

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

WCC NO. F608453

KEISHA BLOUNT, Employee	CLAIMANT
CHURCH'S CHICKEN, Employer	RESPONDENT
FARMERS INSURANCE EXCHANGE, Carrier	RESPONDENT

OPINION FILED JANUARY 26, 2007

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

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

Respondents represented by MELISSA WOOD, Attorney, Little Rock, Arkansas.

STATEMENT OF THE CASE

On December 20, 2006, the above captioned claim came on for a hearing at Springdale, Arkansas. A pre-hearing conference was conducted on October 25, 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.

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

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

At the time of the hearing claimant modified her request for temporary total disability benefits to include the periods of July 12, 2006 through September 13, 2006, as well as September 15 and September 16, 2006.

It should also be noted that at the time of the hearing the respondent was given 30 days to take the deposition of Anna Morales and any potential rebuttal testimony from the claimant. This deposition was not taken; therefore, the case was submitted on the record prepared from the hearing on December 20, 2006.

The claimant contends she sustained an injury to her right ankle when she was putting items in a cooler and slipped on July 11, 2006. She contends she is entitled to temporary total disability, medical, and an attorney fee.

The respondents contend the claimant did not sustain a compensable 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 25, 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 she suffered a compensable injury to her right ankle while employed by the respondent.

#### FACTUAL BACKGROUND

The claimant is a 23-year-old woman who went to work for the respondent in March 2006 as a shift leader. As a shift leader claimant's job responsibilities included supervising

a particular shift at the respondent's restaurant. These duties also included depositing money, customer service, and supervision of employees.

Claimant testified that at approximately 8:30 to 9:00 p.m. on the night of July 11, 2006 she was walking into the cooler when she slipped and fell. Claimant testified that she had some pain at that time but that it was not substantial. Claimant continued to work the remainder of her shift and left the respondent's place of business at approximately 9:30 - 9:40 p.m.

Claimant testified that as she was walking up the steps at her apartment she noticed a "horrible" pain in her right ankle. Claimant was taken to the emergency room by her boyfriend where she was given a splint, crutches, and medication. Claimant was also instructed to receive follow-up treatment from Dr. Cooper.

Before claimant could see Dr. Cooper she returned to the emergency room at St. Mary's on July 15, 2006 and was again instructed to wear a splint and use crutches. Claimant was to continue her medications and was again told to receive follow-up treatment from Dr. Cooper. Claimant saw Dr. Cooper on July 28, 2006 and he has treated claimant with a splint, crutches, medication, and physical therapy.

Claimant has filed this claim contending that she suffered a compensable injury to her right ankle while employed by respondent on July 11, 2006. She seeks payment of medical treatment, temporary total disability benefits, and a controverted attorney fee.

### ADJUDICATION

Claimant contends that she suffered a compensable injury to her right ankle when she slipped and fell while working for the respondent on July 11, 2006. Claimant's claim is for an injury caused by a specific incident identifiable by time and place of occurrence. The Commission has stated in *Henry Weaver v. Precision Packaging*, Full Commission Opinion filed February 2, 1995 (E400880), that pursuant to Act 796 of 1993, the following

must be shown in order to establish the compensability of an injury occurring after July 1, 1993:

- (1) proof by a preponderance of the evidence of an injury arising out of and in the course of his 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 injury;
- (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.

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 meet her burden of proving by a preponderance of the evidence that she suffered a compensable injury which arose out of and in the course of her employment with the respondent.

Initially, I believe it is important to note medical treatment claimant received for problems with both of her ankles only week before July 11, 2006. Claimant testified that on July 4, 2006 she was seen at the emergency room after falling off a horse and landing on her back at the rodeo. The emergency room record from July 4, 2006 makes no mention of the rodeo or a fall from a horse. Instead, the emergency room record from July 4, 2006 indicates that claimant was seen for complaints of bilateral lower extremity swelling which had been present for some two to three days. Claimant was described as being in moderately severe pain. She was having difficulty walking and ambulated into the room slowly. Numerous tests were performed and claimant was diagnosed as suffering from peripheral edema. Notations were made that claimant suffered from edema in both of her ankles. Claimant was given medication and instructed to receive follow-up treatment from Dr. Tejeda in five to seven days. Claimant was also taken off work for one week.

Coincidentally, claimant's first day to return to work after the emergency room visit of July 4, 2006 was July 11, 2006, the date of her alleged injury. As previously noted, claimant testified that she slipped and fell while in the process of walking into a cooler. Claimant admitted that her accident was not seen by any employee and that she did not report the accident at that time. In fact, claimant testified that she did not feel what she described as a sharp pain or a "horrible" pain until walking up the steps at her apartment. While claimant testified that she did not report the injury at the time it occurred because she did not believe it was substantial, she later testified that she thought she had torn a ligament. Obviously, this would have been a significant injury and her testimony regarding a belief that she had torn a ligament is inconsistent with her testimony that her injury was not substantial.

Q. And when did you first notice that the pain was horrible?

A. As I hit that second stair at my apartment complex.

Q. When the fall first happened, was there any kind of sensation or pain at that time?

A. Yes. I felt that I had probably tore a ligament or something, but it wasn't enough pain that I felt that I had done something serious.

In summary, I simply find that claimant has failed to meet her burden of proving by a preponderance of the evidence that she suffered a compensable injury to her right ankle which arose out of and in the course of her employment with the respondent on July 11, 2006. While claimant did seek medical treatment from the emergency room on that night for a condition which she attributed to a fall at work, the objective findings at the time of the examination on July 11 consisted of moderate swelling around the right ankle. This was the same finding which had been present one week earlier on July 4, 2006, when claimant was seen at the emergency room for complaints of bilateral lower extremity swelling which had been present for some two to three days. At the time of her visit on July 4, claimant

described her pain as moderately severe and she was having difficulty walking. Claimant was taken off work for one week and on her first day to return to work after July 4, 2006 she suffered this alleged injury. Claimant's accident was not witnessed by any employees and was not reported at that time. Claimant did not feel the need to receive medical treatment until she was climbing stairs at her apartment complex on the night of July 11, 2006. Given the evidence presented, I simply find that claimant has failed to meet her burden of proof.

ORDER

Claimant has failed to prove by a preponderance of the evidence that she suffered a compensable injury to her right ankle while employed by respondent on July 11, 2006. Therefore, her claim for compensation benefits is hereby denied and dismissed.

IT IS SO ORDERED.

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GREGORY K. STEWART  
ADMINISTRATIVE LAW JUDGE