

**BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION
CLAIM NO. H205803**

TRACY D. DECKER, EMPLOYEE

CLAIMANT

VS.

WHITE RIVER HEALTH SYSTEM, INC. EMPLOYER

RESPONDENT

**RISK MANAGEMENT RESOURCES,
CARRIER, TPA**

RESPONDENT

OPINION FILED MARCH 26, 2024

Hearing before Administrative Law Judge, James D. Kennedy, on the 21st day of February, 2024, in Mountain Home, Baxter County, Arkansas.

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

Respondents are represented by Kenneth P. "Casey" Castleberry, Attorney-at-Law, Little Rock, Arkansas.

STATEMENT OF THE CASE

A hearing was conducted on the 21st day of February, 2024. At the time of the hearing, the parties agreed that the issues were as follows: (1) Compensability of a gradual onset injury to claimant's right ankle; (2) Reasonable and necessary medical treatment for her injury; (3) Attorney fees. All other issues were reserved.

The respondents contend the claimant's current problems, if any, are not related to an alleged injury of November 15, 2021, are not compensable, and the claimant's alleged injury was not reported to the employer until August 15, 2022. The claimant self-terminated on November 19, 2021, with no notice and before her shift was over. Further, the respondents contend that the claimant got into an altercation with her son-in-law and fell off her porch on or about January 15, 2022.

A Prehearing Order dated October 10, 2023, provided that the parties stipulated that the Arkansas Workers' Compensation Commission has jurisdiction of the within claim and that an employer/employee/carrier relationship existed on or about November 15, 2021, and all relevant times thereto.

The Prehearing Order along with the claimant's and respondent's contentions are all set out in their respective responses to the Prehearing Questionnaire and made a part of the record without objection. The witnesses were Gabriel Don Decker, the husband of the claimant, and the claimant, Tracy Decker. 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 hear the testimony and observe the demeanor of the witnesses, the following findings of fact and conclusions of law are made in accordance with Arkansas Code Annotated §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/carrier relationship existed on November 15th, 2021, and at all relevant times.
3. That the claimant has failed to satisfy the required burden of proof to show that she sustained a gradual onset injury to her right ankle that was related to her work.
4. That, consequently, all other issues are moot.
5. If not already paid, the respondents are ordered to pay for the cost of the transcript forthwith.

REVIEW OF TESTIMONY AND EVIDENCE

The Prehearing Order, along with the prehearing questionnaires of the parties and the claimant's amended response to the prehearing questionnaire were admitted into the

record without objection. The claimant submitted two (2) exhibits that were admitted without objection. The respondents submitted six (6) exhibits that were admitted without objection.

The husband of the claimant, Gabriel Don Decker, was called as the first witness. He testified that he had been with the claimant for twenty-two (22) years as of June 31. He testified that when she injured her foot at work, she would initially come home and stay off of it as much as possible. She slowly had gotten worse and he would catch her in the driveway crying, before she would come into the house. “So, you know, she was in pain, and I knew something was wrong. Sometimes, she tried to attribute it to her fibromyalgia or other, you know things, just a bad day at work, things of that nature. Now, she’s – we can’t go to the store for long periods of time because she can’t walk around Walmart. Her ankle swells. She’s having to stay off of it. She’s in pain more than her medications help.” (Tr.pp. 7-8) He went on to state that he’s doing about ninety percent (90%) of the housework at this point. She had told him about twisting her ankle when she had to transfer patients sometimes, and she would have to push them in a wheelchair by herself, because there was not enough staff to assist her. (Tr.p. 9) She would have to push them across the street up an incline to the ER, where the patient would be admitted. “She was wheezing so bad and just having problems herself” because the patient was so heavy that she was trying to get over there. This happened on more than one occasion where she was required to push a two to three hundred (200 – 300) pound patient, one hundred (100) plus yards. (Tr.pp. 10-11)

Under cross-examination, Mr. Decker admitted that he had not worked at White River Health Systems and that he was basing his testimony on what he had been told.

He testified that he had walked up the thirty percent (30%) grade when he had gone to his doctor. The patients would go from the outpatient building to the ER. He further testified that there was “not necessarily a specific incident.” One time she came home and was hurting from doing it. I mean, there’s not, you know, “she didn’t fall per say or you know, come home and state she twisted her ankle real hard” or something very specific. There was not a specific single incident in his mind. (Tr.p. 13)

The claimant, Tracy Decker, was then called. She testified that she was born on March 17, 1969, and was fifty-four (54) at the time of the hearing and had been an RN for twenty-four (24) years. (Tr.p. 15) In regard to her working conditions, she testified that it was normal to push patients in a wheelchair and on stretchers. “That’s a normal given. Helping from the bed to the wheelchair, whatever.” She also discussed nurses going across the street to the ER pushing a wheelchair by themselves or if using a stretcher, with the help of another nurse. She stated that she could not “put down like a specific time” in regard to her injury. “It was a gradual continual pain that would not go away. I have a lot of medical conditions, and I’m on a lot of medications, and this pain was still not comforted.” The pain was different than before going to work at White River. She went on to testify about the gradual pain in her ankle and “they did say I had a tear which I went to physical therapy for it.” “I went to physical therapy afterwards, because I didn’t pay attention to myself until I quit work there, and then I’m like, I’ve got to do something about this leg. It will not stop hurting. This foot. This ankle. And I went to the doctor and they said I had a tear and I went to physical therapy at that time.” She stated that Doctor Agnel told her she had a torn ligament and sent her to physical therapy. (Tr.pp. 16-17) “It just -- it was a gradual thing but there was areas that are not safe in that hospital which

contributed to it not healing, or it getting worse you know.” She talked about a specific incident where she had to push a 350 to 400 pound lady from the outpatient building to the ER. When I got to the ER with that lady, “I was just worn out, I -- my whole body hurt. My legs were throbbing. I was wheezing. So, I mean, if I hadn’t turned, you know, my ankle had just gotten worse during a period of months.” She went on to say that she didn’t take care of it until she left the job. (Tr.pp. 18-19) She thought that an RN was on her feet seventy to eighty percent (70% to 80%) of the time. (Tr.p. 21)

Under cross-examination, the claimant testified that she began working for the respondent in May of 2019, and her last day of work was November 18, 2021. The claimant also agreed that she filed her Form C reporting her injury on August 9, 2022. She also admitted she had not reported the right ankle injury prior to her termination and that when her deposition was taken, she had answered that she could not recall a specific injury. When questioned about the specific incident she testified to on the day of the hearing in regard to pushing the very heavy women and the fact that she did not mention it at the time of her deposition, she stated she did not recall it at the time of her deposition. She then testified that in regard to remembering the incident, she did not know where to talk about it -- “didn’t know where to bring it up.” (Tr.pp. 22-24)

She also admitted that she saw Dr. Sidiqui, a pain management doctor, and was asked why she did not disclose her ankle pain on her December 2021, visit. She responded that she had so much pain throughout her body and that he didn’t really deal with “orthopedic natures” and he focused on her back and neck. (Tr.p. 24) She was also questioned about seeing her primary care provider, Bobbi Tosh, an APRN, on October 15, 2021, prior to leaving the respondent, and about the medical report making no mention

of muscle aches, no joint pain, no swelling, and no back pain. She admitted that the report was read correctly. She could not recall if she told Ms. Tosh about her ankle pain at that time. She also agreed that a medical report dated November 8, 2021, by Ms. Tosh, made no mention of muscle aches, joint pain, swelling, or back pain. (Tr.pp. 25-26) She went on to state that she did not focus on her ankle pain until December after she quit work. “I had just wrote it off to a bad day at work, several times. And when I finally quit work is when I finally turned and looked at myself to see how I could help myself be more healthy. And the ankle was one thing that was not going away.” (Tr.p. 27)

The claimant was also questioned about seeing Dr. Boop, a neurologist, and the report mentioned increased neck pain and headaches along with other issues but made no mention of an ankle issue. The claimant thought that she had probably told him about the ankle pain because she would fill out a chart in regard to pain when seeing him. (Tr.p. 29) She was also questioned about seeing Chelsey Howell, a physical therapist who saw her for treatment of her ankle pain. The claimant admitted that the report, dated August 10, 2022, provided she was not currently working at the time of the report due to IBS symptoms and this would have been one day after she had filed her claim for compensation. The claimant denied the accuracy of the report on August 3, 2022, by Ms. Howell, where it stated that she could walk 2 to 3 hours without pain. (Tr.pp. 30-31) The claimant went on and stated “the right ankle does impact my ability to do many other things. So, it does -- to the scope of my whole body of being disabled.” (Tr.p. 32)

On redirect, the claimant stated that Dr. Angel had stated her injury was a gradual injury that would happen because the claimant was a nurse working hard and continually not paying attention to herself. (Tr.p. 34)

The claimant submitted thirty-three (33) pages of medical records that were admitted as claimant's exhibit one, along with the deposition of Gabriel Don Decker, the claimant's husband, as claimant's exhibit two, without objection. The medical records provided a right ankle radiology report dated December 30, 2021, which provided that no acute fracture or dislocation was seen. An ER note dated January 17, 2022, provided the claimant presented with lower extremity pain and also mentioned right hip pain while walking. A CT of the pelvis occurred on the same date which provided no fracture or dislocation of the pelvis was seen. (Cl. Ex. 1, PP. 2-7)

The claimant presented to Bobbi Tosh, APRN, on February 10, 2022, and the report mentioned ankle pain, but stated that the onset of the ankle pain was February 13, 2022. The report mentioned a previous cough, and further stated that the pain in her right foot had started a few months prior when standing for a long period of time. (Cl. Ex. 1, PP. 8-12)

The claimant saw Dr. Jeffery Angel on February 16, 2022, and the medical report referred to right ankle swelling and instability. The report went on to mention weight reduction and stated that the radiology exams were normal. It also mentioned in regard to the right ankle that there was no tenderness to palpation and no swelling and no joint instability. The assessment provided for chronic pain of the right ankle with posterior tibial tendinitis of the right lower extremity. (Cl. Ex. 1, PP. 13-16) An MRI of the right ankle was completed on February 27, 2022. Under impression, the report provided for a mild

marrow signal at the neck of the talus which could represent a stress reaction but no associated fracture, mild soft tissue edema, a thickening of the superior medial portion of the spring ligament complex which could represent chronic sprain, and moderate tenosynovitis of the peroneal brevis and longus tendons. (Cl. Ex. 1, PP. 17-18) The claimant then returned to Dr. Angel on March 2, 2022. The report provided that the symptoms from the last visit had not changed and that the right ankle pain symptoms had developed spontaneously. The pain was gradual in onset and was aggravated walking and with strenuous activity. Under assessment, the report provided for a right contusion of the bone and a peroneus brevis sprain on the right. (Cl. Ex. 1, PP. 19-23)

The claimant then returned to Bobbi Tosh, APRN, on March 28, 2022, and ankle pain was mentioned along with the review of other health related issues, including hypertension, acid reflux, asthma, and fibromyalgia, among others. (Cl. Ex. 1. PP. 24-26) The claimant then returned to Ms. Tosh, APRN, on April 1, 2022, with the report again mentioning ankle pain with an onset of February 13, 2022, but again mentioning other issues. (Cl. Ex. 1, PP. 27-28) The claimant returned to Ms. Tosh, APRN, on May 3, 2022, for another follow-up. The report mentioned the assessment of a variety of health-related issues, including moderate persistent asthma, ankylosing spondylitis, hypertension, acid reflux, seasonal allergic rhinitis, sleep apnea, depressive disorder, and ankle pain. (Cl. Ex. 1, PP. 29-33)

The respondents filed six (6) exhibits without objection. It was noted that the claimant filed a Form AR- C on August 9, 2022, which stated she was required to be on her feet throughout the day to assist the doctor and the patients which caused a gradual onset injury. (Resp. Ex. 1) The First Report of Injury provided that it was prepared on

August 15, 2022, and stated that it was a gradual onset injury that occurred on November 15, 2021. (Resp. Ex. 2) The respondents also submitted wage records. (Resp. Ex. 3)

The respondents provided additional medical records which were made part of the record without objection as Respondents Exhibit 4. The first medical record dated December 1, 2022, provided that the claimant was referred to Dr. Meraj Siddiqui with a chief complaint of bilateral shoulder pain, chronic pain, neck pain and rib pain. No mention of ankle pain was made. (Resp. Ex. 4, PP. 2-5) The respondents records also provided that the claimant presented to Ms. Tosh multiple times from October 15, 2021, through February 10, 2022. (Resp. Ex. 4, PP. 6-32)

The records also provided that the claimant presented to Dr. Angel on February 28, 2022. The MRI of the right ankle provided the joints aligned normally and no fracture was suggested. The medial ankle tendons were intact without evidence of tendinosis or tear. There was a circumferential fluid signal that surrounded both the peroneus brevis and the peroneus longus tendons, which was likely tenosynovitis. A partial split tear of the peroneus brevis tendon was also noted at the level of the ankle. The report further provided that a thickening of the superior medial portion of the spring ligament complex could represent chronic sprain. (Resp. Ex. 4, PP.33-34)

The claimant presented to the Little Rock Diagnostic Clinic on May 24, 2022, for a follow-up for neck pain and migraines. The diagnostic description was for cervical radiculitis and migraine with aura. The ankle was not mentioned in the report. (Resp. Ex. 4, PP. 35-40)

The respondents also introduced into evidence physical therapy records for the claimant from July 18, 2022, through August 22, 2022. The records provided Chelsey

Howell, DPT, provided the therapy as a result of a sprain to claimant's right ankle due to the claimant's nursing job. The claimant had been seen earlier in the year but was unable to finish the therapy due to taking care of an ill family member. The claimant's presentation was consistent with the diagnosis of a right ankle sprain and chronic ankle sprain. The reports provided that the claimant was making progress with her therapy, but then the physical therapist missed a date due to an emergency and then the claimant reported that she was not feeling well and was unable to attend the therapy. The last therapy record provided that a therapy session was set up for August 30, 2022, and the claimant failed to appear. (Resp. Ex. 4, PP. 41-71)

The deposition of the claimant was also entered into the record without objection. During the deposition, the claimant admitted that she had allowed her license to lapse. (Resp. Ex. 5, P. 13) She testified that she did not recall when the injury occurred but that she first became aware of the ankle injury in the fall of 2021. Her last day of work for the respondent was November 18, 2021, and she thought that the injury to her right ankle occurred approximately two (2) months before. She did not think that she complained to anyone at the respondents in regard to her ankle injury. (Resp. Ex 5, PP. 21-22) She was unable to remember a specific injury in regard to her right ankle. (Resp. Ex. 5, P. 24) She also admitted that the physical therapy that was ordered helped her. (Resp. Ex. 5, P. 28) The claimant also admitted to a cervical fusion in June of 2019, due to degenerative disc disease, which was not related to work. She also admitted to an incident in January of 2022, that involved her son in law where she was pushed off a three-step high porch and injured her hip. (Resp. Ex. 5, PP. 47-48)

A copy of the IZARD County Sheriff's report in regard to the incident was also introduced into the record without objection which included photographs and mentioned an altercation between the claimant and her son-in-law, on January 14, 2022. (Resp. 6)

DISCUSSION AND ADJUDICATION OF ISSUES

In regard to the primary issue of compensability, the claimant has the burden of proving, by a preponderance of the evidence, that she is entitled to compensation benefits for the injury to her right ankle under the Arkansas Workers' Compensation Law. In determining whether the claimant has sustained her 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. Cavananugh'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).

Here, the claimant asked the Commission to determine if she suffered a gradual onset injury to her right ankle on or about November 15, 2021. Arkansas Code Annotated §11-9-102(4)(A)(ii) states, in relevant part, that injuries that occur over a period of time and are not the result of a specific incident occurring at an identifiable time and place are not compensable unless they are caused by rapid repetitive motion. To be awarded benefits for a gradual onset injury, the claimant must prove several things: (1) the injury arose out of and in the course of employment; (2) the injury caused internal or external physical harm to the body, which required medical services or resulted in death or disability; (3) the injury was caused by rapid repetitive motion; (4) the injury was the major cause of the disability or need for treatment; and (5) the injury was established by

objective medical findings. A.C.A. §11-9-102(4)(D). Also see, *Malone v. Texarkana Public Schools*, 333 Ark. 343, 969 S.W. 2d 644 (1998) and *Hapney v. Rheem Mfg. Co.* 342 Ark. 11, 26 S.W.3d 777 (2000). Arkansas courts have set out a two-pronged test for such cases as the matter at bar. The claimant must engage in tasks that are repetitive and the repetitive motion must be rapid. See *Malone, supra*. Arkansas courts have further determined that as a threshold issue, the tasks must be repetitive or the rapidity issue is not reached. Certainly, even repetitive tasks and rapid work, taken alone, will not satisfy the definition. Repetitive tasks must be completed rapidly. It is also noted that a compensable injury must be established by medical evidence supported by objective findings. A.C.A. §11-9-102(4)(D). “Objective findings” are those findings which cannot come under the voluntary control of the patient. A.C.A. §11-9-102(16)(A)(i)

In the present matter, there is no question that the claimant, while working as a nurse, was required to push patients (some who were extremely heavy) on multiple occasions up a hill from the outpatient center to the ER when the patient would have to be admitted due to complications. There is no question that this was a difficult task, especially at times when additional staffing would have assisted the situation. However, the elements of the claimant’s work, however difficult, do not meet the legal standards set forth by the Arkansas courts for a finding that the claimant suffered a gradual onset injury. Tasks that are repetitive must also be completed rapidly and this did not occur in the present matter before the Commission. Further there are no specific objective findings that these activities led to the injury of the right ankle. It is also 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). Consequently, there is no alternative but

to find that the claimant has failed to prove, by a preponderance of the evidence, that she suffered a compensable gradual onset injury to her right ankle on November 15, 2021.

Based upon the available evidence in the case at bar, without giving the benefit of the doubt to either party, there is no alternative but to find that the claimant has failed to satisfy the required burden of proof to show that the claimed right ankle injury is in fact work related and compensable under the Arkansas Workers' Compensation Act. Consequently, all other issues are moot. 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