

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F710824

JEFFREY G. BLYTHE	CLAIMANT
EXPRESS PERSONNEL SERVICES	NO. 1 RESPONDENT
AIG CLAIM SERVICES, INC. CARRIER	NO. 1 RESPONDENT
SECOND INJURY FUND	NO. 2 RESPONDENT

OPINION FILED AUGUST 18, 2008

Hearing before ADMINISTRATIVE LAW JUDGE ERIC PAUL WELLS in Fort Smith, Sebastian County, Arkansas.

Claimant represented by DUSTI MILLER, Attorney, Fort Smith, Arkansas.

Respondents No. 1 represented by MELISSA WOOD, Attorney, Little Rock, Arkansas.

Respondent No. 2 represented by DAVID SIMMONS, Attorney, Little Rock, Arkansas, excused from the hearing.

STATEMENT OF THE CASE

On May 29, 2008, the above captioned claim came on for a hearing at Fort Smith, Arkansas. A pre-hearing conference was conducted on , and a pre-hearing order was filed on March 7, 2008.

A copy of the pre-hearing order has been marked Commission's Exhibit No. 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 this claim.

2. On all relevant dates, the relationship of employee-employer-carrier existed between the parties.

3. The claimant sustained a compensable injury to

4. The appropriate weekly compensation rates are \$225 temporary total disability and \$169 for permanent partial disability.

5. The claim is controverted in its entirety.

By agreement of the parties the issues to litigate are limited to the following:

1. Whether the claimant sustained a compensable injury to his right ankle/foot as a result of a specific incident on or about September 28, 2007.

2. The claimant's entitlement to medical services, temporary total disability benefits from September 29, 2007, through a date to be determined, and attorney's fees.

Claimant's contentions are:

"The claimant contends he sustained a compensable injury to his ankle on September 28, 2007, when he fell while in the course and scope of his employment for the respondent employer."

Respondents' contentions are:

"The respondent contend that the claimant did not sustain a compensable injury on October 4, 2007. The respondents contend that claimant was not working on October 4, 2007. The respondents further contend that the claimant's need for medical treatment is associated with pre-existing or underlying problems and not any compensable or acute work-related incident. Respondents authorized treatment at Cooper Clinic on October 1, 2007."

## DISCUSSION

The central issue in this case is whether the claimant sustained a compensable injury to his right leg and foot in an employment related accident on September 28, 2007. The burden rests upon the claimant to prove these compensable injuries. In order to meet this burden, the claimant must first show that this alleged injury satisfies the statutory 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 injuries alleged to be compensable. Further, this subsection requires that the actual existence of a physical injury must be based upon or by objective findings as that term is defined by Ark. Code Ann. §11-9-102 (16)(A)(i).

The claimant testified that, "walking across the field, but there was no pavement or concrete out there at the time, and I fell into a hole on the way out to go to work and pretty much fell to my knees. And, then I got up from there and finally made it back to the building. I set there for a little while and then told my boss that I had fell in a hole and I hurt my leg. He said okay go ahead and go to the doctor."

The claimant reported to Cooper Clinic on October 1, 2007, reporting pain in his right ankle and leg gradually increasing over the past two days. Dr. Keith Holder was the treating physician at that time. X-rays were taken of the right ankle and showed no acute bony injury. In a report prepared by Dr. Holder, he reports right leg arterial insufficiencies and refers the claimant for a

Doppler study at St. Edward Hospital and requests input from a vascular surgeon.

On October 1, 2007, the claimant was seen by Dr. Robert Jagers, a vascular surgeon, who reviewed an arteriogram performed on the claimant which showed a thrombus in the right common femoral artery, and an occluded right popliteal artery, with some collateral flow to the level of the ankle. The impressions given by Dr. Jagers on that date were ischemic right foot and a history of tobacco use.

On October 12, 2007, Dr. Jagers completed a discharge summary report regarding the claimant. The report indicates that an arteriogram with thrombolytic therapy was performed on October 1, October 2, and October 3, 2007. The report further discloses that, “. . .the thrombus did clear from the popliteal artery and infrapopliteal vessels, however he did have a peroneal nerve neuropathy with an ischemic muscle in his anterior compartment. work-up at this point did not show any obvious reason for the arterial thrombus. No popliteal artery aneurysm, nor did he have any intra cardiac thrombi. CT showed some minimal arteriosclerotic changes in his distal aorta but no critical stenosis. Rhythm strip has shown normal sinus rhythm throughout his admission. He was seen by Dr. Samman of the Hematology Service, who recommended Coumadin therapy.”

On October 25, 2007, the claimant reported to the Mercy Hospital/ Turner Memorial Emergency Room in Ozark, Arkansas. He reported a shooting pain in his right foot. The claimant stated

that he had pain for a period of two weeks. The emergency room physician noted that his dorsal pedal pulse was weak and ordered an x-ray of the claimant's right foot. Examination of the x-rays revealed no evidence of fracture or dislocation.

On October 29, 2007, the claimant was seen by Dr. William Griggs, at the Southwest Neurological Institute in Fort Smith, Arkansas. Dr. Griggs recommended a nerve conduction velocity test in the right lower extremities and an EMG in the right lower extremities. In an addendum to Dr. Griggs' neurological history and physical dated October 29, 2007, Dr. Griggs states: "Nerve Conduction Velocities show a neuropathy in both legs. The right deep peroneal nerve is quite slow at the knee. He does not have any motor slowing. I think we are going to do a metabolic peripheral neuropathy work-up to include an ANA, Vitamin B12, Folic Acid level, basic metabolic panel, CBC, fasting blood sugar, HIV, blood lead, Lyme antibody, RPR, serum protein electrophoresis, thyroid panel with TSH, heavy metal screen on the urine, and a urine porphobilinogen. I am going to put Jeffery on a one a day vitamin and vitamin B1 100 mg twice a day. There is a significant chance that he will improve on that over time. I did not give him a prescription."

After consideration of all the medical evidence presented, it is my opinion that the claimant has established by the medical evidence, which is supported by objective findings, the actual existence of physical injury or damage to his right leg and foot. Thus, the claimant has satisfied the statutory requirements for a

compensable injury that are contained in Ark. Code Ann. §11-9-102 (4)(D).

Next, the claimant must prove that his medically established and objectively documented right leg and ankle injury or damage meets the definitional requirements for a compensable injury that are found in Ark. Code Ann. §11-9-102 (4)(A)(i). These definitional requirements are:

1. The injury arose out of and occurred in the course of the employment.
2. The injury was caused by a specific incident.
3. The injury is identifiable by time and place of occurrence.
4. The injury caused internal or external physical harm to the claimant's body.
5. The injury required medical services or resulted in disability.

In order to prove the first three of these requirements, the claimant must show the existence of a causal relationship between a specific employment related incident and the physical injury. However, the claimant need not prove that the employment related incident was the sole or even major cause of the physical injury. It is only necessary that the employment related incident contributed to his ultimate difficulties. Clearly, an aggravation to a preexisting condition may still constitute compensable injuries. Further, it is not necessary that the claimant prove the existence of this causal relationship by medical evidence. Nor, are there any requirements that this causal relationship be

supported by objective findings. The existence of such a relationship can be reasonably derived from the record as a whole.

In the present case, the greater weight of the credible evidence clearly shows that the injury or damage to the claimant's right leg and ankle are not related to the incident alleged by the claimant on September 28, 2007. The claimant testified that while working for the respondent, his right ankle and leg fell into a hole up to his knee and he then felt pain. It may very well be the case that the claimant did fall into this hole and experience some pain. However, the medical evidence is clear that a fall as described by the claimant could not cause the type of injury or damage that the medical evidence shows the claimant sustained. In a letter dated April 30, 2008, a client representative of the claimant requests by letter to Dr. Robert Jagers the answer to the following question: "It is my understanding that you have treated Mr. Blythe for problems associated with his right lower extremity, (ischemic foot). Please let me know within a reasonable degree of medical certainty, did any work-related injury or job duty cause his need for treatment?" On May 2, 2008, Dr. Jagers responded, "No."

On May 9, 2008, a client representative of the respondent requested the answer to the following question from Dr. Keith Holder: "It is my understanding that you have treated Mr. Blythe for problems associated with his right lower extremity (ischemic foot). Please let me know within a reasonable degree of medical certainty, did any work-related injury or job duty caused his need

for treatment?” On May 20, 2008, Dr. Holder responded as follows: “This is best answered by the vascular surgeon. Typical causes of arterial vascular insufficiencies are not related to injury but to other sclerotic vascular disease. This patient was a smoker which increases the risk for disease.”

While it is true that the claimant need not prove the existence of a causal relationship by medical evidence, in the current matter, the medical evidence is vital to that causal relationship in that the types of damage or difficulties that the claimant had in the form of an arterial clot cannot be seen or perceived by any of the senses that are used to determine factual evidence. It is, however, possible with the aid of medical opinion and/or device that damage or difficulties such as an arterial clot can be appreciated with senses that are normally used to understand factual evidence. That is why medical evidence is so important to determine the causal relationship in this present matter.

#### ADJUDICATION

After reviewing all of the medical evidence, the testimony the claimant, and considering that testimony as true, I find that the claimant cannot prove by a preponderance of the evidence that the causal relationship required between the alleged work related injury and the objective medical findings is present. It is clear from the responses by both the vascular surgeons, Dr. Jagers and Dr. Holder, that the fall on September 28, 2007, suffered by the claimant did not cause the difficulties he now reports with his right leg and foot.

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 Arkansas Workers' Compensation Commission has jurisdiction over this claim.

2. The stipulations agreed to by the parties at the pre-hearing conference conducted on March 6, 2008, and contained in a pre-hearing order filed on March 7, 2008, are hereby accepted as fact.

3. The claimant is able to prove by a preponderance of the evidence the presence of objective medical findings.

4. The claimant did not prove by a preponderance of the evidence the required causal relationship between those objective medical findings and the work related injury of September 28, 2007.

5. The claimant did not prove by a preponderance of the evidence that he sustained a compensable injury on September 28, 2007.

6. The claimant is not entitled to any benefits associated with this matter.

ORDER

In accordance with the above findings and conclusions of law, the claimant's case must be dismissed in its entirety.

IT IS SO ORDERED.

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ERIC PAUL WELLS  
ADMINISTRATIVE LAW JUDGE