

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F306416

PATRICIA NIEVES	CLAIMANT
CRYSTAL LAKE FOODS LLC	RESPONDENT
COMPCARE ADMINISTRATORS, INC. INSURANCE CARRIER	RESPONDENT

OPINION FILED MAY 19, 2006

Hearing before ADMINISTRATIVE LAW JUDGE ELIZABETH DANIELSON in Springdale, Washington County, Arkansas.

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

Respondents represented by CURTIS NEBBEN, Attorney, Fayetteville, Arkansas.

STATEMENT OF THE CASE

A hearing was held on March 14, 2006, in Springdale, Arkansas.

A pre-hearing conference was held in this claim, and as a result a pre-hearing order was entered in the claim on October 12, 2005. This pre-hearing order set forth the stipulations offered by the parties, the issues to litigate and the contentions thereto.

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

1. The Arkansas workers' Compensation Commission has jurisdiction of this claim.

2. The July 18, 2005, Full Commission opinion is res judicata and the law of this case.

By agreement of the parties the issues to litigate are limited to the following:

1. Compensability of the claimant's left ankle and foot injuries of June 21, 2002.

2. Related medical.

3. Attorney's fees.

In regard to the foregoing issues the claimant contends that she was injured on June 21, 2002. She injured her foot and ankle when she slipped and fell while she was working for Peterson Farms.

In regard to the foregoing issues the respondents contend that they have not denied any authorised reasonable and necessary medical expenses to the claimant's compensable left knee injury.

The documentary evidence submitted in this matter consists of the Commission's pre-hearing order marked Commission's Exhibit No. 1. The claimant submitted medical information marked Claimant's Exhibit No. 1 and Claimant's Exhibit No. 2. It was agreed by the parties that prior transcripts are to be incorporated by reference per the respondents' request. All these documents were entered without objection.

DISCUSSION

It has been stipulated by the parties that the claimant sustained a compensable injury to her left knee on June 21, 2002. It has earlier been testified to at a prior hearing held on November 2, 2004, that medical treatment was administered for the claimant's left knee problems and that she ultimately underwent surgery by Dr. Chris Arnold.

The claimant testified that following her June 21, 2002, fall when she injured her left knee, she fell so hard that she began to have pain in her feet. The claimant testified that her knee got really swollen and turned black or a purplish color and it had a

greenish color all over her whole foot. The claimant testified that following her injury she returned to work on Monday and the plant nurse continued treating her left knee and gave her some plastic to cover her left leg from the bottom up over the knee. The claimant testified that she had never had prior foot or ankle problems before her June 21, 2002, fall. The claimant testified that she complained to Dr. Chris Arnold about her foot and he referred her to a specialist, Dr. Bright. The claimant testified that there was a period of time due to her pregnancy that she did not have treatment for her foot or her knee. The claimant testified that her foot hurt all over and that she could not specify exactly where it was hurting. The claimant testified that she remembers when she was pregnant she was complaining a lot and asked them to do something about her pain because it was so hard and she was given an injection. The claimant testified that she was not given medications because she was pregnant.

The claimant testified that she was also being seen by Dr. Raben for her back problems. The claimant testified that she had gone to the hospital because her foot was hurting and that she complained to Dr. Raben about her foot. The claimant testified that her foot doctor, Dr. Bright, has not released her but that she has not seen him for a while because he gave her some soles to wear that are helping her.

On cross examination, the claimant agreed that on June 26, 2002, when she was seen by Mr. Beasley, a nurse practitioner, she told him what was wrong with her. The claimant agreed that she

continued to work for the respondent up until she took leave for her pregnancy. The claimant testified that her baby was born July 4, 2003. The claimant testified that she had a lot of problems during her pregnancy because of her foot and remembers that she took maternity leave beginning in April 2003. The claimant testified that she continued to work but because of the weight due to her pregnancy she had a lot of difficulty walking and that her foot and knee hurt a lot. The claimant agreed that her pregnancy and weight affected her feet.

The medical records set forth that the claimant was seen at the Lowell Medical Clinic by Max Beasley on June 26, 2002, where she reported she tripped over a drain in the floor, fell and hurt her left knee. The claimant reports knee pain and swelling. X-rays of the claimant's knees indicate that there are no fractures. Nurse Beasley writes on July 1, 2002, that he has seen the claimant on follow up for her left knee which is a little better. Nurse Beasley notes that the claimant still reports pain under a larger hematoma area over her left knee and she also started having pain in her left ankle and a hematoma was present in the ankle which she did not show him the week before. The doctor notes that the claimant denies any previous problem with her ankle and reports that she has been taking her medications and applying moist heat on her knee. X-rays taken of the claimant's left ankle do not reveal any fracture present. Dr. Beasley recommended that the claimant avoid kneeling and climbing stairs or ladders and she was given a splint to wear on her ankle. Nurse Beasley notes that the claimant

has full range of motion and seems to have adequate strength in her ankle although she was instructed that because she has an ankle sprain it would be easy to resprain her ankle. On a follow up visit dated July 8, 2002, Nurse Beasley writes that on June 21, 2002, the claimant sustained a contusion to her left knee and a left ankle sprain. Nurse Beasley writes that the claimant reports that the pain she has had in her ankle is much better and she has been wearing her ankle splint at work but not at home. Upon examination, Nurse Beasley notes that the hematoma that was present in the claimant's left ankle has resolved. The claimant was instructed to continue to apply moist heat to both her left knee and ankle as well as continue her Ibuprofen. On July 22, 2002, Nurse Beasley writes that the claimant reports that she continues to improve but still has pain in her left knee and left ankle with prolonged standing. Upon examination, Nurse Beasley notes that the claimant's ankle is stable and without any obvious deformity. Nurse Beasley recommended that she continue with the moist heat to both her left knee and ankle and that she can return to her usual job without restrictions. On August 22, 2002, Dr. Russell Green writes that he has seen the claimant for her improving symptoms of her left knee. Dr. Green makes no mention of the claimant's left ankle and released the claimant from further care with no anticipated long term problems. There is a note in the claimant's exhibits indicating that the claimant was seen by Dr. W. H. Howard on April 14, 2003, and there is another note in the claimant's exhibits that the claimant went to the emergency room on September

5, 2003, noting that her foot hurt a lot from her hip to the bottom. Records from the emergency room dated September 5, 2003, indicate that the claimant was given medications for pain for her back, knee and ankle. The claimant was seen by Dr. Cyril Raben on September 30, 2003, for her complaints of low back and left leg pain. Upon examination, the doctor notes that the claimant has pain on resistance of her patella and pain and tenderness on palpitation of her plantar fascia. Dr. Raben recommended that the claimant undergo physical therapy as well as take medications for her pain, spasm and inflammation noting that she should perhaps hold off on her medications since she is breast feeding. On October 23, 2003, Dr. Christopher Arnold writes that he has seen the claimant for her left knee and left ankle pain. Upon examination, the doctor notes that the claimant is very tender along the anterior talofibular ligament and that x-rays of the claimant's left ankle were within normal limits. Dr. Arnold recommended some treatment for the claimant's knee and writes concerning the claimant's left ankle pain, that he thinks this is most likely a persistent ankle sprain although he could not rule out an occult fracture. Conservative treatment was agreed upon and if there was no improvement an MRI would be performed.

The claimant was seen by Dr. Bright on December 18, 2003, where she reports pain to the bottom of her left heel for the past eighteen months with progressive worsening and noting that she has had no prior treatment or trauma noted. Upon examination, Dr. Bright notes that the claimant has symptomatic plantar fasciitis

with the probable heel spur syndrome associated to the medial plantar aspect of the left heel. X-rays of the claimant's left foot revealed a medial infracalcaneal heel spur on the left heel. Dr. Bright administered medication into the claimant's left heel and recommended that she wear a temporary orthotic, a night brace, to do home physical therapy and to take the prescribed medications. On January 16, 2004, Dr. Bright writes that the claimant's medical history has not changed since the last visit and he again administered medication to the claimant's heel as well as recommended continued wear of her orthotic device, to wear her night brace and to perform home physical therapy. The claimant reports on February 6, 2004, to Dr. Bright that she is doing much better and after examination it was determined that her inflammation had reduced and she was advised to continue her plantar fascial protocol. On March 5, 2004, the claimant reports to Dr. Bright that her left foot is doing better but she still has a little bit of pain. The claimant reports that her left heel is a little bit sore on the front side and it was determined, after examination, that she had inflammation plantar fasciitis present in the left heel. Dr. Bright recommended medication as well as to implement night splinting. On April 1, 2004, the claimant reports to Dr. Bright that her heel is doing better although she does have some pain across the top of her foot. Upon examination, Dr. Bright notes that the claimant has symptomatic plantar fasciitis and mild joint pain to the right mid tarcel. Dr. Bright notes that the claimant asked that he write a letter for her in regard to her condition and

her injury encountered back in June 2002. Dr. Bright agreed to write a letter on behalf of the claimant and recommended that she continue following her plantar fascial protocol. Dr. Bright writes on May 13, 2004, that the claimant reports that her heels are doing much better. Upon examination, a small amount of inflammation was noted to the medial plantar aspect of bilateral heels but marked improvement is identified. The claimant was advised to continue with her arch supports as well as stretching and occasional night bracing. On June 29, 2004, Dr. Bright writes that the claimant reports that her left heel is doing much better but still is having some pain along the ankle area for which the doctor recommended ankle supports, proper shoes and home physical therapy. Dr. Bright writes on July 1, 2004, to the claimant's attorney that he first saw the claimant on December 18, 2003, in regards to a heel condition which she reports occurred at her work place on June 21, 2002. Dr. Bright notes that the claimant relates that this problem occurred spontaneously post the work related injury further noting that the claimant was clinically diagnosed with a plantar fascial tear to the left heel which has been conservatively treated and healed. Dr. Bright writes that the claimant was last seen on June 29, 2004, and complete resolve of the left heel condition was found and the patient was pain free. Dr. Bright writes on July 30, 2004, that the claimant's heel is doing better but still has some tenderness. The doctor notes that the claimant desires to proceed with orthotic casting in order to develop an orthotic device. Dr. Bright recommended that the claimant maintain on the plantar

fascial protocol. On February 21, 2005, Dr. Bright writes that the claimant is seen on follow up for her plantar facial bilateral heel pain, noting that she relates complete relief and relates 100 percent improvement at this stage and is doing quit well. Dr. Bright writes that upon clinical examination no symptoms were found in the heel area.

After a complete review of this case, I find that the claimant has proven by a preponderance of the evidence that she sustained a compensable left ankle injury as a result of her compensable fall on June 21, 2002. The testimony given at the hearing is hindered due to the claimant not speaking English as well as her lack of sophistication. Within a week or two after her fall, the claimant reported to Dr. Beasley the pain in her left ankle and the doctor notes that she has a hematoma present. The claimant was diagnosed as having an ankle sprain and continued to be treated by Nurse Beasley up through July 22, 2002, conservatively for her ankle. On August 22, 2002, Dr. Russell Green saw the claimant for her improving symptoms as to her left knee and at that time made no mention of a left ankle problem and released the claimant from further care with no anticipated long term problems. It was not until September 5, 2003, that the claimant was seen at the emergency room with complaints of her foot hurting. The claimant was seen by Dr. Raben as well as Dr. Christopher Arnold throughout September and October of 2003 for her left knee as well as left ankle complaints. Dr. Arnold lastly writes concerning the claimant's left ankle on October 23, 2003, that he thinks this is

most likely a persistent ankle sprain. By the time Dr. Bright began treating the claimant on December 18, 2003, her complaints were to her left heel and foot with persistent complaints of left ankle pain. Dr. Bright treated these symptoms conservatively with medication, bracing and proper shoes as well as orthotics and home exercises. By February 21, 2005, Dr. Bright writes that the claimant's symptoms as to her left foot and ankle have completely resolved and relates 100 improvement at this time. Dr. Bright writes that upon clinical examination, no symptoms were found in the heel area. I find, therefore, that the claimant is entitled to medical treatment for her left ankle through February 21, 2005, but treatment for her foot problems are denied. There is no indication that this claimant had any complaints as to her left foot hurting until September 5, 2003, when she was seen at the emergency room and this is more than a year after her compensable fall. It is noted that in the claimant's cross examination, she testified that due to weight gain because of her pregnancy she developed problems with walking and caused her feet to hurt and agreed that her pregnancy and weight affected her feet. It is also noted in Dr. Bright's medical records that he makes mention several times of treating both of her heels rather than just her left heel which would indicate that she was having problems with both of her feet rather than just her left foot alone. Therefore, no medical treatment will be paid for by the respondents for the treatment of the claimant's left heel and foot but the respondents will pay for

the treatment for the claimant's left ankle problems through February 21, 2005.

FINDINGS & CONCLUSIONS

1. The Arkansas workers' Compensation Commission has jurisdiction of this claim.

2. The July 18, 2005, Full Commission opinion is res judicata and the law of this case.

3. The claimant has failed to prove by a preponderance of the evidence that she sustained a compensable injury to her left heel and foot on June 21, 2002, but she has proven by a preponderance that she sustained a compensable injury to her left ankle on June 21, 2002, when she fell while working for the respondent. See discussion above.

4. The respondents shall pay for the treatment of this claimant's left ankle through February 21, 2005. See discussion above.

ORDER

The claimant has proven by a preponderance of the evidence that she sustained a left ankle injury while working for the respondent on June 21, 2002.

The respondents should pay for all reasonable and necessary medical treatment for this claimant's left ankle injury through February 21, 2005.

The claimant has failed to prove by a preponderance of the evidence that she sustained a compensable injury to her left heel and foot while working for the respondent on June 21, 2002.

Therefore, no benefits will be paid for medical treatment for this claimant's left heel and foot by the respondent.

IT IS SO ORDERED.

ELIZABETH DANIELSON
ADMINISTRATIVE LAW JUDGE