

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F504629

MARCUS L. ADAIR,

CLAIMANT

TAMMY MCDANIEL D/B/A
HIRING RANGE,
UNINSURED EMPLOYER

RESPONDENT

OPINION FILED MAY 30, 2007

Hearing before ADMINISTRATIVE LAW JUDGE CHANDRA HICKS, in Little Rock, Pulaski County, Arkansas.

The claimant appeared pro se.

The respondent, Tammy McDaniel, failed to appear at the hearing.

STATEMENT OF THE CASE

A hearing was held in the above-styled claim on May 9, 2007, in Little Rock, Arkansas. A prehearing telephone conference was held in this claim on March 26, 2007. The claimant appeared on his own behalf, but the respondent did not appear. A Prehearing Order was entered in this case on March 26, 2007. This Prehearing Order outlined the issues to be litigated and resolved at the hearing.

The issues to be litigated were limited to the following:

1. Compensability of the claimant's right ankle injury of April 19, 2005.
2. Medical benefits.
3. Whether claimant is entitled to temporary total disability from April 20, 2005 until June 29, 2005, exclusive of the five days (54 ½ hours) worked on May 2, 3, and May 31, 2005, and June 1 and 2, of 2005.

In regard to the foregoing issues, the claimant essentially contends he sustained a compensable right ankle injury on April 19, 2005, and that he is entitled to reasonable and necessary medical treatment and temporary total disability compensation, as a result of this injury.

The documentary evidence submitted in this case consists of the Commission's Prehearing Order, which has been marked as Commission's Exhibit No. 1. The Prehearing Notice and Questionnaire mailed on January 19, 2007, but was returned, has been marked as Commission's Exhibit No. 2. The Prehearing Order filed on March 26, 2007, was sent to the respondent, but was returned, has been marked as Commission's Exhibit No. 3. The claimant's medical packet was marked as Claimant's Exhibit No. 1, and photographs presented by the claimant were marked as Claimant's Exhibit No. 2.

The following witnesses testified at the hearing: the claimant, and his wife, Mrs. Pat Adair.

DISCUSSION

The claimant, age 62(9/24/44), has prior work experience primarily performing electrical-type work. The claimant was hired as an electrician on March 21, 2005, by the respondent. The claimant essentially testified he sustained a work-related injury on April 19, 2005, in Russellville, while working for the respondent. According to the claimant, on the day of the injury, the respondent had anywhere from five to 50 employees. The

claimant gave the following testimony concerning his alleged work incident:

Q. Okay. What happened on April 19th?

A. They had a platform built there. We were working in an aluminum plant and they had a platform that we had to run some conduit on, pull some wire and stuff like that, and the ladder going up to the platform we had to work on the top rung was about four inches below the top level of the platform just right to catch your foot, and I was coming down off the ladder - off the platform and when I stepped on that ladder, my foot slipped out from under me - - -

A. - - - and I fell about, oh, seven or eight feet. Landed on - - - I think it was concrete that I hit because they were building this floor in sections, and the rebar was sticking out and I just barely missed that rebar, and they were getting ready to make a concrete pour with a pump truck and the pump truck driver - - his name I didn't get - - he seen me fall and one of the guys from Little Rock Electric - - His name was Kevin, wasn't it? - - I know his first name was Kevin. He seen me fall and they came to see about me and I thought everything was all right. I laid there for a minute or two to get my breath back and all this. When I stood up, that's when I knew something was wrong with this right foot. So, we went to the hospital - - -

According to the claimant, he drove himself to the hospital, where they X-rayed his ankle and determined it was cracked. Therefore, they gave him a pair of crutches, bandaged up his ankle and told him to go home and get with his regular doctor, who is Dr. V. Bryan Perry, of Pine Bluff. The claimant also testified he was instructed by hospital personnel to stay off his feet for about six or eight weeks. The claimant testified he was paid \$18.00 an hour, and he worked 40 hours per week, and was paid \$30.00 a day per diem.

The claimant testified he notified Philip Work of his injury, as he was the foreman of the job.

According to the claimant, the respondent sent him a check for \$3,000.00 around May of 2005, to cover his expenses. The claimant denied that any private group health insurance carrier has paid on this claim.

The claimant admitted to seeing Dr. Perry, who also instructed him to stay off work for six to eight weeks. According to the claimant, he was unable to work due to his injury from April 19, 2005 until June 29, 2005, exclusive of the 54 ½ hours he worked on May 2, 3, and 31, 2005, and June 1 and 2, 2005, as he knew the people he was working for, and it was kind of more or less foreman type work. The claimant testified he was unable to work during the aforementioned period because of swelling and pain of the ankle. The claimant testified that although he has had problems with his ankle, he has continued to work since June 30, 2005.

The claimant testified he has incurred medical expenses for his ankle from Dr. Perry in the amount of \$824.00, and a bill from St. Mary's Regional Medical Center, in Russellville, in the amount of \$1,728.50.

During the hearing, the claimant's wife of 28 years, Mrs. Pat Adair, gave testimony. She admitted to taking the photographs of the claimant's ankle three or four days after the incident.

Medical records reflect that on April 19, 2005, the claimant

sought treatment from St. Mary's Regional Medical Center, due to having fallen off a ladder. The claimant complained of right ankle, right knee and right elbow pain.

X-rays taken of the right ankle showed that there was a fracture line through the anterior portion of the tibia, but there was no displacement. There was significant soft tissue swelling over the medial malleolus as well.

The claimant contends that he sustained a compensable injury to his right ankle while working for the respondent on April 19, 2005, when he fell seven to eight feet from a ladder.

Employment in Arkansas means every employment in the state in which three or more employees are regularly employed by the same employer in the course of business. Ark. Code Ann. § 11-9-102(11)(A). Ark. Code Ann. §11-9-102(4)(A) defines compensable injury as:

(i) An accidental injury causing internal or external physical harm to the body or accidental injury to prosthetic appliances, including eyeglasses, contact lenses, or hearing aids, arising out of and in the course of employment and which requires medical services or results in disability or death. An injury is "accidental" only if it is caused by a specific incident and is identifiable by the time and place of occurrence[.]

A compensable injury must be established by medical evidence supported by objective findings. Ark. Code Ann. § 11-9-102(4)(D). The claimant bears the burden of proof in establishing a compensable injury and must sustain that burden by a preponderance of the evidence. Ark. Code Ann. § 11-9-102(E)(i).

After considering the testimony offered and the documentary evidence, I find that the claimant has proven by a preponderance of the evidence that he sustained a compensable right ankle injury arising out of and in the course of his employment with the respondent/employer, on April 19, 2005, an employer who had at least five or more employees at the time of the claimant's injury. The claimant presented a credible account of falling off a ladder while performing electrical duties for the respondent, and this testimony is corroborated by the medical records. The claimant testified that he reported the incident to Mr. Work, and he sought emergency treatment from a local hospital, where X-rays were taken of the ankle and he was instructed to stay off of his ankle for six to eight weeks. This x-ray revealed a fracture line through the anterior portion of the tibia, and swelling was also shown as well. Thereafter, the claimant received conservative treatment for his right ankle injury from his family doctor, Dr. Perry. The aforementioned objective findings found in the X-rays taken on April 19, 2005, namely, swelling and a fracture are sufficient to satisfy the statutory requirement of establishing an injury by medical evidence supported by objective findings as defined in Ark. Code Ann. § 11-9-102(4)(D). Therefore, based on the evidence before me, I find that the claimant has established each of the elements necessary to establish that he sustained a compensable right ankle injury on April 19, 2005, while working for the respondent.

The claimant also proved that he remained in his healing

period beginning April 19, 2005, and had not returned to work until, June 30, 2005, so that he proved he was entitled to temporary total disability compensation from April 20, 2005 until June 29, 2004, (this is exclusive of the 5 days (54 ½ hours) worked in May and June of 2005). See, Wheeler Construction Co. v. Armstrong, 73 Ark. App. 146, 41 S.W. 3d 822 (2001). The claimant also proved he was earning sufficient wages to entitle him to a temporary total disability compensation rate of \$466.00, and \$350.00 for permanent partial disability. Based on the record before me, I find the claimant is entitled to nine weeks of temporary total disability compensation (this is exclusive of the 5 days worked in May and June of 2005), which amounts to \$4,194.00.

The claimant proved that all the medical treatment of record, (from St. Mary's Regional Medical Center totaling \$1,728.50, and from Dr. Perry totaling \$824.00) was reasonable and necessary treatment in connection with his compensable right ankle injury, pursuant to Ark. Code Ann. §11-9-508 (a). Therefore, the respondent remains liable for all reasonable and necessary medical treatment the claimant has pursued for his compensable right ankle injury, which amounts to \$2,552.50.

The claimant testified the respondent paid him \$3,000.00 around the first of May of 2005 for some of his expenses that resulted from his compensable right ankle injury. Therefore, I find that the respondent is entitled to a \$3,000.00 credit which

it has previously paid for the claimant's expenses incurred due to his compensable right ankle injury of April 19, 2005.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. At the time of the injury, the preponderance of the evidence establishes that the respondent employed regularly more than three employees; therefore, the Arkansas Workers' Compensation Commission has jurisdiction over this claim.
2. The employee-employer-carrier relationship existed on April 19, 2005, and at all other relevant times.
3. The claimant's compensation rate is \$466.00/\$350.00.
4. On April 19, 2005, the claimant sustained a compensable right ankle injury.
5. The respondent is directed to pay all reasonable and necessary medical expenses related to the claimant's compensable right ankle injury, which totals, \$2,552.50.
6. The respondent is liable for temporary total disability compensation for the claimant's compensable right ankle injury (from April 20, 2005 until June 29, 2005, exclusive of the 5 days worked in May and June of 2005), in the amount of \$4,194.00.
7. The respondent is entitled to a \$3,000.00 credit for monies paid for the claimant's compensable ankle injury.
8. All other issues are reserved.

AWARD

The respondent, Tammy McDaniel, d/b/a the Hiring Range is directed to pay benefits in accordance with the Findings of Fact cited above, through the date of the hearing of May 9, 2007. I specifically find that respondent is liable to the claimant for \$4,194.00 in unpaid temporary total disability compensation, and for \$2,552.50 in un-reimbursed medical expenses. The respondent

is entitled to a \$3,000.00 credit for monies previously paid for the claimant's compensable right ankle injury. Therefore, the respondent has remaining total accrued liability of \$3,746.50. All accrued sums shall be paid in a lump sum without discount and this award shall earn interest at the legal rate until paid, pursuant to Arkansas Code Ann. §11-9-809.

A copy of this Opinion has been forwarded to the Compliance Division for possible sanctions against the employer/respondent pursuant to Ark. Code Ann. § 11-9-401 and § 11-9-406.

IT IS SO ORDERED.

CHANDRA HICKS
Administrative Law Judge