BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. H004017

MEGHAN JOHNSON, EMPLOYEE	CLAIMANT
WHITE COUNTY MEDICAL CENTER, LLC, EMPLOYER	RESPONDENT
ACTION CLAIMS ADMINISTRATORS, INSURANCE CARRIER/TPA	RESPONDENT

OPINION FILED JUNE 9, 2021

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

Claimant represented by the HONORABLE STEVEN R. McNEELY, Attorney at Law, Jacksonville, Arkansas.

Respondents represented by the HONORABLE GUY A. WADE, Attorney at Law, Little Rock, Arkansas.

Decision of Administrative Law Judge: Reversed.

OPINION AND ORDER

The claimant appeals an administrative law judge's opinion filed January 26, 2021. The administrative law judge found that the claimant failed to prove she sustained a compensable injury. After reviewing the entire record *de novo*, the Full Commission reverses the administrative law judge's opinion. The Full Commission finds that the claimant proved by a preponderance of the evidence that she sustained a compensable injury. We find that the claimant proved she was entitled to reasonably necessary medical treatment and temporary total disability benefits.

I. HISTORY

Meghan Amanda Johnson, now age 22, testified that she became employed with the respondents as a Mental Health Technician and Certified Nursing Assistant in January 2020. The parties stipulated that the employee-employer relationship existed on April 15, 2020, "the date of the claimed injury." The claimant testified on direct examination:

> Q. Tell the judge what happened on April 15 to cause your injury.
> A. I was doing a round on patients. We had to do 15-minute rounds where we would go and check each patient to see where they were and what they were doing. I was rounding the corner into a patient's room when – I'm sorry, my mouth was messed up – when I heard a pop and felt a pop in my ankle.
> Q. All right. Now, did you continue working that day?
> A. Yes, sir.
> Q. All right. Who did you report it to?
> A. I first reported it to the charge nurse of the unit, and then I reported it to Danna Meriweather later that day….
> Q. And did you talk to Ms. Meriweather?
> A. Yes, sir.
> Q. All right. And what was that conversation about?
> A. I told her exactly what happened, and she said that I needed to see Denise, but we were short-staffed so I had to stay the rest of the day to help.
> Q. Okay. So when did you eventually see Ms. Denise Courtney? And she's here today outside, correct?
> A. Yes, sir. I saw her on the 17th of April.
> Q. All right. And did you tell her what happened?
> A. Yes, sir, I did.

The respondents' attorney cross-examined the claimant:

> Q. And the date that you felt this pain in your right ankle and foot was April 15, 2020?
> A. Yes, sir.
> Q. Now, you describe in your deposition this was around noon that this occurred?

A. Yes, sir.
Q. And that you were actually doing rounds on patients, correct?
A. Yes, sir.
Q. Patients would have already had lunch, and so you were checking the approximate seven patients that you were responsible for in their rooms?
A. Yes, sir.
Q. Now, you told me you were turning to go into one of those patient's rooms at the time you felt this pain, is that right?
A. Yes, sir.
Q. Now, this was a flat hallway, there was not a ramp?
A. Correct….
Q. Okay. Now, you didn't trip or fall on anything?
A. No, sir.
Q. You were just turning left, I think you described to me, to go into this patient's room?
A. Yes, sir.
Q. There was nothing, when you turned into the room, that you were trying to avoid like a piece of furniture or a ball or anything you were trying to keep from stepping on?
A. No, sir.
Q. There was nothing on the floor?
A. No, sir.
Q. No water, no liquid or fluid or anything like that?
A. No, sir….
Q. You didn't trip over anything?
A. No, sir….
Q. You're basically just walking?
A. Yes, sir….
Q. So was there anything in the workplace or about the workplace that caused this injury?
A. No, sir.

According to the record, the claimant treated at Unity Health-Searcy Medical Center on April 17, 2020: "20-year-old white female presenting to the clinic today for evaluation of right foot pain. She reports that she developed pain in her right lateral ankle when she felt a pop while she was

walking about 1 week ago." Physical examination showed "Tenderness with mild edema along the right lateral ankle, good peripheral pulses, normal cap refill." Dr. Daniel Pace assessed "1. Acute right lateral ankle sprain: Advised rest, ice, elevation, and compression….Will consider MRI of her right ankle if symptoms persist or worsen."

The claimant's attorney examined Denise Courtney, an Associate Health Nurse:

> Q. When was the first time you found out she injured her ankle?
> A. April 17.
> Q. All right. And who told you?
> A. She did.
> Q. All right. And what was your understanding of what happened?
> A. She reported that she had had an injury. She had already seen her primary care physician. She said she was walking down a hallway and something – she had a pop in her leg and that her – her primary care physician had said she had a strain. And I asked her if she had reported this to her employer, because when the initially to see me (sic), they bring a First Report of Injury. She did not bring out internal First Report of Injury….
> Q. So as an Arkansas work comp case, did y'all accept this case?
> A. We did not accept it for workers' comp.
> Q. All right. And who made that decision?
> A. The adjuster. The actual claims administrator.

The claimant testified that she initially continued to work for the respondent-employer following the accident. The claimant followed up with Dr. Pace on May 15, 2020: "21 year old white female presenting to the clinic today for evaluation of persistent right lateral ankle pain, after she felt

a recent pop. She reports that pain is worse with weight bearing." Dr. Pace assessed "1. Right lateral ankle sprain: Will continue with NSAIDS, advised rest/elevation/ice/compression, will refer to Dr. Blickenstaff, ortho, for further evaluation."

The claimant testified that Dr. Pace took her off work on May 15, 2020. The record indicates that Dr. Pace signed a Work Excuse on May 15, 2020: "Meghan Johnson was in our office on 5-15-20. Mrs. Johnson may return to work pending review of Orthopeadic (sic) doctor appt on May 20, 2020." The claimant testified that she did not work after May 15, 2020.

The claimant saw Dr. Kyle R. Blickenstaff on May 20, 2020:

> Pleasant 21-year-old white female who works at Compass psychiatric unit as a technician here for evaluation of acute right ankle pain. She fell a couple weeks ago and felt a pop in her ankle subsequently associated with persistent progressive pain, swelling, and bruising. She reports continued pain with weight-bearing activities of daily living. She denies any previous right foot or ankle injuries and she is here for orthopedic evaluation….
> Right ankle: Moderate lateral swelling and ecchymosis with tenderness at the ATFL and CFL.

Dr. Blickenstaff assessed "Sprain of other ligament of right ankle, initial encounter….Referred to physical therapy for aggressive ankle rehab. She [will] remain off work for the next 3 weeks." Dr. Blickenstaff signed a Return to Work slip on May 20, 2020 which indicated, "Not able to return to work for 3 weeks."

The record indicates that Denise Courtney completed an "OSHA's Form 301," "Injury and Illness Incident Report" on May 20, 2020. The "Injury and Illness Incident Report" indicated that the "Date of injury or illness" was April 15, 2020 at 1:00 p.m. After the question "What was the employee doing just before the incident occurred?", Denise Courtney reported "Rounding on patient. Walking down hallway to go to patient room. Felt pop in right ankle. Nothing in the work environment related to the pop." Ms. Courtney described the injury as follows: "Severe strain. Possible tendon tear. Do not have access to medical records due to HIPPA. Did not report loss time, RX written and tear until 05-20-2020." Following the question "What object or substance directly harmed the employee?", Ms. Courtney reported "nothing identified in the work environment per associate. Injury considered to be idiopathic."

The claimant received physical therapy visits beginning May 26, 2020. A physical therapist reported "ankle swelling; positive" on May 26, 2020 and subsequent visits. The claimant followed up with Dr. Blickenstaff on June 10, 2020, and Dr. Blickenstaff kept the claimant off work for an additional three weeks.

Dr. Pace referred the claimant to Dr. Michael Weber, who examined the claimant on June 18, 2020:

> This patient is new here. She is 21 years of age and she works as a nurse in a behavioral health facility in Searcy. In

> early April she was simply walking and turning into a patient's room when she felt a pop and a severe pain on the lateral side of her right ankle. She noticed swelling and ecchymosis after that. She has been to an orthopedic surgeon near home who is treating her conservatively with NSAIDS and physical therapy. She is not getting any better and now has had to be off of work for 5 weeks without any improvement. Her mother says that her ankle still swells and bruises at the end of the day. She tells me also that the therapist and the doctor both [have] been able to dislocate her ankle.
> The physical exam reveals that she is well-developed and has a BMI of 45.4. Her ankle is not particularly swollen today but it is tender and the tenderness is along the course of the peroneal tendons….
> [Plain] x-rays of the right ankle were ordered today. 3 views were obtained. They show a more or less intact ankle with no significant degenerative changes.
> There is a slight extension of the anterior border of the tibia which might be interpreted as [an] early osteophyte.
> Lateral right ankle pain. She does not have a good mechanism of injury rather than just a painful pop that occurred without a significant stress on her ankle. My main suspicion would be split tearing of the peroneal tendons or subluxation of the peroneal tendons.
> Since she has been symptomatic now for greater than 2 months I think it is reasonable for her to have an MRI performed.

The claimant signed a Form AR-N, Employee's Notice Of Injury, on June 22, 2020. The claimant wrote on the Form AR-N that an accident occurred at mid-day on "4/21/1999." The claimant appeared to write, "I was performing my 15 minute rounds on my designated patients. 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 superiors." The claimant wrote that she injured her "right outside ankle."

An MR of the claimant's right ankle was taken on July 1, 2020 with the following impression:

> 1. Suspected small split tear of the submalleolar peroneus brevis extending over a distance of 1.6 cm in length.
> 2. Probable common peroneal sheath tenosynovitis with involvement of the submalleolar peroneus brevis and longus.
> 3. Mild osteophytic spurring at the anterolateral aspect of the tibial plafond.

The claimant followed up with Dr. Weber on July 2, 2020:

> This patient returns having had an MRI of her right ankle. They did find that she has a split tear of the peroneus brevis tendon just distal to the lateral malleolus tip. Her tendon sheath is somewhat inflamed as well. The lateral ankle ligaments are normal.
> The physical exam is unchanged. She does have lateral tenderness and swelling. It hurts her to bear weight or invert her foot.
> Peroneus brevis tendon tear right ankle.
> I told her that it is recommended that she have this repaired surgically. This involves re-suturing the tendon into a round shape with a buried Prolene sutures. I have told her that she would be nonweightbearing for 6 weeks and then weightbearing in a boot for 6 more weeks before being released.

Dr. Weber performed surgery on July 13, 2020: "Repair of split tear peroneus brevis tendon, right ankle." The pre- and post-operative diagnosis was "Split tear of peroneus brevis tendon, right ankle." Dr. Weber provided follow-up treatment after surgery, including physical therapy, and the claimant also followed up with Dr. Pace.

Danna Merriweather, a supervisor with the respondent-employer, testified that the respondents terminated the claimant's employment on or about July 15, 2020.

A pre-hearing order was filed on September 30, 2020. The claimant contended, "1. Claimant contends that she worked for the respondent employer and suffered a specific incident injury to her right ankle in the course and scope of her employment. 2. Claimant contends that she is entitled to the payment of reasonable and necessary medical treatment for the above conditions under Rule 30. 3. Claimant contends that she is entitled to Temporary Total disability from May 19th, 2020 through a date to be determined. 4. Claimant contends the below benefits have been denied and she is entitled to an attorney fee. 5. Claimant specifically claims additional future medical treatment, future impairment rating, future TTD, retraining and %/% benefits and total disability and reserves the same." The respondents contended that the claimant "did not sustain a compensable injury within the course and scope of her employment."

The parties agreed to litigate the following issues:

1. Compensability.
2. Medical treatment.
3. Temporary total disability benefits from May 19, 2020 to a date to be determined.
4. Fees for legal services.

Dr. Weber signed a Return to Work/School form on November 24, 2020 which indicated, "full release, no restrictions as of 12/01/2020."

A hearing was held on December 8, 2020. The respondents' attorney examined Dana Meriweather:

> Q. Now, when did you first learn of complaints that she was having involving her 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. Okay. 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. 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.

An administrative law judge filed an opinion on January 26, 2021. The administrative law judge found that the claimant failed to prove she sustained a compensable injury. The claimant appeals to the Full Commission.

II. ADJUDICATION

A. Compensability

Ark. Code Ann. §11-9-102(4)(Repl. 2012) provides, in pertinent part:

> (A) "Compensable injury" means:
> (i) An accidental injury causing internal or external physical harm to the body …

> arising out of and in the course of employment and which requires medical services or results in disability or death. An injury is "accidental" only if it is caused by a specific incident and is identifiable by time and place of occurrence[.]

A compensable injury must be established by medical evidence supported by objective findings. Ark. Code Ann. §11-9-102(4)(D)(Repl. 2012). "Objective findings" are those findings which cannot come under the voluntary control of the patient. Ark. Code Ann. §11-9-102(16)(A)(i)(Repl. 2012).

The employee has the burden of proving by a preponderance of the evidence that she sustained a compensable injury. Ark. Code Ann. §11-9-102(4)(E)(i)(Repl. 2012). 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. 269, 101 S.W.3d 252 (2003). The determination of the credibility of witnesses and the weight to be given their testimony are matters exclusively within the province of the Commission. *Cooper v. Hiland Dairy*, 69 Ark. App. 200, 11 S.W.3d 5 (2000). The Commission may not arbitrarily disregard the testimony of any witness. *Freeman v. Con-Agra Frozen Foods*, 70 Ark. App. 306, 19 S.W.3d 43 (2000).

An administrative law judge found in the present matter, "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."

The Full Commission finds that the claimant proved by a preponderance of the evidence that she sustained a compensable injury.

The claimant was employed with the respondents as a CNA and Mental Health Technician. The parties stipulated that the employee-employer relationship existed on April 15, 2020. The claimant testified that she was performing employment services for the respondents on that date, "I was doing a round on patients….I was rounding the corner into a patient's room when – I'm sorry, my mouth was messed up – when I heard a pop and felt a pop in my ankle." The evidence of record corroborates the claimant's testimony. Dr. Pace assessed "acute right lateral ankle sprain" on April 17, 2020. Denise Courtney, an Associate Health Nurse for the respondents, testified that the claimant reported to her on April 17, 2020 that the claimant had injured her right ankle at work. Dr. Blickenstaff reported on May 20, 2020 that the claimant had "felt a pop in her ankle" while working for the respondents. Dr. Blickenstaff assessed "Sprain of other ligament of right ankle[.]" Dr. Weber reported on June 18, 2020, "In early April she was simply walking and turning into a patient's room when she felt a pop and a severe pain on the lateral side of her right ankle." Dr. Weber arranged diagnostic testing which revealed among other things a "small split tear of the submalleolar peroneus brevis extending over a distance of 1.6 cm in length."

The Full Commission recognizes Ms. Courtney's completion of an "OSHA's Form 301" on May 20, 2020 which alleged, among other things, "Injury considered to be idiopathic." The respondents contend that the claimant did not prove she sustained a compensable injury and implicitly assert that the claimant's injury was "idiopathic." The Arkansas Supreme Court has distinguished injuries suffered from unexplained causes and injuries sustained from idiopathic causes:

> We first note that injuries sustained due to an unexplained cause are different from injuries where the cause is idiopathic. An idiopathic fall is one whose cause is personal in nature, or peculiar to the individual. 1 LARSON, WORKERS' COMPENSATION LAW, §§12.11(1998); *see also Kuhn v. Majestic Hotel*, 324 Ark. 21, 918 S.W.2d 158 (1996); *Little Rock Convention & Visitors Bur. v. Pack*, 60 Ark. App. 82, 959 S.W.2d 415 (1997); *Moore v. Darling Store Fixtures*, 22 Ark. App. 21, 732 S.W.2d 496 (1987). Because an idiopathic fall is not related to employment, it is generally not compensable unless conditions related to employment contribute to the risk by placing the employee in a position, which increases the dangerous effect of the fall. LARSON, *supra*.

Whitten v. Edward Trucking/Corporate Solutions, 87 Ark. App. 112, 189 S.W.3d 82 (2004), citing *ERC Contractor Yard & Sales v. Robertson*, 335 Ark. 63, 71, 977 S.W.2d 212, 216.

The Full Commission finds in the present matter that the claimant was a credible witness. *See Cooper, supra*. When a truly unexplained fall occurs while the employee is on the job and performing the duties of her employment, the injury resulting therefrom is compensable. *Moore v.*

Darling Store Fixtures, *supra*. The Full Commission finds in the present matter that the claimant's injury was unexplained and was compensable. The claimant credibly testified that she "heard a pop and felt a pop in my ankle" while performing employment services for the respondents on or about April 15, 2020. The evidence of record corroborated the claimant's testimony. Corroborating evidence included the testimony of Denise Courtney as well as the reports of Dr. Pace, Dr. Blickenstaff, and Dr. Weber. There were a number of objective medical findings establishing a compensable injury to the claimant's right ankle. These objective medical findings included "edema" in the claimant's right ankle as noted by Dr. Pace on April 17, 2020. Dr. Blickenstaff reported "swelling and ecchymosis" in the claimant's right ankle on May 20, 2020. The physical therapist noted "swelling" in the claimant's right ankle on several occasions. Additionally, an MR of the claimant's right ankle on July 1, 2020 showed a "split tear of the submalleolar peroneus brevis extending over a distance of 1.6 cm in length." The Full Commission finds that these described objective medical findings were causally related to the accident which occurred on or about April 15, 2020 and were not "idiopathic" in nature.

The Full Commission finds that the claimant proved by a preponderance of the evidence that she sustained a compensable injury. The claimant proved that she sustained an accidental injury which caused

physical harm to the body. The injury was not idiopathic but arose out of and in the course of the claimant's employment with the respondents. The injury required medical services and resulted in disability. The injury was caused by a specific incident and was identifiable by time and place of occurrence on or about April 15, 2020. *See Edens v. Superior Marble & Glass*, 346 Ark. 487, 58 S.W.3d 369 (2001). In addition, the claimant established a compensable injury by medical evidence supported by objective findings not within the claimant's voluntary control.

B. <u>Temporary Total Disability</u>

The claimant in the present matter sustained a compensable scheduled injury to her right ankle. *See* Ark. Code Ann. §11-9-521(a)(4)(Repl. 2012). For scheduled injuries the injured employee is to receive temporary total or temporary partial disability during the healing period or until she returns to work, whichever occurs first. Ark. Code Ann. §11-9-521(a)(Repl. 2012); *Wheeler Constr. Co. v. Armstrong*, 73 Ark. App. 146, 41 S.W.3d 822 (2001). The healing period is that period for healing of the injury which continues until the employee is as far restored as the permanent character of the injury will permit. *Nix v. Wilson World Hotel*, 46 Ark. App. 303, 879 S.W.2d 457 (1994). Whether an employee's healing period has ended is a question of fact for the Commission. *Ketcher Roofing Co. v. Johnson*, 50 Ark. App. 63, 901 S.W.2d 25 (1995).

The claimant contends that she is entitled to temporary total disability benefits beginning May 15, 2020. The claimant testified that Dr. Pace took her off work on May 15, 2020. The record indicates, however, that Dr. Pace actually stated on May 15, 2020 that the claimant could "return to work" pending review by an orthopedic specialist. The claimant was not taken off work until Dr. Blickenstaff's examination on May 20, 2020. Dr. Weber performed surgery on July 13, 2020. The respondents terminated the claimant's employment on or about July 15, 2020. Dr. Weber signed a Return to Work/School form on November 24, 2020 which indicated, "full release, no restrictions as of December 1, 2020." The Full Commission finds that the claimant reached the end of her healing period no later than December 1, 2020. We find that the claimant proved she was entitled to temporary total disability benefits beginning May 20, 2020 until December 1, 2020.

After reviewing the entire record *de novo*, the Full Commission finds that the claimant proved by a preponderance of the evidence that she sustained a compensable injury on or about April 15, 2020. The claimant's compensable injury on that date was not "idiopathic." The claimant proved that the current medical treatment of record, including surgery performed by Dr. Weber, was reasonably necessary in accordance with Ark. Code Ann. §11-9-508(a)(Repl. 2012). The claimant proved she was entitled to

temporary total disability benefits from the time she was taken off work on May 20, 2020 until the end of her healing period no later than December 1, 2020. The claimant's attorney is entitled to fees for legal services in accordance with Ark. Code Ann. §11-9-715(a)(Repl. 2012). For prevailing on appeal to the Full Commission, the claimant's attorney is entitled to an additional fee of five hundred dollars ($500), pursuant to Ark. Code Ann. §11-9-715(b)(Repl. 2012).

IT IS SO ORDERED.

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SCOTTY DALE DOUTHIT, Chairman

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M. SCOTT WILLHITE, Commissioner

Commissioner Palmer concurs.

CONCURRING OPINION

I agree with the majority that, based on the record and case law before us, Claimant's injury appears to be unexplained rather than idiopathic and that it is compensable. I write separately, however, to note my concern of the slippery slope that unexplained causes present. There is nothing in the record to suggest that the injury would not have occurred had, by mere happenstance, Claimant been at home rather than at work at the time the injury occurred. My fear is that outcomes such as this will

encourage workers injured while away from work to wait until they are at work to report an injury and, that without any obvious explanation for the cause of the injury, the injury will be found to be compensable.

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CHRISTOPHER L. PALMER, Commissioner