STATEMENT OF THE CASE

On November 18, 2005, the above-captioned claim came on for a hearing in Monticello, Arkansas. A pre-hearing conference was conducted on August 22, 2005, and a Prehearing Order was entered that same day. A copy of the August 22, 2005, Prehearing Order has been marked as Commission Exhibit No. 1 and made a part of the record herein without objection. At the hearing, the parties confirmed that the stipulations, issues, and respective contentions, as amended, were properly set forth in the Prehearing Order.

The parties stipulated as follows:

1. Existence of the employer/employee relationship on January 12, 2005.

2. Compensation rate: \$312.00 – TTD, \$234.00 – PPD,
based on an average weekly wage of \$469.00.

The parties agreed that the issues to be presented were compensability and the claimant's entitlement to additional benefits.

The parties' contentions are set forth in the Prehearing Order and are incorporated herein by reference.

Subsequent to the hearing, the claimant submitted a written objection to the inclusion in the record of pages one and two of Respondent Exhibit No. 1. The claimant stated in her letter that the parties agreed prior to the hearing to exclude these pages, and it is this judge's recollection that the parties did so agree. In any event, the two pages are irrelevant to the claim at hand. Therefore, pages one and two of Respondent Exhibit No. 1 are hereby excluded from the record. The claimant's post-hearing objection, together with the response of respondents, shall be blue-backed and incorporated into the record herein.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing 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 claimant and to observe her demeanor, the following findings of fact and conclusions of law are hereby made in accordance

with Ark. Code Ann. § 11-9-704:

1. The Arkansas Workers' Compensation Commission has jurisdiction of this claim.
2. The stipulations agreed to by the parties are reasonable and are hereby accepted as fact.
3. The claimant has failed to prove by a preponderance of the evidence that the existence and extent of her injury is established by medical evidence supported by objective findings.
4. The claimant has therefore failed to prove by a preponderance of the evidence that she sustained a compensable injury.
5. The respondents have controverted this claim in its entirety.

DISCUSSION

I. History

The claimant worked for the respondent-employer as a spray painter. She testified that she injured her left foot on January 12, 2005, when she stepped on an air hose and it rolled out from under her. She reported the injury to her supervisor, but she did not seek medical treatment until several days later, when her foot continued to bother her.

She initially treated with Dr. Jeff Reinhart, whose records were not introduced into evidence. She then saw an orthopedic surgeon, Dr. Gregg Massanelli. He gave the claimant's history as follows:

She has a chief complaint of left heel pain. She has had it since January 12, 2005. She said she thinks she stepped on a hose when her symptoms began. Her symptoms are classic for plantar fasciitis.

Dorland's Illustrated Medical Dictionary, 30th Ed., defines plantar fasciitis as an inflammation of fibrous tissue along the sole of the foot. Dr. Massanelli's treatment notes make no mention of any objective sign of injury to the claimant's foot; he reviewed x-rays and opined they showed nothing abnormal other than a bipartite sesamoid, which *Dorland's* defines as a small, divided, nodular bone embedded in a tendon or joint capsule.

Dr. Massanelli prescribed medication to treat the claimant's plantar fasciitis, as well as the use of an arch support and night splint. He did not "foresee any long-term problems from her diagnosis."

The claimant continued to have problems with her foot, and eventually she sought a change of physician. Thereafter the respondents controverted additional medical treatment, and the claimant resigned her position with the respondent-employer because she did believe she could return to work. She has not returned to work since.

II. Adjudication

For the claimant to establish a compensable injury as a result of a specific incident, the following requirements of Ark. Code Ann. § 11-9-102 (4)(A)(i) must be established: (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 physical harm to the body which required medical services or resulted in disability or death; (3) medical evidence supported by objective findings, as defined in Ark. Code Ann. § 11-9-102(16), establishing the existence and extent of the injury; and (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. *Ford v. Chemipulp Process, Inc.*, 63 Ark. App. 260, 977 S.W.2d 5 (1998). If the claimant fails to establish by a preponderance of the evidence any of the requirements for establishing the compensability of a claim, compensation must be denied. *Id.*

There appears to be little or no doubt that the claimant has plantar fasciitis, and that it is at least in part attributable to a work injury. Nonetheless, by law a claimant must introduce medical evidence supported by objective findings to establish the existence of her injury. *Id.*, ARK. CODE ANN. § 11-9-102 (4)(D). The only objective findings contained in the record herein are x-ray reports noting the

presence of a bipartite sesamoid and/or a unicameral bone cyst. I can find nothing in the record, nor in relevant medical literature, to connect either of these objective findings with a diagnosis of plantar fasciitis. In other words, there are simply no objective findings in the record that establish the existence of plantar fasciitis.

Therefore, I find that the claimant has failed to prove by a preponderance of the evidence that the existence and extent of her injury is established by medical evidence supported by objective findings. The claimant has failed to prove that she sustained a compensable injury. I note that I would reach the same findings even if the claimant's injury were considered as a gradual-onset injury.

AWARD

The claimant has failed to prove by a preponderance of the evidence that she sustained a compensable injury. Therefore, this claim for benefits must be, and it hereby is, denied and dismissed.

IT IS SO ORDERED.

HON. J. MARK WHITE
Administrative Law Judge