

**NOT DESIGNATED FOR PUBLICATION**

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION  
CLAIM NO. F910998

DONALD CAMPBELL, EMPLOYEE	CLAIMANT
TONY'S TIRE SERVICE, EMPLOYER	RESPONDENT
GUARANTEE INSURANCE COMPANY, CARRIER/TPA	RESPONDENT

OPINION FILED APRIL 4, 2011

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

Claimant represented by the HONORABLE EDDIE WALKER, JR., Attorney at Law, Fort Smith, Arkansas.

Respondents represented by the HONORABLE JOHN D. DAVIS, Attorney at Law, Little Rock, Arkansas.

Decision of Administrative Law Judge: Affirmed and Adopted.

OPINION AND ORDER

Claimant appeals from a decision of the Administrative Law Judge filed October 13, 2010.

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

1. The Arkansas Workers' Compensation Commission has jurisdiction of this claim.
2. On all relevant dates in December of 2009, the relationship of employee-employer-carrier existed

between the parties.

3. On all relevant dates in December of 2009, the claimant earned wages sufficient to entitle him to weekly compensation benefits of \$550.00 for total disability and \$413.00 for permanent partial disability, should such benefits have been appropriate.
4. The claimant has failed to prove that the frost bite to his feet and hands, which he experienced in December of 2009, represents a "compensable injury", as that term is defined by Ark. Code Ann. §11-9-102(4) (A).
5. The respondents have denied the occurrence of any compensable injury to the claimant's feet and hands and have controverted this claim in its entirety.

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.

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A. WATSON BELL, Chairman

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KAREN H. MCKINNEY, Commissioner

Commissioner Hood dissents.

**DISSENTING OPINION**

I must respectfully dissent from the majority opinion. After a de novo review of the record, I find that the frost bite to the claimant's feet and hands, which he experienced in December of 2009, represents a "compensable injury" as that term is defined by Ark. Code Ann. §11-9-102 (4) (A) (i).

The definition of "identifiable" in Ark. Code Ann. §11-9-102(4) (A) (i) as "capable of being identified" is discussed in Edens v. Superior Marble Glass, 346 Ark. 487, 58 S.W. 3d 369 (2001). The claimant does not have to identify the exact time of occurrence. The Court of Appeals has also determined that a

"specific incident" is not limited to a single event, but can involve a series of distinct related actions or events over a brief or limited period of time. Cedar Chemical v. Knight, 372 Ark. 233, 272 S.W.3d (2008). Here, the time when the accident occurred was on or about Thursday, December 10. The place where the accident occurred was at Tony's Tire Service, while the claimant was performing his job duties at Tony's Tire Service, which was located in a metal building with a heater that didn't work, under circumstances where overhead doors measuring 16 feet tall and 20 feet wide were subject to be open because of the need to get vehicles in and out of the building. The claimant testified that the temperature dropped down into the teens on Tuesday or Wednesday. He testified that the heater did not get fixed until Thursday, December 10<sup>th</sup>, and that, by the time the heater got turned on, his toes had started turning colors and, by Friday afternoon, they had already turned black.

Although the claimant had some symptoms consistent with frost bite before December 10, his testimony is that the temperature had just dropped into the teens that Tuesday or Wednesday and that, by Thursday, his toes were turning colors. The time of occurrence of the claimant's frostbite injury is "identifiable" pursuant to Ark. Code Ann. §11-9-102 (4) (A) (i), and I would award all benefits associated with the injury.

For the aforementioned reasons I must respectfully dissent.

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PHILIP A. HOOD, Commissioner