

NOT DESIGNATED FOR PUBLICATION

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. G700972

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| JOSE MORA, EMPLOYEE | CLAIMANT |
| XPRESS BOATS, INC., EMPLOYER | RESPONDENT |
| BRIDGEFIELD CASUALTY INSURANCE CO. INSURANCE CARRIER/TPA | RESPONDENT |

OPINION FILED DECEMBER 14, 2021

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

Claimant appears *pro se*.

Respondents represented by the HONORABLE MICHAEL E. RYBURN, 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 November 1, 2019. 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 the within claim.
2. I hereby accept the above stipulations as fact.
3. The claimant failed to prove by a preponderance of the credible evidence that he sustained a compensable right foot injury, arising out of and in the course of his employment with the respondent-employer on February 2, 2017.

We have carefully conducted a *de novo* review of the entire record herein and it is our opinion that the Administrative Law Judge's 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 November 1, 2019 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 credible evidence that he sustained a compensable right foot injury, arising out of and in the course of his employment with the respondent-employer on February 2, 2017.

For the claimant to establish a compensable injury as a result of a specific incident, the following requirements of Ark. Code Ann. §11-9-102(4)(A)(i) (Repl. 2012), must be established: (1) proof by a preponderance of the evidence of an injury arising out of and in the course of employment; (2) proof by a preponderance of the evidence that the injury caused internal or external physical 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(4)(D), establishing the injury; and (4) proof by a preponderance of the evidence that the injury was caused by a specific incident and is identifiable by time and place of occurrence. *Mikel v. Engineered Specialty Plastics*, 56 Ark. App. 126, 938 S.W.2d 876 (1997).

A pre-existing disease or infirmity does not disqualify a claim if the employment aggravated, accelerated, or combined with the disease or infirmity to produce the disability for which compensation is sought. See *Nashville Livestock Commission v. Cox*, 302 Ark. 69, 787 S.W.2d 664 (1990); *Conway Convalescent Center v. Murphree*, 266 Ark. 985, 585 S.W.2d 462 (Ark. App. 1979); *St. Vincent Medical Center v. Brown*, 53 Ark.

App. 30, 917 S.W.2d 550 (1996). The employer takes the employee as he finds him. *Murphree, supra*. In such cases, the test is not whether the injury causes the condition, but rather the test is whether the injury aggravates, accelerates, or combines with the condition. However, although a disabling symptom of a pre-existing condition may be compensable if it is brought on by an accident arising out of and in the course of employment, the employee's entitlement to compensation ends when his condition is restored to the condition that existed before the injury unless the injury contributes to the condition by accelerating or combining with the pre-existing condition. *See Arkansas Power & Light Co. v. Scroggins*, 230 Ark. 936, 328 S.W.2d 97 (1959).

The evidence preponderates that the claimant's right foot injury satisfies the requirements of compensability. The claimant sustained an injury while performing employment services on February 2, 2017. The claimant offered credible testimony regarding his injury. The claimant testified as follows:

Q And February 2, 2017, is the day that we have indicated that you were injured. Do you remember that day?

A You mean this last one about the amputation?

Q Yes.

A So I arrived to work and I was going outside to pick up these things we call consoles and then I came back inside and, when I was getting down off the forklift, I stepped down kind of hard and there was metal all over the place and I kind of felt like something poked me and I took my tennis shoe off and that's when I found that little – like a thorn in my foot.

Q Where in your foot did you find it?

A Inside. It was inside the foot.

In addition to the claimant's testimony that he injured his foot while performing employment services on February 2, 2017, the respondents presented two witnesses who testified that the claimant informed them that he injured his foot that day. Chris Overturf, a witness for the respondents, testified that he was told that the claimant stepped on something. Although Overturf could not recall seeing a piece of metal that came from the claimant's foot, he did testify that the claimant told him his foot was hurting.

Additionally, John Gillham offered testimony as a respondents' witness. Gillham testified as follows:

Q Okay. Was there – tell me what they told you.

A They said that he had been hurt on Thursday and that they felt that he needed to go see –

seek medical attention. Said it wasn't an emergency, so I began asking him, 'So what was the circumstances?' And they said he had gotten off the forklift – they didn't mention jumping – but he'd gotten off the forklift and felt like he had sprained his ankle slightly, so he took off his shoes and socks and looked and said that there had been a little red spot on – and my understanding was on the side of his foot. A little red spot, he'd tried squeezing it, no blood came out. So at that point –

Q Just a minute now. Did you see this?

A No.

Q You didn't see his foot?

A No.

Q He explained this to you?

A Right.

The claimant sought treatment four days after the work accident, giving a history of a piece of metal going through his shoe on February 2, 2017. There were objective findings of the injury in the form of "swelling, redness, and drainage to distal foot (rt)". In addition, this injury required medical treatment in the form of "amputation of toes 2 and 3, right foot along with excision of metatarsal heads of toes 2 and 3, right foot" and "aggressive irrigation and debridement of wound".

The claimant was treated by Dr. Robert Olive who performed the claimant's amputations. Dr. Olive provided an opinion to the claimant's attorney regarding his injury. Dr. Olive's letter stated, in pertinent part:

This letter is written at your request to provide further information on my patient Jose Mora. I have reviewed my records as well as the records from Dr. Kleinhenz's office.

Mr. Mora's on the job injury is greater than 50% responsible for the subsequent loss of his toes. The diabetes certainly exacerbated the situation, but the amputation would not have been required had he not suffered the injury initially.

It is undisputed that the claimant had the pre-existing condition of diabetes, which caused neuropathy in his feet. However, prior to his work accident, the claimant had been able to adequately care for his feet without the need for any amputations. The claimant was able to perform his work duties without any problems until he stepped on the metal object at work. It was not until after his work accident that the claimant experienced swelling and draining in his right foot which ultimately resulted in the amputation of his 2nd and 3rd toes.

Based on the aforementioned, I find that the claimant has established by a preponderance of the evidence that he sustained a compensable right foot injury.

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

M. Scott Willhite, Commissioner