

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

WCC NO. F604858

MARY KREBS, Employee	CLAIMANT
ROGERS SCHOOL DISTRICT, Employer	RESPONDENT
RISK MANAGEMENT RESOURCES, Carrier	RESPONDENT

OPINION FILED MARCH 5, 2007

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

Claimant represented by STEPHANI BRADY JUNGMEYER, Attorney, Fayetteville, Arkansas.

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

STATEMENT OF THE CASE

On February 14, 2007, the above captioned claim came on for a hearing at Springdale, Arkansas. A pre-hearing conference was conducted on December 6, 2006, and a pre-hearing order was filed on December 7, 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 at all relevant times.
3. The claimant was earning sufficient wages to entitle her to compensation at the weekly rates of \$459.00 for temporary total disability benefits and \$344.00 for permanent partial disability benefits.

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

1. Compensability of injury to claimant's foot and right ankle.

2. Temporary total disability or temporary partial disability benefits.
3. Medical.
4. Attorney fee.

At the time of the hearing the claimant withdrew her request for payment of temporary total or temporary partial disability benefits.

The claimant contends that she suffered a compensable injury to her right foot and right ankle which arose out of and in the course of her employment, and that she is entitled to related medical expenses as a result thereof.

The respondents contend the claimant did not sustain a compensable injury as defined by the Arkansas Workers' Compensation Act.

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 witness and to observe her 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 December 6, 2006, and contained in a pre-hearing order filed December 7, 2006, 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 foot and/or ankle while employed by the respondent.

FACTUAL BACKGROUND

The claimant is a 53-year-old woman who began working for the respondent in March 2005. The claimant performed two job duties for the respondent. Claimant drove

a school bus and she also worked in food services.

Claimant testified that on a day between May 15, 2005 and May 30, 2005, she was working in the cafeteria at Oakdale Junior High School. Claimant testified that as she turned with a stack of trays she felt a shooting pain in her right foot at or below the ankle. Claimant testified that she thought the pain would go away and did not report the injury at that time. Claimant testified that she continued to work until the end of the school year and she was not scheduled to work during the summer. Claimant testified that during the summer she was in such pain that at times she could not walk. On September 29, 2005, the claimant sought medical treatment from Dr. Low at Mercy Convenient Care. Claimant was diagnosed as suffering from plantar fasciitis and was given medication and stretching exercises. When this treatment did not improve her condition, claimant sought medical treatment from Dr. Myers at the Northwest Arkansas Foot Clinic. Dr. Myers diagnosed claimant's condition as neuritis and plantar fasciitis. Dr. Myers treated claimant with heat, ice, medication, stretching exercises, home physical therapy, and injections. Claimant was most recently treated by Dr. Myers on April 6, 2006.

Claimant has filed this claim contending that she suffered a compensable injury to her right foot and ankle while working for respondent in May 2005. She seeks payment of medical treatment in connection with that compensable injury.

ADJUDICATION

Even though claimant cannot pinpoint the day of her alleged injury other than to testify that it occurred between May 15, 2005 and May 30, 2005, her claim nevertheless is a claim for a specific injury 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 while employed by the respondent.

In order to prove a compensable injury claimant has the burden of offering medical evidence supported by objective findings establishing an injury. A.C.A. §11-9-102(16)(A)(i) defines objective findings as “those findings which cannot come under the voluntary control of the patient.”

In this particular case, claimant has been diagnosed as suffering from plantar fasciitis by both Dr. Low and Dr. Myers. In addition, Dr. Myers also diagnosed claimant as suffering from neuritis. However, the medical records do not contain any objective evidence establishing an injury. The record is devoid of any testing or any other finding made by claimant’s treating physicians which could be classified as objective. Absent objective findings establishing an injury, claimant cannot prove a compensable injury.

In summary, in order to prove a compensable injury claimant must offer objective findings supporting the alleged injury. In this particular case, the medical records contain no findings which could be considered objective. Instead, the medical records only contain a diagnosis from claimant’s treating physicians. A diagnosis without objective

findings is not sufficient.

ORDER

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

IT IS SO ORDERED.

GREGORY K. STEWART
ADMINISTRATIVE LAW JUDGE