

NOT DESIGNATED FOR PUBLICATION

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. G907500

RICKIE C. BATTIE, EMPLOYEE	CLAIMANT
ALL POINTS, INC., EMPLOYER	RESPONDENT
LIBERTY MUTUAL GROUP, INSURANCE CARRIER/TPA	RESPONDENT

OPINION FILED JULY 13, 2021

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

Claimant represented by the HONORABLE ANDY L. CALDWELL, Attorney at Law, Little Rock, Arkansas.

Respondents represented by the HONORABLE DAVID C. JONES, Attorney at Law, Little Rock, Arkansas.

Decision of Administrative Law Judge: Affirmed and Adopted.

OPINION AND ORDER

Claimant appeals an opinion and order of the Administrative Law Judge filed April 14, 2021. In said order, the Administrative Law Judge made the following findings of fact and conclusions of law:

1. The Arkansas Workers' Compensation Commission has jurisdiction over this claim.
2. An employer/employee relationship existed on August 14, 2019, the date of the claimed injury.
3. At the time of the claimed injury, the claimant earned an average weekly wage of \$825.72, sufficient for a TTD/PPD rate of \$551.00/\$413.00.

4. The claimant has failed to satisfy the required burden of proof to show by a preponderance of the evidence that he sustained a compensable work-related injury to his left lower leg, left foot, left great toe, and left second toe, on August 14, 2019.
5. Consequently, all other issues are moot.
6. If not already paid, the respondents are ordered to pay for the cost of the transcript forthwith.

We have carefully conducted a *de novo* review of the entire record herein and it is our opinion that the Administrative Law Judge's April 14, 2021 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.

Therefore 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.

SCOTTY DALE DOUTHIT, Chairman

CHRISTOPHER L. PALMER, Commissioner

Commissioner Willhite dissents.

DISSENTING OPINION

After my *de novo* review of the record in this claim, I dissent from the majority opinion, finding that the claimant “failed to satisfy the required burden of proof to show by a preponderance of the evidence that he sustained a compensable work-related injury to his left lower leg, left foot, left great toe, and left second toe on August 14, 2019.”

For the claimant to establish a compensable injury as a result of a specific incident, the following requirements of Ark. Code Ann. §11-9-102(4)(A)(i)(Repl. 2012), 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).

It is undisputed that the claimant suffered from diabetes prior to his workplace accident. However, a pre-existing disease or infirmity does not disqualify a claim if the employment aggravated, accelerated, or combined with the disease or infirmity to produce the disability for which compensation is sought. See, *Nashville Livestock Commission v. Cox*, 302 Ark. 69, 787 S.W.2d 664 (1990); *Conway Convalescent Center v. Murphree*, 266 Ark. 985, 585 S.W.2d 462 (Ark. App. 1979); *St. Vincent Medical Center v. Brown*, 53 Ark. App. 30, 917 S.W.2d 550 (1996). The employer takes the employee as he finds him. *Murphree, supra*. In such cases, the test is not whether the injury causes the condition, but rather the test is whether the injury aggravates, accelerates, or combines with the condition.

The claimant's injuries meet the requirements for compensability. The claimant provided credible testimony that he was involved in a workplace accident on August 14, 2019. The claimant testified that a pallet fell against his left leg and landed on his left foot. When the pallet landed, the claimant felt what he described as a "little sting", "a little tingle, a little numbness" on his foot.

There were objective findings of the injury in the form of a left leg contusion and swelling in the left lower extremity as noted in the August

21, 2019 medical records; gas gangrene in his left great toe as revealed in X-rays taken on October 7, 2019. In addition, this injury required medical treatment in the form of prescription medications, debridement and amputation of the left great toe and left second toe.

I recognize that in general foot ulcers are common for diabetic patients; however, the claimant testified that he was not suffering from left foot ulcers on the day of the accident and had not suffered from diabetic foot ulcers prior to his workplace accident. This testimony is supported by the August 21, 2019 medical record which indicates that there were no prior episodes. Therefore, I credit the claimant's testimony that his condition was asymptomatic prior to his work accident.

Despite having diabetes prior to the work accident, the claimant was able to perform his job duties without limitations or restrictions. It was not until after the pallet landed on the claimant's foot that he developed a foot ulcer that ultimately resulted in the above-referenced amputations. Thus, I find that the claimant's left leg and left foot injuries are compensable injuries. See *Leach v. Cooper Tire and Rubber Co.*, 2011 Ark. App. 571 (2011) (An employer takes the employee as he finds him, and employment circumstances that aggravate preexisting conditions are compensable.)

Based on the foregoing, I find that the claimant has established by a preponderance of the evidence that he sustained compensable left leg and left foot injuries.

For the foregoing reason, I dissent from the majority opinion.

M. SCOTT WILLHITE, Commissioner