

NOT DESIGNATED FOR PUBLICATION

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F608453

KEISHA BLOUNT, EMPLOYEE	CLAIMANT
CHURCH'S CHICKEN, EMPLOYER	RESPONDENT
FARMERS INSURANCE EXCHANGE, CARRIER	RESPONDENT

OPINION FILED OCTOBER 22, 2007

Upon review before the FULL COMMISSION, Little Rock, Pulaski County, Arkansas.

Claimant represented by HONORABLE EVELYN BROOKS, Attorney at Law, Fayetteville, Arkansas.

Respondent represented by HONORABLE MELISSA WOOD, Attorney at Law, Little Rock, Arkansas.

Decision of Administrative Law Judge: Affirmed and Adopted.

OPINION AND ORDER

The claimant appeals from a decision of the Administrative Law Judge filed January 26, 2007.

The Administrative Law Judge entered the following findings of fact and conclusions of law:

1. The stipulations agreed to by the parties at the pre-hearing conference conducted on October 25, 2006, and contained in a pre-hearing order filed that same date, 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 ankle while employed by the respondent.

The claimant alleges that he sustained a compensable injury that is governed by the Arkansas Workers' Compensation Act, A.C.A. § 11-9-101 et seq. The claimant's alleged injury is, indeed, an injury that is covered by the Act; however, the claimant has failed to establish the elements necessary to prove a compensable injury by a preponderance of the evidence.

We have carefully conducted a de novo review of the entire record herein and it is our opinion that the Administrative Law Judge's decision is supported by a preponderance of the credible evidence, correctly applies the law, and should be affirmed. Specifically, we find from a preponderance of the evidence that the findings of fact made by the Administrative Law Judge are correct and they are, therefore, adopted by the Full Commission.

Thus, we affirm and adopt the decision of the Administrative Law Judge, including all findings and

conclusions therein, as the decision of the Full Commission on appeal.

IT IS SO ORDERED.

OLAN W. REEVES, Chairman

KAREN H. MCKINNEY, Commissioner

Commissioner Hood dissents.

DISSENTING OPINION

The claimant appeals the January 26, 2007, opinion of the Administrative Law Judge finding that the claimant did not sustain a compensable injury. The Majority has affirmed and adopted the decision of the Administrative Law Judge as their own. The Majority now essentially finds that the claimant's injury was due to a pre-existing condition. In support of this finding, the Majority notes that the week before her work related injury, the claimant had been in an accident where she was noted to have bilateral ankle swelling. In denying benefits, the Majority also finds that

because there were no witnesses to the accident and because the claimant testified that she did not initially believe her injury was serious, she was not credible.

After a de novo review of the record, I find that the claimant should have been awarded benefits. In fact, I am shocked at the conclusions reached by the Majority and believe they have blatantly ignored the medical evidence in the record which supports the claimant's testimony that she sustained a compensable injury.

Additionally, the Majority errs in finding that the claimant's injury from the week before was somehow related to the incident in question. In my opinion, the change in the claimant's condition is so obvious that I cannot help but wonder if the Majority has reviewed the same record as I have. Though the claimant was injured the week before, she was treated for having chest pain and bilateral leg swelling-not for an ankle sprain. In fact, it is evident that the claimant's treatment was directed at treating her reports of shortness of breath and chest pain as evidenced by the fact that she had an ECG and chest x-ray performed.

Notably, the claimant was not noted to have bruising and was simply given Lasix, a diuretic which is also used for treatment of cardiac patients, for her condition. Yet, the following week, hours after falling, the claimant was noted to have swelling only in her right ankle which supports her claim she injured at work. Likewise, one week after falling at work, the claimant was noted to have bruising and a knot on the top and side of her right foot. It is unlikely it would take two weeks for a bruise or knot to appear had the claimant injured herself on July 4. Finally, even the claimant's treating physician, Dr. Cooper, attributed the claimant's injury to the incident at work even after being told of the claimant's fall off the horse the week before. In short, I am aghast that the Majority could review the record in this case and logically conclude that the claimant's injury was pre-existing.

The claimant testified that she worked as a shift leader for the respondent-employer. On July 11, 2006, she was injured when she slipped and twisted her ankle at work. The claimant testified that she was on her way to put a tub

of lettuce and mayonnaise in the cooler when she slipped and fell on a wet floor. The claimant said that as she fell, her right foot came up and hit a shelf that was two to three inches off the floor. The claimant testified that the fall occurred at around 8:30 to 9:00. She said she suffered from pain but did not feel she had sustained a substantial injury. Accordingly, she did not report the injury and worked until the end of her shift at around 9:30 to 9:40.

The claimant described that after her shift she attempted to climb the stairs to get to her home and immediately realized that her injury was, in fact, serious. The claimant said,

Q. Now, you said earlier something about the emergency room. At what point did you go to the emergency room?

A. It was after my shift. Like I said, I felt that I was in a little bit of pain but not enough that I felt there was anything wrong with my foot. As I got home and I was - - I live upstairs. As I was going - - I hit my second stair, and if you notice, your foot goes like this (demonstrating with right hand) when you walk. It moves upwards from your heel onto our toes. As I did that on my second stair, I felt that I could not go any further up my stairs.

The claimant said that she arrived at the emergency room around 30 minutes after the end of her shift and that her boyfriend, Bernie Cibrian, called the claimant's supervisor, Joe. The claimant said that she contacted Joe the following morning and relayed that she had been taken off work for three days. She also subsequently provided a doctor's note.

The claimant also described that on July 4, 2006, she was injured after being bucked off a horse at the rodeo. The claimant said that she landed flat on her back. However, she denied sustaining any injury to her ankle at that time. The claimant said she sought medical treatment because she was having pain in the top of her chest and felt hot. She was also suffering from swelling from the top of her knees into both of her feet. The claimant said she was treated for having water retention and was taken off work for a week and returned on July 11, 2006.

The claimant indicated that the fall from July 11, 2006, resulted in different symptoms than being bucked from the horse. The claimant testified that after the horse

incident, she had chest pain and felt hot. She described that blood work, an EKG and x-rays were performed to make sure her heart was beating correctly. She was also retaining water in her legs and given medication for such. However, by the time the claimant returned the following week, the swelling in her legs had mostly resolved. The claimant further testified,

Q. Now, what was the difference after your fall, if there was one - - if there was a difference, what was the difference in your right ankle after the fall in comparison to before the fall with just the problems you had been having since the horse accident?

A. When I had the fall I had a lot of pain towards the top of my foot. It was horrible.

Q. And when did you first notice that the pain was horrible?

A. As I hit that second stair at my apartment complex.

Q. When the fall first happened, was there any kind of sensation or pain at that time?

A. Yes. I felt that I had probably tore a ligament or something, but it wasn't enough pain that I felt that I had done something serious.

Q. Did you have any bruising on your foot?

A. I had light bruising, but it was like a yellowish color that wasn't a big bruise.

Jose Ramirez, Store Manager, also testified. He did not refute the claimant's testimony that she was injured and reported that she had twisted her ankle after slipping and falling. Rather, Ramirez's testimony seemed to focus on whether the claimant was able to work during the time period for which she is requesting temporary total disability benefits. Ramirez indicated that he saw the claimant on the 17th at a casino. Ramirez said he saw the claimant and then she walked away. She was not on crutches. However, Ramirez could not recall what kind of shoes the claimant was wearing or whether she had a splint.

The claimant provided rebuttal testimony and denied being at a casino on that date. However, the claimant admitted that while she was off work she had to go to Wal-Mart and other places to get items to care for her two children. She also indicated that during her time off work, she was taken off crutches by her physician. However, she

was subsequently instructed to begin using them again. At the time of the hearing, the claimant had begun employment with H & R Block.

The medical records largely corroborate the testimony of the claimant. The claimant presented to the emergency room on July 4, 2006. At that time the claimant presented with trouble in breathing and a heart murmur. The claimant reported she had suffered from bilateral leg swelling and numbness in her feet for 2-3 days. She also reported a "Burning tightness to legs". Various blood tests were performed on the claimant and a chest x-ray was taken. On the x-ray, which returned as being normal, a clinical history of chest pain is given. Likewise, an ECG was performed and indicated the claimant had "Abn. R wave progression". The report also indicated, "BORDERLINE ECG". The claimant was given Lasix and taken off work for a week.

On July 11, 2006, the claimant returned to the emergency room. The claimant reported that she had, "slipped on a wet floor + twisted her ankle". The claimant relayed that the injury had occurred one hour before while at work.

The claimant denied that she had any prior injury to the area. She also denied any numbness in her ankle. The claimant was noted to have swelling to the right ankle. X-rays were performed and revealed, "Moderate soft tissue swelling about the right ankle. No displaced fracture is identified." The claimant was given a splint and crutches. She was instructed to use the crutches until July 17 and to use the splint for two weeks. She was referred to Dr. Cooper in the event she could not bear weight within two weeks.

The claimant returned to the emergency room on July 15, 2006. The claimant complained of ongoing pain in her right ankle. The claimant reported that she had ongoing pain and that she was using her splint faithfully. She also reported she was using her crutches if she walked more than a few steps. The claimant was diagnosed with a sprain. She was also noted to have a knot on the top and side of her right foot.

On July 18, 2006, the claimant was treated by Heather M. Sams, PA. The note provides, "Right ankle reveals a lump with swelling at the right lateral malleolus." The

claimant was also noted to have minimal bruising of the right ankle. The claimant reported that she was no longer using the crutches. She was instructed to use the splint unless she could not bear weight and then she was to use crutches. The claimant was also released from working.

The claimant returned to Sams on July 25, 2006, and reported that her ankle was still bothering her. She reported that it would still swell after being on her feet and that it hurt to bear weight. The claimant also reported that she still suffered from swelling on the top of her foot on occasion. The claimant was again noted to have limited range of motion and to have, "... maybe just a trace bit of swelling at the lateral malleolus compared to the left foot." X-rays revealed, "No evidence of acute osseous injury. Mild lateral soft tissue swelling." The claimant was instructed to return to work the following day, but to keep her appointment with Dr. Cooper.

On July 28, 2006, the claimant was treated by Dr. Cooper. The note provides,

Ms. Blount is a 22 year old lady who on 7/11 was at work at Church's Chicken and

went into the cooler. There she slipped and inverted her ankle. I questioned her and she seems pretty certain that's the mechanism of injury. She says she's never done that before. The pain is anterior and lateral over the ankle. It swelled. She doesn't remember popping when she did it, but it all happened so fast, she's not sure.

Physical examination revealed,

Examination of her right ankle reveals faint fading ecchymosis laterally, mild swelling around the ankle. She has no tenderness in the foot. Tibialis anterior, posterior, and achilles are palpable in continuity. ROM looks good. I believe I can feel her peroneus brevis although I'm not totally sure I can feel it distal to the lateral malleolus. She's diffusely tender around her ankle including over the deltoid ligament anteriorly around the anterolateral ankle ligaments but not just distal to the distal fibula. She's not tender over the syndesmosis nor over the fibula. She's not tender over the syndesmosis nor over the proximal leg. There's no deformity. She's neurovascularly intact.

X-rays, I believe, are unremarkable except for some soft tissue swelling.

IMPRESSION: Severe ankle sprain.

PLAN AND DISCUSSION: I think she's still hurting because (sic) it's a severe sprain. I told her she must expect to

get well from this and she says she does. I want her to wean off the crutches as comfort allows, wear the air cast stirrup when she's up and about and come out of it otherwise work on ROM. We're going to send her to Mercy to get a home exercise program. She says she fell off a horse the day before this but did not injure her ankle. She says her employer is trying to blame this ankle injury on that, but this appears to be a work comp problem. We've given her a work note putting her at sit down work. We'll see her back in 2 weeks.

The claimant was prescribed physical therapy. When she was initially assessed, she reported that the onset of her ankle sprain was on July 11, 2006. During therapy, the claimant also reported that she had been instructed by the respondent-employer that she could not return to work until she was 100%. On September 6, 2006, the claimant reported that she had a bad episode of swelling in her ankle the day before. The doctor's report indicates that the claimant reported the swelling was in her left ankle. However, as the claimant reported that she had improved 90% and the following day, the physical therapist indicated that the claimant had been seen eight times for a right ankle sprain,

and no other notations regarding the claimant's left ankle were made, it appears that there was simply a typographical error made. The note from September 7 also indicates that the claimant reported that her symptoms had improved some 90% but that she still suffered from progressive swelling throughout the day. She further reported consistent discomfort at a 3 or 4 out of 10. On September 13, 2006, Dr. Cooper indicated the claimant could return to work with no restrictions as of September 14, 2006. However, he indicated she could work two days and then would need two days off. He further provided that she would be released to full time work after September 18, 2006. He also instructed her to wear her brace as needed.

After reviewing the record, I find that the decision of the Majority is simply not consistent with the evidence in the record. Though the claimant was bucked off a horse, she did not have an ankle injury. Rather, she was treated for a potential heart condition. When reviewing the medical records, it is apparent that the claimant's ankle injury did not exist until after she fell at work. Likewise,

as the claimant consistently reported that she injured her ankle when she slipped and fell at work, the medical records support such a conclusion, and there is no evidence to rebut her testimony, the Majority's decision is simply not supported by the evidence.

To be compensable, an injury must be established by medical evidence supported by objective findings, which are defined as findings that cannot come under the voluntary control of the patient. Continental Express, Inc. v. Freeman, 66 Ark. App. 102, 989 S.W.2d 538 (1999). Ark. Code Ann. § 11-9-102 (5) (Supp. 1999), further provides in pertinent part:

(A) "Compensable injury" means:

- (i) An accidental injury causing internal or external physical harm to the body...arising out of and in the course of employment which requires medical services or results in disability or death. An injury is "accidental" only if it is caused by a specific incident and is identifiable by time and place of occurrence.

While medical evidence is not required to show a causal connection, claimant must show proof by a

preponderance of the evidence. Wal-Mart Stores, Inc. v. VanWagner, 337 Ark. 443, 990 S.W.2d 522 (1999). It has long been recognized that a causal relationship may be established between an employment-related incident and a subsequent physical injury upon a showing that the injury manifested itself within a reasonable period of time following the incident, is logically attributable to the incident, and there is not other reasonable explanation for the injury. Hall v. Pittman Construction Co., 235 Ark. 104, 357 S.W.2d 263 (1962).

If the claimant's disability arises soon after the accident and is logically attributable to it, with nothing to suggest any other explanation for the employee's condition, we may say without hesitation that there is no substantial evidence to sustain the Commission's refusal to make an award. Clark v. Ottenheimer, 229 Ark. 383, 314 S.W.2d 497 (1958); Johnson v. Little Rock School District, Full Commission Opinion filed April 4, 2002 (E700511 & F011921). But, if the disability does not manifest itself until many months after the accident, so that reasonable men

might disagree about the existence of a causal connection between the accident and the disability, the issue becomes one of fact upon which the Commission's conclusion is controlling. Kivett v. Redmond Co., 234 Ark. 855, 355 S.W.2d 172 (1962).

In this instance, the Majority essentially finds that the claimant's ankle injury was pre-existing. However, the record simply does not support such a finding. In fact, to make such a finding defies logic given the evidence in the record.

The claimant readily admitted that around July 4, 2006, she had been injured and sought medical attention after being bucked off a horse. Indeed, the claimant sought medical attention on July 4, 2006. While the emergency room note from that date does not indicate the reason for the claimant's symptoms, it is clear that the claimant reported she was having chest pain and difficulty breathing. She also reported bilateral swelling of her lower extremities. She also complained of burning and tightness in her legs. What is significant to note is that the claimant's primary care

for treatment appears to have revolved around her chest symptoms.

It is also significant to note the emergency room report does not indicate that the claimant sustained an ankle injury. In fact, it is evident that the claimant's lower extremity symptoms were bilateral in nature; not specific to the right ankle. This is evidenced by the fact the claimant reported that both her legs felt tight and that she was having pain and numbness in both legs. The fact that the claimant was noted to have bilateral swelling also demonstrates that the claimant did not have a right ankle sprain.

In fact, there is simply nothing in the emergency report to indicate that the claimant's right ankle had sustained an acute injury. There was no indication that the claimant's right ankle was bruised or that it had been injured. Since the claimant's symptoms were reported to be some two to three days old, if the claimant had sustained bruising, presumably it would have occurred by that time. Certainly, if the claimant had reported twisting her ankle,

then that would have been noted in the medical report or x-rays and other diagnostic tests which were focused on the condition of the claimant's right ankle would have been performed. Yet, instead, x-rays of the claimant's chest were performed, as was blood work and an ECG. Likewise, Lasix, a medication known to treat water retention and to help cardiac patients breathe was prescribed. This is indicative that the claimant was seen for potential heart problems and for bilateral swelling and is simply not consistent with the claimant having an ankle injury at that time.

Indeed, the medical reports correlate with the claimant's testimony regarding that her chest pain was the reason she needed treatment on July 4, 2006. Likewise, the medical records from July 4, 2006, corroborate the claimant's testimony that her leg symptoms were simply due to water retention as evidenced by the fact that her symptoms were not limited to her right ankle.

In contrast, the medical records from July 11, 2006, show that the claimant had sustained an acute ankle injury. This is consistent with the claimant's testimony

that she slipped and fell and sprained her ankle while at work. In fact, the July 11, 2006, doctor's note explicitly indicates that the claimant had slipped and fallen at work an hour before seeking treatment. This mirrors the claimant's testimony that she was injured near the end of her shift, went home, and then immediately went to the emergency room.

Likewise, the objective findings from the July 11, 2006, visit are consistent with the injury reported by the claimant. The emergency room notes from July 11, 2006, specifically indicate that the claimant was complaining of right ankle pain and swelling in her right ankle. The claimant also explicitly related this condition to her fall at work. Notably, at that time, the claimant was not identified to have swelling in any other area of her right lower extremity or in her left lower extremity. This corroborates the claimant's testimony that her prior swelling due to water retention had resolved. It is also notable that the claimant was not noted to have bruising yet. While this would be consistent with a sprain that had

occurred hours before, presumably if the claimant had sustained bruising around July 4, 2006, it would have been noticeable by that point.

Additionally, when the claimant returned to the emergency room on July 15, 2006, she was noted to have knot on the top of her foot and swelling at the right lateral malleolus. She was also noted to have bruising of her ankle. The notations that the claimant had bruising and a knot and swelling in the lateral malleolus are significant in that these are all findings that had not previously been identified. It is commonly acknowledged that bruising sometimes takes time to appear. Accordingly, if the claimant had a pre-existing injury in the form of an ankle sprain before July 11, 2006, bruising would have been noted in the July 11, 2006, doctor's report. Yet, instead, the first notation of bruising occurred on July 15, 2006, which would be four days after the claimant's work injury. This, in addition with the appearance of a knot and the specific swelling to the ankle in an area consistent with a sprain

injury corroborate the claimant's testimony that she injured herself on July 11, 2006 rather than on July 4, 2006.

It is also important to note that the nature of the claimant's fall from the horse is not consistent with the nature of her injury. The claimant testified that during the July 4, 2006, fall from the horse, she landed on her back; not on her feet. There is no reason to doubt the veracity of this claim as the claimant has been forthright in providing potentially damaging testimony that she fell from a horse. Furthermore, even Dr. Cooper, the claimant's treating physician, indicated that the claimant's injury was caused by her work injury. While this was admittedly based on a history given by the claimant, Dr. Cooper explicitly dismissed the possibility that the claimant's injury would have been caused by falling off of a horse as opposed to slipping, falling, and twisting her ankle.

It is well established that where a medical opinion is sufficiently clear to remove any reason for the trier of fact to have to guess at the cause of the injury, that opinion is stated within a reasonable degree of medical

certainty. Huffy Service First v. Ledbetter, 76 Ark. App. 533, 69 S.W.3d 449 (2002), citing Howell v. Scroll Tech., 343 Ark. 297, 35 S.W.3d 800 (2001). However, the Commission is not free to arbitrarily disregard any expert medical opinion. Freeman v. Con-Agra Frozen Foods, 344 Ark. 296, 40 S.W.3d 760 (2001).

The Majority seems to be finding the claimant's condition was pre-existing. Unfortunately, they do not bother to acknowledge the opinion of Dr. Cooper, much less provide a reason to reject his opinion. This is clearly in error of law as it constitutes arbitrarily disregarding a medical opinion.

The claimant told Dr. Cooper she was injured when she slipped at work. This is consistent with the claimant's other statements regarding her injury. Ultimately, based on the claimant's history and the physical examination of the claimant's ankle, Dr. Cooper concluded that the claimant's injury was more consistent with a slip and fall accident than with being thrown from a horse. There is no other offered explanation for the claimant's injury and

accordingly, the opinion of Dr. Cooper should be given great weight.

Finally, I note that it is unrefuted that the claimant waited until after her shift to seek medical attention. As the claimant had to stand on her feet in order to perform her job, I do not believe that if her strain was pre-existing, she would have been able to complete her job duties for an entire shift given the severity of her strain. Furthermore, I do not believe that the claimant would work her entire shift if she intended to falsely claim that her pre-existing injury was work related. In contrast, it is entirely plausible and believable that the claimant would be able to work for a period of one hour after sustaining a sprain. I find this to be particularly true as the symptoms of a sprain are often not instantaneous.

I next address the Majority's assertion that the claimant lacks credibility because she did not immediately realize she had sustained a serious injury and because there was not a witness to her accident. I must reject these arguments. This Commission has seen countless cases where a

claimant wrongly believed they sustained a minor injury only to realize they have sustained serious injuries which require treatment and, in some instances, surgery. To now find that the claimant is not credible because she did not immediately believe an ankle sprain was a serious injury and because there were no witnesses to her accident is ludicrous. Additionally, I found the claimant's testimony that she realized the extent of her injury when she began climbing stairs to be credible. As anyone with a sprained ankle has experienced, the more one flexes ones foot, the greater is the pain they experience. As such, I find that it is very credible the claimant would realize the true nature of her injury when she started climbing the stairs.

I also reject the finding that the claimant is not credible because she waited until after her shift to report the injury. The claimant waited less than 24 hours to report her injury. In fact, the claimant's injury was reported within hours of the incident. The claimant did not immediately report the injury because she did not think that she had sustained a serious injury. However, she took steps

to notify the employer of her injury as soon as she realized the true nature of her injury and that she would need medical attention. These actions, in my opinion, show that the claimant was a responsible employee who reported her injury to the employer at the appropriate time. In fact, I do not believe that it would be in either party's interest to require worker's to report minor incidences of no consequence.

In short, I am confounded by the decision of the Majority. The Commission no doubt has the ability to weigh credibility issues. However, it appears that because the opinions of the Commission which hinge on credibility are usually given great deference by the appellate courts, the Commission has ignored the medical evidence in the record and erroneously used credibility as an excuse to deny the claimant benefits. As previously discussed, the Majority's findings that the claimant was not credible are erroneous and not supported by the record. Furthermore, irregardless of the claimant's credibility, the overwhelming weight of the objective medical evidence simply does not support the

findings of the Majority. There was no doubt a change in the claimant's condition after she twisted her ankle at work and the only doctor's opinion on causation was that the claimant had a new, work-related injury. This opinion was given despite the doctor being aware the claimant was bucked from a horse. The Majority failed to acknowledge a change in the claimant's condition and did not give any reason to reject the medical opinion on causation. In my opinion, this constitutes reversible error.

For the aforementioned reasons, I must respectfully dissent.

PHILIP A. HOOD, Commissioner