

**BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION**

**CLAIM NO. F206424**

<b>ROY A. DUHART, EMPLOYEE</b>	<b>CLAIMANT</b>
<b>E-Z MART STORES, INC., EMPLOYER</b>	<b>RESPONDENT NO. 1</b>
<b>ZURICH AMERICAN INSURANCE CO, CARRIER</b>	<b>RESPONDENT NO. 1</b>
<b>SECOND INJURY FUND</b>	<b>RESPONDENT NO. 2</b>
<b>DEATH &amp; PERMANENT TOTAL DISABILITY TRUST FUND</b>	<b>RESPONDENT NO. 3</b>

**OPINION FILED JANUARY 10, 2008**

Hearing before ADMINISTRATIVE LAW JUDGE ELIZABETH W. HOGAN, on August 3, 2007 at Little Rock, Pulaski County, Arkansas.

Claimant represented by the HONORABLE MORRIS W. THOMPSON, Attorney at Law, Little Rock, Arkansas.

Respondents No. 1 represented by the HONORABLE DAVID C. JONES, Attorney at Law, Little Rock, Arkansas.

Respondent No. 2 represented by the HONORABLE DAVID PAKE, Attorney at Law, Little Rock, Arkansas.

**ISSUES**

\_\_\_\_\_A hearing was conducted to determine the claimant's entitlement to payment of medical expenses.

At issue is whether or not the claimant sustained a compensable consequence of a left foot injury resulting in the amputation of both legs. All other issues are reserved.

After reviewing the evidence impartially without giving the benefit of the doubt to either party, Ark. Code Ann. §11-9-704, I find the evidence preponderates in favor of the claimant

**STATEMENT OF THE CASE**

The parties stipulated to an employer-employee-carrier relationship on May 7, 2002 at which time the claimant sustained a compensable injury at a compensation rate of \$308.00/\$231.00. Medical expenses, temporary total disability benefits and permanent partial disability benefits (100% to the left lower extremity) have been accepted. The healing period ended on December 29, 2003.

Shortly before the hearing, the issues changed and wage loss will not be addressed in this decision.

The claimant contends his right leg was amputated in July, 2002 and his left leg was amputated in January, 2003 as a result of a compensable left foot injury on May 7, 2002. He contends his diabetes was a latent condition. The claimant receives Social Security Disability benefits and some medical expenses have been paid by Blue Cross Blue Shield.

Respondent No. 1, Zurich, accepted the left foot injury and resulting amputation. However the carrier contends the claimant's right leg problems are unrelated to the compensable left leg injury. The claimant's preexisting diabetes was the major cause of his need for treatment and disability. Alternatively, in the event of an award, Respondent No. , Second Injury Fund would be liable for any wage loss. Respondent No. 1 further contends they are entitled to a offset for any payments made by a third party under Ark. Code Ann. §11-9-411.

The following were submitted without objection and comprise the evidence of record: the parties' prehearing questionnaires and exhibits contained in the transcript along with the depositions of the claimant and Dr. John Baldrige incorporated by reference. The parties also filed post-hearing briefs.

The claimant, who walked with prosthetic legs and a cane was the only witness to testify at the hearing.

The claimant, age 59 (D.O.B. February 29, 2004) has a high school education and three years of college courses. He has an insurance license and experience selling disability, fire, health and life insurance policies. His work history includes jobs as an insurance salesman, assistant store manager, and supervisor of employees. His health history includes eight prior workers' compensation claims and three motor vehicle accidents with injuries to his hands, head, neck, shoulders, back, left knee, ankle and left foot, (see the list in the rehabilitation report). The claimant was diagnosed with diabetes in 1989 and has taken insulin since 1993. His diabetes has caused problems with his eyes. He was treated for cold feet but denies any prior injuries to his feet. The claimant has also experienced anxiety attacks in recent years.

The claimant was injured in May 2002 when an 80 pound tote fell on his left foot. During recovery, he used crutches and placed more weight on his right leg.

The claimant discovered a lesion on the right foot which led to the amputation of his right leg in July, 2002. Subsequently, his left leg was amputated in January, 2003. The claimant feels his right foot was infected by the transfer of bodily fluids from the left foot injury.

### **MEDICAL EVIDENCE**

The claimant has been treated by internist, Dr. Lee Walker, orthopaedic surgeon, Dr. Larry Nguyen, infectious disease specialist, Dr. Lindley, and endocrinologist, Dr. Phillip Peters. During treatment, the claimant was found to be suffering from anemia and renal insufficiency.

The claimant was hospitalized for pain and swelling of his left foot injury on May 7, 2002. He developed cellulitis and an ulcer requiring I.V. antibiotics.

The claimant saw Dr. Walker on June 3, 2002 for ulcers on both feet and was hospitalized. An MRI scan revealed osteomyelitis. In reports dated July 13, 2002 and July 15, 2002, Drs. Nguyen and Walker explained that the claimant's wounds would probably not heal properly. The infections would recur causing fever and purulent drainage and they recommended amputation.

Dr. Peters (chosen by the respondents) and Dr. Nguyen authored letters dated September 30, 2002 and January 10, 2003 discussing the causal relationship between the compensable left foot injury and the development of infection in the right leg.

I believe the medical findings and history are consistent with Mr. Duhart sustaining an injury to his left foot when the heavy object fell on it. I think this resulted in skin breakdown leading to infection in the foot including osteomyelitis. I do not believe the infection spread systemically through the body from the left foot to the right foot but I believe there is good evidence to suggest that because of injury to the left foot and the fact the patient had to use crutches to get around he placed additional pressure on his right foot resulting in skin breakdown. This would have then compromised his barrier to infection and it is very possible he sustained external contamination from the infection in the left foot spreading to the right foot resulting in osteomyelitis in the right foot which necessitated amputation below the knee on the right leg.

I believe the injury he sustained was the aggravating and contributing cause to the infection in his left foot and that there is evidence that

this contributed to the infection in the right foot which resulted in his amputation.

The only pre-existing factor which would have aggravated the circumstances is that the patient is a diabetic which makes him more susceptible to infection but there was nothing the patient did that adversely impacted upon this. There was also no evidence on my exam of significant neuropathy which would have predisposed him to the injury or infection.

#### Disposition

It is my clinical impression that the injury resulted in the infection in the patient's left foot. I doubt the infection spread from the left foot to the right foot systemically but there is a very good possibility that because the patient had to walk in an awkward manner because of the injury in the left foot he sustained traumatic damage to the right foot resulting in skin breakdown and then had subsequent contamination from the left foot infecting this skin breakdown resulting in his current osteomyelitis. His diabetes mellitus is certainly a predisposing factor but I don't believe was the initiating factor.

It is medically probable that he developed the ulceration on the left foot due to the drop of a weight on the left foot, exacerbating the left foot swelling and causing some aggravation of his diabetic symptoms.

It is medically possible thereafter that increased weightbearing on the right foot developed further ulcerations on the right foot that necessitated the below knee amputation.

The respondents asked Dr. John Baldrige, endocrinologist to provide a second opinion. After reviewing the medical records, Dr. Baldrige opined that the right leg infection was unrelated to the compensable left foot injury.

In his deposition, Dr. Baldrige explained that the claimant's diabetic condition was very advanced and that the claimant suffered diabetic complications prior to the compensable foot injury. And an advanced diabetic condition predisposes the breakdown of skin tissue with little or no provocation.

Dr. Baldrige explained that diabetes can affect the eyes, the vascular system, the kidneys and nerves. In the claimant's case, he has previously been diagnosed with severe proliferative retinopathy of the eyes and congestive heart failure in 2001. During his hospitalization, he was found to have micro-albumin in the urine indicating renal insufficiency. Dr. Baldrige also interpreted the neurotrophic ulcers on both feet as of June 3, 2002 to be preexisting. In someone

with advanced diabetes, the skin breakdown could occur with prolonged positioning (bedrest), altered gait (use of crutches), congenital equines varus deformity or contamination (Tr. p. 34-35, 55-58).

### **FINDINGS AND CONCLUSIONS**

\_\_\_\_\_The existence of a causal connection is a question of fact for determination by the Commission. If an injury is compensable, every natural consequence of that injury is also compensable. The basic test is whether there is a causal connection between the two episodes. Air Compressor Equipment v. Sword, 69 Ark. App. 162, 11 S.W.3d 1 (2000). Home Insurance Co. v. Logan, 255 Ark. 1036, 505 S.W.2d 25 (1974), Aluminum Co. of America v. Williams, 232 Ark. 216, 335 S.W.2d 315 (1960), Bearden Lumber Co. v. Bond, 7 Ark. App. 65, 644 S.W.2d 321 (1983), Wackenhut Corp. v. Jones, 73 Ark App. 158, 40 S.W.3d 333 (2001).

When reviewing expert medical records, the doctor's opinion must be considered based on the entirety of the opinion. The absence or presence of certain words will not validate or invalidate the opinion, and the use of the word "probably" satisfies the statutory requirement that medical opinions be stated within a reasonable degree of medical certainty, Wackenhut, supra.

Based on the expert medical testimony, I find a causal connection between the compensable left foot injury and the right leg infection. The claimant's use of crutches and bed rest following the accident caused the breakdown of skin and resulting complications due to the claimant's diabetes. There is no evidence that the claimant's diabetes was a latent condition.

1. The Workers' Compensation Commission has jurisdiction of this claim in which the relationship of employer-employee-carrier existed among the parties on May 7, 2002 at which time the claimant sustained a compensable left foot injury, aggravating a pre-existing diabetic condition, resulting in the amputation of the left leg.
2. The claimant has proven by a preponderance of the evidence of record that his right foot ulceration and resulting amputation was caused by the compensable left leg injury.
3. The respondents are directed to pay all reasonable and

necessary medical expenses within thirty days pursuant to Rule 30.

4. The respondents are entitled to an offset against medical expenses paid by third parties pursuant to Ark. Code Ann. §11-9-411.
5. Blue Cross Blue Shield was provided notice of this claim but filed no lien with the Commission. Mr. Thompson did not disclose his communication with Anthem Blue Cross Blue Shield until the day of the hearing and respondents No. 1 could not stipulate to the amount. Therefore, no finding of fact can be made with regard to a third-party lien.
6. This claim has been controverted and the claimant's counsel is entitled to the maximum attorney's fees to be paid in accordance with A.C.A. §11-9-715, §11-9-801, and WCC Rule 10.

Pursuant to the Full Commission decisions of Coleman v. Holiday Inn, (November 21, 1990) (D708577), and Chamness v. Superior Industries, (March 5, 1992)(E019760), the claimant's portion of the controverted attorney's fee is to be withheld from, and paid out of, indemnity benefits, and remitted by the respondent, directly to the claimant's attorney.

As a reminder, Ark. Code Ann. §11-9-715 was amended by Act 1281 of 2001, limiting attorney's fees on medical benefits and services for injuries after July 1, 2001.

7. The respondents are directed to pay the court reporter's fees and expenses associated with transcribing this hearing within thirty days pursuant to Commission Rule 20.

### **AWARD**

Respondents are directed to pay benefits in accordance with the Findings of Fact above. 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 A.C.A. §11-9-809, and Couch v. First State Bank of Newport, 49 Ark. App. 102, 898 S.W.2d 57 (Ark. Ct. App. 1995), and Burlington Industries, et al v. Pickett, 64 Ark. App 67, 983 S.W.2d 126 (1998), 336 S.W. 515, 988 S.W.2d 3 (1999).

IT IS SO ORDERED.

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ELIZABETH W. HOGAN  
Administrative Law Judge