

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F605278

DAVID HODGES

CLAIMANT

ALLEN WHITE dba W. W. RIGGING COMPANY
UNINSURED

RESPONDENT

OPINION FILED JANUARY 25, 2007

Hearing before ADMINISTRATIVE LAW JUDGE MICHAEL L. ELLIG in Fort Smith, Sebastian County, Arkansas.

Claimant represented by STEPHEN SHARUM, Attorney, Fort Smith, Arkansas.

Respondent not represented by counsel.

STATEMENT OF THE CASE

A hearing was held in the above styled claim on October 31, 2006, in Fort Smith, Arkansas. Although notice had been given of the hearing to the respondent, in the manner required by law, the respondent did not appear in person or through counsel. The Commission's records further reflect that the respondent is uninsured for workers' compensation purposes.

A pre-hearing order had been entered in this claim on September 13, 2006. Notice of the pre-hearing conference had also been given the respondent, in the manner required by law. However, the respondent failed to appear in person or through counsel at the prehearing conference. As a result, no stipulations were entered. However, the issues to be litigated and resolved at the present time were identified. A copy of this pre-hearing order was made Commission's Exhibit No. 1 to the hearing.

The following issues were litigated at the hearing and are to be resolved at the present time:

1. whether the relationship of employee-uninsured employer existed between the parties on December 28, 2005 and whether this was an employment covered by the Act.
2. The appropriate compensation rates.
3. whether the claimant sustained a compensable injury to his foot on December 28, 2005.
4. The claimant's entitlement to the payment of medical expense, temporary total disability benefits from December 28, 2005 through March 13, 2006, and attorney's fees.

In regard to these issues, the claimant contends that during and within the scope of his employment, the employer had a contract with Love Box Company in Fayetteville, Arkansas, for the removal of industrial machinery. On December 28, 2005, during and within the scope of his employment, the claimant fell from a forklift causing a fracture of his right foot and heel. The claimant was earning an average weekly wage of \$400.00 per week entitling the claimant to temporary total disability benefits of \$267.00 per week and permanent partial disability benefits of \$200.00 per week. The claimant is entitled to temporary total disability benefits from December 28, 2005 through March 13, 2006 of 11 weeks of compensation. The claimant is entitled to the payment of medical expenses and attorney's fees.

In regard to these issues, no contentions had been made by the respondent. However, the respondent's inaction in this case could

only lead to the conclusion that the case has been controverted in its entirety.

DISCUSSION

I. EMPLOYEE-EMPLOYER RELATIONSHIP

The threshold issue is whether the relationship of employee-employer existed between the parties on December 28, 2005, and whether this relationship was one that would fall under the jurisdiction of the workers' Compensation Act. The burden rests upon the claimant to prove these facts.

The claimant testified that he was hired by the respondent a couple of weeks prior to December 28, 2005. He further testified that his agreed rate of pay was \$10.00 per hour and that he was expected to work a 40-hour week. He testified that he was paid by the respondent, in cash, each Friday. His hours, the actual location of his work, and his assigned daily task were all set by the respondent. The duration of this employment was for an indefinite period.

It was the claimant's further testimony that Allen White dba W.W. Rigging Company, had contracted with Love Box Company to take down some heavy machinery at Love Box Company's plant. He stated that he had been hired along with four other employees to perform the actual labor necessary to accomplish this end. He testified that Mr. White dba W.W. Rigging Company also had another employer in Fort Myers, Florida, which is apparently the respondent's principle place of business.

After considering all of the evidence presented, it is my opinion that the claimant's testimony in regard to these matters, is credible. This testimony is sufficient, in and of itself, to prove the existence of the employee-employer relationship between the claimant and Allen white dba W.W. Rigging Company and to prove that Allen white dba W.W. Rigging Company had sufficient employees to cause this to be an employment relationship covered by the Act. Thus, the claimant has proven the first two jurisdictional requirements necessary for him to pursue his claim.

II. COMPENSATION RATE

The next issue to be addressed is the appropriate weekly compensation rate for any disability benefits to which the claimant may be entitled. As previously noted, the claimant's credible testimony establishes that he had been hired by the respondent at the hourly rate of \$10.00 and for a contemplated 40 hour work week. This credible testimony is sufficient to prove an average weekly wage of \$400.00 and corresponding weekly compensation rates of \$267.00 for total disability and \$200.00 for permanent partial disability.

III. COMPENSABILITY

The next issue to be addressed is whether the claimant sustained a "compensable injury" to his foot, on December 28, 2005. The burden rests upon the claimant to prove all of the facts necessary to establish this alleged compensable injury.

The claimant must first prove that his alleged compensable injury satisfies the requirements of Ark. Code Ann. §11-9-

102(4)(D). This subsection requires that the claimant prove by medical evidence the actual existence of the physical injury which is alleged to be compensable. The claimant must further prove that the actual existence of this physical injury is supported by “objective findings”, as that term is defined by Ark. Code Ann. §11-9-102(16)(A)(i).

The emergency room records of Sparks Regional Medical Center show that, on December 28, 2005, the claimant presented with complaints involving his right foot. On physical examination, swelling and deformity of the claimant’s right foot was observed and noted. X-rays, taken at that time, were interpreted as showing a fracture of the calcaneus. These x-rays also noted significant soft tissue swelling surrounding the ankle, especially on the lateral side.

The claimant was subsequently seen by Dr. Tom Patrick Coker, an orthopaedic surgeon. Dr. Coker also diagnosed a recent calcaneus fracture together with a fracture of the middle phalanx of the third toe.

I find that the foregoing medical evidence is sufficient to satisfy the statutory requirements for a “compensable injury”, that are contained in Ark. Code Ann. §11-9-102(4)(D).

The next statutory requirements are found in Ark. Code Ann. §11-9-102(4)(A)(i). These requirements are:

1. The injury must arise out of and occur in the course of the claimant’s employment;
2. The injury must be caused by a specific incident;

3. The injury must be identifiable by time and place of occurrence;
4. The injury must cause internal or external physical harm to the claimant's body.
5. The injury must require medical services or result in disability.

In order to prove the first three of these statutory requirements, the claimant must establish the occurrence of a specific employment related incident and the existence of a causal relationship between this incident or accident and the medically established injury to his right foot.

The claimant testified that, on December 28, 2005, he had been assigned the task of pulling copper of a conduit in one of the buildings where the machinery was being removed. At that time, another employee came over and advised him and his supervisor, Barry White, that a fire had been started in one of the conveyor line chutes. In order to put out the fire, he and other of the respondent's employees placed a 55-gallon drum of water onto a pallet. This pallet was then picked up by a forklift and moved to the fire site. The claimant then got on the pallet, along with the drum of water and was raised by the forklift to the area of the fire. While attempting to dump the water on the fire, the claimant fell approximately 10 to 11 feet, from the pallet to the concrete floor. He immediately experienced pain and swelling in his right foot. He testified that Mr. Allen White was present, at the time of this accident, and was the one that took him to the emergency room of Washington Regional Medical Center.

The claimant's testimony, concerning the facts and circumstances surrounding his right foot injury, coincides with the histories he related to his various treating physicians. I find such testimony to be credible. I further find that this testimony is sufficient to prove that the injury to the claimant's right foot arose out of and occurred in the course of his employment with the respondent, was caused by a specific incident, and is identifiable by time and place of occurrence. Thus, he has satisfied the first three requirements of Ark. Code Ann. §11-9-102(4)(A)(i).

The findings noted on the x-ray studies and the observations of swelling and deformity of the claimant's foot are clearly sufficient, in and of themselves, to prove that he had experienced internal physical harm to this portion of his body. Thus, the claimant has satisfied the fourth requirement of Ark. Code Ann. §11-9-102(4)(A)(i).

The medical evidence, regarding the nature and extent of the claimant's foot injury, reveal that this injury would reasonably require immediate medical services. The claimant's testimony concerning the pain and limitations following his injury and the medical restrictions placed on his physical activities by Dr. Coker would be sufficient to prove that this injury resulted in disability, at least on a temporary basis. Thus, the claimant was satisfied the final requirement for a compensable injury, under Ark. Code Ann. §11-9-102(4)(A)(i).

IV. BENEFITS

Clearly, Ark. Code Ann. §11-9-508 would entitle the claimant to all “reasonably necessary medical services” at the respondent’s expense. The evidence presented reveals that the medical services provided the claimant by the personnel of the emergency room of Washington Regional Medical Center and by and at the direction of Dr. Tom Patrick Coker were necessitated by or connected with the claimant’s compensable foot injury. The services provided by these individuals were also of a type and duration that would be considered by the general medical community in this area as being appropriate treatment of an injury such as that experienced by the claimant. The evidence further shows that these services actually accomplished their intended purposes of accurately diagnosing the nature and extent of the injury, resolving or stabilizing the physical damage it caused, and reducing or resolving the claimant’s symptoms and limitations.

It is my finding that the medical services rendered to the claimant by and at the direction of the personnel at the Washington Regional Medical Center on December 28, 2005, and by and at the direction Dr. Coker represent “reasonably necessary medical services”, within the meaning of Ark. Code Ann. §11-9-508. The expense of these services is therefore the liability of the respondent herein. However, this liability is subject to the medical fee schedule established by this Commission.

The remaining matter is the claimant’s entitlement to temporary total disability benefits. As the claimant sustained a

“scheduled” injury, he is entitled to temporary total disability benefits during the duration of his healing period or until he returned to work, whichever occurred first.

The duration of the healing period is a medical question, which must be resolved on the basis of the greater weight of the medical evidence presented. The healing period continues until the claimant has achieved the maximum benefit of time and medical treatment in the resolution or stabilization of the actual physical damage caused by the compensable injury.

In the present case, the medical evidence shows that the claimant continued within his healing period from the effects of his compensable injury from the date of its occurrence through March 13, 2006. In fact, it is even apparent from Dr. Coker’s clinic note of March 13, 2006, that the claimant had not, as of that date, reached maximum healing. Even though Dr. Coker released the claimant from further treatment, to return only on an as needed basis, he also stated that maximum healing would not occur for another six to nine months.

The claimant testified that he did not return to work until March 13, 2006. Again, I find the claimant’s testimony, in this regard, to be credible.

Therefore, I find the claimant has proven by the greater weight of the credible evidence that he continued within his healing period and had not returned to work during the period of December 28, 2005 through March 13, 2006. Pursuant to the provisions of the Act, he would be entitled to temporary total

disability benefits at the weekly rate of \$267.00 during the period of December 29, 2005 through March 13, 2006.

FINDINGS OF FACT & CONCLUSIONS OF LAW

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

2. On December 28, 2005, the relationship of employee-uninsured employer existed between the parties. This employment relationship falls within the purview of the Arkansas workers' Compensation Act.

3. On December 28, 2005, the claimant earned wages sufficient to entitle him to weekly compensation benefits of \$267.00 for total disability and \$200.00 for permanent partial disability.

4. On December 28, 2005, the claimant sustained a compensable injury to his right foot.

5. The medical services rendered to the claimant by the emergency room personnel at Washington Regional Medical Center and by and at the direction of Dr. Tom Patrick Coker represent "reasonably necessary medical services" for the claimant's compensable injury. Pursuant to Ark. Code Ann. §11-9-508, the respondent is liable for the expense of these services, subject to the medical fee schedule established by this Commission.

6. The claimant was rendered temporarily totally disabled by his compensable right foot injury for the period beginning December 29, 2005, and continuing through March 13, 2006. He is entitled to temporary total disability benefits during this period at the appropriate weekly compensation rate of \$267.000.

7. The respondent has controverted this claim in its entirety.

8. A reasonable fee for the claimant's attorney is the maximum statutory attorney's fee on the controverted temporary total disability benefits herein awarded.

ORDER

The respondent shall pay to the claimant temporary total disability benefits for the period of December 29, 2005 through March 13, 2006, at the weekly rate of \$267.00. All of these benefits have accrued and total \$2,822.57.

The respondent shall be liable for the expense of the medical services provided to the claimant by and at the direction of the physicians at the emergency room at Washington Regional Medical Center and by and at the direction of Dr. Tom Patrick Coker. This liability is subject to the medical fee schedule established by this Commission.

The respondent shall be liable for the claimant's attorney for the maximum statutory attorney's fee on the temporary total disability benefits herein awarded. One-half of this fee is the obligation of the respondent in addition to such benefits. The remaining one-half of this fee is to be withheld from these benefits.

All benefits herein awarded have heretofore accrued and are payable in a lump sum without discount.

This award shall bear the maximum legal rate of interest until paid.

IT IS SO ORDERED.

MICHAEL L. ELLIG
ADMINISTRATIVE LAW JUDGE