

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. G808515

BILLY W. CORLEY,
EMPLOYEE

CLAIMANT

ACME BRICK COMPANY,
EMPLOYER

RESPONDENT

TRAVELERS INSURANCE COMPANY,
INSURANCE CARRIER/TPA

RESPONDENT

OPINION FILED FEBRUARY 10, 2021

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

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

Respondents represented by the HONORABLE AMY C. MARKHAM,
Attorney at Law, Little Rock, Arkansas.

Decision of Administrative Law Judge: Reversed.

OPINION AND ORDER

The respondents appeal an administrative law judge's opinion filed October 5, 2020. The administrative law judge found that the claimant proved he was entitled to a 20% anatomical impairment rating to the body as a whole. The administrative law judge found that the claimant proved he was entitled to wage-loss disability in the amount of 45%. After reviewing the entire record *de novo*, the Full Commission reverses the administrative law judge's opinion. The Full Commission finds that the claimant did not prove he sustained an unscheduled compensable injury, and that the

claimant did not prove he was entitled to a whole-body permanent impairment rating.

I. HISTORY

The testimony of Billy Wayne Corley, now age 63, indicated that he became employed with the respondents in about 1983. The claimant received emergency treatment for complaints of chest pain in July 2014. The claimant also complained of “leg edema and R leg pain and knee pain for one week.” Physical examination in July 2014 showed “Right lower leg pain swelling.”

The parties stipulated that the employee/employer/carrier relationship existed on November 21, 2018, on which date the claimant “sustained a compensable injury.” The claimant testified on direct examination:

Q. Mr. Corley, will you briefly explain to us how you got injured on November 21, 2018....

A. Well, early in the morning I have got to walk the catwalk and turn the belt on so that we can run material on the belt. And I was walking in the catwalk below – what I walk on is like galvanized steel. It gave way and I went down in it. And when I went down, I fell all the way, the ankle all the way up to the knee down in there. And my hip and my leg and my arm and my shoulder and all that hit up against the frame. That is how I got my accident.

According to the record, the claimant treated at Mercy Clinic Cliff Drive on November 22, 2018:

Patient is a 61 yo male who presents to ER for leg injury. He states that he fell from standing level on 11/14/18 and landed on his right knee. He had some swelling to the knee afterwards but did not get seen. He states that he was [at] work yesterday on a catwalk, when the catwalk broke. His right leg went through the catwalk, but he did not fall to the ground. He states that he had a large amount of swelling around the right lower leg afterwards with some redness and bruising. Pain is from right knee and radiates down into the lower leg and into the ankle. No pain in the foot but chronic neuropathy of the right foot. He is able to walk....

A physician's assistant examined the claimant and reported swelling in the claimant's right knee, right ankle, and right lower leg. The physician's assistant stated, "Pt here with 2 injuries to right lower leg. Has hematoma to the leg. Xray of right knee, tib fib, ankle negative for fracture or dislocation. There is some concerns (sic) for an achilles tendon tear but no rupture. Walking boot applied. Amb referral to orthopedics given."

Dr. Justin Clayton reported on February 15, 2019:

61 year old male who fell through a catwalk on the 21st of November at work, resulting in pain and swelling over the lateral aspect of his ankle. Pain is worse with weightbearing and palpation, better with rest. Does not radiate other than the fact that it includes the entire lateral side of his leg distal to the knee, can be quite severe at times. He has been evaluated by Occupational Medicine as well as Pain Management. Pain Management felt like this was more an edema issue due to his lymphatics....

ORTHOPEDIC: He has significant edema, especially laterally along the distal third of his fibula. He has bogginess in the subcutaneous tissues and bruising along this area as well.

IMAGING: Weightbearing three view of the right ankle demonstrates lateral soft tissue swelling and to a lesser extent, medial swelling.

Otherwise is unremarkable....

ASSESSMENT/PLAN: This is a patient with significant pain and swelling after an injury. I do not see an orthopedic issue, however, I would like two things to happen. First I would like [him] to see the lymphedema clinic and then secondly I think it would be prudent to have him potentially be evaluated or at least have imaging sent to either UAMS or OUMC just to evaluate his MRI because it does have a very unusual appearance. [He] is going to be referred back to the Occupational Medicine Clinic.

The claimant began treating with an Occupational Therapist, Christine A. Capeheart, on February 26, 2019. The occupational therapist's Primary Diagnosis was "Lymphedema of right lower extremity." Christine Capeheart reported on March 11, 2019 that treatment included "MLD to neck and shoulder collectors, superficial and deep abdominal collectors. Stimulation to (L) and (R) Axillary and Inguinal Nodes and created anastomosis between axillary and inguinal nodes. Posterior and Anterior (L) and (R) LE MLD sequences to promote de-congestion and softening of fibrotic tissue."

The claimant followed up with Dr. Clayton on March 27, 2019: "I saw him previously and got him set up with the lymphedema clinic. In the interim, the patient has had a few lymphedema treatments and he has also had an ultrasound of the lateral side of his leg. He reports that the lymphedema treatments have definitely improved both the swelling in his leg as well as his pain but he does continue to have significant swelling and pain in that extremity."

The claimant continued to regularly receive occupational therapy. Ms. Capeheart reported on June 25, 2019, “Overall appearance of limb: Increased edema throughout whole (R) LE including his knee and hip. He has 3+ pitting edema from (R) knee to toes.”

Dr. Clayton noted on August 20, 2019, “This is a 61-year-old male who had a work-related injury a number of months ago, sustaining a soft tissue injury primarily to his right lower extremity. This appears to have produced a Morel lesion and he has had some success with lymphedema treatments. He did develop a wound at the heel as well as the dorsal aspect of his foot. He has been evaluated by a wound care doctor who reports that he does not feel like either of these needs any specific intervention....ORTHOPEDIC: He does have edema in his right lower extremity up to about his knee. He has tenderness along the lateral aspect of his leg as previously identified.” Dr. Clayton assessed “Patient with lymphedema after a significant injury. I was not able to palpate any obvious fluid collections. I am not sure that any sort of surgical intervention at this point is going to be especially helpful. I think revisiting the lymphedema clinic is probably the best option with wound care as needed.” The claimant resumed his follow-up occupational therapy treatment with Christine Capeheart.

The claimant followed up with Dr. Clayton on September 13, 2019: “This is a patient who had a workers’ comp related injury who sustained a significant injury to his right lower extremity. The patient has had persistent swelling and pain in his right lower extremity that has responded somewhat to lymphedema treatments but he has recurrent problems. His pain is relatively well controlled when he is not edematous but any sort of being up on his feet with his feet in a dependent position causes increased swelling as well as pain....MRI was reviewed and demonstrates only soft tissue edema.” Dr. Clayton assessed “Lymphedema right lower extremity, traumatic in origin. I think at this point he has gotten as much improvement from my services as he can get. I anticipate that he will need lymphedema treatments indefinitely. Patient will need a functional capacity evaluation as well as an impairment rating. His restrictions for work will remain unchanged from last time with the patient requiring frequent sitting breaks.”

The claimant participated in a Functional Capacity Evaluation on September 26, 2019:

Mr. Billy Corley is referred to Functional Testing Centers, Inc. for the purpose of undergoing a comprehensive functional capacity evaluation to determine his current functional status. [Mr.] Corley is referred with complaints of on-going edema and pain in his right lower leg which he attributed to injuries he sustained in a work related accident.... The results of this evaluation indicate that a reliable effort was put forth, with 41 of 41 consistency measures within expected limits....

Overall, Mr. Corley demonstrated the ability to perform work in the **SEDENTARY** classification of work as defined by the US Dept. of Labor's guidelines over the course of a normal workday with limitations as noted above....

Mr. Corley reports that he was injured while working when he stepped through a catwalk and injured his RLE. He states that he has some [swelling] in his right leg from his knee to his ankle that did not improve. He states that he was eventually diagnosed with Morel Lesion after having it casted for a period of time. He states that he made no progress in therapy and he states that his doctors have been unable to adequately control the amount of edema in his RLE especially below the knee....

Mr. Corley describes his pain as being in his right leg. He states that he has continued to be treated at the Lymphedema clinic and is currently going 2 times a week. He states that he has a home unit as well that he uses 1-2 times daily for his chronic swelling in his RLE....

Mr. Corley rates his RLE pain as a going from moderate to severe depending on activity and position. He states that he has severe pain at night when trying sleep and has pain when walking or standing for even brief periods. He also reports moderate low back pain and bilateral shoulder pain prior to testing....

There was significant edema present at both the medial and lateral joint lines of the right ankle and there is no ratable varus or valgus of the ankle joint. He does [have] edema present throughout the RLE from just above the knee to his toes. He does have congenital varus of the right knee. There was no temperature differences, color differences or skin loss, right vs. right. He also had full PROM of the contralateral side ankle joint and toes. No other ratable finding was found with physical examination.

Additionally, an IMPAIRMENT EVALUATION SUMMARY – Lower Extremity was prepared at Functional Testing Centers, Inc. on September 26, 2019:

Mechanism of Injury: Mr. Corley reports that he sustained an injury to his right lower extremity when a catwalk broke and

his right leg went through the catwalk with immediate pain, bruising and swelling in his right lower leg.

Injury/Surgical History: Lymphedema, Morel Lesion, which is described as an internal degloving type injury. No indication of significant ligament or tendon tear, Dr. Steven O. Smith. CRPS was ruled out by Dr. Natalie Strickland, pain medicine.

Other Medical Considerations: Congestive heart failure, poorly controlled Type 2 diabetic with diabetic polyneuropathy, long term insulin use, hypertensive, gout, mixed hyperlipidemia, reactive depression, generalized arthritis, diabetic peripheral neuropathy, bilateral post-traumatic osteoarthritis on knees....

The guides recommend using the section that provides the greater impairment. In Mr. Corley's case, the Impairment for his Peripheral Vascular Disorder is the greatest and results in an 20% Whole Person, 50% Lower Extremity Impairment for his work related right injury.

The parties stipulated that the claimant "reached maximum medical improvement on October 15, 2019." Dr. Clayton reported on October 16, 2019:

I have reviewed the impairment report and agree with the findings of the evaluation. He is at MMI as of 10/15/2019 with an impairment of 50% of the lower extremity and 20% of whole person based on the 4th edition of the AMA Guides to Permanent Impairment. I recommend he continue lymphedema treatments indefinitely and am referring him back to Dr. Holder at Mercy Occupation Medicine Clinic for continued care and monitoring of the lymphedema as needed.

The parties stipulated that the claimant "was assessed a 50% rating to his lower extremity and the respondents are paying said rating."

A pre-hearing order was filed on February 11, 2020. The claimant contended, "The claimant contends that his impairment is actually 20% to

the body as a whole instead of the 50% right lower extremity. The claimant contends that even if his impairment is limited to the right lower extremity it is not limited to below the knee. The claimant contends that he has sustained wage-loss disability in an amount to be determined by the Commission because his lymphedema causes his impairment to be to the body as a whole. The claimant contends that his attorney is entitled to an appropriate attorney's fee on any impairment disability benefits over and above 50% impairment to the right lower extremity below the knee."

The respondents contended, "The respondents contend that they have properly initiated payment for the claimant's impairment of 50% to the right lower extremity. The claimant is not entitled to an impairment rating to the body as a whole. The claimant is not entitled to wage-loss disability."

The parties agreed to litigate the following issues:

1. Whether the impairment rating should be to the right lower extremity or to the body as a whole.
2. Whether the respondents have properly determined the extent of the claimant's permanent impairment, even if to his lower extremity.
3. Whether the claimant is entitled to wage-loss benefits.
4. Fees for legal services.

A hearing was held on July 28, 2020. The claimant's wife, Bonnie K.

Corley, testified on direct examination:

- Q. And have you attended the lymphotherapy sessions that he has had in regard to that accident?
- A. Yes, sir. Almost all of them.

Q. Tell us what you observed the therapist doing when she was treating him in these lymphotherapy sessions.

A. She would do these motions – okay. She would start at the neck and into the shoulders and just a circular motion. And what she was doing, she was pushing the fluids....She was pushing in a circular motion. You could see where she would be pushing in a circular motion through the shoulder, down the arm kind of up and into the shoulder, down the side of his sides, down his back toward the groin area.

Q. Now, the records indicate that she was doing what is called MLD and the records show that that means manual lymph drainage therapy.

A. Yes, because then she would also start from the foot doing the same way, pushing up toward the groin area so that they could go out.

Q. So based on your actual observations of the therapist, did she manipulate parts of the body other than the right leg? Did she massage parts of the body other than the leg?

A. Yes, beginning at the neck down.

Q. And did she do that on a regular basis?

A. Every visit.

Q. Did you ever observe any swelling in Mr. Corley's leg?

A. Yeah. Lots of swelling....

Q. Did you observe swelling in any other parts of his body, other than just his leg?

A. Not until after the cast was put on....[Dr. Johnson] put a cast on it and that was to keep it from swelling. Well, it did, it kept that ankle from swelling, the ankle and foreleg from the knee down, except for the toes swelled and above the cast started swelling. He swelled over the cast and up the thigh. That is when he started having swelling that would go into the left leg....

Q. Now, when you say the thigh, does that include the hip or not?

A. Yes. The hip, yes, all the way up going into the groin area....

An administrative law judge filed an opinion on October 5, 2020. The administrative law judge found that the claimant proved he was entitled to a 20% whole-body impairment rating "based on the diagnosis of

lymphedema, a compensable consequence of his compensable injury to his right lower extremity.” The administrative law judge found that the claimant proved he sustained wage-loss disability in the amount of 45%. The respondents appeal to the Full Commission.

II. ADJUDICATION

Ark. Code Ann. §11-9-521(Repl. 2012) provides, in pertinent part:

(a) An employee who sustains a permanent compensable injury scheduled in this section shall receive, in addition to compensation for temporary total and temporary partial benefits during the healing period or until the employee returns to work, whichever occurs first, weekly benefits in the amount of the permanent partial disability rate attributable to the injury, for that period of time set out in the following schedule:

(4) Leg amputated between the knee and the ankle, one hundred thirty-one (131) weeks[.]...

(g) Any employee suffering a scheduled injury shall not be entitled to permanent partial disability benefits in excess of the percentage of permanent physical impairment set forth above except as otherwise provided in §11-9-519(b).

Ark. Code Ann. §11-9-519(Repl. 2012) provides, in pertinent part:

(b) In the absence of clear and convincing proof to the contrary, the loss of both hands, both arms, both legs, both eyes, or of any two (2) thereof shall constitute permanent total disability.

Scheduled injuries differ from unscheduled injuries in that the award for a scheduled injury generally is limited to the benefits provided for that particular injury. *Moser v. Arkansas Lime Co.*, 40 Ark. App. 113, 846

S.W.2d 188 (1993), citing *Rash v. Goodyear Tire and Rubber Co.*, 18 Ark. App. 248, 715 S.W.2d 449 (1986).

The test of whether an injury falls within the scheduled injury category is primarily a question of law. *Taylor v. Pfeiffer PLBG & HTG Co.*, 8 Ark. App. 144, 648 S.W.2d 526 (1983). A claimant who sustains a scheduled injury is limited to the applicable allowances set forth in Ark. Code Ann. §11-9-521(Repl. 2012), and such benefits cannot be increased by considering wage-loss factors absent a finding of permanent total disability. *Federal Compress & Warehouse Co. v. Risper*, 55 Ark. App. 300, 935 S.W.2d 279 (1996).

An administrative law judge found in the present matter, “3. The claimant has proven by a preponderance of the evidence that he is entitled to a 20% anatomical impairment rating to the body as a whole based on the diagnosis of lymphedema, a compensable consequence of his compensable injury to his right lower extremity.” The Full Commission does not affirm this finding. The parties stipulated that the claimant sustained a compensable injury on November 21, 2018. The claimant testified that a catwalk “gave way” and caused him to fall. The claimant testified, “I fell all the way, the ankle all the way up to the knee down in there. And my hip and my leg and my arm and my shoulder and all that hit up against the frame.”

In workers' compensation cases, the Commission functions as the trier of fact. *Blevins v. Safeway Stores*, 25 Ark. App. 297, 757 S.W.2d 569 (1988). The determination of the credibility and weight to be given a witness's testimony is within the sole province of the Commission. *Murphy v. Forsgren, Inc.*, 99 Ark. App. 223, 258 S.W.3d 794 (2007). The Commission is not required to believe the testimony of the claimant or any other witness but may accept and translate into findings of fact only those portions of the testimony it deems worth of belief. *Farmers Co-op v. Biles*, 77 Ark. App. 1, 69 S.W.3d 899 (2002). Moreover, the Full Commission has the duty to decide the case *de novo* and we are not bound by the characterization of evidence adopted by the administrative law judge. *Tyson Foods, Inc. v. Watkins*, 31 Ark. App. 230, 792 S.W.2d 348 (1990).

The parties stipulated in the present matter that the claimant sustained a compensable injury on November 21, 2018. The probative evidence demonstrates that the claimant sustained a compensable scheduled injury to his right lower extremity. It was reported at Mercy Clinic on November 22, 2018 that the claimant injured his right leg when he fell through the catwalk. It was noted, "Pain is from right knee and radiates down into the lower leg and into the ankle." A physician's assistant reported swelling in the claimant's right knee, right ankle, and right lower leg. Dr. Clayton reported on February 15, 2019 that the compensable injury

caused “swelling over the lateral aspect of his ankle....He has significant edema, especially laterally along the distal third of his fibula.” The record does not show that the claimant sustained a compensable injury above his right knee; nor does the record show that the claimant sustained a compensable injury to any unscheduled anatomic region.

Dr. Clayton referred the claimant to an occupational therapist, Christine A. Capeheart. Ms. Capeheart’s Primary Diagnosis on February 26, 2019 was “Lymphedema of right lower extremity.” *Stedman’s Medical Dictionary*, 26th Edition, defines “Lymphedema” as “Swelling (especially in subcutaneous tissues) as a result of obstruction of lymphatic vessels or lymph nodes and the accumulation of large amounts of lymph in the affected region.” The preponderance of evidence supports the administrative law judge’s determination that the claimant sustained lymphedema as a natural consequence of his compensable scheduled injury. *See Hubley v. Best Western Governor’s Inn*, 52 Ark. App. 226, 916 S.W.2d 143 (1996). Nevertheless, the claimant’s treatment for lymphedema does not convert his compensable scheduled injury to an unscheduled injury.

The Occupational Therapist reported that her treatment of the claimant included “MLD to neck and shoulder collectors, superficial and deep abdominal collectors.” The claimant’s wife testified that she observed

the therapist performing “MLD,” or “Manual Lymph Drainage Therapy.” Ms. Corley testified, “She would do these motions – okay. She would start at the neck and into the shoulders and just a circular motion.” Ms. Corley testified that the occupational therapist would massage areas including the claimant’s feet, neck, and shoulders. The claimant described his lymphotherapy treatment: “I went to Chris over there in West Tower, I mean just like she said, she would massage the top, my neck and all, my stomach and all trying to bring the fluids down and she would work with my leg and everything else by pushing up.”

The evidence does not demonstrate that massage of the claimant’s neck, shoulders, feet, or other areas indicates that the claimant sustained a compensable unscheduled, whole-body injury. The probative evidence of record demonstrates that the claimant sustained a compensable scheduled injury to his right lower extremity. A claimant who sustains a scheduled injury is limited to the applicable allowances set forth in Ark. Code Ann. §11-9-521(Repl. 2012), and such benefits cannot be increased by considering wage-loss factors absent a finding of permanent total disability. *Federal Compress & Warehouse Co., supra.*

After reviewing the entire record *de novo*, the Full Commission reverses the administrative law judge’s finding that the claimant proved he sustained wage-loss disability in the amount of 45%. The Full Commission

finds that the claimant sustained a compensable scheduled injury to his right lower extremity. The Full Commission finds that the claimant did not sustain an unscheduled injury, and we find that the diagnosis and treatment of lymphedema did not convert the claimant's compensable scheduled injury to an unscheduled injury. The claimant is limited to the applicable allowances set forth in Ark. Code Ann. §11-9-521(Repl. 2012). The claimant to date does not claim that he is permanently totally disabled. The claim for wage-loss disability is respectfully denied and dismissed.

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 did not prove he sustained an unscheduled compensable injury, and that the claimant did not prove he was entitled to a whole-body permanent impairment rating.

The claimant suffered an admittedly compensable injury to his right leg. As a compensable consequence of that injury, the claimant developed lymphedema. Swelling caused by the lymphedema extended beyond the claimant's leg and into his hip which was noted on June 25, 2019 by Occupational Therapist, Christine Capehart, to wit, "[i]ncreased edema throughout whole (R) LE including his knee and hip". The fact that lymphedema was present in the claimant's hip was further supported by the testimony of the claimant's wife who observed swelling in the claimant's right hip.

Additionally, the claimant's treatment included portions of his body other than his lower leg. Accordingly, I find that the claimant proved by a preponderance of the evidence that he sustained a compensable unscheduled injury and that he is entitled to a 20% whole-person impairment rating as assessed by Dr. Clayton. In addition, I find that the claimant is entitled to 45% wage loss in addition to the 20% impairment rating.

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

M. SCOTT WILLHITE, Commissioner