

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

WCC NO. F604382

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| RANDALL DICKERSON, Employee          | CLAIMANT   |
| WHITE RIVER HARDWOODS, Employer      | RESPONDENT |
| GUARANTEE INSURANCE COMPANY, Carrier | RESPONDENT |

OPINION FILED AUGUST 24, 2006

Hearing before ADMINISTRATIVE LAW JUDGE GREGORY K. STEWART in Springdale, Washington County, Arkansas.

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

Respondents represented by JOHN D. DAVIS, Attorney, Little Rock, Arkansas.

STATEMENT OF THE CASE

On August 2, 2006, the above captioned claim came on for a hearing at Springdale, Arkansas. A pre-hearing conference was conducted on June 7, 2006, and a pre-hearing order was filed on that same date. A copy of the pre-hearing order has been marked Commission's Exhibit #1 and made a part of the record without objection.

At the pre-hearing conference the parties agreed to the following stipulations:

1. The Arkansas Workers' Compensation Commission has jurisdiction of the within claim.
2. The employee-employer-carrier relationship existed among the parties at all relevant times.
3. The claimant was earning an average weekly wage of \$588.36 which would entitle him to compensation at the weekly rates of \$392.00 for temporary total disability benefits and \$294.00 for permanent partial disability benefits.

At the pre-hearing conference the parties agreed to litigate the following issues:

1. Compensability of injury to claimant's right foot on April 3, 2006.
2. Medical.

The claimant contends he sustained a compensable injury to his right foot on April 3, 2006, and that he is entitled to receive medical benefits as a result of the injury.

The respondents contend the claimant did not sustain a compensable injury to his right foot in the course and scope of his employment with White River Hardwoods.

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 witness and to observe his demeanor, the following findings of fact and conclusions of law are made in accordance with A.C.A. §11-9-704:

#### FINDINGS OF FACT & CONCLUSIONS OF LAW

1. The stipulations agreed to by the parties at the pre-hearing conference conducted on June 7, 2006, and contained in a pre-hearing order filed that same date, are hereby accepted as fact.

2. Claimant has failed to prove by a preponderance of the evidence that he suffered a compensable injury to his right foot while employed by the respondent.

#### FACTUAL BACKGROUND

The claimant is a 41-year-old man who has worked for the respondent since 1994. Claimant has performed several jobs for the respondent, most recently as a truck driver. Prior to working as a truck driver the claimant worked in the respondent's warehouse pulling orders. As a truck driver the claimant was responsible for loading orders onto his truck, driving to a job site, and unloading the wood material. According to claimant's testimony some of the job sites would require walking on uneven ground which included rocks and bricks.

In late March or early April 2006 the claimant began noticing pain in his right foot which progressively worsened. As a result, claimant eventually sought medical treatment

from Dr. Abernathy, his family physician. Dr. Abernathy ordered an x-ray which revealed two pieces of metal in the claimant's right foot. Dr. Abernathy also ordered a bone scan which was compatible with osteomyelitis. Dr. Abernathy subsequently referred claimant to Dr. Hennigan for a potential infection evaluation. Dr. Hennigan diagnosed claimant's condition as acute osteomyelitis and recommended a six-week course of antibiotics. Dr. Hennigan also referred claimant to Dr. Pleimann to consider whether the two pieces of metal in claimant's foot should be removed.

Dr. Pleimann ordered an MRI scan of the claimant's right foot and diagnosed claimant's condition as "Probable painful accessory navicular." Dr. Pleimann recommended that claimant continue his antibiotics and also prescribed a boot for claimant to wear.

Claimant has filed this claim contending that he suffered a compensable injury while working for the respondent. He seeks payment of related medical treatment.

### ADJUDICATION

After reviewing the evidence in this case impartially, without giving the benefit of the doubt to either party, I find that claimant has failed to prove by a preponderance of the evidence that he suffered a compensable injury to his right foot in the form of either a specific incident identifiable by time and place of occurrence or in the form of a gradual onset injury.

First, I find that claimant has failed to prove by a preponderance of the evidence that he suffered an injury caused by a specific incident identifiable by time and place of occurrence. Although two pieces of steel were found in the claimant's right foot, claimant testified that he had no idea how those two pieces of metal got into his foot. The medical reports likewise indicate no known injury to this area of claimant's foot. Indeed, claimant did not even testify that the metal got into his foot as a result of on-the-job activities.

Furthermore, claimant did not identify any specific incident which might have aggravated a pre-existing condition. Instead, the claimant seemed to relate his foot complaints to the general work he was performing during late March of early April as opposed to a specific incident. An employee does not have to identify an exact date, but there must be an identifiable incident under A.C.A. §11-9-102(4)(A)(i). *Edens v. Superior Marble and Glass*, 346 Ark. 487, 58 S.W. 3d 369 (2001). A generic description of work is not sufficient - - there must be a particular specific incident. *Hapney v. Rheem Manufacturing*, 342 Ark. 11, 26 S.W. 3d 777 (2000); *Thomas Bardrick v. Rheem Manufacturing Co.*, Full Commission Opinion filed February 21, 2003 (F108263).

Based upon this evidence, I find that claimant has failed to prove by a preponderance of the evidence that he suffered an injury which was caused by a specific incident identifiable by time and place of occurrence.

I also find that claimant has failed to prove by a preponderance of the evidence that he suffered a gradual onset injury to his right foot as a result of his job activities with the respondent.

According to A.C.A. §11-9-102(4)(A), “compensable injury” means:

- (ii) An injury causing internal or external harm to the body and arising out of and in the course of employment if it is not caused by a specific incident or is not identifiable by time and place of occurrence, if the injury is:
  - (a) Caused by rapid repetitive motion.

In addition to proving that work duties involved rapid repetitive motion, claimant must also offer medical evidence supported by objective findings establishing an injury and the resultant condition is compensable only if the alleged compensable injury is the major cause of disability or need for medical treatment. A.C.A. §11-9-102(4)(D) and (E).

In this particular case, I find that claimant has failed to prove by a preponderance of the evidence that his job duties involved rapid repetitive motion of his foot. Claimant

testified that his job duties as a truck driver required him to load his truck and make deliveries to various job sites. Claimant also testified that in the course of making the deliveries it was necessary for him to walk on uneven ground.

The test for determining whether an injury is caused by rapid repetitive motion is two-pronged: (1) the task must be repetitive; and (2) the repetitive motion must be rapid. *Malone v. Texarkana Public Schools*, 333 Ark. 343, 969 S.W. 2d 644 (1998).

After reviewing the evidence presented in this case, I find that claimant's job duties did not require rapid repetitive use of his feet. Having failed to prove that his job duties require rapid repetitive use of his foot, claimant cannot meet his burden of proving by a preponderance of the evidence that he suffered a gradual onset injury while employed by the respondent.

Accordingly, for the foregoing reasons, I find that claimant has failed to prove by a preponderance of the evidence that he suffered a compensable injury which was the result of a specific incident identifiable by time and place of occurrence or a gradual onset injury.

### ORDER

Claimant has failed to prove by a preponderance of the evidence that he suffered a compensable injury. Therefore, his claim for compensation benefits is denied and dismissed.

IT IS SO ORDERED.

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GREGORY K. STEWART  
ADMINISTRATIVE LAW JUDGE