

**BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION
CLAIM NO. H000613**

**SABRINA D. DANIELS,
EMPLOYEE**

CLAIMANT

**ARAMARK CAMPUS, INC.,
EMPLOYER**

RESPONDENT

**INDEMNITY INS. CO. OF NORTH AMERICA/
SEDGWICK CLAIMS MG'T. SERVICES, INC.,
INSURANCE CARRIER/TPA**

RESPONDENT

OPINION FILED MAY 14, 2024

Hearing conducted before the Arkansas Workers' Compensation Commission (the Commission), Administrative Law Judge (ALJ) Mike Pickens, in Monticello, Drew County, Arkansas, on February 14, 2024.

The claimant, Ms. Sabrina Daniels, of Monticello, Drew County, Arkansas, appeared in person, and pro se.

The respondents were represented by the Honorable Randy P. Murphy, Anderson, Murphy & Hopkins, Little Rock, Pulaski County, Arkansas.

INTRODUCTION

In the prehearing order filed November 29, 2023, the parties agreed to the following stipulations, which they affirmed on the record at the hearing:

1. The Arkansas Workers' Compensation Commission (the Commission) has jurisdiction over this claim.
2. The employer/employee/carrier-TPA relationship existed at all relevant times including January 21, 2020, when the claimant sustained an admittedly compensable injury to her left ankle and left foot for which the respondents paid both medical and indemnity benefits.
3. The claimant's average weekly wage (AWW) is \$313.00, which is sufficient to entitle her to weekly compensation rates of \$209.00 for temporary total disability (TTD), and \$157.00 for permanent partial disability (PPD) benefits.

4. The claimant underwent a functional capacity evaluation (FCE) which concluded she sustained a seven percent (7%) permanent anatomical impairment rating to her left lower extremity; and that she was able to perform work in the MEDIUM work category as defined in the United States Department of Labor Guidelines (DOL guidelines).
5. The respondents accepted this 7% permanent anatomical impairment rating to the claimant's left lower extremity, and paid her PPD benefits based on this rating.
6. The claimant last saw a physician for treatment of her compensable injury sometime in February 2023.
7. The parties specifically reserve any and all other issues for future determination and/or litigation.

(Commission Exhibit 1 at 2; Reporter's Transcript at 39). Pursuant to the parties' mutual agreement, the sole issue litigated at the hearing was:

1. Whether the claimant is entitled to additional medical treatment, specifically additional physical therapy (PT), for alleged continued pain complaints in her left ankle and left foot.
2. The parties specifically reserve any and all other issues for future determination and/or litigation.

(Comms'n Ex. 1 at 2; T. 39).

The prehearing order also strongly advised the claimant to call the Commission's Legal Division and to obtain the services of an attorney to represent her in this matter on more than one occasion. (Comms'n Ex. 1 at 1; T. 1). The hearing record consists of the reporter's transcript, as well as any and all exhibits attached thereto.

The claimant contends she is entitled to additional medical treatment in the form of PT to her left ankle and left foot based on her continued complaints of pain and swelling. She reserves any and all other issues for future determination and/or litigation. (Comms'n Ex. 1 at 3; T. 40).

The respondents contend they have paid the claimant all benefits to which she is entitled. The respondents further contend the claimant is not entitled to any additional medical treatment – here, specifically, the PT – for her alleged subjective complaints of pain and/or swelling. The respondents specifically contend the claimant’s continued subjective complaints of pain and/or swelling are neither related to nor reasonably necessary for treatment of her compensable injury since her healing period has long since ended; her permanent impairment rating is minimal and has been paid in full; her complaints of pain and swelling are subjective in nature and not supported by any objective medical evidence reported by any physician; and she has not sought or required any medical treatment in almost one (1) year as of the hearing date. The respondents reserve the right to supplement their contentions and to assert any and all other applicable defenses and arguments upon the completion of necessary investigation and discovery. The respondents reserve any and all other issues for future determination and/or litigation.

(Comms’n Ex. 1 at 3; T. 40).

The record consists of the hearing transcript and any and all exhibits contained therein and attached thereto.

STATEMENT OF THE CASE

The relevant facts are set forth in the parties’ prehearing order stipulations, *supra*, as well as the claimant’s own hearing testimony. (Comms’n Ex. 1 at 2; T. 40; 7-36). The claimant, Ms. Sabrina Daniels, sustained an admittedly compensable injury to her left ankle/left foot on January 21, 2020. On January 21, 2020, the claimant was working with Aramark on the campus of the University of Arkansas at Monticello (UAM) cooking and serving omelets when she ran out of cooking oil. She “hollered” back into the kitchen asking someone to bring her some more cooking oil, but nobody responded to her request. Consequently, the claimant walked back into the kitchen to retrieve more

cooking oil. As she was walking in the kitchen looking around for more cooking oil she slipped, heard a “pop” in her left ankle, and fell to the floor. When she looked down at her left ankle, it “was layin’ flat on the concrete floor.” (T. 8-10).

The claimant was immediately taken to the hospital in Pine Bluff where Dr. Regis Renard, an orthopedic surgeon, determined she had broken her ankle in three (3) places. Dr. Renard performed surgery on the injured left ankle, part of which consisted of Dr. Renard placing a rod in the claimant’s left ankle. At that time Dr. Renard did not prescribe any PT for the claimant, but advised her she was to “exercise” her foot to “keep it movin’...and move it around certain parts of the day.” (T. 11-15).

The claimant underwent an FCE which concluded she was entitled to a 7% permanent anatomical impairment rating to her left lower extremity (which the respondents’ have paid out); and that she was able to perform work in the MEDIUM work category as defined in the United States Department of Labor, Office of Workers’ Compensation Programs, Work Capacity Evaluation of Musculoskeletal Conditions Guidelines (OWCP Guidelines). In April 2023, the claimant returned to work “for ESS as a substitute teacher”, and she testified her required job duties for this job were “more sedentary.” (T. 15-16).

The claimant testified the last time she saw a doctor for treatment of her left ankle/left foot injury was some time in February 2023 when she last saw Dr. Renard. On cross-examination the claimant admitted she had requested and obtained a change of physician (COP) (and it appears there were two (2) COP orders issued in this claim), and that at some point in early 2023 a physician had recommended she undergo some PT. And, although the respondents apparently approved and reapproved the PT recommendation in early 2023, the claimant admitted she had failed to undergo PT at that time. There exist no medical records in the hearing record whatsoever and, specifically,

there exists no medical evidence in the record indicating that any physician has recommended any additional PT for the claimant. (T. 16-36).

DISCUSSION

The Burden of Proof

When deciding any issue, the ALJ and the Commission shall determine, on the basis of the record as a whole, whether the party having the burden of proof has established it by a preponderance of the evidence. *Ark. Code Ann.* § 11-9-704(c)(2) (2024 Lexis Replacement). The claimant has the burden of proving by a preponderance of the evidence he is entitled to benefits. *Stone v. Patel*, 26 Ark. App. 54, 759 S.W.2d 579 (Ark. App. 1998). *Ark. Code Ann.* Section 11-9-704(c)(3) (2024 Lexis Repl.) states that the ALJ, the Commission, and the courts “shall strictly construe” the Act, which also requires them to read and construe the Act in its entirety, and to harmonize its provisions when necessary. *Farmers Coop. v. Biles*, 77 Ark. App. 1, 69 S.W.2d 899 (Ark. App. 2002). In determining whether the claimant has met his burden of proof, the Commission is required to weigh the evidence impartially without giving the benefit of the doubt to either party. *Ark. Code Ann.* § 11-9-704(c)(4) (2024 Lexis Repl.); *Gencorp Polymer Products v. Landers*, 36 Ark. App. 190, 820 S.W.2d 475 (Ark. App. 1991); *Fowler v. McHenry*, 22 Ark. App. 196, 737 S.W.2d 633 (Ark. App. 1987).

All claims for workers’ compensation benefits must be based on proof. Speculation and conjecture, even if plausible, cannot take the place of proof. *Ark. Dep’t of Corrections v. Glover*, 35 Ark. App. 32, 812 S.W.2d 692 (Ark. App. 1991); *Deana Constr. Co. v. Herndon*, 264 Ark. 791, 595 S.W.2d 155 (1979). It is the Commission’s exclusive responsibility to determine the credibility of the witnesses and the weight to give their testimony. *Whaley v. Hardees*, 51 Ark. App. 116, 912 S.W.2d 14 (Ark. App. 1995). The Commission is not required to believe either a claimant’s or any

other witness's testimony, but may accept and translate into findings of fact those portions of the testimony it deems believable. *McClain v. Texaco, Inc.*, 29 Ark. App. 218, 780 S.W.2d 34 (Ark. App. 1989); *Farmers Coop. v. Biles, supra*.

The Commission has the duty to weigh the medical evidence just as it does any other evidence, and its resolution of the medical evidence has the force and effect of a jury verdict. *Williams v. Pro Staff Temps.*, 336 Ark. 510, 988 S.W.2d 1 (1999). It is within the Commission's province to weigh the totality of the medical evidence and to determine what evidence is most credible given the totality of the credible evidence of record. *Minnesota Mining & Mfg'ing v. Baker*, 337 Ark. 94, 989 S.W.2d 151 (1999).

Ark Code Ann. Section 11-9-508 (Lexis Repl. 2024) requires respondents to provide all reasonably necessary medical treatment related to a claimant's compensable injury. The claimant has the burden to prove by a preponderance of the evidence that she is entitled to additional medical treatment. *Wal-Mart Stores, Inc. v. Brown*, 82 Ark. App. 600, 120 S.W.3d 153 (Ark. App. 2003). What constitutes related, reasonably necessary medical treatment is a question of fact for the Commission. *Hamilton v. Gregory Trucking*, 90 Ark. App. 248, 205 S.W.3d 181 (Ark. App. 2005). Based on the total lack of evidence in the record it is impossible for the ALJ to rule in the claimant's favor on the facts herein.

The claimant requests the ALJ order the respondents to pay for additional medical treatment in the form of PT for her complaints of pain and swelling in her left ankle/left foot; however, she has failed to introduce any documentary evidence whatsoever indicating that any physician has recommended she undergo PT at this time, or that PT is reasonably necessary for treatment of her compensable injury left ankle/left foot injury at this time. There exists no medical evidence in the record at all – and certainly no physician's current PT recommendation. Indeed, there exists no

credible evidence in the record *whatsoever* the claimant's request for PT at this late date is reasonably necessary for treatment of her admittedly compensable left ankle/left foot injury.

The claimant last saw a physician for medical treatment in 2023 February; she has had her COP; and she returned to work in April 2023. Although the respondents apparently had approved the claimant's request for PT in early 2023 (apparently on two (2) separate occasions), the claimant failed and/or refused to undergo the PT at that time. (T. 28-36). Consequently, she cannot now be heard to credibly contend she is entitled to PT at this time – especially in light of the total lack of any credible evidence in the record demonstrating the requested PT is related to and reasonably necessary in light of her compensable injury. While the claimant *may or may not* have benefitted from the representation of counsel in this matter, although the ALJ advised her on more than one (1) occasion to contact the Commission's Legal Division and to retain the services of an attorney, she failed and/or refused to do so.

Therefore, for all the aforementioned reasons I hereby make the following:

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. The stipulations contained in the prehearing order filed November 29, 2023, which the parties affirmed on the record at the hearing, hereby are accepted as facts.
2. The claimant has failed to meet her burden of proof pursuant to the Act in demonstrating that her request for additional medical treatment in the form of PT is reasonably necessary for treatment of her January 21, 2020, compensable left ankle/left foot injury.
3. There exists no documentary or other sufficient evidence in the record – medical or otherwise – demonstrating the claimant's treating physician has recommended any additional medical treatment at this time in the form of PT or otherwise.

WHEREFORE, for all the aforementioned reasons, this claim hereby is denied and dismissed subject to the parties' statutory appeal rights.

Sabrina Daniels, AWCC No. H000613

If they have not already done so, the respondents shall pay the court reporter's invoice within 20 days of their receipt of this opinion.

IT IS SO ORDERED.

Mike Pickens
Administrative Law Judge

MP/mp