

**NOT DESIGNATED FOR PUBLICATION**

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION  
CLAIM NO. G004628

CLIFTON JAMES, EMPLOYEE	CLAIMANT
ARKANSAS HIGHWAY & TRANSPORTATION, EMPLOYER	RESPONDENT
PUBLIC EMPLOYEE CLAIMS DIVISION, CARRIER/TPA	RESPONDENT

OPINION FILED JULY 19, 2011

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

Claimant represented by the HONORABLE RANDY SHOCK, Attorney at Law, Fort Smith, Arkansas.

Respondents represented by the HONORABLE BILL WHARTON, 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 February 16, 2011.

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

1. The stipulations agreed to by the parties at the prehearing conference conducted on September 8, 2010, and contained in a pre-hearing order filed September 10, 2010, are hereby accepted as fact.
2. The claimant has proven by a preponderance of the evidence the existence of objective medical

findings of right foot and right ankle difficulties.

3. The claimant failed to prove by a preponderance of the evidence a causal connection between the objective medical findings of right foot and right ankle problems and the specific incident he alleges to have occurred on February 18, 2010.
4. The claimant has failed to prove his entitlement to any benefits in this matter.

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 claimant sustained a compensable right ankle injury on February 18, 2010 and I would award benefits accordingly.

The claimant readily admitted that he had a previous right foot injury in 2007 and presented medical records regarding it. However, there was no evidence presented to establish any medical treatment for claimant's right foot injury between the October 30, 2007 release until the treatment he received following the February 18, 2010 injury. The objective findings for the 2007 injury and the 2010 injury are completely different. While an aggravation of a pre-existing condition can be a compensable injury, that is not what we are dealing with in this case. This is a simple specific-incident injury claim.

For the claimant to establish a compensable injury as a result of a specific incident which is identifiable by time and place of occurrence, the following requirements of Ark. Code Ann. §11-9-102(4)(A)(i)(Repl. 2002), must be established: (1) proof by a preponderance of the evidence of an injury arising out of and in the course of employment; (2) proof by a preponderance of the evidence that the injury caused internal or external physical harm to the body which required medical services or resulted in disability or death; (3) medical evidence supported by objective

findings, as defined in Ark. Code Ann. §11-9-102 (4) (D), establishing the injury; and (4) proof by a preponderance of the evidence that the injury was caused by a specific incident and is identifiable by time and place of occurrence. Mikel v. Engineered Specialty Plastics, 56 Ark. App. 126, 938 S.W.2d 876 (1997). The phrase "arising out of the employment" refers to the origin or cause of the accident, so the employee is required to show that a causal connection exists between the injury and his employment. Gerber Products v. McDonald, 15 Ark. App. 226, 691 S.W.2d 879 (1985). Arkansas Courts have long recognized that a causal relationship may be established between an employment-related incident and a subsequent physical injury based on evidence that the injury manifested itself within a reasonable period of time following the incident so that the injury is logically attributable to the incident, where there is no other reasonable explanation for the injury. Hall v. Pittman Construction Co., 234 Ark. 104, 357 S.W.2d 263 (1962).

This case hinges on the credibility of the claimant. I find that the claimant gave credible testimony at the hearing regarding the specific incident on February 18, 2010. The claimant testified that he reported to work at 7:00 or 7:30 a.m. and started working, clearing brush. While carrying a 12 to 15-foot tree limb to a wood chipper, he stepped in a rut, turned his ankle, and felt immediate extreme pain causing him to vomit. He

reported this to his supervisor, Mr. Lewis James. He also called and reported it to his main supervisor, Ms. Shannen Ray. The claimant was instructed to go to the doctor. He waited in Mr. James' truck until he was transported back to headquarters at lunch. The claimant testified that he left work, went to the doctor, and has yet to be released to return to work. The MRI report on February 19, 2010 found the existence of the injury. The claimant's surgeon, on February 25, 2010, provides a similar history:

Clifton James is a 39-year-old male who comes in for evaluation of a recent injury to his right ankle, twisting the ankle. This injury was about a week ago. 3 to 4 weeks prior, it was noted that he was twisting his ankle much more commonly. 1 week prior, he had a lot of swelling. This went down, and then a tremendous amount of swelling after the ankle popped when he turned it. He had previously had surgery on this ankle. Both were on job injuries, the latest one for the Arkansas Highway Department...

The accidental injury claim form executed by the claimant stated that the date of the accident was February 18, 2010, and gave a description of: "Hauling a log to be chipped turned foot in a whole (sic) in ground."

Despite the fact that the claimant reported an on-the-job injury, his supervisors refused to treat it as a workers' compensation claim, going so far as to testify that the claimant said the injury was not work related. I would note that none of

the respondents' witnesses dispute claimant's account of the specific incident. As such, I find the claimant's testimony more credible than that of the respondents' witnesses.

Based on the claimant's credible testimony and the corroborating medical records, I find that the claimant sustained a compensable specific-incident right ankle injury on February 18, 2010, when he twisted his ankle in a rut while lifting a tree limb, and would award benefits accordingly.

For the aforementioned reasons I must respectfully dissent.

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PHILIP A. HOOD, Commissioner