

**BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION  
CLAIM NO. H204537**

**JAMES E. BOOTH,  
EMPLOYEE**

**CLAIMANT**

**WEYERHAEUSER NR CO., INC.,  
EMPLOYER**

**RESPONDENT**

**WEYERHAEUSER NR CO., INC./SEDGWICK CLAIMS  
MG'T.Cindy SERVICES, INC.,  
INSURANCE CARRIER/TPA**

**RESPONDENT**

**OPINION FILED DECEMBER 6, 2023**

Hearing conducted on September 7, 2023, before the Arkansas Workers' Compensation Commission (the Commission), Administrative Law Judge (ALJ) Mike Pickens, in Texarkana, Miller County, Arkansas.

The claimant was represented by the Honorable Gregory R. Giles, Moore, Giles & Matteson, Texarkana, Miller County, Arkansas.

The respondents were represented by the Honorable Guy Alton Wade, Friday, Eldredge & Clark, Little Rock, Pulaski County, Arkansas.

**INTRODUCTION**

In the prehearing order filed May 16, 2023, the parties agreed to the following stipulations, which they modified and affirmed on the record at the hearing:

1. The Arkansas Workers' Compensation Commission (the Commission) has jurisdiction over this claim.
2. The employer/employee/carrier-TPA relationship existed at all relevant times including June 13, 2022, when the claimant alleges he sustained a "compensable injury" to his left ankle.
3. The claimant's average weekly wage (AWW) was \$1,196.14, which is sufficient to entitle him to weekly compensation rates of \$790.00 for temporary total disability (TTD), and \$593.00 for permanent partial disability (PPD) benefits.
4. The claimant applied for and received short-term disability (STD) benefits from June 14<sup>th</sup>, 2022, through October 28<sup>th</sup>, 2022, at the rate of \$226 for 26 weeks. Therefore, pursuant to *Ark. Code Ann.* Section 11-9-411 (2023 Lexis

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Replacement) the respondents are entitled to a dollar-for-dollar off-set against any TTD benefits that awarded to the claimant, if any.

5. The respondents have controverted this claim in its entirety.
6. The parties specifically reserve any and all other issues for future litigation and/or determination.

(Commission Exhibit 1 at 1-2; Hearing Transcript at 3-5; 59-60). Pursuant to the parties' mutual agreement the issues litigated at the hearing were:

1. Whether the claimant sustained a "compensable injury" within the meaning of the Arkansas Workers' Compensation Act (the Act) to his left ankle on June 13, 2022.
2. If the claimant's alleged injury is deemed compensable, the extent to which he is entitled to medical and indemnity benefits.
3. Whether the claimant's attorney is entitled to a controverted fee on these facts.
4. The parties specifically reserve any and all other issues for future litigation and/or determination.

(Comms'n Ex. 1 at 2, T. 3-5; 60).

The claimant contends he sustained a compensable injury to his left ankle on June 13, 2022. He contends he is entitled to TTD benefits from June 14, 2022, through November 17, 2022, consistent with Stipulation No. 3, *supra*. The claimant contends the medical treatment he has received to date for his left ankle has been related to and reasonably necessary for treatment of his compensable injury; therefore, he contends the Commission should order the respondents to pay for this treatment, including but not limited to reimbursement for his out-of-pocket expense(s) and mileage totaling \$991.98, to date. In addition, the claimant contends he is entitled to additional

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medical treatment for his left ankle injury. Specifically, if the Commission deems the claimant's left ankle injury to be compensable, he intends to request his one (1)-time-only change of physician (COP) for the primary purpose of determining his permanent anatomical impairment, if any, among other purposes as the COP may deem related to and reasonably necessary in light of his injury. Finally, the claimant contends the Commission should order the respondents to pay a controverted attorney's fee as provided by law. (Comms'n Ex. 1 at 2-3; T. 55-56).

The respondents contend the claimant cannot meet his burden of proof in demonstrating he sustained a "compensable injury" within the Act's meaning. Specifically, the respondents contend the claimant did not sustain an "accidental injury", was not within the course and scope of his employment, and/or was not performing employment services at the time of his alleged left ankle injury, which the respondent contend was idiopathic in nature. Therefore, the respondents contend the claimant is not entitled to any medical or indemnity benefits. (Comms'n Ex. 1 at 3; T. 54-55).

### **STATEMENT OF THE CASE**

The claimant, Mr. James Edward Booth (the claimant) is 47 years old. In 2016 he injured his left foot and ankle while working for Tyson when he caught the foot in a drain. He missed no work as a result of this injury, and an MRI of his left ankle performed on March 24, 2016, revealed some mild tendinosis. (Claimant's Exhibit 1 at 2; 2-3). He was diagnosed with a sprain of his left ankle and was able to return to full duty work thereafter with no restrictions. The claimant also had a history of lower back problems for which he drew long-term disability (LTD) at one time. (T. 16; 8-35; 36-39).

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The relevant facts of this claim concerning how the claimant's alleged left ankle injury occurred are undisputed. The claimant began his employment with Weyerhaeuser on April 26, 2022. The claimant admitted he had injured his left ankle in 1996 while working for Tysons, but said he missed no work as a result of this injury, and that he had no more problems with the left ankle thereafter. He testified that before he went to work for Weyerhaeuser he was required to undergo a company physical examination, which he passed. (T. 9-11).

Concerning the alleged left ankle injury at issue in this case, the claimant testified that on June 13, 2022, he was walking on the employer's premises from one building to another, from one work area to another, when he stepped from the grass to the concrete and that his left "ankle rolled" resulting in immediate and significant pain he felt radiate up into the area of his groin. (T. 15-19). He reported this injury almost immediately, and on the Form AR-N under the heading "Place of Accident" is written, "Slick Deck/Bark Hog Area." (Claimant's Exhibit 2 at 1; CX2 at 13-14; T. 15-19; 39-44).

The claimant initially was treated conservatively, but his treating orthopedic surgeon, Dr. Dwayne Daniels, eventually ordered an MRI which was conducted on August 8, 2022, which revealed a, "full thickness tear of the longus tendon" in his left ankle. (CX2 at 30A). Some of Dr. Daniels's clinic notes refer to the tear as having been, "spontaneous." (*e.g., see* Dr. Daniels's clinic note of September 1, 2022). Dr. performed surgery to correct this condition on August 24, 2022, and in a report dated November 21, 2022, Dr. Daniels stated the claimant had sustained no – zero percent (0%) – permanent anatomical impairment as a result of this left ankle injury. (CX2 at 43).

## **DISCUSSION**

### **The Burden of Proof**

When deciding any issue, the ALJ and the Commission shall determine, on the basis of the record as a whole, whether the party having the burden of proof has established it by a preponderance of the evidence. *Ark. Code Ann.* § 11-9-704(c)(2) (2023 Lexis Replacement). The claimant has the burden of proving by a preponderance of the evidence he is entitled to benefits. *Stone v. Patel*, 26 Ark. App. 54, 759 S.W.2d 579 (Ark. App. 1998). *Ark. Code Ann.* Section 11-9-704(c)(3) (2023 Lexis Repl.) states that the ALJ, the Commission, and the courts “shall strictly construe” the Act, which also requires them to read and construe the Act in its entirety, and to harmonize its provisions when necessary. *Farmers Coop. v. Biles*, 77 Ark. App. 1, 69 S.W.2d 899 (Ark. App. 2002). In determining whether the claimant has met his burden of proof, the Commission is required to weigh the evidence impartially without giving the benefit of the doubt to either party. *Ark. Code Ann.* § 11-9-704(c)(4) (2023 Lexis Repl.); *Gencorp Polymer Products v. Landers*, 36 Ark. App. 190, 820 S.W.2d 475 (Ark. App. 1991); *Fowler v. McHenry*, 22 Ark. App. 196, 737 S.W.2d 633 (Ark. App. 1987).

All claims for workers’ compensation benefits must be based on proof. Speculation and conjecture, even if plausible, cannot take the place of proof. *Ark. Dep’t of Corrections v. Glover*, 35 Ark. App. 32, 812 S.W.2d 692 (Ark. App. 1991); *Deana Constr. Co. v. Herndon*, 264 Ark. 791, 595 S.W.2d 155 (1979). It is the Commission’s exclusive responsibility to determine the credibility of the witnesses and the weight to give their testimony. *Whaley v. Hardees*, 51 Ark. App. 116, 912 S.W.2d 14 (Ark. App. 1995). The Commission is not required to believe either a claimant’s or any

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other witness's testimony, but may accept and translate into findings of fact those portions of the testimony it deems believable. *McClain v. Texaco, Inc.*, 29 Ark. App. 218, 780 S.W.2d 34 (Ark. App. 1989); *Farmers Coop. v. Biles, supra*.

The Commission has the duty to weigh the medical evidence just as it does any other evidence, and its resolution of the medical evidence has the force and effect of a jury verdict. *Williams v. Pro Staff Temps.*, 336 Ark. 510, 988 S.W.2d 1 (1999). It is within the Commission's province to weigh the totality of the medical evidence and to determine what evidence is most credible given the totality of the credible evidence of record. *Minnesota Mining & Mfg'ing v. Baker*, 337 Ark. 94, 989 S.W.2d 151 (1999).

It is a black letter principle of workers' compensation law that an employer takes the employee as he finds him; and an employment-related incident that aggravates a preexisting condition(s) is (are) compensable. *Heritage Baptist Temple v. Robison*, 82 Ark. App. 460, 120 S.W.3d 150 (Ark. App. 2003). Stated another way, a preexisting disease or infirmity does not disqualify a claim if the work-related incident aggravated, accelerated, or combined with the disease or infirmity to produce the disability for which the claimant seeks benefits. *Jim Walter Homes v. Beard*, 82 Ark. App. 607, 120 S.W.3d 160 (Ark. App. 2003). The aggravation of a preexisting, otherwise non-compensable condition by a compensable injury is itself compensable. *Oliver v. Guardsmark*, 68 Ark. App. 24, 3 S.W.3d 336 (Ark. App. 1999). An aggravation is a *new injury* resulting from an independent incident. *Crudup v. Regal Ware, Inc.*, 341 Ark. 804, 20 S.W.3d 900 (Ark. App. 2000) (Emphasis added). Of course, since it is a new injury resulting from an independent cause, any alleged aggravation of a preexisting condition must meet the Act's

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definition of a “compensable injury” in order for the claimant to prove compensability. *Farmland Ins. Co. v. Dubois*, 54 Ark. App. 141, 923 S.W.2d 883 (Ark. App. 1996).

Concerning the proof required to demonstrate the aggravation of a preexisting condition, our appellate courts have consistently held that since an aggravation is a *new injury*, a claimant must prove it by *new objective evidence of a new injury different than the preexisting condition*. *Vaughn v. Midland School Dist.*, 2012 Ark. App. 344 (Ark. App. 2012) (citing *Barber v. Pork Grp., Inc.*, 2012 Ark. App. 138 (Ark. App. 2012); *Grothaus v. Vista Health, LLC*, 2011 Ark. App. 130, 382 S.W.3d 1 (Ark. App. 2011); *Mooney v. AT & T*, 2010 Ark. App. 600, 378 S.W.3d 162 (Ark. App. 2010)). Where the only objective findings present are consistent with prior objective findings *or consistent with a long-term degenerative condition rather than an acute injury, this does not satisfy the objective findings requirement for the compensable aggravation of a preexisting condition injury*. *Vaughn*, 2012 Ark. App. 344, at 6 (holding that Arkansas courts have interpreted the Act to require “new objective medical findings to establish a new injury when the claimant seeks benefits for the aggravation of a preexisting condition”); *Barber, supra* (affirming the Commission’s denial of an aggravation of a preexisting condition claim *where the MRI findings revealed a degenerative condition, with no evidence of, and which could not be explained by, an acute injury*). (Emphasis added). Based on the aforementioned law as applied to the facts of this case, I am compelled to find the claimant has met his burden of proof in demonstrating his left ankle injury of June 13, 2022, constitutes a “compensable injury” within the Act’s definition.

The case at bar is both factually and legally similar to *White County Medical Center, LLC v. Johnson*, 2022 Ark. App. 262, 646 S.W.3d 245 (Ark. App. 2022). In *White County Med. Ctr.*, the

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claimant, who was a mental health technician whose job was providing care and support to patients undergoing mental health and substance abuse treatment, was simply walking around the unit checking on her patients when she turned a corner to go into a patient's room, felt a "pop" in her right ankle, reported the incident to her immediate supervisor, then to a co-worker whose job it was to handle workers' compensation claims. Although she was in pain, the claimant continued to work, and about a week later she felt a second "pop" in her right ankle simply while walking. *White Cty. Med. Ctr.*, 646 S.W.3d 248.

The claimant's treating physician initially diagnosed her with a sprained ankle, but referred the claimant to an orthopedic surgeon, Dr. Michael Weber, who suspected a ligament tear in the claimant's right ankle. An MRI confirmed Dr. Weber's suspicion, so the claimant underwent surgery to repair the torn tendon. *White Cty. Med. Ctr.*, 646 S.W.3d 249.

The ALJ issued an opinion finding the claimant had failed to prove a compensable ankle injury, apparently holding the ankle injury was idiopathic in nature. The Full Commission reversed the ALJ, finding that the claimant had in fact met her burden of proof in demonstrating the right ankle injury was compensable in that it was "unexplained", and not "idiopathic".

On appeal to the court of appeals the court affirmed the Full Commission's opinion, finding the claimant's right ankle injury was "accidental" in nature, and "unexplained," not "idiopathic." The court goes on to explain their reasoning in some detail, and to distinguish cases the appellant respondents cited in support of their position the claimant's right ankle injury was not "accidental", nor was it "unexplained", but was idiopathic and, therefore, not compensable within the Act's meaning. *White Cty. Med. Ctr.*, 646 S.W.3d at 250-251. The facts of the *White Cty. Med. Ctr.* case



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are remarkably similar to the case at bar. Therefore, for the same reasons our court of appeals set forth in *White Cty. Med. Ctr., supra*, I am bound by this precedent and compelled to find the claimant herein has met his burden of proof in demonstrating his right ankle injury was unexplained, not idiopathic and, therefore, compensable within the Act's meaning.

The Act defines "temporary total disability" as the period of time within the healing period when the claimant is totally incapacitated from earning wages. *Ark. Code Ann.* Section 11-9-501(b) (2023 Lexis Repl.); *Ark. State Highway Dep't v. Breshears*, 272 Ark. 244, 613 S.W.2d 392 (1981). The Act defines the "healing period" as, "that period for healing of an injury resulting from an accident." *Ark. Code Ann.* Section 11-9-102(2) (2023 Lexis Repl.). Whether the healing period has ended is a question of fact for the Commission to determine based on the evidence of record in each particular case. *Ketcher Roofing Co. v. Johnson*, 50 Ark. App. 63, 901 S.W.2d 25 (Ark. App. 1995). An employee who has sustained a compensable injury is not required to offer objective medical evidence in order to prove entitlement to TTD benefits. *Ark. Health Ctr. V. Burnett*, 2018 Ark. App. 427, 558 S.W.3d 408 (Ark. App. 2018). Here the claimant has met his burden of proof in demonstrating he is entitled to TTD benefits from June 14, 2022 – the day after his compensable left ankle injury – through November 17, 2022, the date his healing period ended and he was able to return to work.

Therefore, for the aforementioned reasons, I hereby make the following:

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

1. The Commission has jurisdiction of this claim.

2. The stipulations contained in the prehearing order filed May 16, 2023, which the parties modified and affirmed on the record at the hearing, hereby are accepted as facts.
3. The claimant has met his burden of proof pursuant to the Act in demonstrating he sustained a compensable injury to his left ankle on June 13, 2022. Therefore, pursuant to *Ark. Code Ann.* Section 11-9-508 (2023 Lexis Repl.), the respondents are responsible for payment of any and all of the claimant's reasonably necessary medical treatment including but not limited to his out-of-pocket expenses, related to his June 13, 2022, left ankle injury.
4. The claimant has met his burden of proof in demonstrating he is entitled to TTD benefits from June 14, 2022, through the end of his healing period, November 17, 2022.
5. The claimant's attorney is entitled to a full statutory attorney's fee based on the total amount of the controverted TTD benefits.
6. Pursuant to *Ark. Code Ann.* Section 11-9-411 (2023 Lexis Repl.), the respondents are entitled to take a dollar-for-dollar credit/off-set based on any and all such benefits paid to or on the claimant's behalf by any third-party payor(s).

### AWARD

The respondents are hereby directed to pay benefits in accordance with the "Findings of Fact and Conclusions of Law" set forth above. All accrued sums shall be paid in lump sum without discount, and this award shall earn interest at the legal rate until paid pursuant to *Ark. Code Ann.* Section 11-9-809, and *Couch v. First State Bank of Newport*, 49 Ark. App. 102, 898 S.W.2d 57 (Ark. App. 1995); *Burlington Indus., et al v. Pickett*, 64 Ark. App. 67, 983 S.W.2d 126 (Ark. App. 1998); and *Hartford Fire Ins. Co. v. Sauer*, 358 Ark. 89, 186 S.W.3d 229 (2004), subject only to the parties' statutory appeal rights.

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**IT IS SO ORDERED.**

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Mike Pickens  
Administrative Law Judge

MP/mp