

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. G902398

JAMES E. MEAD, JR., EMPLOYEE

CLAIMANT

VS.

**AR DEPARTMENT OF CORRECTIONS,
EMPLOYER**

RESPONDENT NO. 1

**PUBLIC EMPLOYEE CLAIMS DIVISION,
INSURANCE CARRIER/TPA**

RESPONDENT NO. 1

**DEATH AND PERMANENT TOTAL
DISABILITY TRUST FUND**

RESPONDENT NO. 2

OPINION FILED MAY 17, 2022

Hearing before Administrative Law Judge, James D. Kennedy, on the April 20, 2022, in Mountain Home, Baxter County, Arkansas.

Claimant is represented by Frederick S. "Rick" Spencer, Attorney-at-Law, Mountain Home, Arkansas.

Respondents No. 1 are represented by Robert H. Montgomery, Attorney-at-Law, Little Rock, Arkansas.

Respondents No. 2 are represented by Christy L. King, Attorney-at-Law, Little Rock, Arkansas

STATEMENT OF THE CASE

A hearing was conducted on the 20th day of April 2022, to determine the issues of compensability for injuries to claimant's left and right knees and both feet while performing employment services for the respondent, plus medical treatment in regard to the injuries, and attorney fees. Respondents No. 1 contended Ark. Code Ann. § 11-9-521(g) was applicable and the claimant did not sustain compensable lower extremity injuries while employed with the Arkansas Department of Correction. In the alternative, respondents No. 1 contended that if the claimant sustained compensable injuries to his lower extremities as a result of his employment with the respondent employer, the claimant

merely sustained a temporary aggravation of a pre-existing condition. Respondent No. 2 did not controvert the claimant's entitlement to benefits and waived its right to appear because the parties stipulated to the TTD/PPD rate. A copy of the Amended Prehearing Order was marked "Commission Exhibit 1" and made part of the record without objection. The parties stipulated that the Arkansas Workers' Compensation Commission has jurisdiction of the within claim and that an employer/employee relationship existed until October 24, 2017, which was the date of the alleged injures and the claimant's last date of employment with the respondents. The parties also stipulated that the claimant reached maximum medical improvement (MMI) on October 12, 2017. The Order further provided the claimant earned a weekly wage of \$722.86 per week, sufficient for a TTD/PPD rate of \$482.00 and \$362.00 per week respectively, and the respondents controverted the claim in its entirety. There was no objection to these stipulations and the Amended Prehearing Order of January 21, 2022, was admitted into the record without objections.

The claimant's and both respondent's contentions are set out in their respective responses to the Prehearing Questionnaire and made a part of the record without objection. The witnesses consisted of the claimant, James E. Mead, Jr., and Christopher Brandon, who was called by the respondents. It is also noted that the depositions of the claimant and Dr. Kevin Steffen, Jr., were admitted into the record without objection. In addition, it was stipulated that the claimant's wife, Ruby Mead, would corroborate the claimant's testimony. 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. The Arkansas Workers' Compensation Commission has jurisdiction over this claim.
2. That an employer/employee relationship existed on or about October 24, 2017, the date of the alleged injuries, and the last day of employment for respondent No. 1.
3. The claimant reached maximum medical improvement (MMI) on October 12, 2017.
4. The claimant earned an average weekly wage of \$722.88 a week, sufficient for a TTD/PPD rate of \$482.00/\$362.00 per week.
5. The claimant has failed to satisfy the required burden of proof, by a preponderance of the evidence, that he sustained a compensable work-related injury to both feet caused by a specific incident by time and place of occurrence.
6. However, the claimant has satisfied the required burden of proof, by a preponderance of the evidence, that the continued walking and climbing stairs for hours at a time constituted a rapid repetitive work-related injury and was the major cause of the claimant's injury to both of his feet.
7. That the claimant has failed to satisfy the required burden of proof, by a preponderance of the evidence, that he sustained a compensable work-related injury to both knees.
8. That the claimant has satisfied the required burden of proof, by a preponderance of the evidence, that he is entitled to reasonable and necessary medical treatment for his work-related injuries to both feet.
9. The claimant is entitled to attorney fees pursuant to Ark. Code Ann. § 11-9-715. This Award shall bear interest at the legal rate pursuant to Ark. Code Ann. § 11-9-809.
10. If not already paid, the respondents are ordered to pay for the cost of the transcript forthwith.

REVIEW OF TESTIMONY AND EVIDENCE

The Amended Prehearing Order, the Prehearing Order, along with the Prehearing Questionnaires of all the parties were admitted into the record without objection. The claimant submitted four (4) exhibits that were admitted without objection: (1) A letter from Dr. Kevin Steffen, Jr.; (2) the deposition of James Mead, Jr.; (3) the deposition of Dr. Kevin Steffen, Jr. DPM; (4) Arkansas Workers' Compensation Form AR – P.

The respondent submitted two (2) exhibits. "Exhibit Number One" was admitted into the record without objection which consisted of twenty-four (24) pages of medical exhibits. An objection was made in regard to admissibility of "Exhibit Two" and consequently, the admissibility of "Exhibit Two" was taken under advisement at the time of the hearing. The issues at the time of the hearing were compensability, entitlement to reasonable and necessary medical treatment, attorney fees, with all other issues reserved.

The claimant testified he was born on January 8, 1961, was married to Ruby Mead, and was sixty-one (61) years old at the time of the hearing. (Tr. 8) He had been married forty-two (42) years. In regard to the Arkansas Department of Corrections, the claimant first started work as a corporal at Brickeys, handling prisoners for about six (6) months, then going to the Mississippi County Work Release for a little over three (3) years, again working with prisoners who would go out and clean stadiums and work ditches. (Tr. 9-11) He then went to work at Calico Rock in 2013, where he worked the night shift for a year, working as a guard on the tower or on the floor, opening doors, letting inmates in and out, moving them, and performing prisoner counts. (Tr. 12-13)

He testified he started having problems with his feet, which consisted of a numbness in his feet, that started probably a year to six (6) months after going to Calico Rock. He testified as follows:

“I was up and down a lot standing on concrete - - “ -- concrete stairs, opening doors. Sometimes you’re on your feet constantly, and, you know, just typically climbing - - climbing stairs, climbing ladders up into the tower, just basic doing your rounds and everything involved with it.”

“It - - I started to get a growth on the back of my heel. I had noticed it, and I went to the doctor and asked him about it, and that was - - that was probably somewhere around 2016 or somewhere in there when I actually started - -“

He went on to state that it was about a year before he was terminated. (Tr. 14) The claimant testified that his employer was aware he was having problems with his feet after he went to Doctor Steffen, who placed him in a boot for six (6) weeks, and he was unable to work in the boot. (Tr. 15) He testified that his employer and Lieutenant Brandon, who was seated at the respondent’s table at the time of the hearing, were aware of the boot and the fact that he had been limping a lot. He was having a lot of pain and cramps in his feet, along with the numbness, which was making sleep difficult. Additionally, he was calling in sick a lot due to the fact it was difficult to work three (3) days in a row, and sometimes even two (2) days in a row. Lieutenant Brandon issued orders where claimant had to have a doctor’s excuse when he was off.

The claimant eventually had a surgery performed by Doctor Steffen. (Tr. 16-18) His recovery took a couple of months due to a staph infection. He thought the surgery was sometime in 2017. He testified he would have foot cramps which were worse while at work, and he had balance problems. He felt like he had pain somewhere around five per a one to ten pain chart, during the day. (Tr. 19-21)

In regard to medications, the claimant testified he was taking non-prescription medications for pain and also Adderall to help him with depression and drowsiness. (Tr. 22) His problems with depression caused him to be scared to be on the tower at night while working with a loaded gun. “I don’t know if anybody here has been depressed, but you - - there’s things I would never do, but it was circular thoughts going and they won’t leave you alone, and time passes real slow up there.” He went on to state they finally got his medications worked out and got it under control. (Tr. 24) He was told he had bone spurs on the other foot, and was also diagnosed with sleep apnea. In regard to standing, he testified he was not constantly on his feet but on his feet “most of the time.” He figured he was on his feet for seven (7) or eight (8) hours during a twelve-hour day. (Tr. 25) Lieutenant Brandon was his immediate supervisor. (Tr. 26)

In regard to the claimant’s termination, he felt he was terminated due to a discrepancy in a barracks count where the guards go in and count the prisoners. He performed part of the first count. Other guards volunteered to count the top level, probably due to the fact it was the claimant’s second day after his surgery. The count was not correct, so a second count was called for, which the claimant was not involved in. The claimant testified he was the only person involved in the count that was fired. (Tr. 31-37)

He stated that he had saved up some money, and after his termination he attempted to open an antique store with his wife, but it was a failure after about eight (8) months. He also testified he had been unable to do anything since that time. (Tr. 38) He started the antique store about a month after his termination as a guard. (Tr. 39)

Under cross-examination, the claimant admitted he was a correctional officer at Brickeys and also at Mississippi County, but worked a lot of the time at Mississippi County

out on the road. (Tr. 43) He admitted he was on his feet a lot, especially while on the road crew. He also admitted that at times at the Calico Rock Unit, he could sit in a chair at his desk. (Tr. 42) The claimant also admitted that it was while he was at the Calico Rock Unit, that problems with his feet started developing. He initially went to his family doctor, Doctor Warr, the same doctor that treated him for his depression. He was then referred to Doctor Steffen for his foot complaints. The claimant was specifically asked that after being referred to Dr. Steffen in regard to his feet, did he tell him that his feet problems were job-related, and he responded, “I have no idea, but I don’t know that I did. I don’t think I did. I don’t - - I can’t say one way or the other. (Tr. 43) When asked if he believed the problems with his feet were work-related, while he was being treated by Dr. Steffen, he responded “No.” “Not necessarily.”

He went on to testify as follows:

“First of all, I didn’t know what was wrong with them, I didn’t know if I had a cancer growth on my heel, so I didn’t know if it was genetics or what was going on at that point, and ...

See, I have a lot of medical leave, so I was not worried about work, any kind of - - whether it was what I - -

I did not have a particular place where I fell down. My knowledge of workman’s comp was not that this was covered at the time.”

He admitted no one at the Calico Rock Unit told him that this was not a workers’ compensation type injury. (Tr. 44) He also admitted he initially filed for FMLA and his signature appeared on the request for FMLA, which was dated May 2, 2017. (Tr. 45, 46)

The claimant stated he had a procedure performed in August of 2017, and then returned to work. (Tr. 47) He was questioned about his depression and testified his depression began back when his wife was having physical and health problems. (Tr. 48)

He knew he was diagnosed with depression while at Calico Rock. (Tr. 49) He also admitted in 2017, he was primarily having issues with his right foot. He also thought that at the time, he was having a little issue with his left foot. He also admitted to being a diabetic and that Dr. Steffen treated him in 2017, for Achilles tendinitis of the right foot, which was what the surgery was for. He agreed that he first thought that his problems were just sore feet. (Tr. 50, 51) The claimant admitted he worked 12 hour shifts and that during a shift, he might be up nine or ten hours and sitting down for a couple of hours. (Tr. 52) He also admitted being fired for “falsifying logs.” After a disciplinary hearing with Officer Brandon on October 24, 2017, he was terminated the next day. He also admitted he had to be on his feet when he opened the antique store. (Tr. 54 – 55) He did that for about a year, and since that time has not sought any kind of employment. The claimant also admitted that he did not start his workers’ compensation claim until April of 2019. (Tr. 56) He was still currently under the care of Doctor Steffen and saw him probably about every other month, although in the last few months, he had seen him sometimes every week, due to fracturing his right ankle on December 25, 2021. (Tr. 57) The claimant stated he slipped on a hotel bath mat and fractured “both bones in my lower leg.”

On re-direct, the claimant agreed his balance, walking, and standing had been severely compromised due to his prison injury. (Tr. 58)

The parties then stipulated that the claimant’s wife would corroborate the claimant’s testimony to the best of her knowledge, and based upon the stipulation, the claimant rested.

The respondents called Christopher Brandon, a building captain at the Department of Corrections, who had worked there for sixteen (16) years, since 2006. He was the

claimant's supervisor for a few years. He remembered the claimant talking about seeing a doctor and obtaining treatment for his feet. He denied the claimant had ever talked to him about filing a workers' compensation claim involving his feet. He had been notified by the Human Resources Department when the claimant filed for FLMA. (Tr. 59-60) He stated that under FLMA, the claimant was subject to a return back to work at some point. If they run out of sick leave and they qualify for FLMA, then they won't be terminated. In regard to the claimant complaining of sore feet, Mr. Brandon stated that "everybody complains of having sore feet. I mean, I have sore feet, too." "We walk a lot, do a lot of walking, some more than others." "I don't think it's uncommon for anybody that's employed that spends time on their feet to have sore feet."

He also admitted he was involved with the claimant's eventual termination. At the time, he was a shift supervisor, supervising probably thirty (30) correctional officers. In 2017, there were still fourteen (14) barracks, and he stated that he would be in the count room and the officers in each barracks would call in their counts. (Tr. 62-63) Mr. Brandon stated the count was an important function and in October of 2017, there had been an inaccurate count. The policy was if there were two (2) head counts that appeared to be wrong, then a roster count would occur, where they would go and verify a face to the name on the roster and mark them off. (Tr. 64) After the discrepancy was corrected, the claimant was brought into the office where he admitted that he had counted part of the barracks, but not the other part. "Therefore, he didn't actually conduct an accurate count." Mr. Brandon went on to state that this was a serious violation and a termination offense. He consequently prepared a report, due to the fact he did not have the authority to hire or fire. A hearing would be conducted to make the final decision. (Tr. 65) Mr. Brandon

further stated he prepared the report, and it got sent up and “I guess Mr. Mead was terminated.” He also testified he never had any discussions with the claimant after the termination which he could recall. (Tr. 66)

Under cross-examination, Mr. Brandon was not sure if he had seen the specific workers’ compensation document that was presented to him but admitted that he had seen workers’ compensation information before. (Tr. 72) The document that was admitted into the record would have been the last or fourth document admitted into the record by the claimant and it was a the Arkansas Workers’ Compensation Form AR-P, which contained the workers’ compensation notice to employers and employees. (See, “Claimant’s Exhibit 4”)

The claimant was re-called and he testified that he had never seen “Claimant’s Exhibit 4”. (Tr. 73)

The claimant’s first exhibit admitted into evidence without objection was a document signed by Doctor Kevin Seffen, Jr., which provided that it was his opinion, based upon a reasonable degree of medical certainty as the treating physician of the claimant, that his employment at the Arkansas Department of Corrections at the North Central Unit for the past eight (8) years, requiring him to stand and/or walk as a correctional officer, was the major reason (more than 50%) of his need for the treatment for his feet and/or his knees. Even though the claimant had a pre-existing disease or condition, his work was the major reason (more than 50%) for his need for treatment and the claimant should, therefore, be entitled to medical treatment for this work-related problem under Arkansas law. Therefore, the major cause (more than 50%) of the need

for treatment and present disability arises out of this work as a prison guard for these past eight (8) years. (Cl. Ex. 1, P. 1)

Claimant's second exhibit was the deposition of the claimant. In the deposition, the claimant testified among other things that he developed bone spurs on his heels, and then developed a hump on the back of his heel. He stated he went to see his family doctor, Dr. Warr, who immediately referred him to a foot specialist, Dr. Steffen. (Cl. Ex. 2, P. 21) His last supervisor was Lieutenant Brandon. (Cl. Ex. 2, P. 27)

In the deposition, he also clarified the situation in regard to his depression. His wife was disabled and had "like six surgeries, and five or six surgeries on her back." "I don't remember how many." They went to Florida to assist her in getting off her medications and deal with her pain. She returned home much better. Consequently, the claimant testified he was doing much better upon arriving in Calico Rock. However, depression again occurred. The claimant stated that he had to call Lieutenant Poole to get off the tower. He was afraid to be on tower duty for six (6) hours a night with a loaded gun. "It was a real practical way to go out." (Cl. Ex. 2, P. 29-30)

The claimant also explained the problem with the prisoner count and being "fired." (Cl. Ex. 2, P. 35) He appealed the decision to terminate his employment to Little Rock, but nothing changed. (Cl. Ex. 2, P. 40)

In regard to his right foot surgery by Dr. Steffen, the claimant stated he was off work for six (6) weeks after the surgery, and he thought he was fired in June or August. He had only been back to work for two (2) days, when he was terminated. (Cl. Ex. 2, P. 44-45) The claimant also confirmed there were no additional surgeries on

either foot and none were planned at the time of the deposition. The claimant also admitted he was able to drive and did not need a walker or a cane. (Cl. Ex. 2, P. 47-48)

In regard to the antique store, the claimant started and ran for about a year, the claimant stated, “And I got to where I couldn’t hardly stand up. My knees bother me and my feet. So I just - - and it wasn’t doing no great shakes, and so I closed it down after a year.” (Cl. Ex. 2, P. 50)

The “Claimant’s Exhibit Three”, the deposition of Dr. Kevin Steffen, Jr., DPM, a podiatrist in Mountain Home, was admitted without objection. In the deposition, Dr. Steffen testified that in his practice, “we don’t really worry about spurs on the back of the heel much. It’s usually the Achilles tendon where it attaches to the spur that we usually try to treat and fix. And so we kind of started from there and started my typical conservative approach of treating the Achilles.” Dr. Steffen referred to the first exhibit of the deposition, a report of the first patient encounter with the claimant, which provided the claimant suffered from Achilles tendinitis and a posterior heel spur of the right. (Cl. Ex. 3, P. 9 -11)

Dr. Steffen was questioned about the type of activity or injury that causes Achilles tendinitis and he stated as follows:

“Typically, a tendinitis is an overuse-type injury where, you know, you’re putting the foot through a specific activity over and over again that the tendon just doesn’t typically like. And then you’ll get that inflammation and injury to that tendon, and it causes the pain eventually. It could be, you know, anything from jumping, walking, stairs. Just like I said, I’ve just seen walking on flat surfaces cause that, particularly if you have a tightness to that Achilles tendon or the calf muscle.”

Dr. Steffen agreed this was typically an overuse-type injury. When the claimant came in, he stated he was on his feet a lot. A heel spur is usually from a chronic strain on the

Achilles tendon or plantar fascia, which is a big ligament on the bottom of the foot. (Cl. Ex. 3, P. 12-14)

The claimant presented to Dr. Steffen multiple times per the medical records that were made part of the deposition, with the claimant's surgery performed on August 18, 2017, for the right foot. Dr. Steffen was questioned about seeing the claimant on August 23, 2017, about five (5) days after the surgery, and he stated it appeared that the claimant was doing fine at that point and there was talk about him returning to weight bearing, without a boot. The medical report of August 30, 2017, provided that the right foot of the claimant was feeling better than the left and Dr. Steffen felt that this was unusual since, it was only two (2) weeks after surgery. (Cl. Ex. 3, P. 26-27) The claimant returned to Dr. Steffen on March 12, 2018, after being released in September of 2017, having numbness and a little bit of pain in the right heel, as well as numbness in the opposite foot. (Cl. Ex. 3, P. 34) Dr. Steffen went on to opine as follows:

“Typically, when I hear numbness in both feet, I start worrying about things like neuropathy or back issues that might be causing impingement of a nerve that might cause numbness. And that's the radiculopathy that I put down as a diagnosis there, (referring to the report of March 12, 2018) is pain in the foot that's radiating from somewhere like the back.” (Cl. Ex. 3, P. 35)

Dr. Steffen was also questioned extensively about the report which he signed and was attached as exhibit 25 of the deposition. (The report was also referred to as the “To Whom It May Concern Letter” which was also Cl. Ex. 1, P. 1) Dr. Steffen stated he did not type the report and, “I think we talked to somebody that helped me come up with it.” “I have to assume maybe his lawyer or something.” He admitted to receiving it from somebody. (Cl. Ex. 3, P. 36) The following questioning then occurred:

Q. Okay. And when you signed this To Whom It May Concern letter in March of 2019, did you know at that time when you signed this that he had not worked for the department of corrections since October 2017?

A. I did not know when he last worked there. I knew he was not working there any longer.

Q. Did you know if he was working anywhere else?

A. I do not know that information.

Q. When he came back in to see you in March of 2018, did he happen to tell you if he was working anywhere else?

A. Not that I recall.

Q. So the fact of the matter is you don't know after - - other than what he's told you about working at the department of corrects or what this To Whom It May Concern letter told you about his job at the department of corrections, you don't know specifically about him employment record, do you?

A. Well, I know from - - I know that when we first started treating him that he was working there. And that was - - so from that time until I released him, I knew that I was working with him - - or that he was working there. That was his job. Then I discharged him after the procedure, whenever the - - I guess that was, what, September. And at that point, that's when I was done with him for that treatment of that procedure. And after that, no, I don't know what happened after that.

Dr. Steffen admitted he had talked to the claimant about being on his feet for his job. The following questioning then occurred:

Q. Okay. And during the year of 2017 while you were treating him and he was doing - - get the Topaz procedure and all of that, did you think at that point or decide at that point that his condition and his foot and ankle problems were probably related to his job or not?

A. I would probably say that if he was not on his feet and not doing that job, that his foot probably would not have hurt so much as it did, you know, if he had something like what I do where I get up and walk and then sit down for ten, 15 minutes and talk to somebody, then stand up and - - you know, frequent resting and sitting. I don't know that he would have the issues.

Q. Okay. And would that be true concerning more or less any kind of employment he might have that would require him to be on his feet, or is that simply - - or specifically about his job at the department of correction?

A. I think his job, from my standpoint, was a lot of standing and a lot of walking and a lot of time on his feet taking a lot of steps throughout the day. And I think that aspect of it is what the issue is. (Cl. Ex. 3, P. 39-40)

Dr. Steffen also admitted he was okay with the claimant returning to work. (Cl. Ex. 3, P. 41) Dr. Steffen was then questioned about how his opinion that the claimant could return to work squared up with his opinion in the To Whom It May Concern Letter, that the claimant's problems were related to his job at the department of corrections and his response was as follows:

“So from my perspective, what he came in for in March was the not the same issue that we had in the previous year. Because the previous year we never discussed any numbness, anything like that. And then every time I've seen Mr. Mead from March on, we've always discussed some sort of numbness or issue like that, which is something different than just his Achilles issue that he had.”

“So I don't know why he has the numbness. I think it's a back issue. I'm not a back expert so I don't know. I've tried to - - and I don't recall if he's gotten it checked or not. But that - - I've been trying to get him to do that to try to figure out why he was having this new issue of the numbness in March.” (Cl. Ex. 3, P. 42)

Dr. Steffen further testified in his deposition that the claimant started complaining of pain in both feet in June of 2021, the year of the deposition. He stated the claimant mentioned numbness in the left foot and they started talking about the persistent numbness and shooting pain in his feet. Dr. Steffen was also aware that the claimant was diabetic. He opined in his deposition that diabetes “may be one of the number one causes of neuropathy, which is a big issue. I deal with a lot of neuropathy.” (Cl. Ex. 3, P. 46-47) He went on to state as follows:

“So - - because he was already taking medicine for neuropathy or paresthesias that are pain due to nerve pain, which was the gabapentin. And he was just having issues with walking and standing and pain. I think he mentioned his knees from his knees to his ankles.”

“And because he was already on medicine - - he had the diagnosis of stenosis in the back - - and he still was having pain in the back of the legs and still had that tightness in the back of the legs. I recommended physical therapy. So I gave him a prescription for therapy. They usually work with him to help strengthen the legs to stretch things out and things to try to get him walking better.” (Cl. Ex. 3. P. 48)

The nature of the pain is a lot different now (at the time of the deposition in 2021) than before. (Cl. Ex. 3. P. 49) “So I’m concerned that it may not be tendinitis at this point. But I guess there is a chance that maybe if we do an MRI down the road, maybe it still is tendinitis.” (Cl. Ex. 3, P. 50)

Dr. Steffen opined that he believed the claimant’s job duties contributed to the pain and the Achilles tendinitis. (Cl. Ex. 3, P. 52)

Under cross-examination, Dr. Steffen was questioned about objective findings and not just taking the claimant’s word for his problems. He was also questioned about swelling and inflammation and his observation of edema throughout the medical records. (Cl. Ex. 3, P. 54) Dr. Steffen stated that Achilles tendinitis was common in active people such as athletes and that also repetitive work can be a cause. (Cl. Ex. 3, P. 55) In regard to the numbness, Dr. Steven agreed that besides diabetes, it can be caused by nerves that are close to a tendon being treated. He also agreed that the problems the claimant was being treated for was at least 51% due to the claimant’s walking, running, and going up and down stairs due to working as guard taking care of two (2) barracks. He also agreed that foot problems contribute to knee problems, stating that definitely the knee and the Achilles are associated. (Cl. Ex. 3, P. 56-57)

Dr. Steffen added, “So my specialty is podiatry. So I typically go below the knee. So I don’t know if it’s fair for me to comment on exactly what could cause the knee

condition that he has. I have had people to have foot issues that do end up with knee and hip and back issues. But for him specifically, I don't know." (Cl. Ex. 3, P. 59)

On re-direct, Dr. Steffen agreed that he sees patients that develop tendinitis in the Achilles tendon that is not job related, and due to an overuse injury. (Cl. Ex. 3, P. 62)

In addition to the testimony of Dr. Steffen in the deposition, a Mayo Clinic article on Achilles tendinitis was admitted into the record as exhibit two, which provided that the injury can occur from over-use and most commonly occurs in runners who have suddenly increased the intensity of their runs. (Cl. Ex. 3, Exhibit Two attached) An operative note at Baxter Regional Medical Center was also attached which provided a postoperative diagnosis of planter fasciitis right, and Achilles tendonitis, right.

In addition a report dated October 19, 2021, from Dr. Steffen provided the claimant presented for a follow-up of pain in both feet, but is no longer complaining of back pain. He complains of burning, paresthesias, and cramping of the feet, which is worse at the end of the day. Mild edema with varicosities were noted bilaterally, tightness to posterior muscles bilaterally, with no specific pain to palpitation to exam. (Cl Ex. 3, Exhibit Four attached) This report was a follow up to the report from Dr. Steffen dated June 28, 2021, which provided that the claimant was suffering from stenosis in the neck and lower back and had been placed on Gabapentin and recently been diagnosed with diabetes. A second article was also made part of the deposition. (Cl. Ex. 3, Exhibit 5 attached) It provided that there could be an association between knee osteoarthritis and Achilles Tendinopathy. The report mentioned that although in their practice, they had noticed that individuals with symptomatic knee osteoarthritis frequently complained of pain or swelling above the Achilles tendon, they had found no studies that evaluated the situation.

The claimant's final exhibit was the Arkansas Workers' Compensation Form AR-P. (Cl. Ex. 4)

The respondent's first exhibit consisted of twenty-four (24) pages of medical evidence which was admitted into evidence, without objection. The claimant presented to Ferdowsian Foot and Ankle Specialty Clinic thirteen (13) times starting on March 17, 2017, with the last visit of record on March 12, 2018. The claimant was seen by Dr. Steffen, a podiatrist on each visit, and these visits were discussed and reviewed in the deposition of Dr. Steffen that was also introduced into to the record and discussed above.

Respondents Exhibit Two, which consisted of documentary evidence, was also offered to be introduced into the record, but an objection was made as to the admissibility of the documents, and this matter was taken under advisement at the time of the hearing and will be discussed below. The documents included a request for FMLA leave that was signed by the claimant on May 2, 2017, and an FMLA leave approval dated May 11, 2017. (Resp. Ex. 2, P. 1-2) A second and third FLMA request was made, with an approval issued on August 28, 2017. (Resp. Ex. 2, P. 3-7)

A witness statement dated October 24, 2017, and signed by the claimant, provided that the claimant had miscounted a prisoner head count. (Resp. Ex. 2, P. 8) A Statement of Facts Report was also issued by Lt. Christopher Brandon on the same date in regard to the prisoner count, and the report provided that the writer believes "DISCAHRGE" to be consistent with the employee violation. (Resp. Ex. 2, P. 9-11) A letter dated October 25, 2017, from Warden Stephen D. Williams and addressed to the claimant, provided that after review, it was found that the claimant had not completed a roster count as directed and then verbally provided false information. Consequently, there was no option but to

terminate the claimant's employment. (Resp. Ex. 1, P. 12-14) A form with a mail date of November 6, 2017, from the Department of Workforce Services provided the claimant had failed to perform his job duties and had falsified information. (Resp. Ex. 2, P 15-16) This decision was appealed to the Arkansas Appeal Tribunal by the claimant and a hearing officer confirmed the decision and mailed the decision on January 4, 2018. (Resp. Ex 2, P. 17-18) This decision was later confirmed by the Arkansas Board of Review on February 28, 2018. (Resp. Ex. 2, P. 19-21)

An Arkansas Form C was filed by the claimant on or about April 15, 2019, and stated the claimant had sustained a gradual onset injury to both of his feet and knees. A Form 2 prepared by the Department of Corrections provided that the claimant had previously been receiving medical treatment for his injuries before October 24, 2017, that the claimant had filed paperwork for FMLA, and that requests to take the claimant's recorded statement were to no avail. (Resp. Ex. 2, P. 22-23)

DISCUSSION AND ADJUDICATION OF ISSUES

In regard to the primary issue of compensability regarding the lower extremity, specifically the claimant's right and left foot, as well as the right and left knee, the claimant has the burden of proving, by a preponderance of the evidence, that he is entitled to compensation benefits for the injury under the Arkansas Workers' Compensation Law. In determining whether the claimant has sustained his 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).

The initial issue to be determined is the admissibility of the “Respondent’s Exhibit Two.” The Workers’ Compensation Commission has broad discretion with reference to the admission of evidence, and its decision will not be reversed absent a showing of an abuse of discretion. *Brown v. Alabama Elec. Co.*, 60 Ark. App. 138, 959 S.W.2d 753 (1998). The Commission is given a great deal of latitude in evidentiary matters, specifically, Ark. Code Ann. § 11-9-705(a) which states that the Commission “shall not be bound by technical or statutory rules of evidence or by technical or formal rules of procedure.” Additionally, the Commission is directed to “conduct the hearing in a manner as will best ascertain the rights of the parties.” Ark. Code Ann. § 11-9-705(a); *Clark v. Peabody Testing Service*, 265 Ark. 489, 579 S.W.2d 360 (1979). In regard to the present matter, the evidence that was objected to corresponds with the testimony of the witnesses and helps the Commission understand the facts and consequently is found to be admissible.

In the present matter before the Commission, the claimant testified he started having problems with his feet, which consisted of a numbness in his feet, with the primary problem being his right foot. The foot problem started approximately a year after he started work at the Calico Rock Unit, and after working for a time at other correction facilities. The claimant testified he worked 12-hour shifts and he might be on his feet nine or ten hours walking on concrete, and also going up and down stairs, with the remainder of the time spent sitting in a chair. The claimant initially thought his feet were just “sore”

but he developed bone spurs on his heels and a lump on the back of the right heel. He initially filed for FMLA thinking the problems with his feet were not work-related.

The claimant's supervisor, Christopher Brandon, testified he was the building captain at the Department of Corrections and had worked there for sixteen (16) years. He remembered the claimant talking about seeing a doctor and obtaining treatment for his feet. In regard to the claimant complaining of sore feet, Mr. Brandon testified, "everybody has sore feet. I mean, I have sore feet too." "We walk a lot, do a lot of walking, some more than others." "I don't think it's uncommon for anybody that's employed that spends time on their feet to have sore feet." He also testified he was not sure if he had seen the Form AR-P, in regard to notice for employers or employees.

Due to the problems with his feet, the claimant went to see his primary care physician, Dr. Warr, who referred him to Dr. Steffen, a podiatrist. Doctor Steffen initially treated the claimant conservatively, but ultimately performed surgery on the right foot on August 18, 2017. The claimant was placed in a boot after the surgery and was unable to work for a period of time due to the boot and the obvious requirement for a guard at a correction facility to be mobile. In his deposition, Dr. Seffens testified that in his practice, "we don't really worry about spurs on the back of the heel much. It's usually the Achilles tendon where it attaches to the spur that we usually try to treat and fix. And so we kind of started from there and started my typical conservative approach of treating the Achilles." In his deposition he stated that typically tendinitis is an overuse-type injury where, you know, you're putting the foot through a specific activity over and over again that the tendon just doesn't typically like, and went ahead to say that it was typically an overuse-type of injury.

Dr. Steffen later signed a document, that he admitted he did not prepare, which provided that it was his opinion based upon a reasonable degree of medical certainty as the treating physician of the claimant, that the claimant's employment at the Arkansas Department of Corrections at the North Central Unit for the past eight (8) years requiring him to stand and/or walk as a correctional officer was the major reason (more than 50%) of his need for the treatment for his feet and/or his knees. Even though the claimant had a pre-existing disease or condition his work was the major reason (more than 50%) for his need for treatment, and the claimant should, therefore be entitled to medical treatment for this work-related problem under Arkansas law. Therefore, the major cause (more than 50%) of the need for treatment and present disability arose out of his work as a prison guard for these past eight (8) years.

Dr. Steffen was questioned at length in his deposition about this document. He testified that he would say that if the claimant was not on his feet doing his job, his foot would probably not have hurt as much. His job included a lot of standing and walking. He also testified that when the claimant came into his office in March, he did not have the same issues that he had the previous year, when the numbness was not mentioned. Every time he saw the claimant since that March date, numbness was discussed. The claimant started complaining of pain in both feet in June of 2021. Dr. Steffen was aware that the claimant had been diagnosed as a diabetic. He stated that since the claimant was on medication for neuropathy or paresthesia, and was having issues with walking, standing, and pain from his knees to his ankles, he provided a prescription for therapy to strengthen the legs. He again stated he believed that the claimant's job duties contributed

to his pain and the Achilles tendonitis and agreed that throughout the medical records, he had found edema, which resulted in swelling and inflammation.

It is also noted that Dr. Steffen volunteered that his specialty was Podiatry, and he did not know if it was fair for him to comment on exactly what could cause the knee condition.

Under workers' compensation law in Arkansas, a compensable injury must be established by medical evidence supported by objective findings and medical opinions addressing compensability and 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 by a specific accident, 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). In the present matter, the claimant failed to show that he suffered an injury caused by a specific incident identifiable by time and place of occurrence because he failed to identify a specific work event that caused his injury. Ark. Code Ann § 11-9-102(4)(A)(i). There was no proof of

an acute trauma while at work and no report of an injury or an incident was made to his co-workers or supervisors. See, *Kimble v. Labor Force Inc.*, 2013 Ark. App. 601, 430 S.W.3d 156 (2013).

However, with that said, an injury does not have to be accidental and a specific incident in order to qualify as an aggravation/new injury. It must, however, fall within one of the definitions of a compensable injury as set forth in Ark. Code Ann. § 11-9-102(4)(A). The claimant testified he constantly had to walk on concrete floors and climb stairs for seven (7) to nine (9) hours during a twelve-hour shift, and his feet started hurting after he transferred to the unit located at Calico Rock. The claimant's supervisor basically agreed with the claimant's testimony, testifying that everybody's feet hurt, including his own.

The 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 objective medical evidence is not essential to establish the causal relationship between the injury, where objective medical evidence establishes the injury's existence, and a preponderance of other non-medical evidence establishes a causal relation to a work-related incident. *Wal-Mart Stores v. Van Wagner*, 337 Ark. 443, 990 S.W.2d 522 (1999); *Wal-Mart Stores v. Leach*, 74 Ark. App. 231, 48 S.W.3d 540 (2001).

Here the medical records and the testimony of Dr. Steffen provide that the claimant was suffering pain and edema in the right foot, which resulted in the surgery of his right foot and the Achilles tendon. The treating physician opined that he observed objective

findings of edema involving both feet and believed the claimant's problems were work-related and caused by the excessive standing. There were no medical records to show that the claimant had a history of foot pain or problems that required him to seek medical care for his feet prior to his job at the Calico Rock Corrections Unit. Under Arkansas Workers' Compensation law, it is clear 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).

In analyzing whether an injury is caused by rapid repetitive motion, the standard is two (2) pronged: (1) the task must be repetitive, and (2) the motion must be rapid. *Galloway v. Tyson Foods, Inc.*, 210 Ark. App 610, 378 S.W. 3d 210 (2010). Here it is clear that the claimant's duties were repetitive in that he was required to walk back and forth for hours at a time during his 12-hour shift, moving his feet and legs in a constant motion, much like an assembly line worker with his hands and arms, and these continuing steps were sufficient to satisfy the requirements for rapid repetitive motion. See, *Pearson v. Worksource*, 2011Ark. App. 751, 387 S.W. 3d 274 (2011)

Here the medical opinion issued by Doctor Steffen, the treating physician, corresponds with the testimony of the claimant and his supervisor, Christopher Branden. This evidence is sufficient to satisfy the requirements under Ark. Code Ann. § 11-9-102(4)(A)(1) that the injury arose out of his employment; (2) caused internal or external physical harm to the body requiring medical services; (3) was caused by rapid repetitive motion which in this case was spending hours walking on concrete floors; (4)

which was the major cause of the need for treatment; (5) and was established by medical evidence supported by objective findings.

Based upon the above, there is no alternative but to find the claimant's problems with both his right and left feet are work-related arising from his employment, and the claimant has satisfied the burden of proof to satisfy the requirement that the injuries to his feet are work-related and compensable.

In regard to the claimed knee injuries, it is noted that the Dr. Steffen volunteered that his specialty was podiatry and that he goes below the knee. He himself questioned whether it was fair for him to comment on exactly what could cause the knee condition of the claimant. In addition, Ark. Code Ann. § 17-96-101 provides that "Podiatric medicine" means the diagnosis and medical, mechanical, and surgical treatment to the human foot and ankle and "Podiatrist" means a physician legally licensed to practice podiatric medicine. Based upon the above, and the lack of objective findings regarding the claimant's left and right knee, there is no alternative but to find that the claimant has failed to satisfy the required burden of proof in regard to the claimant's knee issues.

Based upon the available evidence in the case at bar, there is no alternative but to find that the claimant has satisfied the required burden of proof to show that the injuries to both feet are in fact work-related and compensable. However, there is no alternative but to find that the claimant has failed to satisfy the required burden of proof in regard to the claim of his knee issues.

In regard to the medical, the Arkansas Compensation Act also provides that an employer shall promptly provide for an injured employee such medical treatment as may be reasonably necessary in connection with an injury received by the employee. Ark.

Code Ann. § 11-9-508(a). The employee has the burden of proving, by a preponderance of the evidence, that medical treatment is reasonably necessary. *Stone v. Dollar General Stores*, 91 Ark. App. 260, 209 S.W. 3d 445 (2005). Preponderance of the evidence means the evidence having greater weight or convincing force. In the present matter, there is no alternative but to find that the claimant has satisfied the required burden of proof that he is entitled to reasonable and necessary medical treatment for his right and left foot, but failed to satisfy this requirement in regard to his knees.

Based upon the evidence available, and after weighing the evidence impartially, without giving the benefit of the doubt to either party, it is found that the claimant has satisfied the burden of proof to show he suffered a compensable work-related injury to both his right and left foot and is entitled to reasonable and necessary medical treatment for these injuries. He has failed to satisfy the required burden of proof for the claimed injury to the right and left knees.

The claimant and his attorney are entitled to the appropriate legal fees as spelled out in Ark. Code Ann. § 11-9-715.

This Award shall bear interest at the legal rate pursuant to Ark. Code Ann. § 11-9-809. 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