

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

WCC NO. F704618

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| STANLEY HOUK, Employee | CLAIMANT |
| FRANKLIN ELECTRIC COMPANY, Employer | RESPONDENT |
| HELMSMAN MANAGEMENT SERVICES, Carrier | RESPONDENT |

OPINION FILED AUGUST 20, 2008

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

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

Respondents represented by JAMES A. ARNOLD, II, Attorney, Fort Smith, Arkansas.

STATEMENT OF THE CASE

On July 23, 2008, the above captioned claim came on for a hearing at Springdale, Arkansas. A pre-hearing conference was conducted on May 28, 2008, and a pre-hearing order was filed on May 29, 2008. 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 on April 27, 2007 when claimant fell at work injuring his right elbow.
3. The claimant was earning an average weekly wage of \$530.20 which would entitle him to compensation at the weekly rates of \$360.00 for total disability benefits and \$310.00 for permanent partial disability benefits.
4. Respondent has controverted this claim in its entirety.

At the time of the hearing the parties agreed to modify the stipulation with regard to

claimant's average weekly wage. The parties have agreed to stipulate that claimant earned an average weekly wage of \$620.01 which would entitle him to compensation at the rate of \$414.00 for total disability benefits and \$310.00 for permanent partial disability benefits.

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

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

The claimant contends that on April 27, 2007 he injured his right arm when he fell and landed on concrete. He contends he is entitled to temporary total disability, medical, and an attorney's fee.

The respondents contend that the claimant's right elbow injury is not a compensable injury under the applicable provisions of the Arkansas Workers' Compensation Act. Without waiving any other defense, the respondents contend the claimant was injured in an idiopathic fall resulting from one or more of the claimant's personal medical conditions.

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 of the within claim.
2. The employee/employer relationship existed between the parties on April 27, 2007 when claimant fell at work injuring his right elbow.

3. Respondent has controverted this claim in its entirety.
4. The parties' stipulation that claimant earned an average weekly wage of \$620.01 which would entitle him to compensation at the rate of \$414.00 for total disability benefits and \$310.00 for permanent partial disability benefits is hereby accepted as fact.
5. Claimant has failed to prove by a preponderance of the evidence that he suffered a compensable injury while employed by respondent on April 27, 2007. Specifically, the claimant's fall was idiopathic in nature; therefore, it is not a compensable claim.

FACTUAL BACKGROUND

_____ The claimant is a 57-year-old man who began working for the respondent in 1978. On April 27, 2007 the claimant was not performing his regular job duties; instead, he was filling in for another employee. Claimant's job duties on that date required him to take parts which were coming out of an oven and place them into boxes. Trays which had contained the parts were also taken off the line and stacked on a pallet. After claimant stacked a tray on a pallet he fell, landing on the concrete floor and cracking his elbow.

Claimant was taken to the hospital by his supervisor and eventually underwent surgery on his elbow. Claimant has not returned to work for the respondent since April 27, 2007.

Claimant has filed this claim contending that he suffered a compensable injury to his elbow as a result of the fall at work on April 27, 2007.

ADJUDICATION

_____ In order to prove that he suffered a compensable injury, claimant has the burden of proving by a preponderance of the evidence that his injury arose out of and in the course of his employment with respondent. The primary issue in this case is whether the

claimant's fall was due to an unexplained cause or whether it was idiopathic in nature. An idiopathic injury is one whose cause is personal in nature or peculiar to the individual. *Kuhn v. Majestic Hotel*, 324 Ark. 21, 918 S.W. 2d 158 (1996); *Little Rock Convention and Visitors Bureau v. Pack*, 60 Ark. App. 82, 959 S.W. 2d 415 (1997); and *Moore v. Darling Store Fixtures*, 22 Ark. App. 21, 732 S.W. 2d 496 (1987). If a claimant suffers an unexplained injury at work, it is generally considered compensable. *Little Rock Convention and Visitors Bureau, supra*. However, an idiopathic injury is personal in nature and is not related to the employment. Therefore, it is generally not compensable unless the conditions related to the employment contribute to the risk of injury or aggravate the injury. *Id. see also, Crawford v. Single Source Transportation*, 87 Ark. App. 216, 189 S.W. 3d 507 (2004).

After reviewing the evidence in this case impartially, without giving the benefit of the doubt to either party, I find that the cause of claimant's fall was idiopathic in nature, not unexplained.

Claimant has been diagnosed with diabetes since 1973 and he testified that he suffered from lymphedema, a swelling of lymph glands in his legs. Claimant testified that he does not know why he fell on April 27, 2007. Claimant testified that the area where he fell was flat and he did not remember tripping on anything. He also indicated that there was nothing slippery on the floor which caused him to fall. Claimant's best explanation was that his feet simply got tripped up.

Q. You don't know why you fell?

A. Other than getting my feet tripped up, no.

In support of its contention that claimant's fall was idiopathic in nature, respondent has offered the opinion of Dr. Holder who authored a report dated July 7, 2008 opining that claimant's fall was secondary to his underlying medical condition of severe peripheral

neuropathy caused by his diabetes. At the hearing claimant admitted that he had neuropathy in the lower extremities, but further testified that he retains feeling in his feet and legs and that he can walk as well “as I ever did.” However, the medical records indicate that the peripheral neuropathy caused by claimant’s diabetes is significant. In February 1994 claimant was evaluated by Dr. Henderson for a fracture at the base of the second metatarsal. At the time of his evaluation on February 21, 1994, Dr. Henderson noted that the claimant had previously been evaluated for a fracture on the right fourth metatarsal and also a fracture of the great toe. Dr. Henderson did not attribute claimant’s toe fractures to a stress fracture, but rather to the amount of feeling claimant had in his foot.

He is a diabetic and I would question the amount of feeling he has in that foot because the injury to the great toe, to me does not appear like a stress fracture, but appears more like something that happened when he hit his toe on something and developed a fracture across the base of the metatarsal.

Dr. Henderson in a subsequent report dated March 23, 1994 indicated that claimant’s most recent metatarsal fracture had healed and that “... I think most of these problems are probably related to the fact that he has diabetes and peripheral neuropathy in his foot.” During this period of time claimant was also evaluated by Dr. Dang who in a report dated March 29, 1994 noted that claimant suffered from “Numbness of both legs of peripheral neuropathy from diabetes.”

Before the claimant’s fall in April 2007 he underwent surgery to remove a portion of his left great toe on December 26, 2006. This surgery was performed by Dr. Fulmer. After claimant was off work for a period of time he was released by Dr. Fulmer to return to light duty work and eventually to full time work. Significantly, Dr. Fulmer on a form dated February 13, 2007 indicated that claimant had a permanent restriction that claimant could not “walk without the use of or assistance from a brace, cane, crutch, another person,

prosthetic device, wheelchair, or other assistive device.” This permanent restriction was given only two and one-half months before claimant’s fall.

It is also important to note that Dr. Fulmer completed a statement in connection with claimant’s attempt to receive social security disability benefits. In that attending physicians’ statement, Dr. Fulmer stated:

Patient has severe diabetic peripheral neuropathy with both sensory and motor impairment to his lower extremity....”

Dr. Holder did not evaluate the claimant before rendering his opinion in the July 7, 2008 letter. However, Dr. Holder did review all of the medical reports indicating that claimant suffered from severe peripheral neuropathy as a result of his diabetes. Dr. Holder also reviewed claimant’s deposition testimony from August 7, 2007 wherein he described his injury. Based upon his review of the medical records as well as his review of claimant’s deposition testimony, Dr. Holder was of the opinion that claimant’s fall resulted from his severe peripheral neuropathy. While none of claimant’s treating physicians have opined that claimant’s fall was due to his peripheral neuropathy, none of those other physicians have been asked to state an opinion as to the cause of claimant’s fall; instead, they have simply treated claimant’s condition.

In summary, an idiopathic injury is one whose cause is personal in nature or peculiar to an individual. Idiopathic injuries are generally not considered compensable unless the conditions of the employment contribute to the risk of injury or aggravate an injury. Based upon the evidence presented in this case, I find that claimant’s fall was idiopathic in nature. The medical records introduced into evidence indicate that claimant suffers from diabetes and as a result suffers from severe peripheral neuropathy and motor impairment in his lower extremities. In fact, shortly before the claimant’s fall Dr. Fulmer had indicated in a report dated February 13, 2007 that claimant should not walk without some type of

assistance. Based upon his review of the medical records describing claimant's condition as well as claimant's deposition testimony describing the injury, it was the opinion of Dr. Holder that claimant's fall was the result of his diabetic peripheral neuropathy. I find that Dr. Holder's opinion is credible and entitled to great weight. I also find that there were no employment conditions present which contributed to claimant's risk of injury or aggravated his injury.

Finally, in reaching this decision I note that a significant portion of the testimony at the hearing dealt with claimant's insulin level and whether he felt dizzy or lightheaded at the time of the fall. My decision finding that claimant's fall was idiopathic in nature is not dependent upon a finding that claimant's insulin level was abnormal at the time of the fall. Instead, the finding is based upon the fact that claimant suffers from severe peripheral neuropathy which results in both sensory and motor impairment to his lower extremities as stated by Dr. Fulmer and the opinion of Dr. Holder.

ORDER

Claimant has failed to prove by a preponderance of the evidence that he suffered a compensable injury when he fell on April 27, 2007. Claimant's fall was idiopathic in nature and his employment did not contribute to the risk of injury or aggravate his injury; therefore, it is not considered compensable under Arkansas Workers' Compensation law. Claimant's claim for compensation benefits is hereby and dismissed.

The respondents are ordered to pay the court reporter's charges for preparing the hearing transcript in the amount of \$383.50.

_____ IT IS SO ORDERED.

GREGORY K. STEWART
ADMINISTRATIVE LAW JUDGE _____