

NOT DESIGNATED FOR PUBLICATION

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. G806988

MARY LIVINGSTON, EMPLOYEE	CLAIMANT
ARKANSAS HEALTHCARE PERSONNEL, INC., EMPLOYER	RESPONDENT
AIG CLAIMS, INC., INSURANCE CARRIER/TPA	RESPONDENT NO. 1
DEATH & PERMANENT TOTAL DISABILITY TRUST FUND	RESPONDENT NO. 2

OPINION FILED JULY 9, 2021

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

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

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

Respondents No. 2 represented by the HONORABLE DAVID L. PAKE, Attorney at Law, Little Rock, Arkansas.

Decision of Administrative Law Judge: Affirmed and Adopted.

OPINION AND ORDER

Claimant appeals an opinion and order of the Administrative Law Judge filed April 12, 2021. In said order, the Administrative Law Judge made the following 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.

We have carefully conducted a *de novo* review of the entire record herein and it is our opinion that the Administrative Law Judge's April 12, 2021 decision is supported by a preponderance of the credible evidence, correctly applies the law, and should be affirmed. Specifically, we find from a preponderance of the evidence that the findings of fact made by the Administrative Law Judge are correct and they are, therefore, adopted by the Full Commission.

Therefore we affirm and adopt the decision of the Administrative Law Judge, including all findings and conclusions therein, as the decision of the Full Commission on appeal.

IT IS SO ORDERED.

SCOTTY DALE DOUTHIT, Chairman

CHRISTOPHER L. PALMER, Commissioner

Commissioner Willhite dissents.

DISSENTING OPINION

After my *de novo* review of the record in this claim, I dissent from the majority opinion, finding that 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.”

Ark. Code Ann. §11-9-511(a) states:

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.

Section 511 grants the Commission authority to grant the claimant's request for an independent medical evaluation (hereinafter, "IME") if it is reasonable and necessary. Here, I find that an IME is reasonable and necessary.

The claimant underwent a right insertional Achilles tendon debridement secondary repair on June 5, 2019. Section 3.2 (The Lower Extremity) of the *AMA Guides to the Evaluation of Permanent Impairment, Fourth Edition* provides impairment ratings for weakness, loss of motion, arthritis, and other conditions that may have resulted from the claimant's compensable right ankle injury. Thus, an IME is reasonably necessary to determine the nature and extent of the claimant's impairment.

Alternatively, it appears that relief sought by the claimant may be available through some other provision such as Ark. Code Ann. §11-9-514.

For the foregoing reason, I dissent from the majority opinion.

M. SCOTT WILLHITE, Commissioner