

**BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION  
CLAIM NO. G907500**

**RICKIE C. BATTIE, EMPLOYEE**

**CLAIMANT**

**ALL POINTS, INC., EMPLOYER**

**RESPONDENT**

**LIBERTY MUTUAL CO., INSURANCE CARRIER**

**RESPONDENT**

**OPINION FILED APRIL 14, 2021**

Hearing before Administrative Law Judge, James D. Kennedy, on the 9<sup>th</sup> day of March, in Little Rock, Pulaski County, Arkansas.

Claimant is represented by Andy L. Caldwell, Attorney at Law, Little Rock, Arkansas.

Respondents are represented by David Jones, Attorney at Law, Little Rock, Arkansas.

**STATEMENT OF THE CASE**

A hearing was conducted on the 9<sup>th</sup> day of March, 2021, to determine the issues of compensability of an injury to the left lower leg and left foot, including the left great toe and second toe; medical; mileage; temporary total disability (TTD) from October 7, 2019, to a date to be determined; and attorney fees. The respondents controverted the claim in its entirety, contended that they did not receive any notice of the injury until November 15, 2019, and that there were no objective medical findings as to the alleged work-related injury. In addition, the respondents contended that if TTD is awarded, the claimant reached the end of his healing period as of January 30, 2020, and drew unemployment benefits at that time and consequently, he was released in December 2019 or January 2020.

The parties stipulated that the Arkansas Workers' Compensation Commission has jurisdiction of the claim; that an employer-employee relationship existed on August 14, 2019, the date of the claimed injury; and that the claimant earned an average weekly wage of \$825.72, sufficient for a TTD/permanent partial disability (PPD) rate of

\$551.00/\$413.00. A copy of the Pre-hearing Order was marked “Commission Exhibit 1” and made part of the record without objection.

The claimant’s and respondents’ responses were set out in their respective responses to the Pre-hearing Questionnaire and made a part of the record without objection. The witnesses consisted of Rickie C. Battie, the claimant, as well as Timikia Jackson and Corey Vester. From a review of the record as a whole, to include medical reports and other matters properly before the Commission, and having had an opportunity to observe the testimony and demeanor of the witnesses, the following findings of fact and conclusions of law are made in accordance with Ark. Code Ann. § 11-9-704. A brief, which is blue-backed and attached to this opinion, was submitted by the respondents.

#### **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.

#### **REVIEW OF TESTIMONY AND EVIDENCE**

The Pre-hearing Order, along with the Pre-hearing Questionnaires of the parties, were admitted into the record without objection. The claimant submitted two (2) exhibits

that were admitted into evidence without objection: (1) Claimant's Exhibit One, which consisted of 379 pages of medical records; and (2) Claimant's Exhibit Two, which consisted of twenty-three (23) pages of additional medical records. The respondents submitted four (4) exhibits that were admitted without objection: (1) Respondents' Exhibit One, which consisted of thirty-one (31) pages of medical records; (2) Respondents' Exhibit Two, which consisted of ten (10) pages and included a workforce services letter and claimant's unemployment records; (3) Respondents' Exhibit Three, which consisted of eleven (11) pages of the claimant's responses to Interrogatories; and (4) Respondents' Exhibit Four, which consisted of ninety-six (96) pages of the deposition of the claimant.

The claimant testified that he was born on October 31, 1963, completed high school, and attended some vocational school, where he obtained some basic computer training. He had worked for the respondent for nineteen (19) years on and off. He started working for them in the North Little Rock-Sherwood area in 2015, and at that time, he worked as a service representative and warehouse person. On August 14, 2019, his job title remained the same, but his responsibilities were different.

Some days I went on the truck as a service rep that helped install the machines, other days I worked in the warehouse, but my position changed because my manager hit the road a lot. As we lost drivers, we didn't get replacements. So my job was to expediate everybody else's work as far as what they intended to do. Some days it required me working like 24 hours back-to-back. Some days it required me making sure that everybody got whatever extra they had in their run to load on their truck so they would – like sometimes that had a stop that was out the way, they didn't want to take it. It was just one stop. (Tr. 8, 9)

On August 14, 2019, the claimant was pulling machines that came in on a Xerox tractor trailer from a skid (pallet), with the pallets weighing fifteen (15) to twenty (20) pounds. The claimant stated that he walked between two (2) pallets when the pallet on

the left fell up against his left leg and his foot, between the ankle and the forward part of the foot, hitting the left side of the left foot. (Tr. 11, 12) When the pallet fell on his foot, he felt a little sting on his foot, but he did not bleed. (Tr. 14) The claimant was working with coworker Corey Vester at the time of the incident, but there was product lined up that blocked Mr. Vester's view of the incident. Antonio Lewis was also working in the middle aisle and asked the claimant if he was okay. (Tr. 15)

The claimant testified that, on the day of the incident, he told Cory Graham, the terminal manager, about it. (The attorney for the respondent provided that an attempt had been made to contact and take the deposition of Mr. Graham, but the respondent company had closed and that they were unable to find Mr. Graham.) The claimant was specifically asked if he felt he needed to go to the doctor on the day of the incident and he responded, "No." (Tr. 16, 17) He admitted that he did not go to the doctor until about seven (7) days later on August 21, 2019, when he presented with pain and lower-extremity swelling. (Tr. 18) His problems worsened from the date of the incident until he presented to the doctor. (Tr. 19) The claimant stated that the doctor looked at his foot but that his main concern was the boil on his buttock. (Tr. 20) The claimant testified that he eventually went to the hospital on October 9, 2019, the same date he was terminated by the respondent, and that he had not worked anywhere since. (Tr. 21) The claimant also stated he continued to work for the respondent for about a month and a half after the incident until October 1, 2019, when he basically assembled a machine by sitting on a blanket on the floor due to his serious problems with walking and standing on his left foot, and that these problems related back to the August incident. (Tr. 22) The claimant also testified that he was taken to the doctor the next day by Timikia Jackson. The claimant

also admitted that he applied for unemployment on December 30, 2019, that he drew unemployment from January 4, 2020, through July 4, 2020, and that he then moved to Louisiana on July 10, 2020, after his benefits expired. (Tr. 24, 25)

In regard to going into the hospital, the claimant testified that he could not walk on his foot and was not scheduled to go into the wound clinic until Wednesday of the next week, so he went to the hospital. His big toe and the toe next to it had to be removed on his left foot. (Tr. 26) The claimant stated he was in the hospital from October 7, 2019, until November 11, 2019. He treated with Dr. Weber in the hospital and continued to treat with him after his release, with his last visit with Dr. Weber sometime in January, when Dr. Weber indicated that it was safe for him to start weight bearing. The claimant thought he saw Dr. Weber one more time, such as January 15 or 16, 2020. The claimant also admitted that he filled out employment applications during the period of time he was drawing unemployment benefits. (Tr. 27, 28)

In regard to current issues with his left foot, the claimant testified he can currently walk thirty (30) or forty (40) minutes without any problems at all. In regard to the claimant's left foot, "It's kinda numb, but every now and then it's like a - - where the incision - - where that little hole was in my foot, that's like a shooting pain kinda like the shock of a taser. It comes and goes. The rest of it is just, I guess, numbness of the nerves, so the foot is always numb." The claimant also testified that he was legally blind in the right eye and could read but not drive. Prior to the incident, he would sometimes walk to work, which was about two and a half (2.5) miles, depending on the weather. If the weather were bad, he would catch a ride. (Tr. 29 - 31)

Under cross examination, the claimant admitted that he continued to work through October 1, 2019, and then was taken to see Dr. Grant by Timikia on October 2. (Tr. 32) The claimant also admitted the respondents had no medical records still keeping him off of work. (Tr. 33) At the time of the incident, he did not tell Corey Graham that the pallet hit his foot, but did mention it hitting or brushing up against his leg. (Tr. 37) The claimant again admitted that there was no bleeding at the time of the incident. (Tr. 39)

The claimant also admitted that Timikia did not get involved in regard to the claim regarding the incident until the October 2, 2019, doctor visit. (Tr. 45) He had been diagnosed with diabetes as far back as 2003 and was determined as insulin dependent in 2011. The claimant also admitted he did not see Dr. Grant until October 2, for what the claimant described as a diabetic ulceration on the bottom of his foot, and he did not tell him about the pallet incident. (Tr. 46, 47) He also admitted he went to the hospital because his foot started bleeding. (Tr. 48) He had suffered from ulcerations before, but never on his foot. (Tr. 49) Under further cross examination, the claimant was asked about a glucose level of 362, and he responded, “Sir, that was not high.” (Tr. 51, 52) The claimant also admitted to having kidney problems in the past. (Tr. 55)

Under redirect examination, the claimant described the pallet hitting the side of his leg before falling and hitting his foot, at which point he kind of “kicked it off [his] foot ... to get it off [his] foot.” The claimant further admitted that he had boils in the past. When asked if he had ever had a boil or any problems with his lower leg below the knee or on his foot prior to the incident that he sought treatment for, his response was, “No, sir.” (Tr. 57, 58)

Ms. Timikia Jackson was then called by the claimant. She testified that she worked for the respondent for nine (9) years, starting as an account coordinator, then office worker, and then office manager. (Tr. 63) She also worked in the warehouse on Tuesday and Friday. In regard to the forms regarding an injury at work, she testified, “I had the forms for it to be reported to me, however, didn’t nobody report nothing that got hurt. I got hurt all the time. I done fell through machines. But, you know, we just kept on working, because there wasn’t but a few of us working.” She worked with the claimant for nine (9) years and prior to August 14, 2019, she had never seen him complain. (Tr. 64, 65) She further testified, “I didn’t see that when he got hurt because he didn’t report it and he kept, you know, kept working.” (Tr. 66) The next day, she went to the door of her office and yelled for the claimant, who was out in the warehouse, and when he did not answer, she started walking around looking for him because he was big and tall. He was sitting down working, and she asked him about sitting down because she had never seen him do that before. He had on one (1) boot and a slide. The claimant stated, “The thing hit my leg last week or something and hit my foot kinda. I’m all right.” When Ms. Jackson told him that she needed him to come up front, she noticed him limping. Ms. Jackson testified that she then told him that she was taking him to the doctor because his sock was brown. (Tr. 67 – 68) She testified that she went into the exam room with him, and when the doctor asked why he was there, the claimant stated that his foot hurt. After the doctor visit, she took him home and he never worked another day for the respondent.

Under cross examination, Ms. Jackson admitted that the claimant did not report the injury to her, but she heard that he had reported it to their boss, though, but they

didn't.... (Tr. 71) She also admitted that she was laid off by the claimant in October 2020. (Tr. 72)

The claimant then called Corey Vester, who had been employed by the respondent for approximately six and a half (6.5) years, last working there in March 2020. (Tr. 75) Mr. Vester worked as warehouse manager and, on occasion, worked with the claimant. (Tr. 76) He stated that he was aware that the claimant sustained an injury on the job, and although he did not see it, it was his understanding that a pallet fell and hit the claimant's foot. He also stated he believed that the claimant told him about the injury on the date of the incident. (Tr. 77)

Under cross examination, Mr. Vester testified he was aware that the claimant was a diabetic, but the claimant was rarely sick or missed work. He also admitted he was not aware of the claimant's medical records. Additionally, he did not witness the incident, and although he did not see the foot, he saw pictures. (Tr. 79)

Claimant's Exhibit One was admitted into the record without objection and consisted of 379 pages of medical records and an abstract. These records provided that the claimant first presented to CHI St. Vincent Emergency on August 21, 2019, with the report referring to the left lower extremity with pain and swelling, with the onset four (4) days earlier. Risk factors included diabetes and hypertension. The report mentioned a crush injury to the left lower leg at work four (4) days earlier. It appeared that the claimant's left lower extremity was x-rayed with no evidence of deep vein thrombosis and no fracture or malalignment. The left foot was not mentioned. The claimant was discharged home, ambulatory, with the report provided that the claimant could return to work on August 24, 2019. (Cl. Ex. 1, P. 1 – 45)



Claimant later presented to Baptist Health and Dr. Martha Griffin on October 7, 2019. This report provided that the claimant presented with “foul smelling drainage from left toe for approximately four [4] weeks, subjective fever and chills.” The report went on to provide that the claimant stated no one was taking care of his diabetes and that he managed it on his own. Under assessment and plan, the report provided that the claimant had cellulitis of the left foot and possible osteo and that he needed to be admitted to the hospital, with Dr. Harrington agreeing to accept the patient. (Cl. Ex. 1, P. 46 – 54)

A report from Baptist Health dated October 8, 2019, provided that the claimant suffered from diabetic foot infection, with the claimant having an infection of the left great toe for about a month. The report mentioned the possibility of gas gangrene and provided for a wound care consult. The photographs in the report provided significant ulcerative wounds of the left toe and a significant callus of the bottom of the right toe. The report further provided that the claimant suffered from uncontrolled diabetes mellitus type 2 and that the right foot would also be followed. (Cl. Ex. 1, P. 55 – 72)

Another report from Baptist Health dated October 9, 2019, provided that the claimant had an abscess of the right foot and a diabetic foot infection with a skin ulcer of the left toe and cellulitis of the toe of the left foot, gas gangrene of the left foot, and uncontrolled blood glucose. The report went on to provide that on that date, the right toe callus was repaired, and the claimant was placed on a broad-spectrum antibiotic for the left foot problems. (Cl. Ex. 1, P. 73 – 80) A report from Baptist Health dated October 10, 2019, provided that the claimant was aware that the toe would have to be amputated. There was no infection noted of the right toe callus. Under assessment/plan, the report provided that the principal problem was a diabetic foot infection. The report also referred

to an acute kidney injury. (Cl. Ex. 1, P. 81 - 97) On October 11, 2019, a report from Baptist Health provided for an abscessed left great toe with osteomyelitis and that the left toe was amputated through the MTP joint. (Cl. Ex. 1, P. 98 – 116) On October 12, 2019, a report from Baptist Health following surgically removing the left great toe provided that the claimant's pain was under control and that no acute events were noted during the night. (Cl. Ex 1, P. 117 – 125) On October 13, 2019, the claimant suffered from shortness of breath and tachycardia during the night, but the claimant felt much better the following morning. (Cl. Ex. 1, P. 126 – 147) A final pathology exam dated October 15, 2019, provided that the amputated great toe appeared necrotic and the post-op diagnosis for the amputation was diabetic foot infection. A pre-op diagnosis of the left second toe was diabetic foot infection. (Cl. Ex. 1, P. 167 – 168) The second toe was amputated on October 16, 2019, and the report from Dr. Michael Weber with Baptist Health provided that the procedure was amputation of the first and second rays with second toe wound debridement and primary closure. The patient was a 55 (fifty-five)-year-old male with poorly controlled diabetes. (Cl. Ex. 1, P. 176) A report from Baptist Health dated October 18, 2019, provided that the claimant developed acute renal failure during his hospital stay, but that he denied any known history of chronic kidney disease or proteinuria. (Cl. Ex. 1, P. 210)

The claimant spent an extended period in the hospital. On October 28, 2019, Dr. William Wesley Thorpe spent over thirty (30) minutes with the claimant in the discharge process. The report provided for a follow-up in one (1) week. (Cl. Ex. 1, P. 309) The claimant returned to Dr. Weber on November 7, 2019, with the x-rays of the left foot providing smooth resection lines and no evidence of bone destruction. Dr. Weber

recommended removing the claimant's staples. (Cl. Ex. 1, P. 317) A report dated November 26, 2019, by Dr. Weber provided that the claimant was six (6) weeks out on the amputation of the great and second toes of his left foot for infection and that he had not been faithful about non-weightbearing. The report further provided that the claimant should return in two (2) weeks to decide about traveling to New Orleans. (Cl. Ex. 1, P. 319) The claimant returned to Dr. Weber on or about December 10, 2019. This report provided that the claimant appeared to be faithful about non-weightbearing. (Cl. Ex. 1, P. 320, 321)

The claimant continued to present with issues involving the left foot. The claimant again presented to Baptist Health on December 13, 2019, with the possibility of osteomyelitis of the fifth metatarsal bone. The claimant was placed on vancomycin and cefepime, and a follow-up with Dr. Weber was planned. (Cl., Ex. 1, P. 350 - 352) A medical report dated December 16, 2019, from Baptist Health provided that the claimant was back at the hospital on December 13, 2019, with a fever and swelling in his foot. The MRI was inconclusive. The claimant was told that the best thing to do was to see if his fever resolved and his wound quieted down while on antibiotics. The claimant was admitted to the hospital on December 13, 2019, and discharged on December 18, 2019. The claimant was discharged to home and instructed to resume his normal diet and activity. (Cl. Ex. 1, P. 364 – 370)

The claimant also submitted a second exhibit of medical records consisting of twenty-three (23) pages that were admitted without objection. On October 2, 2019, the claimant presented to Baptist Health in regard to a left foot ulcer and type two diabetes mellitus, with the long-term use of insulin. The report also mentioned chronic kidney

disease as an abnormal result. The patient history provided that the claimant had a history of uncontrolled diabetes, had been treating himself with over-the-counter medications, and was getting blood sugars in the 700's, although this morning with fasting he obtained a blood sugar in the 100–225 range. The report also mentioned an ulcer on the inside of the left great toe and a cyst on his buttock. (Cl. Ex. 2, P. 1 – 23)

The respondents also submitted a packet of medical exhibits without objection that consisted of thirty-one (31) pages. A report from North Metro Medical Center dated November 27, 2015, provided that the claimant presented due to a boil on his right buttock. The report mentioned that the claimant was diabetic and that there was swelling and draining in regard to the “buttock abscess.” The order provided for vancomycin and insulin. The report provided that according to the claimant, the problems started two (2) weeks prior. The discharge diagnosis provided for uncontrolled diabetes mellitus, acute renal insufficiency, abscess, hypoalbuminemia, and leukocytosis. A progress note dated December 2, 2015, provided that the claimant was still complaining about the abscess and drainage along with some shortness of breath. The claimant was instructed to check his blood sugar at home, take his insulin, and follow up with a primary care physician. (Resp. Ex. 1, P. 1 - 23)

The claimant also presented to St. Vincent North on September 18, 2019. The report provided that the claimant presented with an abscess or boil, with an onset of six (6) days earlier, on the left buttock. (Resp. Ex. 1, P. 24 – 30) A progress note dated October 2, 2019, provided that the claimant had a history of uncontrolled diabetes. This report also mentioned a several-week history of an ulcer to the inside of the left great toe, and that the cyst on the left buttock had greatly improved. (Resp. Ex. 1, P. 31)

The respondent also submitted documentary evidence without objection from the Arkansas Department of Workforce Services and the claimant's unemployment records, which consisted of nine (9) pages, as Respondents' Exhibit Two. (Resp. Ex. 2, P. 1 – 9) The report provided that the claimant contended he was unable to work from October 7, 2019, up and until December 25, 2019, due to a personal disabling condition. The application for unemployment benefits provided for an effective date of December 30, 2019. A letter from the Arkansas Department of Workforce Services provided that the claimant was ineligible for benefits for the period from February 2, 2020, through February 8, 2020. The respondents also submitted the claimant's responses to interrogatories into the record that were admitted without objection as Respondents' Exhibit Three. In response to Interrogatory number 5, the claimant contended that he was entitled to TTD from October 7, 2019, through January 30, 2020. (Resp. Ex. 3, P. 1 – 11)

The final document admitted into evidence was the transcript of the deposition of the claimant, which was admitted without objection as Respondents' Exhibit Four and consisted of ninety-six (96) pages. During the deposition, the claimant testified that the pallet on his left "fell before I could grab it and it rubbed up against my leg and then it eventually hit me on the foot as I turned and walked away from it." (Resp. Ex. 4, P. 13) The claimant testified the pallet weighed about twenty (20) pounds, if that much, and that it hit his left leg on the outside, below his knee, before hitting his foot on the side a little past the steel toe. (Resp. Ex. 4, P. 14) It was a continuous motion. The claimant also testified he thought that he was wearing Caterpillar steel-toed shoes on that day. (Resp. Ex. 4, P. 15) The claimant admitted that it hit the outside of his left foot. (Resp. Ex. 4, P. 16)

## **DISCUSSION AND ADJUDICATION OF ISSUES**

In regard to the primary issue of compensability of the injury to the left lower leg and the left foot, which included the great and second toe of the left foot, the claimant has the burden of proving by a preponderance of the evidence that he is entitled to compensation benefits for the injury under the Arkansas Workers' Compensation Law. In determining whether the claimant has sustained his burden of proof, the Commission shall weigh the evidence impartially, without giving the benefit of the doubt to either party. Ark. Code Ann. § 11-9-704. Wade v. Mr. Cavanaugh's, 298 Ark. 364, 768 S.W. 2d 521 (1989). Further, the Commission has the duty to translate evidence on all issues before it into findings of fact. Weldon v. Pierce Brothers Construction Co., 54 Ark. App. 344, 925 S.W.2d 179 (1996).

Here, the uncontroverted testimony provided that the claimant was a well-liked, hard-working man, who worked for respondent off and on for nineteen (19) years. Since he was blind in one eye and could not drive, he often walked to work, with the one-way trip being over two (2) miles. Even after the August 14, 2019, incident, the claimant returned to work, while clearly suffering from issues with his foot and continued to work on equipment while seated on a blanket. While working in this manner, one of his co-workers went looking for him when she could not see him in the warehouse, and upon finding him seated, demanded he go to the doctor. However, even a well-liked and hard-working employee must satisfy the requirements of the Arkansas workers' compensation law to make a claim under it.

Under Arkansas law, a compensable injury must be established by medical evidence supported by objective findings and medical opinions addressing

compensability, and must be stated within a degree of medical certainty. Smith-Blair, Inc. v. Jones, 77 Ark. App. 273, 72 S.W.3d 560 (2002). Speculation and conjecture cannot substitute for credible evidence. Liaromatis v. Baxter County Regional Hospital, 95 Ark. App. 296, 236 S.W.3d 524 (2006). More specifically, to prove a compensable injury, the claimant must establish by a preponderance of the evidence: (1) an injury arising out of and in the course of employment; (2) that the injury caused internal or external 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(16) establishing the injury; and (4) that the injury was caused by a specific incident and identifiable by time and place of occurrence. If the claimant fails to establish any of the requirements for establishing the compensability of the claim, compensation must be denied. Mikel v. Engineered Specialty Plastics, 56 Ark. App. 126, 938 S.W.2d 876 (1997).

Objective findings are those findings that cannot come under the voluntary control of the patient. Ark. Code Ann. §11-9-102 (16). It is also important to note that the claimant's testimony is never considered uncontroverted. Lambert v. Gerber Products Co., 14 Ark. App. 88, 684 S.W.2d 842 (1985).

It is also noted that a claimant is not required in every case to establish the causal connection between a work-related incident and an injury with an expert medical opinion. See Wal-Mart Stores, Inc. v. VanWagoner, 337 Ark. 443, 990 S.W.2d 522 (1999). 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. Hail v. Pitman Construction Co. 235 Ark. 104, 357 S.W.2d 263 (1962).

In the present matter, the claimant contends that while pulling machines from a Xerox tractor trailer, a pallet that weighed twenty (20) pounds or less fell on his leg, hitting the left side of the left leg and then his left foot on the left side. The uncontroverted testimony of the claimant was that he told Cory Graham, the terminal manager, about the incident. At the time of the hearing, the respondents were unable to find Cory Graham, at least partly due to the fact the employer had ceased to operate. However, at the time of the incident, the claimant testified he was working with Corey Vester, who was unable to see the incident due to product in the way. Mr. Vester did testify however, and he believed that the claimant did in fact tell him about the incident at the time of the injury; it is noted that one of Mr. Vester's jobs was warehouse manager.

Ms. Timikia Jackson, the individual that demanded that the claimant go see a doctor, also testified. She admitted that she had the injury forms for work-related injuries and the claimant had not filed a claim at the time when she took him to the doctor on October 2, 2019, which was over six (6) weeks after the incident. It is noted that Ark. Code Ann. § 11-9-701(b) provides that failure to give notice will not bar a claim if the Commission finds that the employer had knowledge of the injury. Based upon the testimony and other evidence, it is found that there is sufficient evidence to show by the preponderance of the evidence that the claimant made his employer aware of the incident involving the pallet.

In addition to the above, the claimant must also be able to provide the appropriate evidence that the claimed injury caused the internal or external harm to the body which



required the medical services. Here, the claimant's own testimony provided that the pallet "rubbed", "brushed", or "hit" the claimant's leg below the knee, on the outside of the leg, before it fell to his foot, again hitting on the outside or left side of the left foot, behind the steel toe of his shoes and in front of his ankle. The claimant also admitted under cross examination that he did not tell Cory Graham about the pallet hitting his foot, but did mention it brushing up against his leg. He also admitted he was not bleeding from the incident. It is noted that the claimant's testimony placed the pallet striking his left foot on the outside or left side of his left foot and not on the great toe side.

Additionally, the claimant's health history must also be reviewed. The claimant admitted that he was diagnosed with diabetes in 2003 and became insulin dependent in 2011. It was clear from the medical records that the claimant was basically self-treating his uncontrolled diabetes, with one report referring to blood sugar levels of 700, a number vastly higher than the normal or recommended level. There were medical records of the claimant suffering from boils or cysts as far back as 2015, when the claimant presented to North Metro Medical Center due to a boil on his right buttock. The report mentioned that the claimant was a diabetic and was treated at that time with vancomycin and insulin, similar medications that were recently used to treat the patient. The discharge report provided that the claimant was suffering from uncontrolled diabetes mellitus, plus renal insufficiency, and abscess. Commonly known side effects of diabetes mellitus are foot ulcers and the slow healing of skin lesions. No medical report of record provided that the injuries involving the left foot were the result of an item striking the left foot. It is also noted that the claimant also had an issue with a skin ulcer on the right foot, based upon the medical, and no argument was ever made about an item falling on the right foot.

More recently, the claimant presented to St. Vincent North on August 21, 2019, with left lower extremity pain and extremity swelling with the report referring to the left leg, calf, and ankle. The left foot was not mentioned. Later, the claimant again presented on September 18, 2019, with an abscess or boil on the left buttock, with the report providing that the onset of the injury was six (6) days earlier. The date of this injury appeared to have been approximately a month after the work-related incident on August 14, 2019, and there was again no mention in the report of an injury to the left foot. The first mention of the left foot in a medical report appeared to be October 2, 2019. The medical reports of record referred to the claimant suffering from diabetes and most provide that the claimant suffered from uncontrolled diabetes.

A workers' compensation claimant bears the burden of proving the compensable injury by a preponderance of the evidence. Ark. Code Ann. § 11-9-102(4)(E)(i). A compensable injury is one that was the result of an accident that arose in the course of his employment and that grew out of or resulted from the employment. See Moore v. Darling Store Fixtures, 22 Ark. App. 21, 732 S.W.2d 496 (1987) It is noted that an employer takes the employee as it finds him and employment circumstances that aggravate pre-existing conditions are compensable. Heritage Baptist Temple v. Robinson, 82 Ark. App. 460, 120 S.W.3d 150 (2003).

However, when reviewing all of the testimony and the medical that is before the Commission, there is no alternative but to find that the claimant has failed to satisfy the required burden of proof to show a compensable work-related injury to the claimant's left lower leg, left foot, and the left great toe and second toe, by a preponderance of evidence, as required by Arkansas law. Consequently, all remaining issues are moot.

After weighing the evidence impartially, without giving the benefit of the doubt to either party, it is found that the claimant has failed to satisfy the burden of proof that his claim for an injury to his left lower leg, left foot, and left great toe and second toe are work-related and compensable. All other issues are moot. If not already paid, the respondents are ordered to pay the cost of the transcript forthwith.

**IT IS SO ORDERED.**

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**JAMES D. KENNEDY**  
**Administrative Law Judge**