

**BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION**

**CLAIM NO. G806988**

MARY LIVINGSTON, EMPLOYEE	CLAIMANT
ARKANSAS HEALTHCARE PERSONNEL, INC., EMPLOYER	RESPONDENT NO. 1
AIG CLAIMS, INC., THIRD PARTY ADMINISTRATOR	RESPONDENT NO. 1
DEATH & PERMANENT TOTAL DISABILITY TRUST FUND	RESPONDENT NO. 2

**OPINION FILED APRIL 12, 2021**

Hearing held before ADMINISTRATIVE LAW JUDGE CHANDRA L. BLACK in Little Rock, Pulaski County, Arkansas.

Claimant represented by ANDY L. CALDWELL, Attorney at Law, Little Rock, Arkansas.

Respondents No. 1 represented by MELISSA WOOD, Attorney at Law, Little Rock, Arkansas.

Respondent No. 2 represented by DAVID L. PAKE, Attorney at Law, Little Rock, Arkansas. Mr. Pake waived his appearance at the hearing.

**STATEMENT OF THE CASE**

On March 10, 2021, the above captioned claim came on for a hearing in Little Rock, Arkansas. A Prehearing Telephone Conference was conducted on January 13, 2021; and a Prehearing Order was filed on that same date. Said Prehearing Order has been marked as Commission's Exhibit #1 and made a part of the record without objection from the parties.

During the Prehearing Telephone Conference, the parties agreed to the following stipulations:

1. The Arkansas Workers' Compensation Commission has jurisdiction of the within claim.

2. The employee-employer-insurance carrier relationship existed at all relevant times, including October 5, 2018, when the Claimant sustained injuries to her low back and right ankle.

3. Any issue not litigated herein is reserved under the Arkansas Workers' Compensation Act (referred to hereinafter as the "Act").

The parties agreed to litigate the following issue: whether the Claimant is entitled to an independent medical evaluation (IME)/second opinion for the purpose of deciding if, or to what extent she is entitled to another assessment for a permanent anatomical impairment rating for her compensable right ankle injury of October 5, 2018.

Claimant contends that her average weekly wage (AWW) will be determined by the contract of hire, wage records and Arkansas law. The Claimant contends that she sustained injuries to her right ankle and back in the course and scope of her employment on October 5, 2018. Claimant is under the treatment of Dr. (Gregory) Ardoin. The Claimant contends she is entitled to an IME to determine the nature and extent of her impairment. All other issues are reserved.

The Claimant's attorney made additional contentions at the end of the hearing. Specifically, counsel stated: The reason we think the IME is appropriate under §11-9-511, the claimant has, clearly, complaints[sic]. She's indicated and testified that she has, in her own mind, a loss of range of motion and a loss of strength. Both of those are ratable conditions. This case is very similar to Ira Pollins v. Union County Highway Department, G904646. That case was handed down by the Full Commission last month. Almost the exact same facts, just different body parts. That case involved a shoulder. This case obviously involves a left lower extremity, but the facts were almost identical Claimant has surgery by the treating physician, the treating physician releases her, assigns a zero percent rating. Both of those things happened here. We requested an IME in both cases. I represented the claimant in Ira Pollins. We requested an IME. The

respondents objected. We ultimately -- there was a procedural -- it went up to the Full Commission. (TR 23)

Respondents No. 1 contend that all appropriate benefits have been paid with regard to this matter. The Claimant has reached maximum medical improvement associated with her work-related injury and Dr. Adrion has indicated there is a 0% permanent partial impairment per the *AMA Guides, Fourth Edition*, as of August 10, 2020. Respondents are unaware of any medical documentation indicating an entitlement to permanent impairment associated with this claim. Respondents have also overpaid temporary disability benefits in the amount of \$497.71, for which they are entitled to a credit toward any additional indemnity benefits paid to the Claimant.

Respondent No. 2 has deferred to the outcome of litigation and waived its right to attend the March 10, 2021 hearing.

The record consists of the hearing transcript of March 10, 2021, and the exhibits contained therein. Specifically, the following exhibits were made a part of the record: Commission's Exhibit #1 includes the Commission's Prehearing Order of January 13, 2021 and the parties' respective response to the Prehearing Questionnaire; Claimant offered into evidence, Medical Records-consisting of 148 pages, which have been marked as Claimant's Exhibit #1; Respondents No. 1 submitted into evidence seven pages of Medical Records, which have been marked as Respondents' Exhibit #1; Respondents No.1 submitted Non-medical Records consisting of 13 pages, which have been marked as Respondents' Exhibit #2; and Respondents No. 1 submitted into evidence a Respondents' Brief, it has been marked as Respondents' Exhibit #3. Additionally, on March 23, 2021, Respondents No. 1 filed with the Commission a letter with the Commission summarizing their position on the case of Pollins v. Union County Hwy. Dept., Full Commission

Opinion filed on February 5, 2021. Said letter has been blue-backed and marked as Commission's Exhibit # 2.

Based on a review of the record as a whole, to include the aforementioned documentary evidence, other matter properly before the Commission, and after having had an opportunity to hear the testimony of the Claimant and observe her demeanor, I hereby make the following findings of fact and conclusions of law in accordance with Ark. Code Ann. §11-9-704.

### **FINDINGS OF FACT AND CONCLUSIONS OF LAW**

1. The Arkansas Workers' Compensation Commission has jurisdiction of this claim.
2. I hereby accept the aforementioned stipulations as fact.
3. The Claimant failed to prove by a preponderance of the evidence that an independent medical evaluation/IME is reasonable and necessary per Ark. Code Ann. §11-9-511(a) (Repl. 2012) for the assessment of a permanent anatomical impairment rating due to her right ankle injury of October 5, 2018.

### **HEARING TESTIMONY**

The Claimant is 55 years of age. She worked as an employee of Arkansas Health Personnel on October 5, 2018. She was assigned to work at the Arkansas State Hospital as a CNA. She was involved in a work-related incident on October 5, 2018. At that time, a patient physically assaulted the Claimant. She fell to the floor and hurt her back and right ankle.

It appears that the Claimant filed a Form AR-C for injuries to her back and right lower extremity/ankle. The Claimant received initial emergency medical care at a local hospital-CHI St. Vincent. She sought follow-up treatment at Concentra. They referred the Claimant to Arkansas Specialty/OrthoArkansas. There, the Claimant came under the care of Dr. Victor Vargas.

Ultimately, the Claimant was referred to Dr. Gregory Ardoin. The Claimant confirmed that in June 2019, Dr. Ardoin performed surgery on her right ankle. Following the Claimant's ankle surgery, she underwent physical therapy treatment.

However, the Claimant testified that she continues with problems involving her right ankle. According to the Claimant, she has problems with constant pain. The Claimant described several symptoms relating to her ankle, including but not limited to tenderness, cramps, and pain. On cross examination, the Claimant verified that she was released to regular duty work on September 30, 2019. At that time, the Claimant still had additional physical therapy sessions to undergo. Her last treatment at OrthoArkansas was October 16, 2019. The Claimant underwent evaluation for an impairment by Dr. Ardoin on August 10, 2020. She confirmed the contents of Dr. Ardoin's report of August 10, 2020 as being correct wherein he stated that the Claimant was doing well overall, except for some occasional discomfort. However, the Claimant admitted that she complained during that particular visit about some other problems, which were related to a motor vehicle accident (MVA).

The Claimant confirmed that on August 7, 2020, she was involved in a car wreck. She essentially testified that she sustained injuries to only the left side of her body during that accident. Per the Claimant's testimony, her injuries occurred to her left knee and hip. She also sustained some bruising on that side of her body.

Since being released to regular duty work in 2019, the Claimant has continued to work for Arkansas Healthcare Personnel. The Claimant testified that she currently works as a registered certified assistant (RCA) because she is now unable to do CNA work. According to the Claimant, she can no longer lift the patients. The Claimant maintained that in her current position, the patients are able to care for themselves and she is basically there to just watch over them. Although the Claimant's current job is a full-time position, her schedule fluctuates.

On redirect examination, the Claimant denied having done anything to injure or reinjure her right lower extremity.

Upon being questioned by the Commission, the Claimant was asked about her current problems with her lower extremity. The Claimant explained:

Well, I'm -- I'm not able to put full body weight on that leg, and my range of motion with my foot is not as good as it use to be. So when I – like, when I try to drive or when I walk up the steps or when I try to put heels or anything, I can't. My – it does – my – I can't put the weight and it bothers me. It hurts, like, real bad. I've been having a lot of charley horses, and the – just –

However, the Claimant confirmed that she does not have too much of a problem with swelling because she keeps her foot up. According to the Claimant, she is unable to stand or sit for prolonged periods of time.

### **MEDICAL EVIDENCE**

A review of the medical evidence shows that the Claimant sought initial medical treatment for her work-related assault on October 6, 2018, at CHI St. Vincent. In that regard, the Claimant complained “*inter alia*,” of right ankle pain. An MRI was performed of the Claimant’s right ankle, with an impression of “A small avulsion fracture seen of the distal tip of the medial malleolus, uncertain chronicity, but there is overlying soft tissue swelling present, suggestive of an acute process.” The Claimant was placed in a walker boot and discharged home.

On October 30, 2018, the Claimant was seen during a follow-up visit at Concentra. Dr. Scott Carle assessed the Claimant with “Unspecified injury of right Achilles’ tendon, sequela(S861S).” Dr. Carle ordered an MRI of the Claimant’s right ankle and referred her for physical therapy.

An MRI was performed on the Claimant’s right ankle on November 5, 2018, with the following impression: “Increased signal in the distal Achilles tendon consistent with low grade intrasubstance tear versus sprain of the distal Achilles tendon. Moderate retrocalcaneal bursitis. No evidence for occult fracture or bone contusion.”

On November 26, 2018, the Claimant underwent initial evaluation by Dr. Victor Vargas. Her chief complaint was right foot/ankle pain. She reported having undergone physical therapy treatment with worsening pain. At that time, the Claimant reported pain at the heel after an injury that happened a little bit more than month ago. Dr. Vargas noted that the MRI of the Claimant's right foot was consistent with degenerative tendinopathy. However, since the Claimant was complaining of pain after an injury, Dr. Vargas believed she had an exacerbation of the pre-existing condition that required treatment. Dr. Vargas recommended that the Claimant wear a walking boot, an Achilles tendon sock pad, and undergo an injection of her right lower extremity.

Dr. Vargas performed X-rays 3 views (AP, lateral, and mortise views) of the Claimant's right lower extremity on November 26, 2018. He interpreted these X-rays to show large spurring at the insertion of the Achilles tendon and the origin of the plantar fascia. There was some calcification and spurring at the medial malleolus, which was probably due to a previous trauma. At that time, Dr. Vargas directed the Claimant to undergo more physical therapy.

Ultimately, on June 5, 2019, the Claimant underwent surgery to her right ankle, by Dr. Gregory Ardoin. On that same date, Dr. Ardoin authored an Operative Report, which states in relevant part:

**PREOPERATIVE DIAGNOSIS:**

1. Right insertional calcific Achilles tendinosis.
2. Haglund's deformity.
3. Right retrocalcaneal bursitis.

**POSTOPERATIVE DIAGNOSIS:**

1. Right insertional calcific Achilles tendinosis.
2. Haglund's deformity.
3. Right retrocalcaneal bursitis.

**PROCEDURES:**

1. Right insertional calcific Achilles tendinosis.
2. Right Haglund's excision (Partial excision calcaneus).
3. X-ray interpretation, 2-view right hip intraoperatively.

The Claimant returned for a follow-up visit with Dr. Ardoin for her right ankle surgery on June 18, 2019. At that time, Dr. Ardoin instructed the Claimant to wear a boot and undergo rehabilitation physical therapy. The Claimant did so.

On September 18, 2019, the Claimant returned to Dr. Ardoin. She rated her Achilles pain to be at a two on a scale of 10. The Claimant ambulated independently with a slight right antalgic gait.

Dr. Ardoin saw the Claimant for a follow-up visit of her right ankle surgery on September 30, 2019. At that time, Dr. Ardoin physically examined the Claimant right lower extremity. Dr. Ardoin noted among other things that his examination of the Claimant's right foot and ankle revealed a healed incision. Mild edema was noted in the posterior heel. Dr. Ardoin opined:

Impression: Doing well status post right Achilles tendon debridement and partial excision of Haglund's.

Plan: The patient will continue to work with therapy until completed. She may return to regular work duties without restrictions. She will be discharged from care today and may return to the clinic as needed.

The Claimant returned to Dr. Ardoin on August 10, 2020, for an assessment of an impairment rating of her right lower extremity. Dr. Ardoin noted that a physical examination of the Claimant's ankle revealed excellent range of motion, no swelling, and full normal motor strength. Normal reflexes no tenderness of Achilles. Pulses were palpable. Dr. Ardoin's impression was right Achilles tendon injury healed, patient at MMI. He assessed the Claimant with no permanent impairment according to the *Guides to the Evaluation of Permanent Impairment, 4<sup>th</sup> Edition*. Dr. Ardoin stated that no further treatment was needed.

### **ADJUDICATION**

The sole issue for determination is whether the Claimant is entitled to an independent



evaluation/IME for a determination of a permanent anatomical impairment rating to her right lower extremity-ankle injury of August 5, 2018.

Ark. Code Ann. §11-9-511(a) (Repl. 2012) provides, in relevant part: An injured employee claiming to be entitled to compensation shall submit to such physical examination and treatment by another qualified physician, designated or approved by the Workers' Compensation Commission, as the commission may require from time to time if reasonable and necessary. The threshold question is whether the examination is reasonable and necessary. King v. Willow Oaks Acres, Full Commission Opinion filed on January 25, 2001(Claim No. E903202).

In the case at bar, the Claimant sustained an admittedly compensable injury to her right ankle on October 5, 2018, while performing employment duties for the respondent-employer. Ultimately, on June 5, 2019, the Claimant underwent surgery to her right ankle under the care of Dr. Gregory Ardoin. Subsequently, on September 30, 2019, Dr. Ardoin returned the Claimant to full duty work, without any physical restrictions. The Claimant's testimony shows that she returned to work for the respondent-employer and has continued working for them through the date of the hearing. The Claimant last sought medical treatment for her right ankle from Dr. Ardoin on October 16, 2019. Since this time, the Claimant has not required any follow-up treatment of her right ankle injury.

Ultimately, on August 10, 2020, the Claimant was seen by Dr. Ardoin for evaluation and assessment of an impairment rating for her right ankle injury of October 2018. Upon physical examination of the Claimant's right ankle, Dr. Ardoin specifically noted that the Claimant's right ankle had excellent range of motion, no swelling, and full normal motor strength. Normal reflexes and no tenderness of Achilles. Pulses were palpable. Therefore, Dr. Ardoin opined that the Claimant had sustained no permanent impairment according to the *AMA Guides to the Evaluation*

of *Permanent Impairment*, 4<sup>th</sup> Edition. Dr. Ardoin also opined that the Claimant did not require any additional medical treatment.

Based on the evidence before me, I have assigned significant weight to Dr. Ardoin's expert opinion, considering the lack of objective medical findings establishing a permanent physical impairment pursuant to his August 2020 physical examination of the Claimant's right ankle per the *AMA Guides* 4<sup>th</sup> ed; the Claimant's ability to perform full duty work; and the fact that the Claimant has not required medical care for her ankle injury since October 2019-except for the assessment of the rating.

Nevertheless, the Claimant confirmed that she does not have problems with symptoms of swelling in her right lower extremity. Notably, the Claimant testified that she has ongoing problems with range of motion and charley horses in her right lower extremity. However, the Claimant's testimony in this regard is not corroborated by Dr. Ardoin's evaluation and assessment of the Claimant's right ankle, on August 10, 2020. Specifically, Dr. Ardoin's report does not show any objective medical findings of a permanent anatomical impairment to the Claimant's right ankle. Of note, the Claimant's own testimony proves that she does not have any problems with swelling in her right ankle. Considering all of the foregoing, I have assigned minimal weight to the Claimant's testimony.

Therefore, based on all of the evidence before me, I find that the Claimant failed to prove by a preponderance of the evidence that an independent medical evaluation/IME is reasonable and necessary pursuant Ark. Code Ann. §11-9-511(a)(Repl. 2012) for the assessment of a permanent anatomical impairment rating due to her right ankle injury of August 10, 2018.

### **ORDER**

The Claimant has failed to prove by a preponderance of the evidence that an independent

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medical evaluation/IME is reasonable and necessary in connection her compensable right ankle injury of October 5, 2018 under the provision of Ark. Code Ann. §11-9-511(a) (Repl. 2012), for an assessment of a permanent impairment rating. Therefore, this claim is respectfully denied and dismissed.

**IT IS SO ORDERED.**

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**CHANDRA L. BLACK**  
**Administrative Law Judge**