

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. H004017

MEGHAN JOHNSON, EMPLOYEE

CLAIMANT

**WHITE COUNTY MEDICAL CENTER, LLC,
SELF INSURED EMPLOYER**

RESPONDENT

**ACTION CLAIMS ADMINISTRATORS,
INSURANCE CARRIER/TPA**

RESPONDENT

OPINION FILED JANUARY 26, 2021

Hearing before Administrative Law Judge, James D. Kennedy, on the 8th day of December, 2020, in Little Rock, Arkansas.

Claimant is represented by Steven McNeely, Attorney at Law, of Jacksonville, Arkansas.

Respondents are represented by Guy Wade, Attorney at Law, of Little Rock, Arkansas.

STATEMENT OF THE CASE

A hearing was conducted on the 8th day of December, 2020, to determine the issues of compensability of an injury to the claimant's right ankle; reasonable and necessary medical treatment, temporary total disability (TTD) from May 15, 2020, to December 1, 2020; and attorney's fees. The respondents contend that the claimant did not sustain a compensable work-related injury. A copy of the Pre-hearing Order was marked "Commission Exhibit 1" and made part of the record without objection. The Order provided that the parties stipulated that the Arkansas Workers' Compensation Commission has jurisdiction of the within claim and that an employer/employee relationship existed on April 15, 2020, the date of the claimed injury. The Order further provided that the parties agreed that the issues were compensability; medical; TTD from May 19, 2020, to a date to be determined; and attorney's fees. At the time of the hearing, the parties agreed that if TTD is awarded, TTD ended on December 1, 2020. There was

some confusion as to the start date of TTD, but it is determined that if TTD is awarded, the start date would be May 15, 2020, based upon testimony and medical. Further, at the time of the hearing, the parties agreed that the claimant earned an average weekly wage of \$384.75, sufficient for a TTD/permanent partial disability (PPD) rate of \$256.00/\$192.00.

The claimant's and the respondents' contentions are set out in their respective responses to the Pre-hearing Questionnaire and made a part of the record without objection. The witnesses for the claimant consisted of Megan Amanda Johnson, the claimant; Lorna Denise Courtney, an employee of Unity Health; and Sherry Denise Johnson, the mother of the claimant. The respondents called one witness, Danna Kay Meriweather, a supervisor for the Compass Unit of Unity Health. 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.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. That the Arkansas Workers' Compensation Commission has jurisdiction over this claim.
2. That an employer/employee relationship existed on April 15, 2020, the date of the claimed injury.
3. That the claimant has failed to prove by a preponderance of the credible evidence that she sustained a compensable work-related injury to her right ankle.
4. That all remaining issues are moot.
5. 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 an exhibit of medical records consisting of 109 pages that was admitted without objection. The respondents submitted one (1) exhibit without objection, consisting of three (3) pages of documents. The claimant was the first witness called. She testified that she was twenty-one (21) years old at the time of the hearing. She graduated high school in May 2017 and attended the University of Arkansas in Fayetteville and ASU-Beebe while still in high school. The claimant started working for White County Medical Center in January of 2020, her first full-time job. She was hired as a Mental Health Technician for Compass, which was a psychiatric unit of the White County Medical Center. From January 1 through April 15, the claimant testified that an average work week consisted of thirty-six (36) hours that were worked during the day shift on Tuesday, Wednesday, and Thursday. (Tr. 7, 8) The claimant stated that she would take patients to groups to help them socialize and help them with meals, and would then report back to the doctors and nurses if there was a problem. Prior to April 15, she was not having problems with her ankle. (Tr. 9)

On April 15, the claimant was rounding on patients, where she would go and check on each patient, and while rounding the corner to a patient's room, she heard and felt a pop in her ankle. She continued to work that day and first reported the incident to the charge nurse, Brooke, her immediate supervisor on the unit, and later the same day to Danna Meriweather. She stated that when she reported it to the charge nurse, she was told that she should tell Danna Meriweather, who she later talked to. She was told they were short-staffed and that she needed to stay the remainder of the day to help, but she

needed to talk to Ms. Denise Courtney, who she saw on April 17. The claimant also testified that the first doctor she saw in regard to the injury was her family doctor, Daniel Pace, a couple of days later. Her ankle made it difficult to walk due to being bruised and swollen, making it hard for her to do her job. (Tr. 10, 11) In addition to Doctor Pace, the claimant testified that she also saw Doctor Kyle Blickenstaff and finally Doctor Michael Webber, who performed surgery on July 13. The claimant testified that from April through July, she attended physical therapy as per Doctor Kyle Blickenstaff's request, which agitated her ankle. The claimant denied being involved in a motor vehicle accident between the surgery and April 15. (Tr. 12) She also stated that she continued her daily scheduled work shifts until she saw Doctor Pace, who took her off of work on May 15. "I was off until I could see Doctor Blickenstaff, and he took me off three more weeks, and I remained off for that time. He was going to take me off three more weeks again, and that's when I got the second opinion, which by then I had been gone from work for quite some time." In regard to being terminated from work, the claimant testified, "I believe it was in June or July. I don't know the exact date. But I – I had called and told them what happened and she, Ms. Danna Meriweather, said that she had to let me go." The claimant stated that she had not returned to work for the respondent, was not working there now, and has not worked anywhere since May 15. After surgery, she was in a boot for six (6) weeks with no weight bearing. Her right ankle was very painful at the time of the hearing, and it was hard to walk but manageable. (Tr. 13, 14)

Under cross examination, the claimant admitted that she had returned to Searcy from the University of Arkansas and obtained her Certified Mental Health Technician/CAN, which had been obtained as part of her training at Unity Health in

January 2020. She also admitted that she was interested in this area because of her study of psychology, which she intended to finish this spring. (Tr. 16, 17)

The claimant also admitted that she had learned how to report injuries that occurred on the job during orientation and had been hired by Danna Merriweather, the unit supervisor. (Tr. 18) The claimant agreed she was turning to go into a patient's room at the time that she felt the pain in her ankle, and that this occurred on a flat hallway while wearing athletic shoes. The claimant further agreed that she did not trip or fall and that there was no liquid or fluid or anything on the floor. (Tr. 19 - 21) She agreed that she was basically walking, and that she continued to work after she felt the pain, working the remainder of the shift until around 6:30 p.m.. She also admitted that the incident occurred on Wednesday, that she returned and completed her shift on Thursday, and did not talk to Dana Courtney until Friday. (Tr. 22) The claimant also admitted that on her recent visit to Doctor Weber on November 24, he released her with no restrictions and that she has no follow-up visits with any physician. (Tr. 23)

Under redirect, the claimant agreed that the respondents made accommodations for her and reduced the number of patients that she was to see. She also testified that she knew exactly when and where she injured her ankle. (Tr. 25)

The claimant then called Lorna Denise Courtney, who testified that she worked at Unity Health and had worked there for fourteen (14) years. In May of this year, she was an Associate Health Nurse, LPN, and she remembered an incident with the claimant and her ankle. She found out that the claimant had injured her ankle on April 17. The claimant reported that she had an injury and she had been to see her primary care physician. "She said she was walking down a hallway and something - - she had a pain in her leg and

that her - - her primary care physician said she had a strain.” She further testified, “I asked her if she had reported this to her employer, because when they initially see me, they bring a First Report of Injury and she did not bring one.” (Tr. 26) She also admitted that the claim was not accepted as compensable and the decision to terminate the claimant was made by HR. (Tr. 30)

Under cross examination, Lorna Denise Courtney testified that the claimant injured herself while “just walking” and she did not describe anything in the work environment that caused her foot to hurt. (Tr. 33)

Sherry Denise Johnson was also called by the claimant. She testified that she was the claimant’s mother and during May, she worked across the parking lot from the claimant and they lived together. (Tr. 35) She was asked to remember what happened on May 15 when her daughter came home, and she testified that her daughter came home with her ankle bruised, swollen, and hurting to put weight on it. “And I’m a nurse. I iced it and we wrapped it and elevated it, and the swelling went down in the morning.” She further stated that the claimant did not have any problems with her right ankle prior to coming home that evening. (Tr. 36)

The respondents called Danna Meriweather as their only witness. She testified that she was employed by Unity Help and was the Compass Unit Supervisor where the claimant worked. She oversaw the nurses and the CNAs on that unit. (Tr. 38) She had worked in that position for almost three (3) years and had worked for Unity Health longer than that. She stated that she had hired the claimant and reporting work-related injuries were part of the Unity orientation. (Tr. 39) She agreed that the claimant would have been

made aware of what to do in the event of a work-related injury. The following questioning then occurred:

Q. Okay. Now, when did you first learn of complaints that she was having involving right foot or ankle.

A. I am honestly - - I'm sure there was never like a complaint, you know, that she had hurt herself or anything like that. She was having discomfort in her foot.

Q. Did she ever describe to you a particular event or an incident or an accident that happened while she was on the floor?

A. No, but just that, while she was walking, that her foot was hurting.

Q. Okay. What did you do as a result of that?

A. Well, once she needed to go to the doctor, I directed her to HR, and there were questions about if she would be eligible for FMLA if she needed to take time off, if she could use her short-term disability and all of that, which that's out of my scope of - - that's all HR.

Q. Okay. So was there ever any indication to you on behalf of Ms. Johnson that she had been injured while working for Compass?

A. No.

Q. Or working on your floor or your unit?

A. Right. No. (Tr. 40)

The witness went on to state the claimant had never stated that she had fallen or slipped or run into anything. (Tr. 41)

Under cross examination, the following questioning and responses occurred:

Q. And then you heard Ms. Meghan Johnson say that she was rounding a corner and felt a pain in her ankle?

A. I heard her say that, yes.

Q. All right. Now, is that not what your understanding was before, or - -

A. No sir. My understanding was her foot was hurting. She wasn't sure what the issue was. And that was my understanding, even for some time afterwards when she continued to have some foot pain. She wasn't really quite sure what was going on, and she continued to work for three to four weeks.

The witness admitted that she was not present when the claimant talked to Ms. Courtney. She further testified that between the 15th and the 17th, she did not remember any conversation with the claimant. (Tr. 43, 44)

The claimant's medical exhibit consisted of 109 pages and was admitted into the record with no objections. The claimant presented to Unity Health Searcy Medical Center and Doctor Pace on April 17, 2020, for evaluation of right foot pain. The report provided that the claimant developed pain in the right ankle when she felt a pop while she was walking about one (1) week ago. She denied pain on the internal aspect of her right ankle. An x-ray of the right ankle showed no acute fracture. The report made no mention of a work-related injury. (Cl. Ex. 1, P. 1-5) The claimant returned to Doctor Pace on May 15, 2020, for a follow-up and reported that the pain was worse. The report provided that the claimant was suffering from a right lateral ankle sprain and was referred to Doctor Blickenstaff for further evaluation. The report also provided that the claimant could return to work after a review by the orthopedic doctor. (Cl. Ex. 1, P. 6-10) The claimant presented to Doctor Blickenstaff on May 20, 2020, and the report provided that the claimant presented for the evaluation of right acute ankle pain. Specifically, the report stated that the claimant, who works at the Compass psychiatric unit as a technician, was present for an evaluation of acute right ankle pain. She fell a couple of weeks ago and felt a pop in her ankle. It was noted that the report did not specifically provide that the claimant fell at work but clearly provided where she worked. The report further provided

that the claimant denied any previous right foot or ankle injuries and was suffering from persistent progressive pain, swelling, and bruising of the right foot, and that she should be referred to physical therapy for aggressive ankle rehab. (Cl. Ex. 1, P. 11-15)

From May 26, 2020, thru June 10, 2020, the claimant presented to Stephen Blake PT for physical therapy. (Cl. Ex. 1, P. 16-33) She then returned to Doctor Blickenstaff on June 10, 2020, again for right ankle pain. (Cl. Ex. 1, P. 34-38) A day later, on June 11, 2020, the claimant presented to Doctor Pace, with the chief complaint still her ankle. The claimant requested another doctor. The report from Stephen Blake PT, dated June 12, 2020, provided that the claimant cancelled her appointment and her primary care provider had advised her to take some time off therapy. (Cl. Ex. 1, P. 44, 45)

On June 18, 2020, the claimant presented to Doctor Michael Webber. The report provided that the claimant worked as a nurse in Searcy and was simply walking into a patient's room when she felt a pop and a severe pain in the right ankle with swelling and ecchymosis noted after the event. She had been off work for five (5) weeks without any improvement. The physical exam provided for tenderness along the peroneal tendons. X-rays were ordered, which showed a more or less intact ankle. The report provided that since the claimant had been symptomatic for greater than two (2) months, Doctor Webber thought that it would be reasonable to obtain an MRI. (Cl. Ex. 1, P. 46-50) An MRI was provided on July 1, 2020. The MRI provided for no fracture or dislocation but stated that the submalleolar peroneal tendon was suspicious for a split tear extending over a distance of 1.6 centimeters. (Cl. Ex. 1, P. 51) A letter to Doctor Pace from Doctor Weber dated July 2, 2020, provided the MRI findings and stated that the claimant would be non-weight bearing for six (6) weeks in a boot before she would be released. (Cl. Ex. 1, P. 52, 53)

An operative report from Doctor Weber in Little Rock dated July 13, 2020, provided surgery was performed to repair the split tear of the peroneus brevis tendon of the right ankle. (Cl. Ex. 1, P. 54-57) On July 14, 2020, the claimant returned to Doctor Weber for a follow-up. (Cl. Ex. 1, P. 58-62) The claimant then returned to Doctor Pace on July 17, 2020. The report provided that the claimant was still in a lot of pain and reported some dizziness and fatigue. (Cl. Ex. 1, P. 63-67) The claimant then followed up with Doctor Joseph Webber on July 21, 2020, and the physical exam provided for minimum swelling with an intact peripheral neurovascular exam. The staples from the surgery were removed, and the claimant was placed in an Aircast walking boot. (Cl. Ex. 1, P. 68-70) She returned to Doctor Weber on August 27, 2020, for a six (6)-week follow-up. The report provided that the wound had completely healed and that Doctor Weber wanted the claimant to start weight bearing. (Cl. Ex. 1, P. 71-73) She presented for physical therapy from September 10, 2020, to October 20, 2020. (Cl. Ex. 1, P. 74-100) On November 14, 2020, Doctor Weber provided for a full release of the claimant with no restrictions. (Cl. Ex. 1, P. 101)

The respondents submitted an exhibit which was admitted into the record without objection that consisted of three (3) pages of documents. Page 1 was an OSHA Form 301 which provided that nothing was recognized in the work environment causing the injury. A Form AR-N was also admitted into the record, which provided that the claimant suffered a right ankle injury while making rounds. "I rounded the corner into a patient's room when I felt and heard a pop in my ankle. I reported the incident to my superior." The Form provided it was signed on June 22, 2020, and the date of the incident was April 21, 1999. (Resp. Ex. 1, P. 1-2)

DISCUSSION AND ADJUDICATION OF ISSUES

In regard to the primary issue of compensability, the claimant has the burden of proving by a preponderance of the evidence that she is entitled to compensation benefits for her ankle injury. In determining whether the claimant has sustained her 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, there was some confusion in regard to the date of the occurrence. First, it is noted that the Form AR-N, which was signed by the claimant and dated June 22, 2020, provided that the incident occurred on April 21, 1999. The claimant testified that the incident occurred on April 15, 2020, and that prior to April 15, she had no problems with her right ankle. She testified that on April 15, while rounding on patients, and on the way to a patient's room, she heard and felt a pop in her right ankle. No one observed the incident, and no one testified that the claimant told them about the incident that day. The claimant testified that she continued to work the day of the incident and multiple days later, and that she told her immediate supervisor the day of the incident, and later the same day also told Danna Meriwether, who was called as a witness on behalf of the respondents. The claimant admitted that she did not fall or trip and agreed that there were no liquids or anything that caused her to trip. She was simply walking to the next patient's room when she heard and felt the pop in her right ankle.

Denise Courtney, who had worked at Unity Health for fourteen (14) years, and was working as an Associate Health Nurse, LPN, in May 2020, was called by the claimant and testified she found out the claimant injured her ankle on April 17, that the claimant injured her ankle just walking, and she had been to see her primary care physician. The claimant also agreed that she talked to Ms. Courtney two (2) days after the incident, which would have been on Friday, April 17.

The claimant's mother, Sherri Denise Johnson, also testified and was questioned about her daughter returning home on May 15. It is noted that this date clearly does not correspond to the April date of the claimed incident, but her remaining testimony corresponded to the testimony of the case, and it is clear that she was discussing the same date. Ms. Sherri Denise Johnson testified that when her daughter returned home from work, her ankle appeared bruised and it was difficult for her to put weight on it. As a nurse, she iced, wrapped, and elevated it, and the swelling went down the next morning. She also testified that the claimant was not involved in any other incident that would have caused an injury to her right ankle.

In regard to medical, there was no evidence that provided that the claimant had previous issues with her ankle. The claimant presented to Doctor Pace on April 17, 2020, and the medical report provided that the claimant developed pain in her right ankle **about a week ago**, (emphasis added) but the x-ray showed no acute fracture. The report made no mention of a work-related injury. The claimant was later referred to Doctor Blickenstaff, who treated conservatively and ordered physical therapy, which did not resolve the issues with the right ankle. The claimant asked her primary care physician for a referral to a different doctor and later presented to Doctor Weber, who ordered an MRI, and based

upon his findings and the MRI, performed surgery to repair a split tear of the peroneous brevis tendon of the right ankle. The claimant had been taken off of work by Doctor Pace on May 15, 2020, and on November 14, 2020, was provided a full release to return to work with no restrictions by Doctor Weber.

Under workers' compensation law in Arkansas, a compensable injury must be established by medical evidence supported by objective findings and medical opinions addressing compensability 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).

An injury for which the claimant seeks benefits must be established by medical evidence supported by objective findings which are those findings that cannot come under the voluntary control of the patient. Ark. Code Ann. § 11-9-102(16). It is 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 an employer takes the employee as it finds him and employment circumstances that aggravate preexisting conditions are compensable. Heritage Baptist Temple v. Robinson, 82 Ark. App. 460, 120 S.W.3d 150 (2003).

Further, a claimant is not required in every case to establish the casual connection between a work-related incident and an injury with an expert medical opinion. See Walmart 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 A.W.2d 263 (1962)

In the present matter, no one testified that they observed the incident or confirmed that they were aware of the injury until two (2) days later. The claimant testified she reported the incident to the charge nurse and she later talked to Dana Meriweather on the same day. The charge nurse did not testify and Denise Courtney, who was called by the claimant, testified she found out about the ankle on April 17. When Ms. Courtney talked to the claimant, she asked if the incident had been reported to the employer because the employee usually brings a First Report of Injury when they come to see her, and that did not occur.

Ms. Meriweather was called by the respondents and testified she had hired the claimant, she was the Compass Unit Supervisor, and the claimant would have learned

what to do about reporting a work-related injury during orientation. She further testified that she was sure that there was never “like a complaint, you know, that she had hurt herself or anything like that.” She stated that she was aware that while the claimant was walking, her foot was hurting. She had no indication that the claimant had injured herself while working.

As stated above, the 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 it grew out of or resulted from the employment. See Moore v. Darling Store Fixtures, 22 Ark. App 21, 732 S.W.2d 496 (1987). Preponderance of the evidence means the evidence having greater weight or convincing force. Metropolitan Nat’l Bank v. La Sher Oil Co., 81 Ark App. 263, 101 S.W.3d 252 (2003). Based upon the available evidence in the case at bar, there is no alternative but to find that the claimant has failed to satisfy the required burden of proof to show that the claimed ankle injury was is in fact work-related and compensable under the Arkansas Workers’ Compensation Act.

After weighing the evidence impartially, without giving the benefit of the doubt to either party, there is no alternative but to find that the claimant has failed to prove by a preponderance of the credible evidence that her claim for an injury to her right ankle is a compensable claim under the Arkansas Workers’ Compensation Act. Consequently, all remaining issues are moot. If not already paid, the respondents are ordered to pay the cost of the transcript forthwith.

IT IS SO ORDERED.

JAMES D. KENNEDY
Administrative Law Judge