

NOT DESIGNATED FOR PUBLICATION

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. G000622

MIGUEL SERRANO,
EMPLOYEE

CLAIMANT

GEORGE'S, INC.,
SELF-INSURED EMPLOYER

RESPONDENT

CROCKETT ADJUSTMENT COMPANY,
TPA

RESPONDENT

OPINION FILED APRIL 5, 2011

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

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

Respondents represented by the HONORABLE TOD C. BASSETT,
Attorney at Law, Fayetteville, Arkansas.

Decision of Administrative Law Judge: Affirmed and
Adopted.

OPINION AND ORDER

Claimant appeals an opinion and order of the
Administrative Law Judge filed September 8, 2010. In
said order, the Administrative Law Judge made the
following findings of fact and conclusions of law:

1. The stipulations agreed to by the parties at
the pre-hearing conference conducted on March
31, 2010, and contained in a pre-hearing order
filed that same date, are hereby accepted as
fact.
2. The parties' stipulation that claimant earned
sufficient wages to entitle him to
compensation at the rate of \$243.00 for total
disability benefits and \$182.00 for permanent

partial disability benefits is also hereby accepted as fact.

3. Claimant has failed to prove by a preponderance of the evidence that he suffered a compensable injury in the form of an infection to his left foot on or about December 4, 2009.

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.

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

Therefore we affirm and adopt the September 8, 2010 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.

A. WATSON BELL, Chairman

KAREN H. MCKINNEY, Commissioner

Commissioner Hood dissents.

DISSENTING OPINION

After my de novo review of the entire record, I must respectfully dissent from the majority opinion. I would award the claimant indemnity and medical benefits for the injury to his left foot.

The claimant, a diabetic, was hospitalized with a Staphylococcus aureus infection of his right foot and a group A Streptococcus infection in his left second toe, from November 2 to November 6, 2009. The claimant did not attend his scheduled follow-up appointment the next week, for financial reasons. The claimant returned to work on November 24, 2009, and worked until December 4, 2009, when he developed symptoms of infection. He was hospitalized on December 7, with infection in his left second toe. Cultures taken during that stay revealed group A Streptococcus in the left foot and

Staphylococcus aureus in the right. He had not returned to work since that time. The claimant testified that, in his job on the production line, water dripped from the chicken that he cut onto his apron and then onto his shoes, causing his feet to remain wet during his shift. He stated that this was the cause of his most recent infection.

The claimant's treating physician, Dr. Hennigan, stated that the claimant's foot problems were due to the maceration of the skin of his feet, which was caused by his feet getting soaked in water daily during his work shift. The maceration "certainly contributed to, if not caused the infection." He explained that the staph and strep were probably present on the claimant's foot and that the maceration caused by water-soaked shoes allowed that presence to become an infection. As a diabetic, he was at risk for soft tissue infection, and the maceration increased that risk. The doctor explained that the trauma of standing all day at work was a cause as well, which was exacerbated by the claimant's diabetes, because he could not feel the damage occurring to address it, and which was exacerbated by the maceration of the skin of his feet due to the constant wetness.

Dr. Hennigan also stated that the claimant could have suffered a continuation of the infection he had thirty days prior, when he was hospitalized in December 2009, in regard to the Staphylococcus aureus infection he had. However, in regard to the infection with group A Streptococcus, the claimant had a new infection. He may have had group A Streptococcus thirty days prior, but if that infection had continued in between the two hospitalizations, the claimant would have had to have an amputation, because group A Streptococcus is so destructive.

Dr. Hennigan stated at deposition that the fact that the claimant's feet were wet all day at work, which caused maceration of the skin, was the primary cause of the infection by bacteria which were already on his skin. If the claimant was released in November and was able to return to work and work for ten days, during which time his feet were wet the whole work shift, then the resulting maceration would, more likely than not, have led to a new infection or a recurrence of the old infection, one or the other. He stated that maceration in the skin of a diabetic is "bad."

Dr. Hennigan wrote, on June 2, 2010, that:

With regards to water containing chicken runoff, if his feet indeed

were occupationally exposed to such water, the resultant maceration would in my mind clearly be the primary cause of his infection. The reason that this is true is that when skin becomes macerated it loses its integrity to prevent bacterial invasion. Were his skin not macerated this infection would have been unlikely to occur.

The records leave inescapable the conclusion that the claimant suffered a new infection of group A Streptococcus to his left foot in December 2009 after returning to work for ten days to the production line where his feet remained wet for his entire shift. Causation is clearly not an issue. His symptoms began on December 4, 2009, after ten days of working on the line. The maceration caused the claimant's foot to be susceptible to infection, which in fact occurred. The claimant's group A Streptococcus infection became apparent on December 4, 2009. I would award indemnity and medical benefits to the claimant for his compensable injury to his left foot.

For the foregoing reasons, I must respectfully dissent from the majority opinion.

PHILIP A. HOOD, Commissioner