

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

WCC NO. F508997

ANTONIO RODRIGUEZ, Employee

CLAIMANT

RED DRAGON CHINESE RESTAURANT, INC.,  
Uninsured Employer

RESPONDENT

OPINION FILED JANUARY 31, 2006

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

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

Respondent represented by KEN OSBORNE, Attorney, Fayetteville, Arkansas.

STATEMENT OF THE CASE

On January 5, 2006, the above captioned claim came on for a hearing at Springdale, Arkansas. A pre-hearing conference was conducted on October 27, 2005, and a pre-hearing order was filed on October 31, 2006. 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 relationship existed between the parties on July 28, 2005.

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

1. Compensability.
2. Temporary total disability benefits.
3. Medical.
4. Attorney fee.

The claimant's contentions as set forth in his pre-hearing questionnaire are as

follows: "Claimant was injured on July 28, 2005. His left foot was injured when his foot got wet and brought on an infection that resulted in two of his toes being amputated."

The respondent's contentions as set forth in its pre-hearing questionnaire are as follows: "Respondent contends that the claimant's injury is not work related. As such, the respondent contends that it should not be liable for benefits associated with this injury."

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 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 October 27, 2005, and contained in a pre-hearing order filed October 31, 2005, 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 left foot while employed by the respondent.

#### FACTUAL BACKGROUND

The claimant is a 53-year-old man who worked for the respondent for more than one month. Claimant was hired primarily to work as a dishwasher. Claimant's job duties also included cleaning the kitchen at the end of the day.

While claimant's testimony was somewhat difficult to understand, he basically testified that at some point he developed a cut on his left foot between two of his toes which progressively worsened and eventually resulted in him seeking medical treatment from the hospital emergency room on August 4, 2005. Claimant was hospitalized at that time and underwent an amputation of the fourth and fifth toes on his left foot following a

diagnosis of gangrene.

It is claimant's contention that his job with respondent caused his feet to get wet and resulted in an infection which eventually led to the amputation of two of his toes. Claimant has filed this claim requesting temporary total disability benefits, medical benefits, and a controverted attorney fee.

### ADJUDICATION

Some of claimant's testimony seems to indicate that he is contending that he suffered a specific injury identifiable by time and place of occurrence while working for the respondent. Other testimony from the claimant indicates that claimant is contending a gradual onset injury caused by his feet getting wet on a daily basis while working as a dishwasher for the respondent. For either a specific injury identifiable by time and place of occurrence or a gradual onset injury, a claimant has the burden of proving by a preponderance of the evidence that the injury arose out of and in the course of their employment with their employer. Regardless of whether claimant's injury was a specific injury or a gradual onset injury, I find that claimant has failed to meet his burden of proving a causal connection by a preponderance of the evidence.

According to claimant's testimony he went to the hospital emergency room on August 4, 2005, after a "cut between my two toes came out." Claimant contends that the infection and swelling of a cut between two of his toes was caused by his feet getting wet while working as a dishwasher for the respondent. When claimant was subsequently asked about the cut itself, claimant also contended that the cut was related to his work with respondent.

I find insufficient credible evidence supporting either of claimant's contentions. First, with respect to the cut, I note that although claimant contended that the cut was related to his employment with respondent, claimant never offered any specific testimony as to how

he required a cut while working for the respondent. Furthermore, the medical records contradict claimant's testimony. The emergency room records from August 4, 2005 contain a history of claimant's physical complaints which was based upon information given to the emergency room personnel by claimant through an interpreter. According to those medical records the claimant's complaints began two weeks earlier when a trash can lid fell on his left foot. In response to a question of whether the accident occurred at home or at work, "home" is circled.

Furthermore, testifying at the hearing was Sammi Man, the respondent's assistant manager. Man testified that claimant's last day to work for the respondent was July 28, 2005. According to Man the claimant never asked the respondent to see a doctor and never reported an injury at work.

In short, based upon the foregoing I find insufficient credible evidence indicating that claimant suffered a cut on his left foot as a result of his employment with the respondent.

Furthermore, I find no evidence that the cut on claimant's left foot became infected or aggravated by his employment with the respondent. It is claimant's contention that the infection which resulted in the eventual amputation of two of his toes was caused by his feet getting wet as a dishwasher. However, this is claimant's contention and I find insufficient evidence of record supporting this contention.

It is extremely important to note that the claimant is a diabetic who according to his testimony was diagnosed with diabetes some five to six years ago. Claimant also admitted that he had not been taking medication or receiving any medical treatment for his diabetic condition. The medical records describe claimant's diabetes as "uncontrolled" or "poorly controlled."

The medical records from Northwest Medical Center dated August 4, 2005 contain the previously discussed history that claimant injured his left foot two weeks earlier when a trash can lid fell on it at home. The medical records also indicate that claimant's

condition gradually worsened until there was swelling and a black color on his foot. Claimant was subsequently diagnosed as suffering from diabetic neuropathy with gangrenous toes. As a result of that diagnosis Dr. Kendrick performed surgery to remove claimant's toes on August 5, 2005.

Significantly, the medical reports make no mention of any work-related injury or of claimant's feet becoming wet at work, much less any causal connection between claimant's alleged wet feet and his diagnosis of gangrene.

In summary, the claimant apparently suffered a cut on his foot which later became infected and resulted in the amputation of two toes. There is insufficient credible evidence proving that the subsequent infection was related to claimant's work as opposed to his uncontrolled diabetic condition. The medical records do not mention a history of claimant's wet feet and there is no medical opinion relating claimant's gangrene to his employment with the respondent. While it is not necessary for the claimant to offer a medical opinion regarding causation, the lack of such an opinion may be considered in determining whether claimant has met his burden of proof.

In short, I simply find that claimant has failed to meet his burden of proving by a preponderance of the evidence that he suffered a compensable injury while employed by the respondent.

#### 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 hereby denied and dismissed.

IT IS SO ORDERED.

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GREGORY K. STEWART  
ADMINISTRATIVE LAW JUDGE